

## SPINOZA'S IDENTITY AND PHILOSOPHY: JEWISH OR OTHERWISE?

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Maimonides was a Jewish philosopher. But was Spinoza a Jewish philosopher or a philosopher who happened to be Jewish? The question we have been asked to address is illustrative of the radical break between traditional and contemporary notions of the nature of Jewish identity. For traditionalists, Jewish identity consists of fidelity to Jewish religious practices and dogma. The contemporary attempt to assert the Jewish identity of public intellectuals, who often have a marginal connection to Judaism or lack serious knowledge of classical Jewish sources, raises important issues about what constitutes Jewish identity in modernity. Spinoza has emerged as a seminal figure in this debate and the history of Jewish attitudes to Spinoza remains a fascinating subject. Unlike many other public figures whose Jewish identity is currently debated, Spinoza was an educated Jew, thoroughly acquainted with the Bible, Maimonides, and the thought of other Jewish philosophers. But Spinoza's relationship to Judaism was certainly ambivalent, dramatically symbolized by his excommunication. Indeed, for Jewish historians, he belongs within the pantheon of "important heretics in Jewish history," which begins with Jesus.<sup>1</sup> The ban against Spinoza was an outcome of his philosophical beliefs about God, raising the question whether Spinoza's philosophy can nonetheless be seen as a part of the enterprise of Jewish philosophy.

### I.

Let me declare at the outset that I am not a Spinozist nor am I a student of philosophy. But I do have an interest in the question of what makes an intellectual endeavor engaged in by Jews distinctively "Jewish." Intellectual disciplines tend to develop their own distinct criteria to assess the Jewishness of their practitioners. These criteria open a window onto the particular preoccupations of the discipline.

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<sup>1</sup> David Biale, *Historical Heresies and Modern Jewish Identity*, 8 JEWISH SOC. STUD. 112, 114 (Winter/Spring 2002).

Before turning to the field of Jewish philosophy, and the specific case of Spinoza, allow me to draw on the intellectual discipline more familiar to me, the field of law. There is a growing body of literature that addresses the question of whether there is a distinctive Jewish voice in American law. In assessing the distinctive Jewishness of a judge or legal theorist, writers usually make the Jewish connection in one of two different ways. The first focuses on Jewishness as a social role or social identity. Are there patterns of sensitivity to certain legal issues or particular ways of understanding the role of law in American society that exemplify a distinctly Jewish social role, whether that of priest, prophet, parvenu, or pariah? In Robert Burt's, *Two Jewish Justices*, Justice Brandeis emerges as a prophet while Justice Frankfurter is analogized to the parvenu, one who is eager to assimilate but still represents his people and places his trust in the authority of government.<sup>2</sup> The second effort to locate a Jewish voice in American legal culture focuses on actual intellectual influence of Jewish texts and traditions in shaping the thought of a judge or theorist that are carried over, sometimes unconsciously, to different legal contexts. Whether this intellectual influence necessarily requires serious immersion in talmudic studies is open to question. Even a cursory reading of the Hebrew Bible offers a rich and culture-specific picture of the purpose of law—to effectuate justice on earth and to provide for man's spiritual and material welfare—and of the idea of law as obligation and responsibility.

Most such efforts at reclamation—the retrospective assignment of Jewishness to intellectual figures working within a general discipline—are interesting not so much for the new light they bring to bear on the intellectual's work as for the window they open onto contemporary problems of Jewish identity. The later Jewish celebration of those who have left their mark on the course of Western thought as having made a specifically Jewish contribution is often motivated by the desire to validate new Jewish ideologies. The Jewishness of a particular figure is celebrated by reinterpreting the meaning of Judaism. Brandeis, according to Robert Burt, can be placed within the Jewish prophetic tradition because he identified with the outcast.<sup>3</sup> Brandeis was a prophet, according to Saul Touster, because he was prophetically sensitive to the dangers of social division in the body politic.<sup>4</sup> In this view, Brandeis's Jewishness rests on a particular conception of Jewish prophecy that corresponds with Brandeis's legal sensitivities. But this

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<sup>2</sup> ROBERT A. BURT, *TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND* (1988); see also Marc Galanter, *A Vocation for Law? American Jewish Lawyers and Their Antecedents*, 26 *FORDHAM URB. L. J.* 1125 (1999).

