

THE AMERICAN JEWISH COMMUNITY AS CIVIC AND POLITICAL ASSOCIATION: SOME FOUNDATIONAL THOUGHTS

Sanford C. Gordon

Introduction

Richard Claman's essay "Judaism and American Civil/Political Society In the Age of Trump"¹ is an enlightening take on how to reconcile Jewish values with the participation of Jews, *qua* Jews, in the hurly-burly of political life. Claman takes issue with the view, articulated by Soloveitchik, that Jewish engagement requires a rejection of the idea of a secular sphere. This view, Claman contends, is based on an "imperialist" view of holiness that neglects a space for the ordinary between the holy and unholy. This space is sufficiently broad so as to allow for values such as civic engagement, mutual respect and the full-throated defense of liberal-democratic institutions and values—each under the banner of *tikkun olam* (תיקון עולם, "repairing the world").

Writing from the perspective of a social scientist who happens to be a practicing member of the Conservative Jewish community, and not as an authority on either *halakhah* (Jewish "law") or *minhag* (Jewish "custom") as pertains to social science questions, I will pursue a line of inquiry that, of necessity, deviates substantially from the one taken by Claman. Specifically, rather than begin by asking what role Jews in particular have in participating in, and being forceful advocates of, a liberal-democratic order, I will instead spend the bulk of this essay considering what role *any* group has in those capacities.

To the extent that we understand a vibrant civil society as constituting a necessary bulwark against overreach by the state—

¹ Richard Claman, "Judaism and American Civil/Political Society In the Age of Trump" in *Zeramim* 1:3 (Spring 2017), pp. 111-129.

particularly when illiberal or undemocratic actors control the state—it is critical to understand the various mechanisms through which this might operate or fail to operate. This requires proceeding, for the most part, as though Jews, as a group, are “nothing special.” Once we understand these mechanisms, we will be better situated to understand the specific role that Jews might play in particular, given our common beliefs, traditions, and attitudes. I will conclude by arguing in favor of a view of Jewish obligations that is somewhat narrower than a broad conception of *tikkun olam* but one that may succeed in drawing more unified support from Jews coming from different political perspectives.

Civil Society and the State

Writing in the 1830s, the French researcher Alexis de Tocqueville, a trenchant observer of American political culture, observed a special role of political and civic associations in the political life of the United States. From this he derived an inductive theory of the relationship between associations and democratic republics more generally. De Tocqueville provides a useful definition of an association: something that consists

in the public assent which a number of individuals give to certain doctrines, and in the engagement which they contract to promote in a certain manner the spread of those doctrines by their exertions.²

According to this definition, organized Jewry in the United States certainly “counts” as an association. But what is the role of associations generally in American democracy? For de Tocqueville, the critical role of associations is to resist encroachments by a tyrannical majority. In aristocracies, de Tocqueville noted, the powerful have a de facto organization composed of all of those beholden to them. By contrast, the baseline in a democracy is a mass of weak, independent (today we might use the term “alienated”) citizens—a

² Tocqueville, Alexis de. *Democracy in America, Volume 1*. Cambridge: Sever and Francis (1864 [1838]), p. 243.

recipe, as observed by Plato, for the emergence of tyranny.³ De Tocqueville saw in the U.S. a knack for forming associations acting in the civic sphere for the benefit of their members, overcoming free-rider problems (situations in which individuals have an incentive to stand pat while enjoying the efforts of others, contributing to a low overall effort level) via a “doctrine of self-interest rightly understood,” and acting as intermediaries between citizen and state. A mass of associations, *each acting in pursuit of the welfare of its own members*, would have the leverage to resist the tyrannical urges of government that disassociated citizens would lack.

Critically, de Tocqueville presented a radically different perspective concerning the role of groups from the more skeptical position contemplated by the framers of the Constitution. James Madison famously described the threats presented to a republic by “factions,” which he defines in *Federalist* #10 as:

a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.⁴

Presumably, groups of citizens may be united by an impulse of passion or interest *not* adverse to the rights of other citizens, but Madison had little to say about them.

The default presumption for Madison as one of the authors of the *Federalist Papers* (but not, importantly, for Madison as co-founder of the Democratic-Republican—later Democratic—Party) is that organized groups are a problem whose effects need to be controlled. The controls, for Madison, are institutional: an enlarged republic contains a broad variety of interests that will find it challenging to coordinate in pursuit of nefarious aims. In *Federalist* #51, he extolled

³ See, especially book VIII of *The Republic*. Available online at <https://www.gutenberg.org/files/1497/1497-h/1497-h.htm>.

