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RELIGIOUS VALUES, LEGAL ETHICS, AND POVERTY LAW: A RESPONSE TO THOMAS SHAFFER

Stephen Wizner*

INTRODUCTION

As a lawyer, law teacher, and legal scholar, Thomas Shaffer is inspired and guided by religious values. Being a lawyer for Thomas Shaffer is a vocation, a calling to pursue social justice.¹ He is, to use his term, a “role model” of a lawyer who believes that his religious values require that he pursue justice. Shaffer is clearly right in asserting that there is much in the prophetic literature, and, indeed, in the entire Hebrew Bible and the New Testament, that could serve as a moral impetus for social justice lawyering.² One can find considerable support for Shaffer’s religious thesis in the texts that he cites, and in the words of the prophets he looks to as role models. Nevertheless, it is my intention to present a skeptical response to Professor Shaffer’s thoughtful essay.

I. THE RELIGIOUS THESIS

In the religious tradition with which I am most familiar—Judaism—the obligation to pursue justice is a prominent and recurring theological and ethical ideal.³ Jewish religious texts call upon the People to engage in socially responsible behavior in the form of acts of loving kindness, *gemilut hasadim*⁴, and efforts to repair the

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1. See THOMAS L. SHAFFER, FAITH AND THE PROFESSIONS 85-89 (1981).

2. E.g., *infra* notes 3-6, 10-16, 26 and accompanying text.

3. E.g., *Proverbs* 16:8 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“Better a little with righteousness [t]han a large income with injustice.”); *Psalms* 37:27-28 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“Shun evil and do good, and you shall abide forever. For the LORD loves what is right, He does not abandon His faithful ones.”); see also JEROLD S. AUERBACH, RABBIS AND LAWYERS: THE JOURNEY FROM TORAH TO CONSTITUTION 20-22 (1990) (discussing the reflection of Jewish values in the American Constitution).

4. *Maimonides, Mishneh Torah, Seder Nezikin, Book of Damages* 5:22 (Rabbi Eliyahu Touger trans., 1997) [hereinafter *Mishneh Torah, Seder Nezikin*]; see also *Pirke Aboth* 1:2 (The Ethics of the Talmud: Sayings of the Fathers (1962)) (“Upon three things the world standeth; upon Torah, upon Worship and upon the showing of kindness.”).

world, *tikkun olam*.⁵ Jewish theology contemplates the active participation of human beings in helping to bring about the messianic vision of a world of justice and peace.⁶ The religious thesis is that the absorption of Jewish religious thought and the inculcation of Jewish ethical values lead many, even antireligious, Jews to engage in social justice activism.⁷

There is much in Jewish religious thought, ideology and values to support the religious thesis. A central theme of the Bible, the Prophets, and the Writings is "justice", not in the Greek sense of harmony, but rather as righteousness, and the doing of good deeds.⁸ The Hebrew word for justice, *tzedek* and the Hebrew word for charity, *tzedakah*, are from the same Hebrew root.⁹

In Jewish religious thought, doing justice is an obligation commanded by God.¹⁰ The religious duty to pursue justice is the keynote of the humane legislation of the Torah, and of the insistence on social righteousness by Israel's Prophets, Psalmists, and Sages.¹¹

In the Torah, God repeatedly admonishes the Israelites to be kind and generous to the stranger, the widow, the orphan, and the poor.¹² The divine prohibition against oppressing strangers occurs

5. This is a goal that Judaism teaches must always be pursued, though it will never be fully accomplished. See *Pirke Aboth* at 2:21 ("The work is not upon thee to finish, nor art thou free to desist from it."); see also *Psalms* 34:15 ("Shun evil and do good; seek amity and pursue it.").

6. See, e.g., *Zechariah* 8:16-17 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) ("These are the things you are to do: Speak the truth to one another, render true and perfect justice in your gates. And do not contrive evil against one another, and do not love perjury, because all those are things that I hate—declares the LORD.").

7. See, e.g., LAWRENCE H. FUCHS, *THE POLITICAL BEHAVIOR OF AMERICAN JEWS* 178 (1956) (suggesting that Jewish values, such as an emphasis on learning and charity, have helped to guide Jewish political behavior); MOSES RISCHIN, *THE PROMISED CITY: NEW YORK'S JEWS, 1870-1914*, at 166 (1962) ("For most Jewish socialists, although often unaware of it, socialism was Judaism secularized."); GERALD SORIN, *THE PROPHETIC MINORITY: AMERICAN JEWISH IMMIGRANT RADICALS, 1880-1920*, at 111-20 (Paula Hyman & Deborah Dash Moore eds., 1985) (theorizing about why Jews are attracted to socialism).

