Cambridge University Press 978-0-521-11910-8 - Religion in Legal Thought and Practice Howard Lesnick Excerpt <u>More information</u>

# Part I Introductions

The book begins with several brief scriptural and quasi-scriptural passages intended to evoke thought regarding some fundamental questions with which religion deals and which this book hopes to address. Whatever your past or present stance is with respect to any religious tradition, I invite you to ask yourself what message you find in each passage, and how you respond to it.

## RELIGION: AN UNLIKELY SAVIOR The Moral Core of Judaism and Christianity: Reclaiming the Revolution DANIEL C. MAGUIRE<sup>1</sup> (1993)

It is not at all obvious at this point in history that the religions of the world have done more good than harm. Alexander Pope said that "the worst of madmen is a saint gone mad." What is there in religion that makes its saints so mad? Among the ancient offspring of religion we find human sacrifice, magic, witch-hunts, pogroms, crusades, inquisitions, and holy wars. Today's religions look no more promising than yesterday's when we look to Northern Ireland, the Middle East, Afghanistan, or the Punjab. Religion seems more divisive than race.

One might well identify with the Latin poet who wondered how "religion could generate so many evils." Was Lucretius not right in praising Epicurus for saving humankind from the "burden of religion"? A formidable burden of proof rests on anyone who would argue as I shall that a lost revolution of consciousness – one that could have a major, transforming impact on our modernity – is retrievably housed in the classic religions of Judaism and Christianity. Both Judaism and Christianity suffer from advanced decadence, a fact only timidly recognized by the institutional devotees of these religions.

On the one hand, the various Christian bodies seem tired, dated, and failed – unlikely candidates to bring aid to a world in terminal peril. Christianity, with some regional exceptions, seems lost in its doctrinal and ecclesial constructs and trapped in tangential moral concerns. Its dynamic originality seems to have greyed into irrelevance. Its "bare ruined choirs" do not beckon. The ultimate penalty for failed hope, the chill of neglect, seems its just contemporary portion and lot.

On the other hand, an overly segregated Judaism has largely defaulted on the universalist dream of Isaiah. That ancient prophet was sure that the vision that birthed Israel could be "a light to the nations," a light that would reach "to earth's farthest bounds" (Isa. 49:6).

<sup>1</sup> Professor of Moral Theological Ethics, Marquette University.

## CAMBRIDGE

4

#### Introductions

The light of which he spoke was not a little spark of private comfort-piety, but a radical rethinking, in theological symbols, of the essentials of political and economic reality and of the possibilities of human moral genius. The potential influence of this Hebraic vision has not been realized as it abides too much in its "splendid isolation." The dogmatic simplicity of Judaism – in contrast to Christianity, with its Grecian doctrinal overlay – would seem to have made it a more likely candidate for export. And yet, much of its moral power remains untapped.

#### Deuteronomy 26:1-11

When you have come into the land that the Lord your God is giving you as an inheritance to possess, and you possess it, and settle in it, you shall take some of the first of all the fruit of the ground, which you harvest from the land that God is giving you, and you shall put it in a basket and go to the place that God will choose as a dwelling for his name. You shall go to the priest who is in office at that time, and say to him, "Today I declare to the Lord your God that I have come into the land that the Lord swore to our ancestors to give us." When the priest takes the basket from your hand and sets it down before the altar of God, you shall make this response before the Lord:

"A wandering Aramean was my father; he went down into Egypt and lived there as an alien, few in number, and there he became a great nation, mighty and populous. When the Egyptians treated us harshly and afflicted us, by imposing hard labor on us, we cried to the Lord, the God of our ancestors; the Lord heard our voice and saw our affliction, our toil, and our oppression. The Lord brought us out of Egypt with a mighty hand and an outstretched arm, with a terrifying display of power, and with signs and wonders; and he brought us into this place and gave us this land, a land flowing with milk and honey. So now I bring the first of the fruit of the ground that you, O Lord, have given me."

You shall set it down before God and bow down before the Lord. Then you, together with the Levites and the aliens who reside among you, shall celebrate with all the bounty that the Lord your God has given to you and to your house.