⁴ Madison, James. 1787. “Number 10. The Same Subject Continued: The Union as a Safeguard Against Domestic Faction and Insurrection.” Available at <https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-10>.

the virtues of the separation of powers, which will permit “ambition to counteract ambition.” For Madison, factions are an evil with which we must live, for “the seeds of faction are sewn into the hearts of man.”

One can easily view both Madison and de Tocqueville as preoccupied with the potential for a demagogue to rally public support and to amass political power to the detriment of minorities, a concern that surely resonates today in the current political climate. As noted above, they part company in a number of respects. Before proceeding to more recent scholarship on the role of civil society generally and groups in particular, however, I want to highlight one particularly important distinction between the two, but also note two important commonalities.

The distinction I wish to underscore is that, for Madison, the principal protection against tyrannical government is to frame a constitutional design that arrays groups against one another. For Madison, the critical advantage of a large republic is to make the emergence of a “majority faction” less likely. By contrast, de Tocqueville saw the primary conflict not so much as among factions competing for power, but between an array of voluntary associations and a would-be tyrannical majority that could easily emerge in a democratic political system.

The first commonality to which I refer is the fact that both de Tocqueville and Madison saw the *interposition* of multiple interests as the primary defense against loss of liberty. In the contemporary language of game theory, we would speak of these interests, each scrabbling for their own advantage (either against the state or against each other), as an *equilibrium*: Group A pursues the interests of its membership given the behavior of Group B, and vice versa; or, alternatively, Groups A and B pursue the interests of their own memberships given the threat of tyrannical encroachments by the state, and the state is thereby constrained from tyrannical encroachments. At least, that’s the argument!⁵

The second commonality is that neither de Tocqueville nor Madison believed that groups must have liberal-democratic aims or

⁵ An entirely different issue that I will not explore here concerns the principal-agent problem that emerges between a group’s leaders and its membership.

ideals in order to perpetuate a liberal-democratic equilibrium (as they perceive it). This stands in contrast to arguments made by the political scientists Gabriel Almond and Sidney Verba, who, in their landmark work *The Civic Culture*, argued that stable democracies with a strong “rule of law” tradition depended on values supporting those institutions consensually held across their citizenries.⁶ For Madison, the starting assumption is that factions act in bad faith.⁷ For De Tocqueville, the argument is a bit more nuanced: associations can, in his words, encourage the pursuit of a kind of enlightened self-interest; moreover, participation in associations can effectively train citizens for participation in a broader liberal-democratic polity. What de Tocqueville does not assume is that the primary function of associations, or of civil society writ large for that matter, is to advocate for liberal-democratic values *for their own sake*. Those values emerge, instead, as a byproduct.

In the 1950s and 1960s, a class of descriptive political science theories generally lumped under the rubric of “pluralism” articulated a view of politics resting on four premises: that (1) contra Madison, there is no “permanent and aggregate interest of the community;” (2) all citizens belong to groups; (3) citizens participate in politics primarily through membership in groups; and (4) political conflict is group conflict, so that political outcomes are effectively equilibria of group conflict.⁸ For my purposes, it is the reaction to these pluralist accounts that is particularly relevant. In *The Semisovereign People*, E. E. Schattschneider noted two problems with the pluralist paradigm. One is what he referred to as “the mobilization of bias:” many groups are deterred from organizing and pressing their positions because the expected gains are not worth the effort.⁹ The second is that the economy of influence in the interest group environment is heavily

⁶ Almond, Gabriel, and Sidney Verba. *The Civic Culture*. New York: Sage Publications (1963).

⁷ An important caveat on this point: Madison anticipates that representative government would likely populate public offices with elites who, he hoped, would possess those values.

⁸ See, especially, Truman, David. *The Governmental Process*. New York: Alfred A. Knopf (1951); and Dahl, Robert. *Who Governs?* New Haven, CT: Yale University Press (1961).

⁹ Schattschneider, E.E. *The Semisovereign People: A Realist's View of Democracy in America*. New York: Holt, Rinehart & Winston (1960).

skewed toward the rich. In *The Logic of Collective Action*, Mancur Olson pointed to free-rider problems as a fundamental impediment to organized action by groups (notwithstanding de Tocqueville's view of associations in the United States referenced above)—moreover, the broader the group, the more acute the problem.¹⁰

To the extent that we perceive the actions of civil and political associations as an important safeguard of liberal democratic values, the concerns voiced by Olson and Schattschneider should be troubling. Both speak to oligarchic tendencies that can arise even in the presence of a nominally level playing field. Of course, it would be naïve to labor under the conception that the playing field is, in fact, level. But an important question that we ought to be interested in is the extent to which these disquieting features of group involvement in politics are mitigated or exacerbated by formal institutional rules.

