

HANUKKAH AND AMERICAN RELIGIOUS LIBERTY-A CONTRARIAN PERSPECTIVE

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Well Hanukkah is about upon us. And despite the general American mood of good will and cheer, Hanukkah is a tough holiday for Jews. Not tough like Passover with all the preparations. Not tough like Yom Kippur that requires so much physically and spiritually from us. But Hanukkah is tough because, if we are honest, we do not know quite what we should make of it. The nice story of the magical cruse of oil works for a while, but ultimately we know there must be more to it than that. It of course celebrates a great, though ultimately ill-fated, military victory, but the rabbis have always hesitated to emphasize the militaristic elements of the holiday.

In order to translate it into meaningful terms, in modern America Hanukkah is generally celebrated as a festival of religious liberty, and one which we American Jews should particularly celebrate because of the religious liberty that we enjoy. That is the conventional narrative at least. Though, if we look at the Hanukkah story, it is not really one that the ACLU would celebrate. It is not about religious freedom in a pluralistic society. It is about the Maccabean fundamentalists winning out not just over the Greeks, but also over the large elements in the Jewish community that embraced Hellenistic culture and attempted to merge it with Judaism. Jason, of the priestly line, bribed the king to be appointed high priest. Then, if you read 2 Maccabees 4:12-17:

[Jason] took delight in establishing a gymnasium right under the citadel, and he induced the noblest of the young men to wear the Greek hat. There was such an extreme of Hellenization and increase in the adoption of foreign ways because of the surpassing wickedness of Jason, who was ungodly and no true high priest, that the priests were no longer intent upon their service at the altar. Despising the sanctuary and neglecting the sacrifices, they hurried to take part in the unlawful proceedings in the wrestling arena after the signal for the discus-throwing, disdainful of the honors prized by their ancestors and putting the highest value upon Greek forms of prestige.

Translated into contemporary terms, the Maccabees won out not just against the Greeks who defiled the Temple and banned Jewish religious practices, but also against the Jews who laid the groundwork for this by building a Powerhouse Gym right next door to the Temple that even attracted the clergy away from their duties. In light of that, part of the addition to the Amidah that we add during Hanukkah takes on new meaning. We say—

You delivered ... the corrupt into the hands of the pure in heart, the guilty into the hands of the innocent. You delivered the arrogant into the hands of those who were faithful to your Torah.

That may describe the Hellenized Jews more than the Greeks.

If you talk with those who have ever learned with me—and as you probably have noticed already-- I am often a contrarian. At least I am a contrarian to the extent needed to provoke us to carefully examine our ideas. And tonight I want to take that kind of contrarian approach and suggest that just as the historic Hanukkah story is not a narrative about the liberal concept of religious freedom that some assume it is, neither is the contemporary Hanukkah story. Instead I want to suggest that in the United States, today's

Hanukkah is not really a symbol of religious freedom, but instead stands as an object lesson in a subtle kind of threat to religious liberty.

We celebrate religious liberty by pointing to the First Amendment, and to the religious freedom that Jews enjoy in the United States. Here we are, the most diverse, and at least outside Israel, the most vital Jewish community in the world. Few Jews under 40 years old who were born in the United States have experienced meaningful discrimination, and certainly not religious persecution. We have an incumbent U.S. President who regularly hosts a Passover Seder. We have three out of nine U.S. Supreme Court Justices who are Jewish. We have a former U.S. President (and his wife who may well be a future one) who have a Jewish son-in-law. By outward appearances, we are being loved as never before.

But being Jews, we always suspect that things cannot really be that good. And I guess that is what I want us to explore tonight. The First Amendment contains two complementary commands. Congress (and as later interpreted, state and local governments) may not prohibit the free exercise of religion, nor make any law respecting the establishment of religion.

Laws that directly prohibit the free exercise of religion have been comparatively rare in American history once we get beyond colonial times. Perhaps the most direct example is Congress' repeated action in the 19th century to outlaw polygamy practiced by Mormons. But in recent times we have seen other examples which at least some claim are an infringement of their religious liberty. Two recent examples—Christian owned small businesses have claimed successfully that their religious liberty is violated by the requirement under the Affordable Care Act that they furnish health insurance covering contraceptive methods they consider to be abortifacients. And the Satmar community in New York City claims that New York Health Department regulations designed to prevent the spread of herpes to infants violates their religious liberty. The regulations require *mohelim* to obtain informed consent from parents before performing a circumcision using *metzitzah b'peh* (oral suction).

But both of those are a far cry from the total Temple desecration and ban on Jewish religious practice imposed by Antiochus in the Hanukkah saga. And government infringement of free exercise is not the piece I want to emphasize tonight. Instead I want us to look at the other side of the 1st Amendment—the Establishment Clause. This is the provision that is popularly characterized as requiring the separation of church and state. It is the clause that many conservative Christians decry as the source of all our country's troubles—that stem from removing God and prayer from our schools. I want to suggest that the Establishment Clause is in some ways the more important protection for us today and that contemporary Hanukkah demonstrates that.