<sup>3</sup> See sources cited *supra* note 2.

<sup>4</sup> See Saul Touster, *The View from the Hilltop*, 33 *BUFF. L. REV.* 571 (1984).

is a conception of prophecy and of the prophet, as engaged in a mission of social welfare or of championing the rights of the oppressed, that is itself thoroughly Americanized and secularized.

Similarly, the retrospective claim that a judge or theorist's conception of American law shares an intellectual affinity with Jewish law tends to reduce to the claim that somehow American law is quintessentially or especially Jewish. Thus, Jerold Auerbach has argued that American Jewish acculturation, achieved through the transfer of allegiance from Torah to Constitution, was made possible by the discovery of a unitary Judeo-American legal tradition. American lawyers have often contended that the ideals of American law are the same as the age old ideals of Jewish law. Auerbach asserts that this synthesis of Jewish and American law was entirely invented. The myth of a unitary Judeo-American tradition, like the myth of a unitary Judeo-Christian tradition, was not the result of the fortunate discovery that Torah and Constitution are similar traditions but rather the result of a sustained effort by American Jews to obliterate the vast actual differences between the two legal systems.<sup>5</sup>

In an article on the turn to the Jewish legal model in contemporary American legal theory, I conclude that the perceived intellectual affinity between the two legal traditions is often more wishful than accurate.<sup>6</sup> But such attempts at creative synthesis between two distinct cultures yield a fascinating dual redefinition of both cultures. The Jewish legal tradition is subtly reinterpreted to yield a picture of law embodying precisely the qualities contemporary theorists wish to inject into American law. In turn, American legal theorists incorporate this reinterpretation of the Jewish tradition into their work, redefining American legal theory. A similar redefinition occurs in the encounter between Jewish and general philosophy. Yet, Jewish philosophy is an independent discipline of thought and the question remains whether Spinoza was a creative synthesizer who imported Jewish themes, often radically reinterpreted, into his work, or a genuine Jewish philosopher.

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<sup>5</sup> See JEROLD S. AUERBACH, *RABBIS AND LAWYERS: THE JOURNEY FROM TORAH TO CONSTITUTION* (1990).

<sup>6</sup> See Suzanne Last Stone, *In Pursuit of the Countertext: The Turn to the Jewish Legal Model in Contemporary American Legal Theory*, 106 HARV. L. REV. 813 (1993). I do not deny that there are tantalizing similarities as well. Saul Touster has pointed out that the Jewish legal tradition and American constitutionalism share an important common structure because the Puritans consciously turned to the Hebrew Bible in creating their new civic order, planting two Jewish ideas: First, the social body is created by a covenant that transcends the idea of a mere social contract. Second, the good, the true, the righteous, even the beautiful, can be achieved by law. See Touster, *supra* note 4, at 572-75, 578.

## II.

Spinoza is the chief figure onto whom nineteenth and twentieth century conflicts over Jewish identity have been projected back onto. Spinoza has been turned alternatively into a hero and a villain. He was a model for eastern European Jews who chafed against traditional Judaism; “[o]ne thinks of Isaac Bashevis Singer’s heretical characters who obsessively read Spinoza.”<sup>7</sup> More recently, Spinoza has been salvaged as a proto-Zionist luminary because he speculated, in the *Tractatus*, on the revival of Jewish sovereignty. For Moses Hess, who called Spinoza “the latest manifestation of the spirit of Judaism,”<sup>8</sup> David Ben-Gurion, who proposed that the ban on Spinoza should be reversed,<sup>9</sup> and Joseph Klausner, who proclaimed Spinoza “our brother” at the Hebrew University’s celebration of Spinoza’s 300th anniversary,<sup>10</sup> Spinoza expressed the Jewish national and secular spirit of modernity. Others have viewed Spinoza critically. The Jewish historian Heinrich Graetz equated him with that other famous heretic of the same period, Shabbetai Zvi. One was a philosopher and the other a mystic, but Graetz indicted both as destroyers of Judaism.<sup>11</sup> Hermann Cohen labeled Spinoza the quintessential anti-Judaic philosopher, a “blasphemer and apostate,”<sup>12</sup> echoing the virulent accusations of traditionalists such as Rabbi Samuel David Luzzatto in his *Contra Spinoza*.<sup>13</sup> Secular criticism of Spinoza rests not on his mere rejection of religion but on the sense that Spinoza bore a “hate of the religion,” as Julius Guttman put it, which bordered on Jewish anti-Semitism.<sup>14</sup> Thus, the historiographer Israel Baer castigated Spinoza for essentially pandering to his Christian audiences and adopting their viewpoints.<sup>15</sup>

