Fordham Urban Law Journal

Volume 26 | Number 4 Article 5

1999

A Vocation For Law? American Jewish Lawyers and Their Antecedents

Marc Galanter

A VOCATION FOR LAW? AMERICAN JEWISH LAWYERS AND THEIR ANTECEDENTS

*Marc Galanter**

Introduction

Louis D. Brandeis is surely the presiding eminence in the story of the encounter of Jews with the American legal order. He exemplifies the begrudged but unqualified inclusion of Jews in the higher reaches of American legality. At the same time, he is a progenitor of one of the most enduring counter-traditions that surround and challenge mainstream legal practice in the United States — a series of diverse kinds of practice that, for the moment, we can summarize under the heading of public interest law.

In the century since Brandeis started practicing law, Jews have flourished exceedingly in a multitude of areas. They have become a significant component of the elite practitioner, as well as judicial and academic branches of the professional mainstream. At the same time, they have contributed disproportionately to many branches of the "public interest sector," with particular prominence in public service, public interest law firms and the defense of minorities and unpopular causes, to name a few.

But, can this extravagant participation in both hemispheres of the world of American lawyering be explained by something unique to Jewish tradition or experience? In this Essay, I address this question by focusing on Brandeis, who manifests in his person both sides of this extraordinary flourishing. Brandeis seems a felicitous path to understanding, not because he is typical, but because he is archetypical. He has become a cultural marker, a touchstone to be emulated, praised, and claimed as an ancestor by proponents of many different legal projects. But, can he be understood in terms of Jewish tradition and experience?

* John and Rylla Bosshard Professor of Law and South Asian Studies, University of Wisconsin-Madison. An earlier version of this Essay was presented at the Conference on Jewish Law, Jewish History and Critical Legal Studies, Stanford University, February 21-24, 1989. I am indebted to my colleague Walter B. Raushenbush for the gracious gift of a copy of the Reminiscenes of Frederika Denbitz Brandeis.

I. Jewish Legalism

It is hard to avoid the view that Jewish flourishing in American law somehow represents a continuation of a specifically Jewish legality or manifests a specifically Jewish vocation for law. But it is even harder to specify just how the Jewish legal connection works.

A. The Puritan Forebears Theory

In one view of the matter, the connection lies not in the Jews, but in America. In this view, Jewish legality was carried to America by Puritans or other early Americans, so that it was here and waiting for arriving Jews. Thus, Saul Touster found "the source of what would distinguish our [American] legal development from that of England [in] Hebraic elements that moved the Puritans."[1] They planted two Jewish "seeds": (1) "the idea that the social body is created by a covenant which is not merely a social contract but a compact in the service of some high ideal" and (2) "the idea that the good, the true, the righteous, even the beautiful, can be achieved by law, and particularly by statutes and codes."[2] "[T]he Mosaic law and the covenantal idea mysteriously entered the tap roots of our culture through our Puritan forebears."[3]

American law, in this view, has a special resonance for Jews because, in some fundamental way, it is Jewish. The Jewish element in the conjunction is supplied less by the arriving Jews than by the welcoming law. In response, secular Jews, acting "very much like modern prophets," infuse their professional endeavors with a "prophetic tonality."[4] This postpones, but does not eliminate, the search for continuities in the Jews themselves; presumably they have to supply whatever it is that makes them especially receptive to the convenantal Jewish vibrations of American life. This "American Exceptionalist" explanation of the Jewish presence in the law has the inconvenience of requiring a separate explanation for the even greater prominence of Jews in the legal professions of countries with no Puritan Forebears or other evident source of legal affinity.[5]

---

1. Saul Touster, *The View from the Hilltop*, 33 BUFF. L. REV. 571, 575 (1984).
2. *Id.* at 576.
3. *Id.* at 578.
4. *Id.* at 577
5. At the advent of the Nazi era, Jews were twenty-three percent of the advocates at the German bar, although they comprised less than one percent of the total population. *See* Udo Reifner, *The Bar in the Third Reich: Anti-Semitism and the Decline of Liberal Advocacy*, 32 MCGILL LAW JOURNAL 97, 104 (1986). Jews formed sixty percent of the Berlin bar and an even greater portion of the bar in Vienna. *See*

B. The Carry-Over Theory

Monroe Price suggests that Jewish lawyers "share in a tradition of text centeredness,"[6] conveyed by life within the Jewish community. Even ordinary after-school Talmud Torah "has as a subtext . . . an extraordinary introduction into legal thinking . . . that in many ways rival in its persistence, systematic nature and analytic beauty what we do in American law schools today."[7] The carry-over theory implies that Jewish legal virtuosi should arise where the Jewish legal tradition remains most vigorous. But few of the high achievers enjoyed intense exposure to a Jewish legal endowment. In Brandeis' case, as in many others, it is hard to detect more than the most attenuated contact with Jewish legal tradition.[8]

C. The Ambience Theory

We might instead look for a connection not in the specifically legal aspects of Jewishness, but in more diffuse and general traits of Jewish life. Examining Jewish judges, Jeffery Morris finds recurrent patterns of intellect and sensitivity that raise the "question as to whether a common bond, whether of religious faith or ethnic heritage, affects performances on the bench."[9] Morris tentatively suggests a series of possible linkages, ranging from the specifically legal to the diffuse and general. For instance, "they might have brought to the secular law techniques which they would have been exposed to by their families and friends — techniques that have typified talmudic scholarship, such as logic, a certain subtlety of

---

Steven Beller, Vienna and the Jews 1867-1938: A Cultural History 37 (1989). In pre-War Poland, where Jews formed less than ten percent of the total population, Jews were fifty-two percent of the barristers and sixty-four percent of the law students. *See* Raphael Mahler, *Jews in Public Service and the Liberal Professions in Poland, 1918-1939*, 6 JEWISH SOCIAL STUDIES 291, 316 (1944). In between-the-wars Hungary, where Jews were some five percent of the population, they made up fifty-five percent of the legal profession. *See* Nathaniel Katzburg, Hungary and the Jews: Policy and Legislation 1920-1943 25, 30 (1981). In all of these settings, Jews were unwelcome in public services.

6. Monroe E. Price, *Text and Intellect*, 33 BUFF. L. REV. 562, 570-71 (1984).

7. *Id.* at 565. In fairness to the author, it should be acknowledged that this is taken from a talk and it is not put forth as product of scholarly inquiry into the effects of after-school Jewish education. It is cited here as representative of a class of casual, but intriguing explanations of the linkage. *See also* Jeffrey Morris, *The American Jewish Judge: An Appraisal on the Occasion of the Bicentennial, in* 38:3-4 JEWISH SOCIAL STUDIES 195 (1976); Donna E. Artz, *The People's Lawyers: The Predominance of Jews in the Public Interest, in* 35:1 JUDAISM 47 (1986).