Usually any discussion of the Establishment Clause begins with a reference to Thomas Jefferson and the “wall of separation” between church and state. But that phrase did not originate with Jefferson's 1802 Letter to the Danbury Baptists. It did not originate with Jefferson whose Deist religious views are suspect among orthodox Christians. Instead it originated with Roger Williams, a deeply religious Protestant theologian who was concerned with protecting the purity of church doctrine—protecting it from the eroding effects of government. Separation protects religion from being watered down by government. Politics is compromise—and religion is about resisting compromise. That was the Maccabees' message as well.

In 1644, Roger Williams wrote:

When they have opened a gap in the hedge of or wall of separation between the garden of the church, and the wilderness of the world, God hath ever broken down the wall itself. . . and made his garden a wilderness, as at this day. And that therefore if He will ever please to restore His garden and paradise again, it must of necessity be walled in peculiarly unto Himself from the world. [--from The Bloody Tenent of Persecution, For Cause of Conscience]

Was Roger Williams right? Does the state inevitably force religion to change from a beautiful garden to a wilderness when the two embrace? I believe that the drafters of the First Amendment thought so. To borrow language from another source, the Establishment Clause is not so much a wall as a security fence that protects religion.

While often those who defend the separation of church and state are the ones who are made to feel like outsiders because the government has favored another religion, this is not the problem with Establishment that Roger Williams was concerned about. And that is not the piece of the Establishment Clause that I want to focus on tonight. Instead, I want to focus on the damage that comes to the religion that the government decides to embrace.

Put another way, the Establishment Clause protects religion from the subtle lure of government support and power which, while initially attractive, ultimately waters down or destroys religion. I want to suggest that Hanukkah in the United States stands as an example of how that happens.

The dangers we are concerned about here do not happen when a religion is persecuted. Instead they happen when a religion gets too much love from the government. They happen either when the religion calls on the government to help it enforce its beliefs, or when the government bestows largess of one kind or another on the religion.

When the drafters of the First Amendment included the Establishment Clause in the Constitution, they knew what they were fighting. The Church of England was, and is, a clear example of an established church. Its important decisions must be approved by both houses of Parliament and presented to the Queen (or King) for assent. For example, this past October, Parliament passed a law giving the Church of England the right, for the first time, to appoint women as bishops. Even authorization for the use of particular prayer books goes through this legislative process in England.

Suppose Congress or state legislatures got into the business in this country of approving the prayers that could be said in a particular church or synagogue? In the 1962 case of *Engle v. Vitale*, the U.S. Supreme Court struck down as an Establishment Clause violation a prayer that had been composed by the New York Board of Regents for public school students to recite at the beginning of each school day. It read:

Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers and our Country.

As *pareve* as possible! Can you imagine a Saturday at synagogue or a Sunday morning at church full of that kind of soaring prose! And can you imagine the arguments that probably occurred at many New York Regents' meetings back in 1951 as they composed this prayer. We might imagine that perhaps the first draft of the classroom prayer sought the blessings of God on "our Country's leaders," or maybe on its President. Someone on the New York Board of Regents had probably campaigned hard three years earlier for Thomas Dewey or Henry Wallace and did not like the idea of seeking God's blessings on

Harry Truman. So the prayer was watered down to call merely for blessings on “our Country” rather than on its leaders. And on and on....

The Supreme Court rightly said in *Engle*:

[T]he constitutional prohibition against laws respecting an establishment of religion must at least mean that in this country it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government.

In the abstract, we all seem to agree. We do not want our government officials defining for us a religion by majority vote. We do not want to have imposed on us only those religious doctrines or those modes of prayer that can get a majority vote in Congress and survive a filibuster. But unnoticed, in recent years we may have in fact embraced governmental definition of religious doctrine and practice in the name of harmony and good will. That brings me back to Hanukkah.

Most of us celebrate the fact that at Hanukkah we see menorahs up next to Christmas trees at county courthouses; or we have mayors participating in Chabad menorah lightings; and we have the White House Hanukkah reception. And we even have a Hanukkah postage stamp. But all of this has led us to subtly accept the government’s definition of Hanukkah. By that, I do not mean that the government is defining Hanukkah as the Jewish Christmas. That is far too simplistic and not accurate.

