

## CONSCIENCE, CRITICISM AND CONTEMPORARY AMERICA

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American Jews, like other Americans, are rightly concerned about the state of our country—about its leadership, its political institutions, and its political and moral culture.<sup>1</sup> The coarsening of our culture and the balkanizing of our common life have been of concern for decades, but current circumstances render our anxiety acute. Americans seem to have lost their center, their common identity as Americans. They are divided into what the psychologist Joshua Greene calls “moral tribes.”<sup>2</sup> They speak different moral languages, describing and evaluating social phenomena that bear moral significance in incommensurable ways. What to one “tribe” is moral perfidy seems like a salutary upending of conventions of public propriety to another. Driven apart by tribalism, riven into “factions” less malleable than those that James Madison envisioned in the *Federalist Papers*, Americans lack what Aristotle called “civic friendship”—that bond of solicitude that distinguishes just republics from unjust tyrannies.<sup>3</sup> Although civic friendship has never been easy in a large, diverse nation such as ours, it has never been easier to think of one another as enemies. That is a very worrisome sign.

As our demographic makeup changes and we become increasingly diverse—increasingly divided by wealth, educational attainment, urban vs. rural and coastal vs. heartland residence—we have split into factions roughly along party lines. Sixty-six percent of

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<sup>1</sup> This essay was originally given as a talk at the Chautauqua Institution on July 28, 2017. Although I have rewritten the piece, it still has, intentionally, some traits of an oral address.

<sup>2</sup> Joshua Greene, *Moral Tribes* (New York: Penguin, 2014).

<sup>3</sup> *Nicomachean Ethics* 1155a22.

Democrats, according to a recent poll (but only 35% of Republicans) welcome the increasing diversity and pluralism of American culture. By contrast, 64% of Republicans (and 32% of Democrats) want the nation to remain grounded in “Christian religious beliefs.” The dominant Republican view, especially preponderant among evangelicals, expresses a tremendous anxiety about the demographic decline of the white Christian majority. As of 2014, white Christians, comprising both Protestants and Catholics, accounted for less than half—47%—of the population. If one brackets the Catholics, the old stock of mainline and evangelical Protestants accounts for only 32% of Americans. Surveys that study attitudes toward immigrants, race, gay rights, and other topics closely related to social change and value shifts reflect these demographic/cultural anxieties. The partisan divide is fueled not primarily by differences in governing philosophy but by fear—fear of the loss of cultural control, fear of the decline of cultural hegemony, fear of the rise of cultural others by groups sensing their own disinheritance.<sup>4</sup>

The kind of nationalism that has typified the United States—*i.e.*, civic nationalism, a sense of pride and purpose derived from ideas, institutions, and ideals—threatens to be replaced by the ethnic nationalism of Steve Bannon and Donald Trump. Such nationalism, in the American context, is an atavistic form of identity that feeds on grievance, fear of marginalization, resentment of racial and cultural difference, and on the apocalyptic belief that “White Christian civilization” is in its last days.<sup>5</sup> Democratic politics can hardly bear simmering rage, let alone the symbolic weight that apocalyptic, ethnic nationalists apply to democracy.

Political partisanship, although it plays a legitimate and vital role in our democracy, has come to subordinate or to obliterate the ties that otherwise bind us. It has become threatening to our national

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<sup>4</sup> These figures have been culled from surveys conducted by the Public Religion Research Institute, the Pew Research Center, and the Institute for the Advanced Study of Culture at the University of Virginia. See: <https://www.ppri.org/>; <http://www.pewforum.org/>; and <http://iasculture.org/research/publications/vanishing-center>. Accessed November 16, 2017.