8. *See infra* note 18.

9. Morris, *supra* note 7, at 220-21 (noting that this is "particularly difficult to approach because of the degree of apparent assimilation of most of the judges").

mind which comes from [habitually] dealing with abstract question[s], and a zest for debate."[10] They also might have brought "to the secular law the Jewish view of law as dynamic, made for man, and a vehicle for improvement of mankind while on earth."[11] Or, the linkage may consist in the "moralistic concern for social justice" that is so characteristic of American Jews.[12] Nevertheless, as with specific legal carry-overs, there are questions of accounting for these continuities by upbringing or affiliation. As Morris notes, the high legal achievers are so assimilated that is hard to trace the presence of these connections.[13]

II. The Prophetic Trope

A. The Prophetic Strand of Jewish Tradition

One way around the difficulties of establishing the connection between Jewish ambiance and American law is by a more ambitious construction that presents Jewish involvement with the law as the expression of a new universalistic Jewish legalism, emancipated from the particularism of the *Halacha* and descended from the prophetic tradition.

It is commonly claimed that Jewish lawyers and judges are the carriers of a distinctive "prophetic" perspective.[14] Saul Touster, for example, discerns "a Judaic contribution to American law which can be heard as bearing the critical, judgmental voice of the prophets who called for social justice."[15] Brandeis and others "acted very much as modern prophets in calling up to the self-seekers of the Gilded Age the claims of the old virtues and the bonds of

10. *See id.*

11. *Id.* at 222.

12. *Id.* ("Mid-twentieth century American secular Judaism seemed to make a belief in 'doing good' the single distinguishing characteristic of Jewish identity.").

13. *See id.*

14. In most of these allusions, "prophet" is not used as a term of art. Sometimes the meaning is no more focused than the casual use of other terms originating in specific religious contexts, such as crusader, pilgrim, dervish, pundit or savior. Nevertheless, to casual readers it might evoke a visionary zeal for justice joined to moral courage and heroic stature, which is a bit more specific, perhaps, than "crusader" or the use of "Old Testament" as an adjective. To the more attentive, however, it expresses the admired idealistic, universalistic, social-justice pursuing, reformist side of Jewishness — much as "pharisee" (and sometimes "priest") evokes self-absorbed and rigid formalism, casuistic legalism and desiccated spirituality. But, even here, the categories are not always carefully distinguished. Thus, Touster overlaps prophetic with rabbinic, and Brandeis himself equates prophetic with the priestly.

15. Touster, *supra* note 1, at 576.

one community."[16] Tracing the careers of American Jewish judges, Morris reflects:

> There is more than a passing resemblance of these men to the pre-Ezekiel Old Testament prophets: men who were reformers of the moral and social order, fighting to raise the standards of morals and conduct of their times; men whose ability to prophesy came from a knowledge of man and affairs and an insight into cause and effect; opposing iniquity and injustice, they were champions of justice and righteousness regardless of the risks of unpopularity.[17]

The characterization of Brandeis as prophet was a persistent and prominent part of his image.[18] From his law clerks,[19] to Franklin D. Roosevelt, to Justice Oliver Wendell Holmes, to Harold Laski,[20] to his fellow Zionists,[21] to his biographers,[22] comparisons to the prophets abound. His law clerks referred to him as Isaiah, as did Roosevelt. Identification of Brandeis with the prophetic tradition is elevated to conceptual seriousness in Robert Burt's book entitled *Two Jewish Justices*.[23] In it, Brandeis is identified with the

16. *Id.* at 577. That prophet is not meant in any precise sense is evident from the sentence that follow this: "Their sense of calling and how they practiced it seemed to give their professions something of the tonality of rabbinic learning and the sanction of benevolence." *Id.*

17. Morris, *supra* note 7, at 219.

18. Brandeis inspired hyperbolic comparisons: after meeting him, Senator Hoke Smith of Virginia said, "I believe Brandeis is the greatest Jew in the world since Jesus Christ." JACOB DE HAAS, LOUIS D. BRANDEIS: A BIOGRAPHICAL SKETCH WITH SPECIAL REFERENCE TO HIS CONTRIBUTIONS TO JEWISH ZIONIST HISTORY 47 (1929). Chaim Weizmann agreed that there was "something Messianic" in his countenance and bearing. *Id.* at 113. A notable dissent from these outside characterizations is the conclusion of an English Jewish academic that "[i]t would be wrong to picture him [Brandeis] as a great prophet or a great leader or as a great scholar, for he was none of these . . . ." ARTHUR L. GOODHART, FIVE JEWISH LAWYERS OF THE COMMON LAW 38 (1949) (suggesting that Brandeis instead should be remembered as an inspired and creative innovator). This suggests that the exalted estimation of Brandeis reflects something at least as American as it is Jewish.

19. *See* PHILIPP STRUM, LOUIS D. BRANDEIS: JUSTICE FOR THE PEOPLE 361 (1984) (stating that many of his clerks referred to Brandeis as "Isaiah"); DEAN ACHESON, MORNING AND NOON 96 (1965).

20. *See* Letter dated August 12, 1933, *in* HOLMES – LASKI LETTERS 1448 (Mark De Wolfe Howe ed. 1963) [hereinafter LETTERS].

21. De Haas's admiring memoir closes: "As scornful as Isaiah in his castigation of evil he joins the brotherhood of the great prophets in his zeal for righteousness and in his faith in the ultimate achievement of Zion restored and Israel redeemed." DE HAAS, *supra* note 18, at 150.

22. *See* LEONARD BAKER, BRANDEIS AND FRANKFURTER: A DUAL BIOGRAPHY 186 (1984); ALPHEUS THOMAS MASON, BRANDEIS: A FREE MAN'S LIFE 566 (1946).

23. ROBERT BURT, TWO JEWISH JUSTICES: OUTCASTS IN THE PROMISED LAND, 125 (1988).

prophets, who represent ethical imperatives urging "transcendent norms," while Frankfurter is a "high priest" obsessed with self-celebatory constitutional ritual.[24]

Invocation of the prophetic tradition remains a familiar trope both within the Jewish community and in wider discourse about law.[25] Is it the prophetic strand of Jewish tradition that is manifested in the Jewish encounter with American law. The prophets emphasized social action over cultic practice,[26] but the means they employed to do this was through imparting messages of divine inspiration. Classically, most of what prophets do is ascribed to the will of God rather than to their own powers. In other words, the prophet's authority flows from God's inspiration rather than his personal accomplishments. Contemporary admirers tend to envision prophetic inspiration as proceeding from the people rather than from God and implementing new moral insights rather than restoring received notions of virtue. The perspective of the Biblical prophets, however, was essentially backward-looking and "parasitic upon a previously accepted and commonly understood morality."[27] Rather than introducing new ideas, they "assume the

24. "The basic distinction between Moses and Aaron was not in their beliefs. . . . The distinction was between Moses' confidence in his own rectitude and in his people's capacity for right conduct and Aaron's lack of confidence in himself and in them [as displayed in the incident of the golden calf]." BURT, *supra* note 23, at 125. Prophets "trust the people's capacity to govern themselves in the pursuit of transcendent norms . . . [and] are prepared to risk social disorder because they give highest value to individual choice as the reliable route toward salvation." *Id.* at 126. Burt specifically associates Brandeis with Moses who could empathize with the oppression of his people, despite not having suffered the same degradation. The "contemporary generation of American Jews," who resemble Moses and Brandeis in this vicarious experience of bondage, are urged to follow the prophetic path, which, according to Burt, consists of devotion to eliminating boundaries between insiders and outsiders. *Id.* at 126-27.