However, what the government has done is to turn Hanukkah, a minor holiday by most *halachic* standards, into a major Jewish holiday because it happens to usually coincide with Christmas. The government has subtly re-defined the importance—and perhaps the meaning—of our holiday for us—and we have welcomed it. Indeed Chabad has abetted this redefinition of the holiday’s importance. It has latched onto the mitzvah of *pirsumei nisa*, the commandment to publicize the miracle of Hanukkah, to justify encouraging the lighting of giant menorahs on government property (or in other public places) as a way of proclaiming their encapsulation of Hanukkah’s miracle. Here is what Chabad says on its website:

In addition to the menorahs placed in the doorways and windows of Jewish homes, the sages instituted the practice of lighting the menorah in synagogues in order to further publicize the Chanukah miracle....

In times past, the synagogue was the most public Jewish venue. Today, however, the reality is such that many Jews do not visit the synagogue on a daily basis. The Rebbe, Rabbi Menachem Mendel Schneerson, of righteous memory, therefore encouraged the erection of menorahs in public areas to maximize the reach of the radiance of the Chanukah lights and to publicly proclaim the timeless message of the Chanukah victory of light over darkness.

Ironically, for many Hanukkah has become the big Jewish festival of the year-- “The *Hag*”—the term often used in Biblical times for Sukkot. Ironically, because if you read Second Maccabees, Chap. 10: 5-6, the source of the eight-days is not the magic cruse of oil. Instead it says:

It happened that on the same day on which the sanctuary had been profaned by the foreigners, the purification of the sanctuary took place, that is, on the 25th day of the same month, which was *Kislev*. They celebrated it for eight days with rejoicing, in the manner of the Festival of Booths,

remembering how not long before, during the Festival of Booths, they had been wandering in the mountains and caves like wild animals.

So there is a relationship of Hanukkah to The *Hag*, but not the one many imagine.

Now maybe you think I am being overly sensitive in all of this—come on, some decorations; a postage stamp! How could I be upset by such a pleasant gesture during the holiday season?

Rabbis, over the years, have been concerned about the relative importance of the various Jewish holidays and holy days. Some are clearly major festivals and others are not. Some require a cessation from work, a major change in the daily prayer liturgy, elaborate rituals. Others involve only minor additions to the daily worship service and little else. And rabbinical authorities decreed even more elaborate gradations. On Shabbat, 39 separate categories of creative activities were prohibited as work that would desecrate the Sabbath. Refraining from these kinds of efforts acted as a tribute to God's resting from Her own acts of creation. On major festivals that do not fall on the Sabbath, most of these same restrictions apply, but a few (like cooking and carrying) do not. It was important that Jews be reminded of the relative primacy of various observances. The important ritual of blowing the shofar is not performed when Rosh Hashanah falls on Saturday. We need to be reminded of the primacy of Shabbat over even the High Holy Days.

So it is not a minor thing when government tells us Jews that we have our priorities wrong—that we do not really know which holidays are major and which are minor. The Hanukkah stamp in that context is a statement by the federal government that the one Jewish holiday that is important enough to be recognized by federal officials is the rather minor holiday of Hanukkah.

Now postal authorities will tell us that since Christians have Christmas stamps to use to mail Christmas cards, it is only appropriate that Jews should have Hanukkah stamps available to use in mailing Hanukkah cards. Those of us who are old enough to remember when cards were in fact sent by snail mail rather than online, know, of course, that Hanukkah cards were largely unknown until fairly recent years. Traditionally, cards were sent for Rosh Hashanah, yet the Post Office never issued Rosh Hashanah stamps for use in that larger market.

What is going on here, as we all really know, is that the government (along with commercial interests) is trying to cast the net of Christmas over Hanukkah. Just as an important holiday in December is at the center of Christianity, it would only be appropriate to have an equally important December holiday in Judaism. That way we could call the December holiday season a Judeo-Christian tradition. Interestingly, in 2001, just before 9-11, the Post Office expanded its Holiday Series by issuing an Eid stamp to mark the Muslim festivals, one of which marks the end of Ramadan. Ramadan moves around the secular calendar, coming in different months over the years. Is it a coincidence that the Eid stamp was first issued in a year in which Ramadan fell in November and December? The message was: Muslim-Americans, now a growing part of the population, should also have an important December holiday that the government can recognize as well.

Politics pushes toward compromise. What better compromise than a syncretistic religious tradition that can be shared by all in one month of commercial excess? And even better if Jews think that this syncretism is in fact normative Judaism! Is it not just this kind of governmental redefinition of religion that the Establishment Clause was designed to prevent? Roger Williams would recognize how the garden

of religious tradition has been overtaken by the wilderness of the world here. And the Maccabees would too. They were not just fighting the Seleucid Empire, but equally fighting the Jews of the day who were following the ways of the Greeks—who were assimilating or creating syncretistic traditions like constructing a gymnasium next to the Temple.