Isaiah 58:2-9

Day after day they seek me and delight to know my ways.... "Why do we fast, but you do not see? Why humble ourselves, but you do not notice?" Look, you serve your own interest on your fast day, and oppress all your workers. Look, you fast only to quarrel and to fight and to strike with a wicked fist. Such fasting as you do today will not make your voice heard on high. Is such the fast that I choose, a day to humble oneself? Is it to bow down the head like a balrush, and to lie in sackcloth and ashes? Will you call this a fast, Cambridge University Press 978-0-521-11910-8 - Religion in Legal Thought and Practice Howard Lesnick Excerpt <u>More information</u>

#### Some Opening Prompts

5

a day acceptable to the Lord?
Is not this the fast that I choose:
to loose the bonds of injustice,
to undo the thongs of the yoke,
to let the oppressed go free,
and to break every yoke?
Is it not to share your bread with the hungry,
and bring the homeless poor into your house;
when you see the naked, to cover them,
and not to hide yourself from your own kin?
Then your light shall break forth like the dawn,
and your healing shall spring up quickly;
your vindication shall go before you,
the glory of the Lord shall be your rear guard.
Then you shall call, and the Lord will answer;
you shall cry for help, and the Lord will say,
Here I am.

## The Gospel According to St. Matthew 6:19-34

Do not store up for yourselves treasures on earth, where moth and rust consume and where thieves break in and steal; but store up for yourselves treasures in heaven, where neither moth nor rust consumes and where thieves do not break in and steal. For where your treasure is, there will your heart be also.

No one can serve two masters; for a slave will either hate the one and love the other, or be devoted to the one and despise the other. You cannot serve God and wealth.

Therefore I tell you, do not be anxious about your life, what you will eat or what you will drink, or about your body, what you will wear. Surely life is more than food, and the body more than clothing. Look at the birds of the air; they neither sow nor reap nor gather into barns, and yet your heavenly Father feeds them. Are you not of more value than the birds?

Can any of you by worrying add a single hour to your span of life? And why be anxious about clothing? Consider the lilies of the field, how they grow; they neither toil nor spin, yet I tell you, even Solomon in all his glory was not clothed like one of these. But if God so clothes the grass of the field, which is alive today and tomorrow is thrown into the oven, will he not much more clothe you. You of little faith!

Therefore do not ask anxiously, "What will we eat?" "What will we drink?" "What will we wear?" These are the things that occupy the minds of the heathen, but your heavenly Father knows that you need them all. Seek first for the kingdom of God and his justice, and all the rest will come to you as well.

So do not be anxious about tomorrow, for tomorrow will look after itself. Sufficient unto the day is the evil thereof.

### The Letter to the Romans 7:7-12

What then should we say? That the law is sin? By no means! Yet, if it had not been for the law, I would not have known sin. I would not have known what it is to covet if the law had not said, "You shall not covet."

#### Introductions

But sin, seizing an opportunity in the commandment, produced in me all kinds of covetousness. Apart from the law sin lies dead.

I was once alive apart from the law, but when the commandment came, sin revived and I died, and the very commandment that promised life proved to be death to me.

For sin, seizing an opportunity in the commandment, deceived me and through it killed me.

So the law is holy, and the commandment is holy and just and good.

#### THE BABYLONIAN TALMUD<sup>2</sup> ORDER NEZIKIN, TRACTATE MEZIA 59A–59B

If he cut [an oven] into separate tiles, placing sand between each tile: Rabbi Eliezer declared it clean, and the Sages declared it unclean. [The Soncino edition of the Talmud (1935) explains the question in these words:

This refers to an oven, which instead of being made in one piece, was made in a series of separate portions with a layer of sand between each. Rabbi Eliezer maintains that since each portion in itself is not a utensil, the sand between prevents the whole structure from being regarded as a single utensil, and therefore it is not liable to uncleanness [because the contents of the two layers would not be deemed mixed together]. The Sages however hold that the outer coating of mortar or cement unifies the whole, and it is therefore liable to uncleanness [if it contained material not to be mixed].

Rabbi Eliezer brought forward every imaginable argument but they did not accept them.

Said he to them: "If the law agrees with me, let this carob-tree prove it!" Thereupon the carob-tree was torn a hundred cubits out of the ground. "One cannot bring proof from a carob-tree," they retorted. Again he said to them: "If the law agrees with me, let the stream of water prove it!" Whereupon the stream of water flowed backwards. "One cannot bring proof from a stream of water," they rejoined.

Again he said to them: "If the law agrees with me, let it be proved from Heaven!" Whereupon a Heavenly Voice cried out: "Why do ye dispute with Rabbi Eliezer, seeing that in all matter the law agrees with him!" But Rabbi Joshua arose and exclaimed: "It is not in heaven." [This is a reference to Deuteronomy 30:12, from Moses' final charge to the Israelites:

It is not in heaven, that thou should say, Who shall go up for us to heaven, and bring it to us, and make us to hear it, that we may do it? Neither is it beyond the sea, that thou should say, Who shall go over the sea for us, and bring it to us, and make us to hear it, that we may do it? But the word is very nigh unto thee, in thy mouth, and in thy heart, that thou may do it.]