25. For example, the "prophet" versus "priest" trope is invoked to characterize the difference of Critical Legal Studies from mainstream legal thought. Naturally "the critics are more like prophets than priests . . . they are servants of the people but not of the state." Jay Feinman, *Priests and Prophets*, 31 ST. LOUIS L. REV. 53, 59-60 (1986). "Our intolerance for injustice expresses itself in the same sort of condemnatory zeal exhibited by the prophets." *Id.* at 58. "[T]he appropriate metaphor for describing the role of critics in present-day legal education is one of prophets seeking to transform an established religion." *Id.* at 59. In this view, "much of the antipathy engendered by Critical Legal Studies may be understood as a product of this divergence between dogmatic and prophetic approaches." *Id.* at 54.

26. Just how much prophets opposed the priestly cult remains subject to scholarly debate, but "what can be said with certainty is that the prophetic attacks on the cult did introduce a new principle into the religion of Israel: The essence of God's demand is not to be found in the cult but in the moral and ethical spheres of life." Louis Rabinowitz, *Prophets and Prophecy*, *in* 13 ENCYCLOPAEDIA JUDAICA 172 (1971).

27. MICHAEL WALZER, INTERPRETATIONS AND SOCIAL CRITICISM 75 (1987).

previous messages" and aim "to arouse remembrance, recognition, indignation, repentance."[28] Moreover, rather than propounding a message for all the world, their prophecy was rooted in and directed at their own society.[29] "The prophets invoke a particular religious tradition and a particular moral law"[30] shared with and known to their audience; they demand that everyday life conform to the core values of that law.[31]

As modern readers, we tend to respond to the prophets' elevated universal morality and admire their courage, while filtering out their group-centered and god-centered revivalism and retaining a "thin residue of ethical monotheism, cultic criticism and social justice."[32] Modern literary theory reminds us that such selective reordering of the past is inevitable. I do not argue that selective interpretation is inherently illegitimate, but that this example of it is particularly unpersuasive. I find it hard to recognize more than a superficial resemblance to the prophets in the comfortable and prosperous Jewish judges and lawyers that flourish in America.[33] Even at their most courageous and visionary moments, it is difficult to see much resemblance to the prophets in such circumspect, prudent, skeptical, tolerant, liberal and secular craftsmen. It is not that there is *no* resemblance; rather, the comparison reduces both by leaving out so much of the living reality of each.

B. Brandeis as Prophet

My sense that the linkage of American Jewish lawyers to the prophetic tradition is tenuous and forced is confirmed by considerations of Brandeis himself, the prime exhibit in the argument for such a connection. Brandeis invoked the prophets as carriers of a distinctively Jewish mission. In a 1910 interview with a Boston

28. *Id.* at 71, 75.

29. The exception that proves the rule is Jonah, who was so spectacularly recalcitrant about preaching to the people of Ninevah.

30. WALZER, *supra* note 27, at 81.

31. *See id.* at 81-82.

32. Jerold S. Auerbach, *Rabbis, Lawyers and Prophets*, 33:5 MIDSTREAM 26 (1987). In *Rabbis and Lawyers: The Journey from Torah to Constitution*, Auerbach elaborates the departure of the modern "universalistic" prophetic tradition from the historic Jewish original. JEROLD S. AUERBACH, RABBIS AND LAWYERS: THE JOURNEY FROM TORAH TO CONSTITUTION 49-68 (1990).

33. As much as the prophets adhered to accepted tradition, they were typically not happy, prosperous and well-connected members of the establishment. "[S]uch a selected messenger becomes a solitary individual, whose life is marked by loneliness and bitterness . . . . The life story of a prophet is liable to be one of anguish, fear rejection, ridicule, and even imprisonment . . . ." Rabinowitz, *supra* note 26, at 1166-67.

Jewish newspaper, he said: "I believe . . . that the Jews can be just as much of a priest people to-day as they ever were in the prophetic days . . . . The Jewish prophet may struggle for truth and righteousness to-day just as the ancient prophets did."[34]

To fathom what Brandeis envisioned as the special mission of Jews as a "priest people," it is necessary to see just where Brandeis located himself in relation to Jewish tradition. Brandeis was something of an outsider within Judaism. He grew up in a home suffused with a moralistic, reformist atmosphere in which there was little specifically Jewish observance.[35] But he identified so strongly with his uncle, Louis Dembitz, a committed and observant Jew and political activist, that in his teens he changed his middle name to the surname of his admired uncle.[36] Neither Brandeis nor his parents were disturbed by the intermarriage of their children.[37] Jacob De Haas, who introduced him to Zionism, reported that before 1910, when Brandeis was fifty-four, he had no Jewish interests. "He had never disowned being a Jew but equally clearly he had no Jewish consciousness . . . . [H]e was in 1910 neither regarded as a Jew locally or nationally."[38]

The sense of a special Jewish vocation that later manifested itself reflected a "spiritual heritage" containing "[a] dim sense of a Jewish mission, tinged with Jewish dissent and family pride . . . ."[39] His mother's family had been Frankists, followers of the antinomian Sabbatean sect founded by the charismatic Jacob Frank (1726-91). Frank's followers led double lives: outwardly they were Jews or Christians (Frank himself was baptized in 1759), but secretly they

34. L.H. Semonoff, *Think the Jews Should Still Be a Moral Ensign to the Nations*, JEWISH ADVOC., Dec. 9, 1910, at 1, *quoted in* ALLON GAL, BRANDEIS OF BOSTON 132 (1980).

35. *See* STRUM, *supra* note 19, at 9 ("His family practiced what might be called the secular Christianity of the United States, sending each other Christmas greetings and gifts".).

36. STRUM, *supra* note 19 at 10. Denbitz had delivered one of the nominating speeches for Lincoln. De Haas observed that he was the only Frankist to return to Orthodoxy. DE HAAS, *supra* note 18 at 35. (On Frankism, *see infra* notes 40-41 and accompanying text.) De Haas reported that he recruited Brandeis to Zionism by invoking his uncle's name. DE HAAS, *supra* note 18, at 52.