In a recent article on the “ambivalent recuperations of heretics in modern Jewish culture,” David Biale points to a particularly arresting modern literary representation of Spinoza in Milton Steinberg’s novel,

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<sup>7</sup> Biale, *supra* note 1, at 115.

<sup>8</sup> ZE’EV LEVY, BARUCH OR BENEDICT: ON SOME JEWISH ASPECTS OF SPINOZA’S PHILOSOPHY 3 (1989) (quoting MOSES HESS, ROM UND JERUSALEM 20, 84 (1935) (1862)).

<sup>9</sup> *Id.* at 3-4 (citing JOSEPH DUNNER, BARUCH SPINOZA AND WESTERN DEMOCRACY: AN INTERPRETATION OF HIS PHILOSOPHICAL, RELIGIOUS AND POLITICAL THOUGHT vii (1955) (Letter of David Ben-Gurion, October 4, 1954)).

<sup>10</sup> *Id.* at 201 (quoting Klausner’s unpublished speech).

<sup>11</sup> 5 HEINRICH GRAETZ, HISTORY OF THE JEWS 125 (Bella Lowy trans., 1904), *quoted in* Biale, *supra* note 1, at n.13 and accompanying text.

<sup>12</sup> LEVY, *supra* note 8, at 197 (quoting HERMANN COHEN, *Spinoza ueber Staat und Religion, Judentum und Christentum*, in 3 JUDISCHE SCRIFTEN (1924)).

<sup>13</sup> *Id.* at 2 (quoting 1 SAMUEL DAVID LUZZATO, RESEARCHES OF JUDAISM 198-222 (1913)).

<sup>14</sup> *Id.* at 203 & n.23 (quoting JULIUS GUTTMAN, RELIGION AND KNOWLEDGE 223 (1955)).

<sup>15</sup> *Id.* at 70, 78, 198.

*As a Driven Leaf*.<sup>16</sup> The story is about the most famous talmudic heretic, Elisha ben Avuya, known as Aher (The Other), who proclaimed “there is no justice and no judge” and denied the validity of the law. In Steinberg’s novel, Elisha ben Avuya is a student of Greek philosophy, who undertakes a philosophical project based on geometric proofs. Steinberg implicitly equates Elisha with Spinoza, whose *Ethics* was just such a geometric argument. In the novel, Elisha laments his continued exclusion from rabbinic life: “And yet I may not enter. For those who live there insist, at least in our generation, on the total acceptance without reservation of their revealed religion. And I cannot surrender the liberty of my mind to any authority.”<sup>17</sup> Elisha is juxtaposed in the novel to his contemporary, the saintly Rabbi Akiva, who also reads Greek philosophy along with his study of Jewish texts. Akiva is a prototype of Maimonides, who engages in “reasoned theology.”<sup>18</sup> In Steinberg’s view he is a “role model for the committed Jew who also immerses himself in worldly knowledge.”<sup>19</sup> Elisha, in contrast, “sought absolute truth outside of Jewish belief.”<sup>20</sup> Here we have the basic dilemma of the Jewish religion in modernity: How far can one depart from Jewish tenets in the pursuit of truth and yet remain within the boundaries of Judaism?