<sup>5</sup> Philip Gorski, *American Covenant: A History of Civil Religion from the Puritans to the Present* (Princeton: Princeton University Press, 2017), p. 19.

identity. But, except for brief ritual gestures of comity in the wake of shootings and other tragedies, we can't seem to modulate it. We are losing the capacity for civility, which is more than politeness. This civility constitutes the democratic version of Aristotle's civic friendship. In a deep sense, civility means recognizing one another respectfully as citizens and having a willingness to listen, to reason, to persuade, and to be persuaded by one another.<sup>6</sup> We are losing the capacity for shared memory, experience, and sense-making. Of course, we Americans have always contested with each other vigorously about the meaning of our history and its significance for our present and future. But today seems different. Common truths and frameworks within which disagreement is even possible grow scarce. There must be at least minimal agreement as a base from which to mount disagreement. But today, it is as if we are speaking different languages and live in different moral and cultural worlds. Diagnosing our divisions two decades ago, Gertrude Himmelfarb wrote a book called *One Nation, Two Cultures*.<sup>7</sup> Except in a constitutional and legal sense, it is not clear that the "one nation" part still holds.

Since Donald Trump's election, it has been a reflex—among those worried about lurking authoritarianism—to look to governmental and civil society institutions to contain the potential damage that his presidency can wreak. So far, the guardrails are holding, despite attempts to impugn and to weaken them. We look to the courts, the religious communities, the professional civil service, the well-established media and other pillars for a moral compass. Are we justified in doing so? Are these institutions any less politicized than the fray above which (we imagine) they stand? Can they provide a conscience for the country that helps it recall and live up to its best self? I want to explore these questions here. I will do so by looking at one of our greatest American figures, Martin Luther King Jr., who believed that such institutions, particularly the Supreme Court and religious communities, can act as the conscience of the country. If King, writing at a time of overt violence and profound moral division is correct, then we can regain some democratic hope in the insuperable force of our civic ideals. Perhaps the moral resources residing in our

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<sup>6</sup> Edward Shils, *The Virtue of Civility* (Indianapolis: Liberty Fund, 1997).

<sup>7</sup> Gertrude Himmelfarb, *One Nation, Two Cultures: A Searching Examination of American Society in the Aftermath of Our Cultural Revolution* (New York: Vintage Books, 2001).

courts and civil society can yet provide a framework within which we can negotiate our legitimate disagreements. I would like to believe that this is true, but I am somewhat dubious. I will express both my hopes and hesitations below.

King wrote, "The conscience of the country must be both the Supreme Court and the Religious Communities."<sup>8</sup> The first problem to consider is that of conscience. Although we use the term regularly, do we understand what we mean by it? What is conscience? Is it a feature of individual minds, that is, of individual moral personalities? Or can the word "conscience" describe the behavior of public bodies, as King implies? Conscience has been a rich topic of philosophical reflection over the centuries. Although Biblical Hebrew lacks a comparable word, there are several incidents where Biblical characters follow an inner moral prompt as against their base self-interest, according to Gilbert Rosenthal.<sup>9</sup> (Examples include: Joseph resisting the blandishments of Potifar's wife; Shifra and Puah, the Egyptian midwives, disobeying Pharaoh's order to kill the Israelites' first-born males; and King Saul's servants disobeying him and refusing to slay the priests of Nob.) Conscience seems to be a feature of human moral life in general and an enduring feature of the moral history of the West.

I want to make three claims about conscience: first, that it is primarily a subjective phenomenon; second, that its extension from subjective, that is, private, to public status is analogical or metaphorical; and, third, that it is dependent on the context of values in which it operates. This makes conscience less an infallible guide to morals than a voice in a moral conversation. As to the first claim, philosophers, moral psychologists, and others who have studied

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<sup>8</sup> This quote organized a week of lectures at the Chautauqua Institution in July 2017. While I am unable to find the exact source of the quotation in King's works, it does seem consistent with King's attitude, as expressed elsewhere, towards the Church and the U.S. Supreme Court of his day.