37. Brandeis' brother, Alfred, and one of his daughters both married non-Jews with parental approval. *See* STRUM, *supra* note 19, at 10.

38. DE HAAS, *supra* note 18, at 50-51. In fact, before 1910, Brandeis "was Jewish in the same way that he came from Louisville: both were acknowledged as making part of his background; both were relatively unimportant to his present. Perhaps Louisville was of greater importance than Judaism, for his family ties in Louisville led him to return there for visits; he was conscious of no such ties to Judaism." STRUM, *supra* note 19, at 233.

39. GAL, *supra* note 34, at 68.

were "believers" who maintained a "hidden faith" in "Frank as the true Messiah and living God."[40] Frankism contained a strong utopian strain; it emphasized the Jewish mission among other nations to bring about the world's redemption.[41]

Something of this filtered through to Louis Brandeis. At his request (he was twenty-five at the time), his mother wrote to him about her family's Sabbatarianism, which she dismissed as superstitious illusion and "crazy beliefs," and about its effects over the generations:

> My parents' youth was a period of religious ecstasies and illusions . . . . How was it possible for my grandfather and his brothers, all brilliant men, to join a sect, the Sabbatarians, who believed in the coming of the one true Messiah, who was already on Earth and would soon help them? . . . It is even more difficult for me to understand how it was that their children, at least the older ones, shared these superstitions. It shows how clear-headed my mother was, that she was not drawn into the general religious exaltation of her family.[42]
>
> . . . I mentioned earlier the religious sect to which my parents belonged. I do not know what they believed and what Jewish doctrines they discarded, but I do know that they believed in goodness for its own sake and they had a lofty conception of morality with which they imbued us, and which I developed further for myself.[43]
>
> I saw that my parents were good Jews, and yet did not associate with Jews and were different from them and so there developed in me more affection for our race as a whole than for individuals.[44]
>
> . . . [T]his is my justification for bringing up my children without any definite religious belief; I wanted to give them something that neither could be argued away nor would have to be given up as untenable, namely a pure spirit and the highest ideals as to morals and love.[45]

Long after the Brandeis clan resettled in America, Gottlieb Wehle, who was both the uncle of Brandeis' mother and the grand-

40. Gershon Scholem, *Frank, Jacob, and the Frankists*, *in* 7 ENCYCLOPAEDIA JUDAICA 59, 65 (1971).

41. *See* GAL, *supra* note 34, at 68 (indicating that Frankism was "responsive to Enlightenment currents; it thus synthesized rationalism and a radical sense of world-wide mission").

42. FREDERIKA DENBITZ BRANDEIS, REMINISCENCES OF FREDERIKA DENBITZ BRANDEIS: WRITTEN FOR HER SON, LOUIS, IN 1880 TO 1886 8 (1943).

43. *Id.* at 32.

44. *Id.* at 33.

45. *Id.* at 33-34.

father of Brandeis' wife, left a memorandum to his children explaining their spiritual inheritance: "Your ancestors . . . looked upon the commentators of the Talmud who laid main stress on minor casuistic distinctions and definitions as treating the mere outer shell of Judaism."[46] They were instead inspired by a notion of restoring man to "the condition of perfection with which he was endowed when he came from the Creator's hand . . . again . . . free from vice and sin."[47] In Frankism, Wehle's son Theodore wrote: "[they] found a tonic influence, a refreshing impetus in a system of mystic idealism that opened an almost boundless prospect of intellectual and moral expansion. To break with Judaism was impossible, to give it higher and broader significance was the only way open to them."[48]

However eighteenth century Frankists might have put it, this late nineteenth century formulation of going beyond the "outer shell" to give Judaism "a higher and broader significance" by striving to perfect the world fits neatly with the basic shape of Brandeis' views on the relation of Judaism to progressive reform. The urge to reform, redeem and perfect the world became reattached to a Jewishness that had little content apart from being a container for reform and redemption.

When Brandeis reconnected, he had little acquaintance with Jewish literature. Subsequently, with his characteristic thoroughness, he immersed himself in books about Zionism and Jewish history.[49] The prophetic theme was present at the outset of his Jewish involvement. In his 1910 *Jewish Advocate* interview, Brandeis declared that he "found his prototype in Daniel."[50] This characterization enthusiastically was endorsed by the interviewer, who stated: "And how much like the great Daniel, prophet of old, who struggled against historic wrong and injustice, is this mighty modern

46. JOSEPHINE GOLDMARK, PILGRIMS OF '48: ONE MAN'S PART IN THE AUSTRIAN REVOLUTION OF 1848 AND A FAMILY MIGRATION TO AMERICA 192 (1930) (quoting a memorandum left by Gottlieb Wehle at his death to his children).

47. *Id.* at 194.

48. *Id.* at 193 (quoting from an unpublished paper: "Notes on the Wehle Family and their connection with the Frank Movement," by Theodore Wehle).

49. *See* STRUM, *supra* note 19, at 236 (stating that in the summer of 1914 Brandeis researched Zionist literature intensively). Interestingly, the book that seemed to exert the most influence on his Zionist views was Alfred Zimmern's *The Greek Commonwealth*. *See id.* at 237.

50. Semonoff, *supra* note 34, at 1.

Jewish prophet."[51] Seventy years later, his Israeli biographer concurred:

> Daniel's situation, indeed, of that of all the ancient prophets, best characterized Brandeis's position in 1910. The Daniel stories took place not in the Jewish homeland but in Babylon. The Jews there were respected and their God honored. Daniel and his friends underwent many trials but finally triumphed. Moreover, no one was wiser than Daniel; only he was able to read the menacing writing on the wall at Belshazzar's feast, indicating the imminent death of the king. The image of Daniel whose famous trials in the lions' den were a universal symbol, may have been more immediately appealing to Brandeis than that of other prophetic figures like Isaiah who, although exhibiting far greater social concern, lived in Palestine and prophesied an ingathering of the exiles. Like Daniel's, Brandeis's battlefield was outside of Palestine; Brandeis, too, was a man with a mission to pursue in the framework of a non-Jewish society. The qualities of wisdom and boldness characterized the modern Daniel as they had ancient prophet from Babylon. Both were proud of their Jewishness in the Diaspora, and both trusted that their loyalty to their people and heritage would sustain them.[52]

Brandeis' attraction to Daniel helps us to make sense of the identification with the prophetic tradition, not only because Daniel is a diaspora Jew, but also because Daniel is such a marginal figure as a prophet. Indeed, Jewish tradition does not count him as a prophet.[53] If Daniel shares with the prophets' luminous visions and unyielding devotion to the law, he also shares much more with a very different strand of Jewish tradition. Daniel is an eminent representative of the tradition of the discerning and able Jew who acts as advisor to the king. Never does he address or act in relation to Jews or the citizenry. Instead, he remains steadfast in his role as the consummate court insider, advising and providing insight to the several kings he served. Like Joseph, he is "an inspired interpreter

51. GAL, *supra* note 34, at 134. Brandeis' attraction to (perhaps identification with?) Daniel was more than fleeting. Nine years later on board a ship on his journey to Palestine, he wrote to his wife of rereading "the Book of Daniel in which I found some acquaintances." LETTERS, *supra* note 20, at 401. Apart from Daniel, the only Jewish text to which he was attached was the apocryphal Wisdom of Ben Sira (Ecclesiaticus). *See* DE HAAS, *supra* note 18, at 56.