No orthodox rabbi has championed Spinoza, with the possible exception of the first chief rabbi of Palestine, Rabbi Abraham Isaac Kook, for reasons intrinsic to Kook’s philosophy and not that of Spinoza.<sup>21</sup> This no doubt accounts for the journalistic fascination of the *New York Forward* with the idea of a conference on Spinoza held at the Benjamin N. Cardozo School of Law, a law school affiliated with Yeshiva University, an orthodox institution.<sup>22</sup> And so, the *Forward*’s spin: Is Spinoza, the nineteenth and twentieth century icon for modern heretics as well as modern secular and nationalist Jews, about to be declared the prodigal son and returned to the bosom of Jewish orthodoxy as well?

Clearly, this symposium on Spinoza’s Law has no such agenda. But the subject of Spinoza’s heresy would seem to bear, at first blush, on the question whether Spinoza may be classified as a Jewish

<sup>16</sup> See Biale, *supra* note 1, at 124-27.

<sup>17</sup> MILTON STEINBERG, *AS A DRIVEN LEAF* 472 (Bobbs-Merrill 1939).

<sup>18</sup> Biale, *supra* note 1, at 126.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 127.

<sup>21</sup> See LEVY, *supra* note 8, at 4. In Kook’s kabbalistic philosophy, all Jews, no matter how deviant, have a spark of light that contributes to the Jewish corporate body. He writes: “Even from this thick-skinned pomegranate, some inner essence - after being purified and refined—can be extracted and found worthy.” *Id.* (quoting Abraham Isaac Kook, *Bé’iqvey hatson* (“In the footsteps of the flock of sheep”)).

<sup>22</sup> Lisa Keys, *Spinoza, Cardozo: Heretic Gets Boost at Yeshiva Confab*, *FORWARD* (New York), Oct. 4, 2002.

philosopher. Professor Bleich makes a cogent case against viewing Spinoza as a Jewish philosopher.<sup>23</sup> He bases his argument on a painstaking analysis of Spinoza's particular version of pantheism. Heresy is a legal category, however, and therefore shifts with time and context, as does the range of acceptable beliefs about God. Pantheistic views may be found within Hasidic circles and suspect heretical views within certain Lubavitch circles. But the more crucial question is whether an assessment of Spinoza as a Jewish philosopher should turn on the orthodoxy of Spinoza's views about God or creation. Let us suppose, for the moment, that Spinoza's views of God, whether characterized as pantheism or panentheism, were later found to be within the range of beliefs held by traditional Jews. Would Spinoza then be a Jewish philosopher?

A more promising criterion to judge the Jewishness of Spinoza's philosophy is the degree to which his philosophy grew out of acquaintance with classical Jewish texts and traditions. Most assessments of the Jewishness of those who have achieved prominence in Western thought begin with this question of actual intellectual influence. Perhaps, there is a deep structure to Spinoza's thought that expresses Jewish ideas or values in a heterodox way, much as Hegel claimed that his central philosophic conception was a rational articulation of the ideas of the Trinity and Incarnation. The debate about Spinoza's Jewishness often has centered on this criterion, as scholars increasingly attempt to trace the Jewish sources in Spinoza's work and the Jewish themes in his philosophy.<sup>24</sup> Whether Jewish sources played a greater role in the formation of his philosophy than other sources is a matter of ongoing debate. Still, one must ask whether the influence of Jewish texts and ideas on Spinoza's thought suffices to make Spinoza a Jewish philosopher. Certainly this is the case were one to define Jewish philosophy as the contribution of Jewish sources and Jewish thought to the universal discipline of philosophy. But I take the question posed to this panel as follows: Is Spinoza a partaker in a distinctive discipline that has come to be known as Jewish philosophy?

### III.

What then is Jewish philosophy? Allow me to take a circuitous route to one possible definition. Last year, I was asked to speak about the 'Jewishness' of Justice Benjamin Cardozo's jurisprudence. In preparation, I read Richard Polenberg's biography of Cardozo, which

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<sup>23</sup> J. David Bleich, *Was Spinoza a Jewish Philosopher?*, 25 CARDOZO L. REV. 571 (2003).