Finally, before you finally decide whether my points are crazy or not, let me share one more example with you. Last year, as you probably recall, Hanukkah came very early (or as I prefer to say, December came very late)—so that Hanukkah overlapped not with Christmas, but with Thanksgiving. So, it was not until the very end of Hanukkah that the White House got around to holding its annual Hanukkah reception at which, traditionally a rabbi is invited to recite the blessings over the Hanukkah candles. Actually it held two receptions last year on the same day. But the second—which was the major one-- was held on *Motzei* Hanukkah, i.e. right after the end of the eighth day of the holiday. Yet Rabbi Joshua Sherwin, a lieutenant in the United States Navy, was invited (and when you are in the military, presumably RSVP'ing “no” is not an option) to preside over the lighting of the Hanukkah candles and say a blessing. So here is what Rabbi Sherwin said:

Thank you, Mr. President. As Hanukkah formally ends this evening, it is appropriate for us to gather to remind ourselves and the world the true meaning of this holiday. In that spirit, at this wonderful gathering, we now kindle the menorah and recite two blessings as we kindle these lights -- the *she-asa nissim*, thanking God for the miraculous capability to bring light to the darkest corners of the world and for the leaders who are dedicated to strengthening religious freedom in our days just as the Maccabees did in ancient ones.

The second *bracha* -- we'll all join together in the *shehecheyanu*, the simple yet powerful prayer of thanksgiving for the blessing of life, for the gift of light and for the privilege of celebrating this Hanukkah together.

So suddenly, in the court of the most powerful ruler in the world, we have a rabbi creating a tradition of lighting candles after the end of Hanukkah—though not reciting *asher kidshanu b'mitzvotov vitzivanu*-- because it was never commanded. Here we have a Conservative rabbi, flanked by the leader of the free world, adopting the Rebbe's restatement of the meaning of the Hanukkah miracle: “bringing light to the darkest corners of the world.”

Rabbi Sherwin also describes Hanukkah as thanking God “for the leaders who are dedicated to strengthening religious freedom in our days.” Does the Talmud really see Hanukkah as a holiday dedicated to Supreme Court justices who write good 1st Amendment opinions—i.e. those who are dedicated to strengthening religious freedom in our days, in the words of Rabbi Sherwin? In fact the Maccabees were really only interested in religious freedom for Jews who kept strict Torah law. The Hellenized Jews of the day were their enemies—not a group equally entitled to religious freedom.

And then to end the Hanukkah reception, President Obama, apparently knowing that I would one day deliver this talk, wanted to drive home my point about government pressuring us subtly to create syncretistic practices. He held up a menorah in the shape of a turkey and said:

There is only one last piece of business that I need to do. This was prepared for us. Some of you may be aware that Thanksgiving and the first day of Hanukkah converge only every 70,000 years.

So presumably, this is the first and the last time that this may be used. This was prepared for us. This is called a Menurkey. And I just wanted to make sure that those of you who were not familiar with the Menurkey -- that we had our own here in the White House. Enjoy the reception, everybody. Thank you so much. God bless you. God bless America.

So there you are—a Menurkey, a Hanukkah bush or a gymnasium next to the holy Temple which is the symbol of assimilation in the Book of Maccabees. Hardly the way to remember the ultimately ill-fated victory of a group of Jewish fundamentalists who opposed integration of Hellenistic values with Jewish ones!

Of course, if we don't think the government should be defining true Jewish beliefs for us, presumably we don't think it should be defining true Christian beliefs for Christians, true Hindu beliefs for Hindus, or true Muslim beliefs for Muslims. So consider this excerpt from President Obama's address to the nation in September of this year on the threat posed by ISIS (or ISIL):

[W]e continue to face a terrorist threat. We can't erase every trace of evil from the world, and small groups of killers have the capacity to do great harm. That was the case before 9/11, and that remains true today. And that's why we must remain vigilant as threats emerge. At this moment, the greatest threats come from the Middle East and North Africa, where radical groups exploit grievances for their own gain. And one of those groups is ISIL -- which calls itself the "Islamic State."

Now let's make two things clear: ISIL is not "Islamic." No religion condones the killing of innocents. And the vast majority of ISIL's victims have been Muslim. And ISIL is certainly not a state. It was formerly al Qaeda's affiliate in Iraq, and has taken advantage of sectarian strife and Syria's civil war to gain territory on both sides of the Iraq-Syrian border. It is recognized by no government, nor by the people it subjugates. ISIL is a terrorist organization, pure and simple. And it has no vision other than the slaughter of all who stand in its way.

Should the government be telling Muslims that this is not true Islam? We all understand why the President made this speech. But on close analysis, is this different than telling Jews what Hanukkah means?

In closing, I have no illusions that my ideas will do much to change the way Americans embrace our "Festival of Lights," but perhaps it will clarify for you that slightly uneasy feeling you may have as they do.