52. GAL, *supra* note 34, at 134-35.

53. Although Christian and Muslim sources regard Daniel as a prophet and there are some Jewish references to him as one, his story is not included in that portion of the Jewish Bible denominated "Prophets." "[T]he Talmud denies he is a prophet." 5 ENCYCLOPAEDIA JUDAICA 1275.

of dreams and an admirable administrator."[54] He stands four-square in a tradition that has its prototype in Joseph, and that manifests itself in Mordecai,[55] *shtadlanim* [intercessors][56] and Court Jews[57] and innumerable Jews who have risen to positions of influence in non-Jewish societies. If we think of the resemblance of Daniel to Joseph rather than Isaiah, we can get another bearing on Brandeis and other Jewish lawyers in modern America.

III. The Technocratic Tzaddik: From Joseph to Brandeis

Jewish tradition has room for more methods of pursuing justice than that of prophets or rabbis. Indeed, the paradigm of the just man, the *tzaddik*, is identified with neither the prophet nor the rabbi. Joseph is the only biblical character given the title "Tzaddik."[58] He is the prototype of the inspired technician, the inventive doer and, in the setting of living among nations, the discerning advisor to power and the devoted intermediary on behalf of the Jews.

Daniel and Mordecai are the other great exemplars of this tradition. The Purim story, like Exodus, is a deliverance story, but there are significant differences. First, deliverance takes place entirely through human agency, without so much as a mention of God. Second, the Jews triumph by an alliance with the reigning power, not by wrenching themselves free of it. Mordecai, like Joseph, is a highly placed courtier who has performed a notable service for a flawed, but decent ruler. After a period of misfortune, his service is fully appreciated and he rises to be viceroy. Like Joseph, he is successful as an advisor who provides his principal with an accurate and otherwise unavailable reading of his surroundings, exposing what is concealed. The great service that is the turning point is not a physical intervention, but rather the discernment, analysis and transmission of vital and hidden information. From the heights to which he is elevated, each provides for the general welfare and

54. WALZER, INTREPRETATIONS AND SOCIAL CRITICISM, *supra* note 27, at 77.

55. Mordecai lived in Shushan (Susa), the residence of the Persian King, Ahasuerus (Xerxes I), who reigned from 486 to 465 B.C.E. *See* 12 ENCYCLOPAEDIA JUDAICA 307 (1971).

56. "[A] representative of the Jewish community with access to high dignitaries and legislative bodies." 12 ENCYCLOPAEDIA JUDAICA 1462 (1971). Interestingly, "[f]rom the late 19th century the terms *shtadlan* and *shtadlanut* acquired a pejorative undertone; they were used derisively to decry Jewish representatives who failed to stand up with pride and courage against persecuting governments and came to denote those who showed weakness and an eagerness for compromise." *Id.* at 1464.

57. *See* SELMA STERN, THE COURT JEW: A CONTRIBUTION TO THE HISTORY OF ABSOLUTISM IN EUROPE (1950).

58. NEHAMA LEIBOWITZ, STUDIES IN BERESHIT—GENESIS 430 (1976).

guards the well-being of the Jews. The characterization of Brandeis as exemplifying the prophetic tradition misreads not only the tradition, but the man. Brandeis is no more a prophet than he is a rabbi or a priest. To understand him, and a multitude of Jewish figures in American legal life, we should instead explore the figure of Joseph.[59]

A. Joseph as Tzaddik

Joseph is the first Jew who prospers by virtue of his superior discernment.[60] Unlike his forebears, he does not act directly on things, such as fields, wells and livestock, but deals instead with a "second world" of information about things. Joseph is the Jewish lawmaker for the nations. He lives among them and legislates for them. Unlike the prophets, who are largely consumed in intra-Israel debate, Joseph is concerned with life among the nations for both Jews and non-Jews.

Unlike the patriarchs before him and the prophets after him, Joseph has no direct communication from God. Indeed, God is not on-stage anywhere in the Joseph story, as He is before and after. Joseph modestly explains that his insights come "from God"[61] and others appreciate that God is "with" Joseph, but God has no lines. The evidence of His presence is in Joseph's own grace, integrity and unflawed sense of himself as a moral actor. Without the direct intervention of an overwhelming God, Joseph has a different kind of autonomy and, with it, a different kind of moral stature than those who receive messages from God. As such, Joseph's situation is far closer to our own than either is to the situation of the prophets.

Joseph is an aristocrat of personal merit and a true master of the practical — an adept, a virtuoso, a *karma yogi.* He is extremely competent and efficient in running households, prisons and kingdoms. But he is more than efficient, he is very competent at being

59. The basic source on Joseph is of course chapters 37 - 50 of *Genesis*, which provide the most extended and nuanced portrait of any Biblical figure other than Moses. *See* 5-6 BEREISHIS (M. Zlotowitz trans. 1980) (the Artscroll edition); LEIBOWITZ, *supra* note 58; LOUIS GINZBURG, THE LEGENDS OF THE JEWS, VOL. 2 (1910) for detailed commentary and insightful elaborations.

60. As he is reported to have told Potiphar's wife "I belong to those who can see things." *Genesis* 2:54.

61. Joseph mentions God to Pharaoh as a source of his interpretation. He also tells his brothers that "God sent me ahead of you." *Genesis* 45:7. "God intended it for good." *Genesis* 50:17. God is not an intimate, but the architect of the providential events.

good. He nurtures those in his care[62] and exercises power benevolently, "with full wisdom and tact in comparison to the self-destructive conceit and brashness of his adolescent dreams."[63] As teacher/therapist he carefully raises the brothers, to fraternal loyalty and raises them from mere sentimental relief to "working through" their guilt about their earlier treatment of him.[64] Though they have become dependent upon him, he graciously avoids humiliating them.[65] His righteousness is not in learning or theory, but in practical wisdom.

He is a consummate administrator, who combines a large vision with a passion for detail and a willingness to take pains. But Joseph is not just a bureaucrat. He seizes the initiative and takes the risk of boldly proffering startling advice.[66] Joseph is never a leader who occupies the apex of power. He always works for somebody else. He is flexible, adaptable, resourceful and innovative. But he is not "his own man" in the sense that the patriarchs were. He represents a shift from the heroic and God-inspired to the "brilliant" and self-directed.