What did he mean by this? Said Rabbi Jeremiah: "That the Law had already been given at Mount Sinai; we pay no attention to a Heavenly Voice. It is for man and not for God to interpret and decide. One cannot bring proof from God."

Rabbi Nathan met Elijah [the prophet, who was said to be immortal and to appear frequently to the rabbis,] and asked him: "What did the Holy One, Blessed be He, do in

<sup>&</sup>lt;sup>2</sup> The Babylonian Talmud was transmitted orally for centuries prior to its compilation by Jewish scholars in Babylon about the fifth or sixth century CE.

that hour?" "He smiled," Elijah replied, saying, "My children have prevailed, My children have prevailed."

### HALAKHIC MAN JOSEPH B. SOLOVEITCHIK<sup>3</sup> (Kaplan trans., 1983)

Holiness means the holiness of earthly, here-and-now life. [The passage that follows is quoted from the Babylonian Talmud, Shabbat 88b–89a.]

Rabbi Joshua ben [the son of] Levi said: "When Moses ascended on high, the ministering angels spoke before the Holy One, blessed be He, 'Sovereign of the universe! What business has one born of woman among us?""

"He answered them, 'He has come to receive the Torah.'"

"They said to Him, 'That secret treasure, Thou desirest to give to flesh and blood!"

"The Holy One, blessed be He, said to Moses, 'Return them an answer.'"

"He [then] spoke before Him, 'Sovereign of the universe! The Torah which Thou givest me, what is written therein? I am the Lord Thy God, who brought thee out of the land of Egypt (Exod. 20:2).' Said he, to [the angels], 'Did you go down to Egypt? Were you enslaved to Pharaoh? Again, what is written therein? Remember the Sabbath day, to keep it holy (Exod. 20:8). Do you then perform work that you need to rest? Again, what is written therein? Honor thy father and thy mother (Exod. 20:12). Do you have any fathers and mothers? Again, what is written therein? Thou shalt not murder. Thou shalt not commit adultery. Thou shalt not steal (Exod. 20:13). Is there jealousy among you; is the Evil Tempter among you?'"

"Straight away they conceded to Him."

God does not wish to hand over His Torah to the ministering angels, the denizens of a transcendent world. Rather, he handed over His Torah to Moses, who brought it down to the earth and caused it to dwell among human beings, "who reside in darkness and deep gloom" (Ps. 107:10). The earth and bodily life are the very ground of the *halakhic* reality. Only against the concrete, empirical backdrop of this world can the Torah be implemented; angels, who neither eat nor drink, who neither quarrel with one another nor are envious of one another, are not worthy and fit for the receiving of the Torah.

## CIVIL RESISTANCE OR HOLY OBEDIENCE? REFLECTIONS FROM WITHIN A COMMUNITY OF RESISTANCE ANDREW W. MCTHENIA, JR.<sup>4</sup> 48 Wash. & Lee L. Rev. 15 (1991)

The story to which we try to be faithful – our generative narrative – is a very specific one. It is that God entered into human history in the person of an itinerant rabbi named Jesus. He spent some time in an occupied territory teaching and associating with all sorts of people, most of whom seem to have been at the margins of society. He preached a message

<sup>&</sup>lt;sup>3</sup> Joseph B. Soloveitchik (1903–1993) was an Orthodox rabbi, a preeminent Talmudist and philosopher, and the descendant of a line of Lithuanian rabbis.

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CAMBRIDGE

## Introductions

and lived a life which offered a whole new definition of what it means to be human. His agenda was personal and extremely threatening to the political and religious establishment because almost everything he said and did called into question the administered arrangements of the existing world. The message was so radical and he so threatening that he was tried and killed in the name of the law. If the story ended there, it would be just one more tragic event in a fallen world. However, it does not end there, because three days later he rose from the dead. The resurrection is what makes the story unique – and we believe that therein lies God's ultimate saving power.

A small minority of the first century world believed the truth of that story and became part of the Jesus movement. Today, some two thousand years later, those of us who still believe the story to be true have inherited the challenge of affirming a particular witness without being concerned about the need to show that others who do not believe the story are "bad." We do not claim to be able to prove that our view of the world is right. Our job is not to establish empires or even to persuade others to change the law. It is instead to try to live out the awesome truth of that simple story: that the suffering of the crucified Christ represents the wisdom and power of God and that the resurrected Christ here and now represents God's victory over the fear and thrall of death. It is in the everyday ordinariness of life that this God who defies all commonsense is revealed to us. Ours is a particular heritage and our task as Christians is not to persuade the world that the Jesus movement makes sense, but to decide every day "whether – when he meets us in our world, as he does in fact – we want to follow him."