I think this interaction is the chief cause of the controversy surrounding the *Citizens United* decision, in which the U.S. Supreme Court held, on First Amendment grounds, that corporate independent expenditures on political campaigns could not be statutorily restricted.¹¹ Most of us already strongly suspect that corporations wield disproportionate power in American political life. To see this outsized influence instantiated in the rules of the game and given the imprimatur of judicial approval has been, for many, a bridge too far.

And yet, despite these concerns, groups do succeed in overcoming collective action problems, mobilize even in the face of low odds of success and occasionally score victories against an entrenched, powerful elite. How and why this occurs is the topic of an ongoing body of research.

What does all of the foregoing have to do with combating threats to the liberal democratic order? A recent, fruitful line of inquiry in political science concerns the ability of citizens to coordinate to sanction or remove a transgressive leader.¹² Suppose

¹⁰ Olson, Mancur. *The Logic of Collective Action*. Cambridge, MA: Harvard University Press (1965).

¹¹ *Citizens United vs. Federal Election Commission*, 558 US 310 (2010).

¹² See, for example, Barry R. Weingast, "The Political Foundations of Democracy and the Rule of Law" in *American Political Science Review* 91 (1997), pp. 245-263; James Fearon, "Self-Enforcing Democracy" in *Quarterly Journal of Economics* 126 (2011), pp. 1661-1708; and Dimitri

society is composed of two groups, and the leader seeks to transgress against the rights of one or both of them. If the groups, acting jointly, can effectively sanction or remove the leader in the event of a transgression, *and the leader expects them to do so*, then the leader may be dissuaded from attempting the transgression in the first place.

Three features of the political environment may undermine the credible threat of joint action necessary to keep rulers in line. The first risk factor is the absence of a common understanding about what constitutes a transgression in the first place. One benefit of a constitution is to formalize a set of expectations among the citizenry about what would constitute behavior that is, constitutionally speaking, "out of order." The second is the absence of adequate information flows within the society. In order for civil society to discipline rulers, it must be the case that a citizenry that agrees on what actually constitutes a transgression all know that a transgression has occurred (if it has); and all know what the coordinated response to the transgression is going to be. The final aspect is the presence of a significant temptation on the part of rulers or their supporters to engage in the transgressive behavior in the first place, which might occur given the presence of one or the other of the first two factors.

Civil Society, the Jews, and *Tikkun Mos'dot*

As Claman, Novak (cited in Claman's essay) and others have noted, liberal democracies have provided an environment in which Jews can flourish with minimal fears of persecution. George Washington forcefully articulated the critical issue in his famous letter to the Hebrew Congregation at Newport. Following his tour of the Northeast in 1790, he wrote:

It is now no more that toleration is spoken of as if it were the indulgence of one class of people that another enjoyed the exercise of their inherent natural rights, for, happily, the Government of the United States, which gives to bigotry no sanction, to persecution no assistance,

Landa and Ryan Pevnick, "What Could Justify Representative Democracy?" (Unpublished typescript, 2017), New York University.

requires only that they who live under its protection should demean themselves as good citizens in giving it on all occasions their effectual support.¹³

Two aspects of this statement are worthy of remark. First, Washington declared that the status of Jews in the United States is in no sense probationary. We don't owe our citizenship to the continued good graces of another set of citizens who position themselves as worthy of adjudicating our status, any more than they do to ours. What's more, this is a principle universally applicable not just to the Jewish community, but to all communities that "demean [*i.e.*, comport] themselves as good citizens."

So what does this mean, precisely? For some, particularly in the Conservative and Reform movements, this might implicate *tikkun olam*. This is Claman's point. He writes:

as an aspect of public ethics—call it *tikkun olam*—we are obligated to engage with our fellow citizens as such, to protect the institutions that protect our common rights, and that foster our respect for each other...¹⁴

I think this is right in the particulars but perhaps not in general. With respect to the particulars, one can read Claman's point as requiring a forceful defense of our foundational liberal-democratic institutions and values. I would go further and say that the specific institutions and values that require defense, particularly at this moment in our history, are the ones that alleviate the risk factors to which I alluded above: threats to norms that foster a shared understanding among citizens about what is acceptable behavior from our leaders; threats to communication and the free flow of information that facilitate coordination among different groups to sanction those leaders in the event of malfeasance; threats to the political rights of groups of citizens, which might impede their ability either to participate in efforts to assert their rights or to raise the alarm in the event that they are threatened; and threats to institutions that

¹³ Available online at <http://www.tourosynagogue.org/history-learning/gw-letter>.