His achievement is singular and individual. It involves no collaboration or teamwork. Although he impresses others with his charm, beauty and charisma, he has, throughout his life, no friend or peer. His story contains no Jonathon nor the easy camaraderie of Simeon and Levi.

Though it later became an "iron cage," the Egypt that welcomed Joseph was, like America, a favored land. The whole world suffered the years of famine,[67] but only Egypt enjoyed the years of abundance,[68] the wisdom to collect and store the surplus and the political will to use its good fortune to provide for the future. It had a benign policy of sharing its grain with its neighbors at con-

62. JANET HADDA, JOSEPH: ANCESTOR OF PYSCHOANALYTIC 37(3); JUDAISM 17, 21 (Spring 1984); (pointing to Joseph's Claim that God "hath made me a father to Pharoah" (quoting *Genesis*: 45:3)).

63. Jacob Katz, *The Joseph Dreams Anew*, 50 PSYCHOANALYTIC REVIEW 252, 276 (1963).

64. LEIBOVITZ, *supra* 58, at 490-96.

65. *See Genesis* 50:21.

66. After his earlier bold attempt to enlist the cupbearer (Chamberlain) in his cause had come to nothing, *see Genesis* 40:14, Joseph did not lapse into passivity, but seized the next opportunity to launch an even bolder scheme.

67. *See Genesis* 47:13 ("There was no bread in all the Earth.").

68. *See id.* 41:29.

trolled prices. This favored position was due in part by to its receptiveness to outsiders of talent.[69]

Joseph's great achievement is the good work of being a provider, keeping the populace alive by organizing the acquisition, storage and distribution of grain. The benefits of Egypt's good fortune are not restricted on parochial grounds: "And all the world came to Egypt to buy grain from Joseph . . . ."[70] Regulations against profiteering were carefully devised.[71]

Joseph does not arrogate to himself a privileged position, but lives by his own regulations. He distributes rations to his own family "according to the want of their little ones."[72] His treatment of them is sensitive to their individual needs, but not extravagant, which would be offensive when others were suffering. Nor does Joseph exploit the situation for his personal advantage. When his operation absorbs "all the money in Egypt"[73] by selling provisions, he deposits the money in the public treasury.

When the famine intensifies, the Egyptians offer to sell themselves into bondage: they ask Pharaoh to "acquire us and our land."[74] But Joseph acquires "all the land of Egypt for Pharaoh"[75] and arranges for the populace to work as sharecroppers, paying Pharaoh one-fifth.[76] Although the Egyptians had been willing to settle for mere survival ("that we may live and not die"[77]), Joseph manages to minimize the reduction in their circumstances, saving them some chance of a fulfilling life. Accordingly, they respond "you have given us life."[78]

As a former slave, Joseph remembers and is careful to not let the Egyptians fall into slavery. But, his policy entails immense disruption nevertheless. The entire population is resettled, cutting people's ties with their old lands. But Joseph is careful that the

69. *Cf.* LEIBOWITZ, *supra* note 58, at 521. To the commentators, Egypt's virtue is also attested by the honor accorded Jacob by the Egyptians, reflecting an ability to appreciate his greatness. *See Genesis* 50:11.

70. *Genesis* 41:57.

71. *See* LEIBOWITZ, *supra* note 58, at 523.

72. *Genesis* 47:12; *see also* LEIBOWITZ, *supra* note 58, at 523.

73. *Genesis* 47:14.

74. *Id.* 47:19.

75. *Id.* 47:20.

76. *See id.* 47:23-24.

77. *Id.* 47:19.

78. *Id.* 47:25.

resettlement is "by cities," so that they retain their social ties and communities.[79]

Joseph's achievements strike some observers as painfully limited and morally ambiguous. Maurice Samuel accounts Joseph as a "brilliant failure" who "conserved the people, but . . . did nothing more; he rescued it, but did not grace the rescue with a spiritual achievement."[80] If Joseph was farsighted and responsible in public affairs, he was also manipulative and destructive, driven by a "deep rooted passion for demonstrative dominion."[81] He gave his wholehearted best to his adopted nation and "served his [own] people negligently."[82] Arthur Waskow, troubled by Joseph's public policies, argues that Joseph "belongs on the dark side of the tradition."[83] His story "is one of ambition, envy, material power, slavery . . . . of determinism, not . . . freedom."[84] Joseph is cut off from the sense of freedom and possibility associated with God's light. He is a "tzaddik-in-the-dark," who is never in direct contact with God.[85]

> Given no light to live by, Joseph tries to grasp the darkness. . . . He learns to turn the role of overseer, the role that might have degenerated into kapo, in the other direction — to the role of saving life. Although he turns Egypt into a plantation, he does not turn it into a death camp — and by his lights, he turns it into a plantation precisely to keep it from turning into a death camp.[86]

In his extended analysis of the Joseph story, the late Aaron Wildavsky depicts Joseph as complicit with tyranny and idolatry and finds his policies as an administrator "inexcuseable."[87] Perhaps, as Waskow suggets, Joseph is situated in a time in which the

---

79. *Id.* 47:21. Although he represents a powerful centralizing policy, Joseph incorporates decentralized policies strategically. Thus the Midrash tells that he decentralized storage facilities to satisfy the psychological insecurities of the Egyptians. *See* LEIBOWITZ, *supra* note 58, at 522.

80. MAURICE SAMUEL, CERTAIN PEOPLE OF THE BOOK 302 (1977).

81. *Id.* at 362.

82. *Id.* at 346.

83. ARTHUR I. WASKOW, GODWRESTLING 37 (1978).

84. *Id.* at 34.

85. *Id.* at 40.

86. *Id.*

87. AARON WILDAVSKY, ASSIMILATION VERSUS SEPERATION: JOSEPH THE ADMINISTRATOR AND THE POLITICS OF RELIGION IN BIBLICAL ISRAEL 146 (1993). *See also* Berel Dov Lerner, *Joseph the Unrighteous*, 38 JUDAISM 278, 279 (1990) (describing Joseph as a "moral failure as ruler of Egypt" and prototype of the hired gun whose morality consists of loyalty to his superiors).

leeways for action are unusually narrow.[88] But, his circumstances are not so uniquely unpropitious for moral action that we can dismiss Joseph as a special case of no relevance to us. Our own situation is not unlike that of Joseph, who had to devise solutions for unprecedented problems without divine guidance, attempting to visualize the best attainable in a world of imperfect people and limited possibilities. Joseph's achievement was to engage in a course of political action that fully took into account the intractability of the circumstances, including the existing limitations of the people, while preserving the possibilities for overcoming those limitations. He is a master of responsible action that attempts to face up to the brute (and subtle) constraints of the present, without slighting the transformative possibilities that lie within it.