<sup>24</sup> See JEWISH THEMES IN SPINOZA'S PHILOSOPHY (Heidi M. Ravven & Lenn E. Goodman eds., 2002).

details lengthy exchanges between Cardozo and Jerome Frank.<sup>25</sup> Frank, as is well-known, was one of the original legal realists, who claimed that judicial decisionmaking was thoroughly subjective. Judges make and change law on the basis of their life experiences, or more precisely, the biases resulting from those experiences. Frank gave a psychological account of why judges clung to the myth that law was certain, objective, and predictable. “‘Back of this illusion is the childish desire to have a fixed, father-controlled universe, free of chance and error due to human fallibility.’ The myth ‘is a direct outgrowth of a subjective need for believing in a stable, approximately unalterable legal world . . . .’”<sup>26</sup> Frank ranked Cardozo as only a near adult. “[S]urprisingly, he is not ready to abandon entirely the ancient dream . . . .”<sup>27</sup> He cast too many backward glances.

Cardozo responded with a thoroughgoing critique of the new legal realism as generated by a group of scholars “‘content with nothing less than revision to its very roots of the method of judicial decision which is part of the classical tradition.’”<sup>28</sup> Cardozo sought the middle ground. He pursued a creative role for judges balanced against respect for tradition and the need for certainty. For Cardozo, judges both create and discover the law. Frank was incensed and, in his response, he compared his dispute with Cardozo to that between two other great Jewish thinkers: Maimonides and Spinoza. “Realism, or, as Frank preferred, skepticism, naturally had many forerunners, he noted . . . .”<sup>29</sup> Frank wrote: “Indeed, the legal skeptics can take over almost intact Spinoza’s criticism of the pseudorationalism of Maimonides.”<sup>30</sup>

Cardozo’s mistake was to believe that he could “reconcile classical legal theory with the new realism,” just as Maimonides “had devoted himself to reconciling religion with reason . . . .”<sup>31</sup> In that sense, both Cardozo and Maimonides “‘aimed to furnish a Guide to the Perplexed—by reconciling irreconcilables and thus played Judas to the best wisdom of their respective eras. The way out of intellectual perplexity is hard thinking.’”<sup>32</sup> By contrast, Frank was a latter-day Spinoza who “‘refused to save an old theology which was fundamentally at variance with new, verified observations.’”<sup>33</sup>

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<sup>25</sup> See RICHARD POLENBERG, *THE WORLD OF JUSTICE CARDOZO* (1997).

<sup>26</sup> *Id.* at 158-59 (quoting JEROME FRANK, *LAW AND THE MODERN MIND* 35 (1930)).

<sup>27</sup> *Id.* at 159 (quoting FRANK, *supra* note 26, at 237 (alteration in original)).

<sup>28</sup> POLENBERG, *supra* note 25, at 161 (quoting BENJAMIN N. CARDOZO, *Jurisprudence, in* *SELECTED WRITINGS OF BENJAMIN NATHAN CARDOZO* 10 (Margaret E. Hall ed., 1947)).

<sup>29</sup> POLENBERG, *supra* note 25, at 164.

<sup>30</sup> *Id.* (quoting Jerome N. Frank to Benjamin N. Cardozo (Sept. 9, 1932) (on file with Yale University)).

<sup>31</sup> *Id.* at 166.

<sup>32</sup> *Id.* (quoting Jerome N. Frank to Beryl Harold Levy (Aug. 1, 1938) (on file with Yale University)).

<sup>33</sup> *Id.*

The dispute between Cardozo and Frank rests, among other things, on the incommensurability of an internal and external critique. Frank looks at legal theory from the outside, testing it according to verified external observations. Cardozo, in contrast, attempts an internal critique of the law proceeding from an "internal sense of being bound by the law."<sup>34</sup> The internal sense of being bound by the law is not the equivalent of "being subject to or subservient to the law," however.<sup>35</sup> To be bound by the law connotes a stance of internal commitment to the law and its elaboration. In other words, within an internal critique, law is viewed as an ongoing normative project.<sup>36</sup>