<sup>9</sup> See "Is the Concept of Conscience found in Judaism?" Gilbert S. Rosenthal, *Conservative Judaism*, Vol. 64, No.2, Winter 2013, pp. 3-25. By contrast, Michael Wyschogrod forcefully rejects the concept of conscience in biblical and rabbinic literature, see Michael Wyschogrod, *Abraham's Promise*, R. Kendall Soulen, ed. (Grand Rapids: Eerdmans, 2004), pp. 75-90.

conscience agree, at a minimum, that conscience is fundamentally subjective; that is, it is a dimension of *individual* self-awareness. Conscience is “always knowledge of ourselves, or awareness of the moral principles that we have committed to, or assessment of ourselves, or motivation to act that comes from within us.”<sup>10</sup> Going back to the Greek philosophers, conscience is a kind of inner dialogue with oneself. In the literal sense of the Latin *cōnscientia*, it is a sharing of knowledge with oneself. (Although, as we will see, the term also implies sharing knowledge with one another. I shall use this latter sense to build a bridge between the primary subjective significance of conscience and its public role.) Conscience is an inner voice that judges, motivates and awakens feelings, often of guilt or remorse. It is that aspect of ourselves that spurs us to integrity, to unify our desires, judgments, and actions. This is what I mean by “subjective:” conscience goes on within a moral subject. (I do not mean by “subjective” to indicate something arbitrary, or a mere preference, and therefore something irrational.)

King’s statement rests on an implicit analogy. The conscience of a nation, activated in the moral deliberations of its institutions, is *like* the conscience of an individual, reflecting on or struggling to decide what to believe and what to do. The analogy has rhetorical force, but is it valid? Can institutions bring us to moral clarity as a collective, the way conscience can do for an individual? Is the inner conflict that an individual might feel – between, say, what society expects her to do and what conscience tells her is right – analogous to the conflicts that institutions mediate? Conscience is often thought to have a firm grip on right and wrong – its imperatives having to sail into the winds of selfishness, cowardice, conformity and so on. In the Catholic tradition, conscience witnesses to the presence of God’s laws within us.<sup>11</sup> It does

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<sup>10</sup> “Conscience” in *Stanford Encyclopedia of Philosophy*, accessed on November 11, 2017 at: <https://plato.stanford.edu/entries/conscience/>.

<sup>11</sup> It is in the Catholic tradition, especially in Aquinas, and then in the Reformation thinkers that the concept of conscience has been most developed. In the Jewish tradition, by contrast, the concept is underdeveloped. As to Judaism, Eugene Borowitz, commenting on Wyschogrod’s critical view, writes:

Wyschogrod contends...that despite some hints of a similar notion, a fully self-conscious concept of

not have a lock on moral truth, for it can get the application of those laws wrong. But it does bring us to the door of moral truth. Conscience as a moral compass is broadly thought to be, if not an infallible guide, at least a valuable one, all things considered. Listening to the voice of conscience may take courage, but it can result in the achievement of moral integrity, in the achievement of our best self. But can this construal apply to institutions?

Perhaps not. There is a disanalogy between individual moral subjects and institutional entities, with respect to conscience. For individuals, conscience is typically the best voice within us, militating against our base inclinations. For institutions, such as the Supreme Court, conflicting points of view have *prima facie* merit. It's not simply a matter of discerning some inner guide to the right and the good. It's giving a forum for the adjudication of legitimate claims and counter-claims, especially in a democracy. It's operating within norms and rules, precedents and arguments, principles and laws to reach decisions compatible with other decisions such that tradition is sustained, where possible, rather than mutilated. All of this is external, multi-faceted and conflictual in an indispensable way. The work of a court is very much *unlike* the work of conscience in an individual. Public conscience, if there is such a thing, is not, by definition, subjective. Given these considerations, I would say that conscience is at best a metaphor when applied to social institutions. And metaphors are always, strictly speaking, false. They get their punch from the tension between their obvious falsity and some glint of poetic insight they simultaneously convey.

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conscience does not appear in classic Jewish tradition. This follows consistently from the Jewish emphasis upon the affirmation of God's highly contentful revelation to the people of Israel. (Eugene B. Borowitz, *Exploring Jewish Ethics* [Detroit: Wayne State University Press, 1990], p. 185.)

For Wyschogrod, conscience entails an exaltation of human autonomy that would be fundamentally at odds with Jewish theonomy. Surprisingly, however, he stresses the urgency of a novel Jewish doctrine of conscience today: Jewish conscience should enable us to stand against the autonomy of the age and submit to God and Jewish law.