B. The Joseph Story as Mirrored in Brandeis

Much about Brandeis is reminiscent of Joseph. Like Joseph, he was very much an insider, privy to the inner circles of policy. At the same time, each retained a certain distance. Each was brilliant and imposing, but aloof, cool, remote and solitary. Each had immense self-control and skills of self-management.[89]

As with Joseph, Brandeis' leadership was less about recalling people to earlier virtue than it was about envisioning and arranging new ways of coping with changed conditions. It was marked by a skillful marshaling of information, innovative design of institutions, inventive combinations and persuasion of those with power.

Each became a deliverer of Jews late in life after a long period of remaining apart from them. Leadership among the Jews was an episode, a secondary part of a brilliant career in the service of the nation.[90] Joseph arranged the immigration of his family, saw that they were settled in Goshen, and extended his regard, protection and patronage from afar. He "became a father to them all." At the age of fifty-four, Brandeis threw himself into Zionist activity and served for a decade as the leader of the American Zionist movement. In 1920, a conflict with Chaim Weizmann over his re-

88. *See id.* at 39.

89. Tommy Austern, one of Brandeis' clerks, described him as "a thoroughly passionate man, but absolutely and completely under control." STRUM, *supra* note 19, at 361. "He apportioned his time precisely and would book no interference with it . . . ." *Id.* at 361.

90. Brandeis re-discovered his Jewish identity in his fifties; Joseph made no effort to contact his family for twenty-two years.

fusal to resign from the Supreme Court to become head of the World Zionist Organization, led to his withdrawal.[91]

Though he seems outwardly assimilated, Joseph maintains an intense Jewish loyalty in the private domain.[92] His sons, Ephraim and Manasseh, were the first Jews to be born and educated within the highest echelons of the host society. They were not poor immigrants struggling at the bottom of a foreign society; instead, they enjoyed all the advantages, influences and temptations of the Pharonic court. Declining to separate themselves from their immigrant relatives — despised foreigners and shepherds — they were the model of loyal children. We are never told how Joseph accomplished this, but clearly we are to gather that his virtuosity extended to parenting as well. In this at least, Joseph is the model of how to be a Jew in *galut.*[93] In contrast, Brandeis seemed unconcerned about the assimilation of his children into the American mainstream and the loss of their identity as Jews.

But if Joseph preserves Jewish identity, it is without any reference to a distinctively Jewish polity. Unlike prophets, who can play their role fully only to those who share in the tradition, Joseph flourishes in the setting of the nations. While he delivers the Jews, he does not lead them.[94] Joseph displays a kind of diaspora kingliness — quietly august and pivotally influential — that has its echo in Brandeis, who, like Joseph, projects Jewish self-rule to the periphery of his world.

Brandeis was a wonderfully dedicated and energetic Zionist who sought to create in Palestine a refuge and a model polity. Joseph and Brandeis each made a single visit to Palestine — Joseph to bury his father, Brandeis as emissary of the American Zionist movement in 1919. Joseph's relation to the Land of Israel is cool, remote, postponed. There is no immediate longing to return, but it is his last wish that he be buried there,[95] which he envisions happening when God eventually remembers the children of Israel and

91. *See* BEN HALPERN, A CLASH OF HEROES: BRANDEIS, WEIZMANN, AND AMERICAN ZIONISM 217-18 (1987).

92. *Genesis* 40:20; 41:50.

93. Hirsch wonders admiringly how Joseph managed "[t]o be the only Jew in Egypt to have the daughter of the priest of an idolatrous cult as a wife and still raise children who remain for all time the model of Jewish aspiration and blessing." THE PENTATEUCH 586 (Samson R. Hirsch trans., 2d ed. 1926).

94. It is his brother Judah who represents the principle of brotherhood and rule. The commentators tell us that the enmity of his brother disqualifies Joseph from ruling over them in spite of his righteousness.

95. *See Genesis* 50:24.

brings them up out of Egypt to the promised land.[96] Brandeis, in contrast, envisioned no such convergence at a specifically Jewish center. He arranged for burial beneath a portico of the University of Louisville, in a grave entirely bereft of any Jewish mark or symbol.

IV. Joseph in America

If Brandeis is the most eminent and multi-faceted of the Joseph-like American Jewish lawyers, he was neither the first nor the last. Many elements of the Joseph story are recognizable in the remarkable career of the first of the great American Jewish lawyers, Judah P. Benjamin (1808-1884). Benjamin was a prominent lawyer, a United States Senator and influential member of the Confederate cabinet, who rose from the ashes of the Confederacy to become one of the most eminent barristers in London. As a confidant and advisor to Jefferson Davis, he was a "loyal aide, quiet and deferential; his was a total bending of his independence, identity, and performance to the [Confederate] president's purposes."[97] Benjamin had a luminous practical intelligence, coupled with boundless energy and command of self. He was a "prodigiously productive" man who "loved details, complexity, and problem-solving."[98]

Like Brandeis and Joseph for much of their lives, Benjamin was a "double outsider . . . estranged not only from the non-Jewish world but from the established Jewish world as well."[99] He too was infused with a "belief that he was being reserved for a special destiny."[100] Moreover, like Joseph, Benjamin displayed a remarkable resiliency. He repeatedly rose from the pit of failure, scandal and political disaster. Of his escape from the fallen confederacy by a harrowing four month crossing of the Atlantic — including twenty-three days in an open boat — he wrote to a friend: "I never . . . had one minute's indisposition nor despondency but was rather pleased by the feeling of triumph in disappointing the malice of my enemies."[101] Years later he reflected that he had been blessed from birth with a gift of looking at the bright side and an inability to distrust the future. "[I]t was simply elasticity of natural temper-

96. *Genesis* 50:24.

97. ELI EVANS, JUDAH P. BENJAMIN: THE JEWISH CONFEDERATE 387 (1988).

98. *Id.* at 117, 122. Evans remarks on his "almost obsessive commitment to systematic paperwork, along with an encyclopedic memory for detail." *Id.* at 121-22.

99. *Id.* at 13. Although not observant or affiliated, he regarded himself as an "intellectual Jew." *Id.* at 207.

100. *Id.* at 321.