I wish to suggest that Jewish philosophy is also best described as a project of internal critique, one that proceeds from a sense of being bound or internally committed, in a traditional or nontraditional sense, to fundamental ideas of Judaism such as the relevance of Scripture or the idea of revelation or, perhaps as well, to the fate of the Jewish people.<sup>37</sup> It is precisely Spinoza's lack of commitment to the ongoing relevance of Scripture that led Harry Wolfson to view Spinoza as rejecting the project of Jewish philosophy. Consider Harry Wolfson's famous description of the two alternatives on religious issues: to follow Greek philosophy or Hebrew Scriptures. Jewish philosophy, as religious philosophy, attempts to combine or confront or make relevant the two.<sup>38</sup> As Wolfson writes:

For on all these religious issues there are only two alternatives. One was stated in the Hebrew Scripture, and the other in the various writings of Greek philosophers. Thereafter, the great question in the history of religious philosophy was whether to follow the one or the other, or to combine the two. And in the history of religious philosophy, so conceived, two figures are outstanding, Philo and Spinoza. Philo was the first to combine the two; Spinoza was the first to break up that combination.<sup>39</sup>

Although Wolfson describes Spinoza as the first to split religion and philosophy, Wolfson also asserts that Spinoza did not do so deliberately and consciously. Spinoza, according to Wolfson,

seems to have been under the delusion that he was merely spinning on the traditions of religion and that he was only seeing in a truer light that which others before him had seen, to use his own expression, "as if through a mist." The true nature of his new

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<sup>34</sup> GEORGE P. FLETCHER, *BASIC CONCEPTS OF LEGAL THOUGHT* 54-55 (1996).

<sup>35</sup> *Id.*

<sup>36</sup> See generally Ronald Dworkin, *The Model of Rules*, 35 CHICAGO L. REV. 14 (1967).

<sup>37</sup> For a general attempt to define the project of Jewish philosophy, see ZE'EV LEVY, *BETWEEN YAFETH AND SHEM: ON THE RELATIONSHIP BETWEEN JEWISH AND GENERAL PHILOSOPHY* (1987).

<sup>38</sup> HARRY A. WOLFSON, *Spinoza and Religion*, in *RELIGIOUS PHILOSOPHY: A GROUP OF ESSAYS* 246, 269 (1961).

<sup>39</sup> *Id.* at 269.

theology, however, was more accurately understood by others than by himself.<sup>40</sup>

Tellingly, Wolfson concludes his analysis of Spinoza's philosophy with the striking image of Spinoza joining the Lutheran church of a friend. There, Spinoza preaches a sermon against the prevalent credulous beliefs in the spirituality of God, in the divine origin of Scripture, and in God's personal relationship to men. Yet, at the end of the sermon, Spinoza announces: "Now let us pray." In this prayer, he thanks God for His bountiful goodness. "As he is about to close his prayer," Wolfson writes, he catches a glimpse of the congregation and suddenly realizes that he is in a Christian church. Immediately, he adds: "In the name of Christ, the mouth of God, whose spirit is the idea of God, which alone leads us unto liberty, salvation, blessedness, and regeneration. Amen."<sup>41</sup>

Spinoza clearly emerges in Wolfson's analysis as a philosopher who partakes of the enterprise of universal and not Jewish philosophy. Yet, ambiguities remain. First, if Wolfson is correct, Spinoza would have assessed himself as engaged in an internal critique of Judaism, however much he obliterated that which actually makes Jewish philosophy a distinctive endeavor. This raises an interesting question about the relevance of a thinker's self-perception, even if deluded, in assessing whether he is a Jewish philosopher. On such a view, however, that most famous of Jewish heretics, Jesus, was a Jewish theologian. Second, it is impossible to know in advance which of the insights of Jewish thinkers who are engaged in universal philosophy will prove useful or creative for the ongoing project of Jewish philosophy in a changed environment. Thus, several contemporary Jewish philosophers argue that aspects of Spinoza's philosophy are appropriable today by thinkers who take seriously the values and problems of Jewish philosophical theology.<sup>42</sup> Such is the way of the trajectory of ideas through time.

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<sup>40</sup> 2 HARRY A. WOLFSON, *THE PHILOSOPHY OF SPINOZA* 347 (1969).

<sup>41</sup> *Id.* at 351-52.

<sup>42</sup> See *JEWISH THEMES IN SPINOZA'S PHILOSOPHY*, *supra* note 24.