A major problem for many of us who seek to follow Jesus is that the church lost a critical purchase on its ability to see the world clearly when, at the time of Constantine, the church and the state united. From that time forward, too often we have seen our duty as less to be obedient to a call of radical servanthood and more as an obligation to contribute to the success of the state. That radical shift in position – seeing the world from the top down instead of from the bottom up – left us disoriented. Ours is a failure of memory. We reason and think as if we were a majority and yet we are, in fact, strangers in a strange land.

## I BELIEVE .... Questions of Faith: A Skeptical Reaffirmation of Christianity PETER L. BERGER<sup>5</sup> (2004)

This is a book on questions of religious faith. If one has no faith, is there any reason why one should be interested?

Leave aside for the moment the question of why one may have faith: There are good reasons why many people go through life, often very successfully, without faith. It is more difficult to see how one could fail to be *interested* in the matter. Religious faith, in whatever form, always involves one fundamental assumption – namely, that there is a reality beyond the reality of ordinary, everyday life, and that this deeper reality is benign. Put differently, religious faith implies that there is a destiny beyond the death and destruction which, as we know, awaits not only ourselves but everyone and everything we care about in this world, the human race and the planet on which its history is played out, and (if modern physics is correct) the entire universe. One can reasonably say that one does not

<sup>5</sup> University Professor of Sociology and Theology, Boston University; Director of the Institute on Culture, Religion, and World Affairs.

believe in such a transcendent destiny; it is less reasonable to say that one is not interested in it. Religion implies that reality ultimately makes sense in human terms. It is the most audacious thought that human beings have ever had. It may be an illusion; even so it is a very *interesting* one.

Most of the time, in the course of ordinary living, we assume that reality is what it appears to be - the physical, psychological, and social structures that provide the parameters of our actions. The philosopher Alfred Schutz called this "the world-taken-forgranted." There are exceptional individuals who question this taken-for-grantedness by way of intellectual reflection, individuals like Socrates or Einstein; they are quite rare. For most people ordinary reality is put in question by something that happens to interrupt the flow of ordinary living. Often what happens is something bad - illness, bereavement, loss of social status, or some other individual or collective calamity. But the taken-forgrantedness of everyday reality can also be put in question by some very good things: an intense aesthetic experience, or falling in love, or being awed by the birth of one's first child. Either way, suddenly, it becomes clear that there is more to reality than one had previously assumed. Minimally, this is what is meant by experiences of transcendence. Such experiences are not yet religious - atheists and agnostics too become ill, get to be parents, become intoxicated by music or by love. But one could call these experiences "pre-religious": By relativizing ordinary reality they open up the possibility of a reality that [is] usually hidden. One takes the step from a pre-religious to a religious perception of transcendence when one believes that the reality that lies beyond ordinary experience means well by us. Again, one need not believe this. But it is certainly interesting to consider the possibility.

#### On the other hand, if one has faith, why should one ask questions about it?

There are people who have faith without feeling the need to reflect about it. These are often people who have grown up in a social environment in which their particular faith is taken for granted, or they have had a powerful experience which confirmed their faith and which retains its power in their memory. Or perhaps the capacity for unquestioning faith is simply a part of a certain personality type; in religious terms one could then say that such faith is a gift. The value one ascribes to reflection will determine whether one envies such people or thinks that they are missing something important. Be this as it may, most human beings feel constrained to reflect about their experiences and beliefs, if only to relate different experiences and beliefs to each other in such a way that they make overall sense. Obviously any aspect of human experience and belief can become an object of reflection. Religion is no exception.

Probably the most cited Biblical passage dealing with faith is from the eleventh chapter of the Letter to the Hebrews, which begins with the eloquent sentence: "Faith is the assurance of things hoped for, the conviction of things not seen." A little later in the chapter it is said that "whoever would draw near to God must believe that he exists and that he rewards those who seek him." With all due respect for this New Testament text, one must regretfully conclude that it is not terribly helpful to the contemporary individual who hovers between belief and unbelief, to anyone who asks whether one should have faith in the first place.

But that is not the question that is being discussed here. It is the question of all those who find themselves in a situation where God has not spoken – or, if it seems that He may have spoken, one cannot really be sure about this. Put differently, the problem for faith

10

#### Introductions

this situation is the profound fact of God's siler

in this situation is the profound fact of God's silence. I think that this silence ought to be taken with utmost seriousness.