101. *Id.*

ament: a total absence of . . . despondence and brooding over adverse circumstances."[102]

Among the many distinguished Jewish lawyers prominently visible on the American legal scene since Brandeis began his career a century ago, we find few rabbis cultivating and expounding Jewish law. We may find some prophets (and would-be prophets). We also may find a multitude of Josephs — people of extraordinary competence, inspired organizers and administrators, idealistic, creative lawyers who see law in its social context, as a malleable instrument to put to the service of moral vision. They are loyal to their fellow Jews and are comfortable with and committed to working with the powers that be. They embrace large responsibilities that reach beyond the Jews to the general population and beyond the technically legal to politics in the broadest sense. They are people who, in Weber's phrase, have a "calling for politics."[103]

These Joseph figures are un-prophet-like in many ways. They flourish among the nations. Many are confidants of the powerful. They address their energies to the general life of the society rather than (or as well as) to Jews per se. Their wisdom is pragmatic and subject to revision in the light of experience. At the core of the contrast between the Joseph figure and the prophet is the tension between Weber's ethic of consequences and the ethic of ultimate ends. The ethic of ultimate ends judges actions by the good intentions or correct principles that animate them; the ethics of consequences accepts responsibility for the consequences of acting in a world in which good must be accomplished with means that are morally dubious and dangerous.[104] Just as Joseph used deception and threats to test his brothers and drastic resettlement policies to deal with the famine, modern Josephs use the flawed means of the law and politics. The three pre-eminent qualities for the moral politician, Weber observes, are "passion, a feeling of responsibility, and a sense of proportion."[105] His ideal politician is free of romantic intoxications: "what is decisive is the trained relentlessness in viewing the realities of life, and the ability to face such realities and

102. *Id.* at 392.

103. *See generally* Max Weber, *Politics as a Vocation* (1918), *in* FROM MAX WEBER: ESSAYS IN SOCIOLOGY (Hans H. Gerth et al. eds., 1958).

104. *See id.* at 121 ("[A] man who believes in an ethic of responsibility takes account of precisely the average deficiencies of people. . . . The believer in an ethic of ultimate ends feels 'responsible' only for seeing to it that the flames of pure intentions is not squelched . . . .").

105. *Id.* at 115.

to measure up to them inwardly."[106] These figures are not detached technicians or immoral instrumentalists. Rather, they are mature men — "no matter whether old or young in years" — who are "aware of responsibility for the consequences" of their conduct and feel such responsibility "with heart and soul."[107] It is such a "genuine man" who unites a commitment to ultimate ends with an ethic of responsibility who has "the 'calling for politics.'"[108]

Identification of this Joseph figure re-locates the questions raised earlier that face assertions about a Jewish vocation for law. Does the worldly sagacity of Joseph flourish in some Jewish communities and in some eras more than in others? Wherever it appears, is there anything distinctively Jewish about it?[109] If there is, how has it been transmitted from Joseph to Brandeis to us? Tracing these connections may be even more daunting than continuities with rabbinic or prophetic traditions; for those traditions are articulated and institutionalized, while the Joseph theme is not cultivated and transmitted in an organized way.

The flourishing of the Joseph prototype reminds us that we are not confined to rabbinic or prophetic models in finding examples of legal virtuosity. Joseph and his practical progeny provide a model that seems especially relevant to life in a society that is secular and heterogeneous, affluent but stratified. Many prominent American Jewish lawyers bear little resemblance to the Joseph figure.

But if these resemblances are more than coincidental, what are we to make of them? Is the worldly competence and responsibility exemplified by Joseph to be accounted as a permanent and valued feature of Jewish tradition? Aaron Wildavsky argues that it was superseded by the arrival of Moses and the prophets with their emphasis on binding law and God's transcendent authority. Joseph, in this view, was a failed experiment in moral leadership, "the path not taken."[110] My argument in this Essay leads to the opposite conclusion, that in important ways Joseph is the road taken—or at least the road on which we find ourselves traveling. Even if Wildavsky is correct that in the original sequence Joseph was unqualified to propound the moral law, it does not follow that he is

106. *Id.* at 126-27.

107. *Id.* at 127 (emphasis in original).

108. *Id.*

109. WILDAVSKY, *supra* note 87, at 159. Wildavsky appreciates Joseph's sagacity, but dismisses it as *goyish*, "a prudential wisdom that the Bible regards as the highest achievement of non-Israelites." *Id.*

110. *Id.* at 206.

unfit to wrestle with its application in a world of hard choices where God no longer speaks.[111]

If Jews are not to be an isolated, inward-looking sect like the Amish, there needs to be a periphery as well as a center. Where Moses is associated with an integrative, centripetal movement to the promised land and the enunciation of an elaborated and distinctively Jewish law, Joseph is the prototype of dispersive centrifugal movement and into the diaspora, accomplishment in and comfortable adjustment to the wider gentile world. Is this outward movement merely a falling away, at best a postponement? Or is it also a source of value? The answer depends on whether Jewish life is envisioned as a struggle to overcome the impediments to coalescence at that integral center or as including movement away from the center that makes possible voyages of rediscovery and enrichment.

If Joseph is a pathfinder who traces that outward movement that enables us to flourish in a secular, pluralist and stratified society, his story also has ominous overtones. Joseph's liberation in Egypt, the precursor and forerunner for eventual collective liberation from Egypt, also sets the stage for enslavement in Egypt. The goodness of Egypt proved transitory. Is the goodness of America so robust that we can dismiss any worry of an America that "kn[ows] not Joseph?"[112]

Deeply involved in Egyptian society, Joseph was an exceptional figure at the edge of a community of more integral Jews. Can such a marginal figure be generalized into a common type? As a great proportion of the American Jewish community takes on elite status[113] can we imagine a whole Jewish community that is a fellowship of Josephs?

Joseph was a former victim and slave who remembered what it was like to be down. At the same time, however, he was a responsible politician who faced up to the harsh realities of his situation. He reminds us that our alternatives are not confined to embracing

111. In *The Disappearance of God: A Divine Mystery*, Richard Elliott Friedman traces over the course of theHebrew bible "the diminishing of the apparent presence of the divine among humans, the hiding of the face of God . . . . and the presumably related . . . . "transition from divine to human responsibility for life on Earth." RICHARD ELLIOTT FRIEDMAN, THE DISAPPEARANCE OF GOD: A DIVINE MYSTERY 30 (1995).

112. *Exodus* 1:8.

113. On the ascension of Jews into the elites of Western society, *see* W.D. RUBINSTEIN, THE LEFT, THE RIGHT AND THE JEWS 42-70 (1982) ("[S]ince the 1950s . . . Western Jewry as a whole has risen into the upper-middle class, and the Jewish proletariat transformed itself into a near-universal bourgeoisie.").

an illusory self-interest or to casting ourselves as the appointed instruments of imminent and universal liberation. Does acceptance of Joseph as a prototype mean abandonment of the notion that Jews have a special role in redeeming the world? Apart from Joseph's explanation to his brothers that God had sent him from Egypt, any connection to divine purpose is left unspoken in the story. Yet there are hints that Jews scattered among the nations have their own messianic (or at least liberating) vocations.[114] Indeed, there is a traditional notion that the final messiah will be preceded by Messiah ben Joseph — a redeemer from the house of Joseph. So, if the legacy of Joseph cannot show us the way to a final, transformative redemption, it may be useful in helping us learn the next step along the way. Surely this is as much as we may expect from lawyers.

114. *See Genesis* 48:19 ("[A]nd his offspring shall become a multitude of nations.").