¹⁴ Claman, p. 128.

moderate policies so that no group within society has too strong a temptation to violate all of the foregoing norms in pursuit of short-term policy gains.

With respect to the general, however – in light of its use as a defense of social action and of advocacy for political positions favoring a particular set of policies over which reasonable people might disagree – the slogan *tikkun olam* is too loaded a term. If *tikkun olam* means defending our political norms and institutions as a bulwark against tyranny to some, but universal health care or Pre-K on the left or militarized drug enforcement on the right, it is asking the concept to carry too heavy a burden to rally Jews of all political stripes to a unifying political program aimed at building consensus and reducing the aforementioned risk factors.

Rather, I would advocate distinguishing a narrower concept that might avoid the political pitfalls that *tikkun olam* might represent. I am continually drawn to the Yom Kippur morning *haftarah*, Isaiah 57:14-58:14. I think a line from 58:12 is particularly apt. If you follow all of the admonitions Isaiah has delineated in the previous paragraphs, then

וּבָנוּ מִמֶּנּוּ חֲרֻבוֹת עוֹלָם מוֹסְדֵי דוֹר-וָדוֹר תִּקְוִימוּ

Those coming from you shall rebuild ancient ruins; and you shall repair the foundations of many generations.

The Hebrew words for foundations and institutions, *y'sodot* (יסודות) and *mos'dot* (מוסדות), are etymologically linked. To engage in the enterprise of *tikkun mos'dot* (תיקון מוסדות, “repairing institutions”) then would seem to be the appropriate task set before us. And in particular, *tikkun mos'dot* offers a number of advantages over its more contentious cousin, *tikkun olam*.

First, both foundations – whether actual or metaphorical – and institutions are indisputably human creations. This fact allows us to sidestep the conundrum of whether and how to draw a distinction between holy and unholy altogether. Instead, we can focus on the distinction between that on which all of us ought to reasonably agree (“common values”) and those issues that divide us (“private values”), emphasizing, at least for the moment, the former.

Second, *tikkun mos'dot* avoids the motivational question of whether one should defend or repair those institutions for their own

sake or because they afford specific advantages to us as a community. If we accept that there is something special about the constellation of norms, values and institutions in the United States that has, in the long run, proven tremendously beneficial to the Jews that have settled here, we don't need to answer the question at all. Rather, we can just fall back on de Tocqueville's notion, alluded to above, of self-interest, rightly understood, to justify a defense of those common values. In other words, little is riding on the answer to the question, because either answer points us in the same direction.

Finally, *tikkun mos'dot* entails a certain degree of humility and patience. As I stated somewhat cheekily in the introduction, understanding the role of civil society as a bulwark against tyrannical overreach requires proceeding as though the Jewish community is "nothing special." And so it remains here: repairing institutions may be a worthy aspiration or even obligation of the Jewish community, but it is not exclusively ours. As we have seen in the past year, numerous groups perceive a similar role for themselves (and need not solve the motivational riddle either).

Max Weber, the preeminent sociological thinker of the early 20th century, referred to politics as the "strong and slow boring of hard boards."¹⁵ We may not necessarily find ourselves capable of solving the myriad problems the country faces in 2018. But we are surely more likely to prevail against them if we endeavor to build upon strong foundations. In other words, *tikkun mos'dot* is a *necessary*, if not *sufficient* undertaking in the ultimate pursuit of *tikkun olam*. What greater responsibility then do we have as a community than to participate in this necessary task?

Sanford C. Gordon is Professor of Politics and Associated Professor (by courtesy) of Law at New York University. He received his B.A. from Cornell and his Ph.D. from Princeton. Prior to his arrival at NYU, Professor Gordon

¹⁵ Weber, Max. "Politics as a Vocation." In Gerth, H.R., and C. Wright Mills, eds., *From Max Weber: Essays in Sociology*. New York: Routledge (1948).

taught at the Ohio State University from 1999-2002; and in 2005-2006, was a fellow-in-residence at the Center for the Study of Democratic Politics at Princeton. His research on the politicization of executive branch agencies, corporate influence in regulation, the political economy of criminal justice, electoral accountability, research methodology, and the institutional determinants of legitimate authority has appeared in the American Political Science Review; the American Journal of Political Science; the Journal of Politics; the Quarterly Journal of Political Science; Political Analysis; the Journal of Law, Economics, and Organization; and the New England Journal of Medicine among other places.

*The American Jewish Community as Civic and Political Association:
Some Foundational Thoughts*

Sanford C. Gordon