Well, what if we return conscience to where it really belongs, to individuals? What about focusing then on the judges who sit on the Court? Each has a conscience. Perhaps we could say that institutions come to embody conscience because of the conscientiousness of the individuals who sustain them. But this doesn't work either. First, it's a fallacy (the fallacy of composition) to scale up from individual traits to the traits of a group. To say "each basketball player is excellent; therefore the basketball team is excellent" doesn't hold. Second, and more importantly, for judges to fulfill their institutional mandate means for them to follow the norms of legal principle with devotion. They must not let their personal moral views overwhelm their interpretation of the law. Despite whatever sphere of discretion judges have for deciding the law, they cannot simply make the law conform to their consciences as private individuals. There is an objectivity to the law that is not analogous to the subjectivity of conscience. Law has its own decision procedures. Conscientiousness for judges means following the normative canons of their profession and its traditions, rising above their personal politics or religious beliefs.

Of course, it's not that simple. Bracketing or constraining one's own moral conscience and conscientiously deferring to the interpretative norms and procedures of the law doesn't quite describe how it works in practice. Rather than politics or religious beliefs *as such* intruding, judicial philosophy or ideology intrudes. Conscience does its work not only through adherence to the law but through fidelity to a certain view about what the law is, what it is for and what its place is in our republic. For originalists, such as recently-appointed Supreme Court Justice Neil Gorsuch (and former occupant of his seat Antonin Scalia), the meaning of legal statements should be construed or constrained by their meaning in the historical context of their composition. This method attempts to weed out, or severely to minimize, personal interpretation. Conscientiousness in this framework means rigorous exclusion of the interpreter's moral views in favor of an allegedly objective, historically anchored meaning. For someone like Justice Louis Brandeis, by contrast, interpretation and judgments of law should take into account contemporary social science as well as contemporary ethical/moral understandings. The law should take non-legal considerations on board as a matter of course. Conscientiousness, for a progressive, means capacious inclusion of

what the lawyer or judge thinks best promotes human welfare as a matter of principle. "In the order of explanation, morality comes first" vis-à-vis purely legalistic, in the sense of positivistic, considerations. Moral principles exert control over the operation and effect of law, in Ronald Dworkin's influential view.<sup>12</sup>

Even in just this way, the Court opens itself to something like the charge of politicization. (How much more so when courts are intentionally "packed" with conservative nominees.<sup>13</sup> More spectacularly, the Senate majority's refusal to meet with Judge Garland, with its insistence on temporizing until someone more like Justice Scalia could be nominated, deepens the impression that the Court is just another political branch of government.) But politicization is not the right word. The Court is influenced by the judicial philosophies of its members, and these do not map in an exact way onto partisan identities. But it does show that the concept of conscience, when applied to a complex institution such as the Supreme Court, is tricky. Judicial philosophy slants in conservative or progressive directions. Conscience is, as previously mentioned, context-dependent. The conservative Justice thinks that his or her professional ethics have been met by properly integrating correct legal judgment with correct principled jurisprudence; the progressive Justice agrees. But because the underlying principles of jurisprudence diverge, their judgments differ. Yet conscience has been served. Assuming integrity and good will, if the judgments of opposing judges are both conscientious, it is hard to see how conscience can fill the role that King believed it should.

Do the religious communities rise to that role more naturally than the Court? Can they be the conscience of the nation? Just as governmental institutions such as legislatures represent different, *prima facie* legitimate interests, and just as the Supreme Court wrestles with different *prima facie* legitimate claims and manifests different

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<sup>12</sup> Nicos Stavropoulos, "Legal Interpretivism", *The Stanford Encyclopedia of Philosophy* (Summer 2014 Edition), Edward N. Zalta (ed.) at <https://plato.stanford.edu/archives/sum2014/entries/law-interpretivist/>. Accessed December 5, 2017.