I confront God's silence, I am determined to *bear* that silence, I refrain from trying to deny its reality by prematurely speaking into it. I too remain silent, and I wait. At the same time, I acknowledge that I find God's silence intolerable, even offensive. I refuse to deny *either* God's silence or my hunger for the silence to be broken. And then I find myself compelled to address – to speak into – that silence nevertheless. This, I suppose, could be called the primeval form of prayer – addressing the silent God, from whose absence I suffer.

And then I can begin to reflect, and I decide to reflect by looking at human reality without, for the moment, making any religious assumptions. I then find that prayer, in one form or another, is a universal human phenomenon. Over the ages human beings have spoken into the silence – in simple words, in elaborate ceremonies, chanting, singing, dancing, offering sacrifices, beating drums, and playing on every sort of musical instrument – an endless cacophony of yearning sound. Could it be that there never was an answer? There is no way of denying the hunger. Could it be that this hunger is all there is?

## THE SPIRITUAL COUPLETS OF MAWLANA JALALU-'D-DIN MUHAMMAD RUMI<sup>6</sup> The Travelers Who Ate the Young Elephant Book III, Story I (2008)

The man whose calling "O Allah" was equivalent to God's answering him, "Here am I."

That person one night was crying, "O Allah!" that his mouth might be sweetened thereby, And Satan said to him, "Be quiet, O austere one! How long wilt thou babble, O man of many words? No answer comes to thee from nigh the throne, How long wilt thou cry 'Allah' with harsh face?"

That person was sad at heart and hung his head, And then beheld Khizr [a legendary prophet, associated with the biblical Elijah] present before him in a vision, who said to him, "Ah! thou hast ceased to call on God, Wherefore repentest thou of calling upon Him?"

The man said, "The answer 'Here am I' came not, Wherefore I fear that I am repulsed from the door."

Khizr replied to him, "God has given me this command; Go to him and say,

'O much-tried one,

Did not I engage thee to do my service?

Did not I engage thee to call upon me?

That calling 'Allah' of thine was my 'Here am I,'

And that pain and longing and ardour of thine my messenger;

Thy struggles and strivings for assistance

Were my attractions, and originated thy prayer.

Thy fear and thy love are the covert [sic] of my mercy,

Each 'O Lord!' of thine contains many 'Here am I's'."

<sup>6</sup> Thirteenth-century Persian poet, Islamic jurist, theologian, and mystic.

#### FOOTNOTE TO ALL PRAYERS Poems C. S. LEWIS<sup>7</sup> (1965)

He whom I bow to only knows to whom I bow When I attempt the ineffable Name, murmuring Thou, And dream of Pheidian fancies and embrace in heart Symbols (I know) which cannot be the thing Thou art. Thus always, taken at their word, all prayers blaspheme Worshipping with frail images a folk-lore dream, And all men in their praying, self-deceived, address The coinage of their own unquiet thoughts, unless Thou in magnetic mercy to Thyself divert Our arrows, aimed unskilfully, beyond desert; And all men are idolators, crying unheard To a deaf idol, if Thou take them at their word. Take not, oh Lord, our literal sense. Lord, in Thy great, Unbroken speech our limping metaphor translate.

### Note: A Catalogue of Provocative Prompts

Christianity ... seems lost in its doctrinal and ecclesial constructs and trapped in tangential moral concerns [and] an overly segregated Judaism has largely defaulted on the universalist dream of Isaiah.

Now I bring the first of the fruit of the ground that you, O Lord, have given me.

Is not this the fast that I choose: to loose the bonds of injustice, to undo the thongs of the yoke, to let the oppressed go free, and to break every yoke?

Seek first for the kingdom of God and his justice, and all the rest will come to you as well.

I would not have known what it is to covet if the law had not said, "You shall not covet."

It is for man and not for God to interpret and decide. One cannot bring proof from God.

Angels, who neither eat nor drink, who neither quarrel with one another nor are envious of one another, are not worthy and fit for the receiving of the Torah.

Our task as Christians is not to persuade the world that the Jesus movement makes sense, but to decide every day "whether – when he meets us in our world, as he does in fact – we want to follow him."

The problem for faith is the profound fact of God's silence. I think that this silence ought to be taken with utmost seriousness.

That calling "Allah" of thine was my "Here am I."

Taken at their word, all prayers blaspheme.

7 British novelist, academic, medievalist, literary critic, essayist, lay theologian, and Christian apologist (1898–1963).