

## America's Jewish Debt Is Not to Jews of 1776, But to Judaism's Tenets

Unlike many of my colleagues I have chosen in this our beloved country's bicentennial, to focus attention not on what American Jews contributed to the revolution in 1776 but rather on what the heritage of Judaism contributed to the political thought of that period. It is my considered judgment that the American Revolution would have succeeded even if there had been no Jews in the colonies at that time. However, had there been no Old Testament and no Biblically based political ideals there would never have been a revolution nor any of the democratic institutions for which the United States later became the model for all the world.

Too often we overlook the fact that the very notion that one has the right to question the legitimacy of power is a Jewish perspective. Prior to Judaism no one ever thought, in the words of Professor Jacob Talmon, that "King, Parliament, even the sovereign people, even Pope and Council, must at all times exhibit their credentials in the face of divine or natural law." Everywhere it was assumed that the power of the ruler is as natural as the sun and the moon, the thunder and the lightning. Even Aristotle held that there were people who were born to rule while others were born to be ruled. Human slavery itself he deemed natural.

In the Soviet Union one does not dare question the credentials of the authorities in control. And even now her most famous rebels, when they do rebel, take their stance from the religious tradition. However, this religious tradition which is essentially Judaic yielded much more than the right to rebel. (I say essentially Judaic because Christianity was too often reconciled to giving to Caesar what was Caesar's as long as God had what was His. Judaism dared to question also Caesar's claims.)

And precisely because according to Judaism, no one was ever above the Law, there was in Jewish law the requirement that even kings and high priests must account for their deeds to human tribunals and not only to divine ones. Judaism also had the doctrine of judicial review. One could challenge the constitutionality of any legislative or executive mandate. Such a challenge was a challenge to the legitimacy of the power that was being exercised against a fellow human.

Furthermore, because Judaism always distinguished between spiritual power which resided in the priests, prophets, and rabbis and temporal power which resided in kings, princes, "nesiim," and others, one can trace the doctrine of separation of church and state back to Judaism. No one other than Moses was entitled to hold the two powers at the same time and when the Maccabees later usurped both they were severely criticized for their breach of the Judaic pattern. Judaism preserved the right of the prophet to criticize the monarch while the monarch retained his claim to the prophet's respect and obedience.

It is from this position that one arrives at the notion that there is a difference between law and justice. Law is "what is"; justice is "what ought to be." What the ruling authority ordains is law; what he ought to ordain is suggested by the keepers of the conscience.

Justice is the standard by which we measure the quality of law the litmus paper to determine whether the rule of law conforms to the ideal. And this dichotomy is the heart of the theocentric law which Judaism gave to mankind and especially to the founders of the American republic. By its mandate, even the will of the majority is not the voice of God. That was the theory of the French Revolution, not the theory of the American Revolution. According to Judaism — and incidentally Hamilton, Madison and Jay - the majority must be made to do no wrong, and what is right and wrong is determined not by them but rather by a higher law, the “echo of the infinite” of which Oliver Wendell Holmes did write.

If Jews who immigrated to these blessed shores felt so at home here it was not because they came from democratic countries. On the other hand, they came from lands in which democracy was hardly known. But because of their Jewish background they could melt so readily into the American process which was familiar to them - it was Judaic in origin and character.

To be even more specific with regard to the Judaic roots of American political thought one could cite many more ideas.

In Judaism we stress the rule of law to such an extent that Prof. Zilberg points out that even God is bound by it. Having divested Himself of some authority by delegating it to the rabbis, He could not curtail the judicial power they were exercising.

Second, the violent resistance of the American colonists to the unlawful search of their homes and the seizure of their property stems from the Biblical injunction that even a creditor cannot invade the debtor's residence to collect a debt. He may stand outside and request security and that is all. Rabbinic law extended this prohibition to include even the court's sheriff. From this concern there ultimately emerged the right to privacy which Jewish law articulated at least two thousand years before western law embraced it.

And the right against self-incrimination, which is much more protective of alleged criminals in Jewish law than in any other legal system known to us, may have come from Judaism not Lord Coke. Of this scholars have written and I need not labor the point. Suffice it to say that Maimonides rationalizes the rule by pointing out that it prevents mentally disturbed people from destroying themselves by confessing to crimes they did not commit. So great was the concern of Jewish law for the sanctity and dignity of human life that our sages were mindful even of those who did not cherish life!

Indeed, the greatness of America is her respect for the human personality which remains inviolate. This is also the hallmark of Judaism which teaches us that we were created in the divine image. The two traditions are kin Judaism is the mother, and Americanism the daughter. Therefore, what American Jews did or could have done in 1776 does not intrigue me as much as the fact that Judaism came to this hemisphere before the Jews did and laid the foundation for a great civilization which will endure as long as Jews and Judaism have and will.