<sup>13</sup> See, for example: <http://www.cnn.com/2017/11/30/politics/trump-judges-courts-race/index.html>. Accessed December 5, 2017.

judicial-philosophical commitments—so too do the religious communities represent an *irreducible pluralism*. I do not mean merely that there are very many different religious communities in the US. Rather, *within* the historic families of faith, there are ongoing arguments about what the pertinent tradition means. On the one hand, these give the religious communities dynamism. On the other hand, however, these arguments cause internal division and separation. Even in a relatively small community such as the Jewish community, some institutional expressions of Judaism skew in a consistently liberal, rights-affirming, diversity-celebrating, progressive direction while some skew toward a rigorous fidelity to Jewish law and belief as it was fixed centuries ago. Although these internal divisions are primarily religious in nature, they are also political. It is rare to find a Reform Jew these days who is not a progressive. Over half of all American Orthodox Jews (57%) are Republicans.<sup>14</sup>

Religious communities no less than political parties seek to orient their members toward a political-moral identification, a way of navigating the public world, shaping outlook and decision making, actualizing faith in the democratic public sphere. Religious traditions and the communities that sustain them are seldom aloof from politics. Although, like the Supreme Court, they are not overtly political; they mediate political sentiments. They are implicated in the public conversation of the nation on the great issues of the day. America may not be a Christian republic, but it is not a godless one either.<sup>15</sup> The public square, despite the fondest hopes of some *über*-secularists, has never been completely naked. Religious communities, both internally and in their dealings with one another, are torn by political and moral divisions. This is what irreducible pluralism means. It is hard to envision how multiple and internally divided communities could rise to express a unified conscience.

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<sup>14</sup> Pew Research Center's Religion & Public Life Project, "A Portrait of Jewish Americans: Findings from a Pew Research Center Survey of U.S. Jews" (2013) p. 97, at <http://www.pewforum.org/2013/10/01/jewish-american-beliefs-attitudes-culture-survey/>. Accessed on November 16, 2017.

<sup>15</sup> For a balanced assessment of the role of religion in our political culture and public policy, see John DiIulio, Jr. *Godly Republic* (Berkeley: University of California Press, 2007).

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These concerns notwithstanding, we do have historical experiences of a community or coalition of communities that took a leading role on great public moral issues and functioned, roughly and at least in retrospect, as the nation's conscience. Recalling that *cōnscientia*, in Latin, can also mean "sharing knowledge with one another," conscience here means a call to remember some of the nation's founding ideals, to measure the distance between our current condition and those ideals, and to act to diminish the distance. In this sense, conscience is a public sharing of knowledge, knowledge of ideals derived perhaps from the Declaration of Independence or the Constitution. Conscience means interpreting, judging, hearkening, believing ourselves to be under judgment together. To the extent that we can do this as a body politic, a country can have a conscience that is somewhat analogous to an individual's.

But unlike conscience in its primary, subjective sense, the public sharing of knowledge is far more open to contestation and ongoing, undetermined interpretation. There is less agreement and resolution as to what the relevant ideals are, what they mean, or what they demand. Are there criteria that settle whether an interpretation of the nation's ideals is correct? Are there criteria that allow us to determine which social groups – which interpretive communities – serve as the nation's conscience? Start with religious communities as interpretive and activist stakeholders. Assuming for the sake of argument that religious communities are equally conscientious in the assertion of their values and their appeal to shared civic ideals – is the Catholic Church's staunch opposition to abortion the voice of the nation's conscience, or is the firm commitment of liberal Protestant and Jewish denominations to a woman's right to choose the best expression of the nation's conscience? All are equally conscientious, devoted to their views, and courageous in advocating for them. (And remember the third claim: conscience operates within a framework of moral values; it is framework-relative, not framework-transcendent. It does not have a God's eye view – although it might present itself to us, phenomenologically, as if it had one.) Although I certainly have my own view about this, it seems suspect to me to associate the views of those religious communities with whom I agree with the nation's conscience

and to see the opposing views *prima facie* as retrograde. Similarly, are those communities that affirm and celebrate the equality of gay men and women the true conscience of the nation, or is there any legitimacy to traditionalist conceptions of marriage and family and of the “natural law” tradition that typically undergirds those views? Is there is a commanding height from which we can say that these religious communities, and not those, have achieved the role of the conscience of the country? We ascribe conscience according to our antecedent value commitments. A rational criterion that could judge among and order those commitments would help, but is there one?

King himself wrestled with this. It’s worth looking at the criterion that he provides and seeing whether it works. In one of the great classics of American political thought and rhetoric, indeed, of American religion, “Letter from a Birmingham Jail,” King tried to refute a group of Birmingham clergy, Protestant, Catholic, and Jewish, who urged patience and condemned his approach of direct action. He met their caution with prophetic indignation, attacking their piety as morally bankrupt complicity in an ungodly system of historic oppression. No one reading the “Letter” today could fail to see the justice of King’s cause and the rightness of his argument. His opponents argued on behalf of forbearance and tolerance, acknowledging progress in race relations, but urging that “honest convictions in racial matters [should] be pursued in the courts.”<sup>16</sup> They endorsed the basic justice of the black cause but differed with King over strategy, strongly affirming local and legal, or, better, legalistic solutions. Before a fully just resolution, “the decisions of those courts should in the meantime be peacefully obeyed.” To King’s “fierce urgency of now,” they preached deferral and patience.

King first defended himself against the charge of being an outside agitator who brought an alien agenda to a community that could handle its own problems in its own way. Powerfully asserting his right to be involved, he declared, “I am in Birmingham because injustice is here.”<sup>17</sup> Likening his cause to that of ancient Israel’s

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<sup>16</sup> See <http://teachingamericanhistory.org/library/document/letter-to-martin-luther-king/>, accessed on November 16, 2017.

<sup>17</sup> This and the other citations from the “Letter from Birmingham Jail” may be found at: <http://www.ucla.edu/~ras2777/flourishing/kingletter.html>. Accessed November 16, 2017.

prophets and the apostle Paul, he must “carry the gospel of freedom beyond my particular home town.” And what is the gospel that he brought? It is the demand of the oppressed for their rights and dignity against the oppressor—the ever urgent, but frequently deferred, demand of the vulnerable against the powerful. Whenever the black man or woman has heard the word “wait,” he or she knows that this “has almost always meant ‘never...’ There comes a time when the cup of endurance runs over and men are no longer willing to be plunged into an abyss of despair.” He hoped that his interlocutors could understand “the legitimate and unavoidable impatience” of his followers.

Having established his right to protest in Birmingham, King addressed a second, deeper objection. Although his strategy was generally one of Gandhian non-violence; nonetheless, some laws do get broken. His interlocutors found his stance fatally inconsistent. King admitted the inconsistency. He writes:

Since we so diligently urge people to obey the Supreme Court’s decision of 1954 outlawing segregation in the public schools, it is rather strange and paradoxical to find us consciously breaking laws. One may well ask: “how can you advocate breaking some laws and obeying others?”

It is at this point that King proposes a criterion that justifies some moral beliefs and actions, while delegitimizing others.

King claimed, following St. Augustine, that there are two types of law—just and unjust. “An unjust law is no law at all.” Thus, to break laws that entrench segregation, even though they are positive laws of the state, in the name of a higher, just law, is not an injustice. We can determine, furthermore, whether a law is just or unjust by whether it coheres with

the moral law or the law of God. An unjust law is a [man-made] code that is out of harmony with the moral law... Any law that uplifts human personality is just. Any law that degrades human personality is unjust.

Applying this criterion to his actual situation, he claims that

all segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority, and the segregated a false sense of inferiority.

In addition to the injury that unjust law does to its victims' sense of dignity and worth, King also argued on procedural grounds. Such laws were passed without the consent of black citizens, whose rights to vote were infringed. Therefore, the statutes passed by white legislatures were undemocratic in a fundamental sense. Furthermore, the laws have unequal effects on groups of citizens; they advantage white people and disadvantage people of color. This is another fundamental offense against democratic norms.

The undeniable power of King's argument comes, in part, from its appeal to the prophetic strain of Judaism and Christianity. It comes also from its deep connection to American moral traditions and beliefs. King's letter falls squarely into the tradition of the American jeremiad—so named with reference to the Biblical Jeremiah—a prophetic indictment of the sins of God's chosen people in the New World.<sup>18</sup> Cathleen Kaveny explains that the jeremiad is “best understood as a type of extended moral indictment or complaint, a law-like charge that certain actions, already performed, violate a socially binding agreement.”<sup>19</sup> Going back to the Puritans, the jeremiad appealed to the mission of the new settlers to establish a city upon a hill, a holy errand in the wilderness. In light of the high calling and solemn responsibility of that mission in the eyes of God and of the world, the Puritan preachers accused their erring brethren of defecting from and corrupting their calling. The preachers included themselves in this fallen state of social sin, warning of God's judgment but holding out hope that sinners may repent and realize the future that God hopes for them. The jeremiad is unflinching in its criticism of immorality and ungodliness but also hopeful; the preacher always believes that a more just, more glorious, future is attainable. This set of motifs persists throughout American history both in literature and

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<sup>18</sup> The classic work on this tradition is Sacvan Bercovitch, *The American Jeremiad* (Madison: University of Wisconsin Press, 2012 [1978]).

<sup>19</sup> Cathleen Kaveny, *Prophecy Without Contempt: Religious Discourse in the Public Square* (Cambridge, MA: Harvard University Press 2016), p. 126.

political oratory. We see it in Lincoln's Second Inaugural Address. The would-be Jeremiah is never a distant, unconnected figure, nor is he merely a moral scold. The prophet comes from within the social world and national tradition, in Lincoln's case as a president, in King's as the grandson of slaves. The connection with the nation, with its mystic chords of memory, and the temporally deeper connection with the Bible, infuse the jeremiad with ultimate moral seriousness. For all his radicalism, there is something profoundly conservative about the prophet. He is rooted in a shared tradition. He wants return, not revolution. He seeks renewal of the ancient covenant, of the trust between the chosen ones and God.

The Bible vindicates what it preserves as true canonical prophecy and condemns the false prophets and status-quo-oriented priests who served the reigning monarchs. In the book of Amos, the priest Amaziah tells Amos to return to Judah, his own territory, and to cease prophesying in the shrine of Bethel, in the Kingdom of Israel. Amos defends himself against Amaziah and the regime of King Jeroboam, whom Amaziah serves, in a way that anticipates King. Amaziah says, "Seer, off with you to the land of Judah...and do your prophesying there. But don't ever prophesy again at Bethel; for it is a king's sanctuary and a royal palace." Amos replies, "I am not a prophet and I am not a prophet's disciple. I am a cattle breeder and a tender of sycamore figs. But the LORD took me away from following the flock, and the LORD said to me: go prophesy to my people Israel."<sup>20</sup> Amos then rains down news of the destruction of the regime and of Amaziah's own denigration and punishment. For the retrospective canonical point of view, there is no question as to who was in the right and who was in the wrong, who spoke God's word and who served craven political ends. But it was hardly clear in its context. Amaziah—or the priests, ministers and rabbi of Birmingham—stood for order, stability and time-honored tradition. Amos, or King, stood for overturning the present, perceived as moral degeneration, in favor of a higher, original, more just and more fundamental order. Amaziah invoked political precedent; Amos invoked God as a more fundamental ruler. But God also sometimes favors precedent, and (in Amos' case) God arguably allowed the Northern Kingdom to flourish for two hundred years. The priests are not, as a class, God's

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<sup>20</sup> Amos ch. 7.

enemies. God's covenant with Aaron is no less binding than God's covenant with Israel or with David. Both Amos and Amaziah draw on traditions of divine fidelity. What the Jewish and Christian traditions declared settled in hindsight must have appeared quite open and perplexing in the moment. And despite the negative evaluation of priests like Amaziah in Amos or prophets like Hananiah in Jeremiah, there remains an irreducible pluralism of values. Society needs both prophets and priests, both criticism and order. We may esteem prophets, but they cannot be our only moral guides.

King's argument echoes prophecy but cannot, in a biblical sense, claim to be prophecy. God does not speak to prophets any longer, at least not to sane and morally credible ones. The immediacy of the divine voice has retreated behind the interpretation of moral traditions and texts. King's criterion of discerning and following just law and rejecting unjust law fills the space where once Jeremiah, Amos, Isaiah and others heard the words of a living God. Interpretation of a tradition and its value-laden texts is contentious, never infallible and always provisional. The Jewish tradition says *'adif chakham mi-navi*: a sage is preferable to a prophet.<sup>21</sup> A sage recognizes that the interpretation of the tradition is now the best we can do. We cannot claim the mantle of divinely validated authority. The best we can do is put forth our most reasoned views of what our responsibility is, what our texts mean. The best we can do is reason, persuade and criticize ourselves and our institutions. Declarations in the name of God, the work of prophets, do not work in a human conversation, where different viewpoints must be accommodated and compromises must be made.<sup>22</sup>

Prophetic denunciations and calls to action have played an undeniable role in the great political and moral movements of American history. The Revolution itself was preached in the churches.<sup>23</sup> Benjamin Franklin's original design for the Great Seal of

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<sup>21</sup> Babylonian Talmud, Bava Batra 12a.

<sup>22</sup> Compromises are crucial in a constitutional democracy and indeed may often be morally legitimate—but not rotten compromises, compromises that accommodate and facilitate genuine tyranny. There are limits to what is tolerable. See Avishai Margalit, *On Compromise and Rotten Compromises* (Princeton: Princeton University Press, 2013).

<sup>23</sup> James H. Hutson, *Religion and the Founding of the American Republic* (Washington: Library of Congress, 1998), pp. 37-48.

the United States had on it Pharaoh and his hosts drowning in the Red Sea as Moses and his people reach dry land. A pillar of fire blazes above the dynamic scene and the words “rebellion to tyrants is obedience to God,” rings the circle.<sup>24</sup> But perhaps in a democracy we should say that public discourse, based on rationally available reasons, cognizant of pros and cons and open to compromise and revision, is a better currency than prophetic declamation. At least in normal times. King’s issues indeed demanded the “fierce urgency of now” and the prophetic voice. Are the issues on our political horizon as blunt and dichotomous? They certainly are, if one believes that the very future of the republic is at stake. But that is far from clear. The level of threat posed by the Trump presidency is open to dispute. Insinuations that we are in the early stages of a Weimar-like collapse arguably add to the problem of moral tribalism rather than ease it.<sup>25</sup> I would like to see the temperature lowered rather than kept hot by passions that democratic politics is not designed to bear.

The process of sharing moral knowledge and responding to it appropriately, which is what conscience can mean in a public context, is certainly one way forward. It is both potent and limited. It offers no guarantees. Effective recollection of the nation’s founding ideals can mobilize and undergird resistance to populist excess, ethnic nationalism, and authoritarian impulse. But the essentially contested nature of what claims to be liberty, equality, happiness, equal protection, freedom of religion or expression, and so on ensures that conscience speaks in many tongues. Conscience needs patience, prudence, civility, and temperance to do its work. These values are neither secure nor abundant in our public life today. Nor is there great willingness to reach across divides and to reason with one another.

Another way forward is to elevate the ideal of the *chakham* (“sage”) over the *navi* (“prophet”). We are awash in uncritical and lazy thinking, simplistic, one-sided views, conspiracy mongering, “alternative facts.” Partisans hunker down in their ideological silos and refuse to entertain cognitive complexity and dissonance. Jews, especially Conservative Jews familiar with the Talmud and its rigorous modes of argument, are uniquely situated to model critical

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<sup>24</sup> Hutson, *Religion and the Founding*, p. 51.

<sup>25</sup> I have in mind the diagnosis of the historian of 20<sup>th</sup> century Nazism and fascism Timothy Snyder in *On Tyranny* (New York: Tim Duggan Books, 2017).

thought to such citizens. There are no simple, ideologically simple answers to the complex questions of identity and policy that confront us. Naming and criticizing simple-minded off-ramps from intellectual and moral engagement — premature exits from intellectual responsibility — could be a great service to public discourse. That too is a work of conscience, powered by moral passion.

“For lack of vision, a people lose restraint.”<sup>26</sup> We need to restore a vision of American ideals and purpose, grounded in tradition but open-eyed and critical as well. The inspiration and denunciations of prophets have a role to play here, but the contribution of the modest under-laborer, exposing and criticizing epistemic irresponsibility, should not be scanted.

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<sup>26</sup> Proverbs 29:18.