8. See FUCHS, *supra* note 7, at 178.

9. MAYER SCHACHTER-HACHAM, MICHLAL HALASHON B'ELEPH SHORASHIM: MILON DIKDUK IVRI-ANGLI [ENCYCLOPEDIA OF THE LANGUAGE IN 1,000 ROOTS: HEBREW-ENGLISH GRAMMATICAL DICTIONARY] 565-66 (1968).

10. E.g., *Deuteronomy* 16:20 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) ("Justice, justice shall you pursue, that you may thrive and occupy the land that the LORD your God is giving you.").

11. See, e.g., *Psalms* 11:5-7 ("The LORD seeks out the righteous man, but loathes the wicked one who loves injustice. . . . For the LORD is righteous; He loves righteous deeds; the upright shall behold his face.").

12. E.g., *Deuteronomy* 15:7 ("If . . . there is a needy person among you, one of your kinsmen in any of your settlements in the land that the LORD your God is giving

in no fewer than thirty-six places in the Torah,¹³ usually accompanied by similar exhortations regarding widows and orphans.¹⁴ The ethical injunction to do justice to the poor and disadvantaged appears repeatedly throughout the Hebrew Bible,¹⁵ inviting an understanding of the constitutive Jewish religious text as a manifesto for activism in furtherance of social justice.

In the Hebrew Bible, God is never satisfied with mere ritual observance; He demands that the people act justly.¹⁶ The idea of commandments, *mitzvot*, that impose obligations on individuals to pursue justice permeates Jewish religious thought, engendering what the late Robert Cover called "a Jewish jurisprudence of the social order."¹⁷ In Cover's words: "The basic word of Judaism is obligation or *mitzvah*. . . . Indeed, to be one who acts out of obligation is the closest thing there is to a Jewish definition of completion as a person within the community."¹⁸

What evidence is there that this Jewish tradition of religious obligation to do justice, to perform acts of loving kindness, to make the world a better place, has permeated the souls of Jewish social activist lawyers and motivated their behavior?

Gerald Sorin has offered in support of the religious thesis his collective biography of 170 American Jewish immigrant radicals.¹⁹ Sorin concludes that:

The great bulk of the Jewish men and women who came to socialism had been saturated in Jewish tradition and Jewish culture. To them socialism, though a political movement, was more than the mere program of a political party. To them socialism was more than an economic or sociological doctrine, it was an ethical system. Even atheists . . . proved by their words and their actions that Jewish ethical precepts and religious values still had a strong hold on them, and that their upbringing and

you, do not harden your heart and shut your hand against your needy kinsman."); *Exodus* 22:20-22 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) ("You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt. You shall not ill-treat any widow or orphan. If you do mistreat them, I will heed their outcry . . .").

13. J. H. HERTZ, *THE PENTATEUCH AND HAFTORAH* 314 (Sonano Press 2d ed. 1960).

14. *See id.*

15. *Id.* (noting that the Hebrew Bible contains a "constantly-repeated exhortation" that one not oppress widows, strangers, or orphans).

16. *E.g.*, sources cited *supra* notes 6, 10, 12; *infra* note 26 and accompanying text.

17. *See* Robert Cover, *Obligation: A Jewish Jurisprudence of the Social Order*, 5 *J.L. & RELIGION* 65, 65 (1988).

18. *Id.* at 66-67.

19. *See* SORIN, *supra* note 7, at 2.

training prepared them to be more receptive to radical ideology.²⁰

Typical of the Jewish socialists whose stories and political beliefs are brought to life in Sorin's book is Morris Winchevsky, whom Sorin calls "the patriarch of Jewish socialism."²¹ Winchevsky was militantly antireligious.²² "My greatest pleasure," he wrote, "had been in proving that Moses did not write the Torah, that Joshua did not rearrange the course of the sun and the moon, that David was not a very nice man and Solomon not always wise."²³

Yet, this same Morris Winchevsky, "whose disbelief," according to Sorin, "approached fanaticism"²⁴, would nevertheless confess:

[F]or almost everything I write I have to thank that poet-preacher [Isaiah] who entered my heart and mind with love for orphans and widows and other defenseless and oppressed people . . . with his hatred for everything that stands for robbery and murder and deceit under whatever mask it parades. . . . I am grateful . . . not to him alone, but also to Amos and Hosea before him and Micah after him.²⁵

Like Morris Winchevsky and Thomas Shaffer, I find "ancestors" in the Bible who serve as social justice role models for me. Every year on Yom Kippur I am deeply moved and challenged by the words of the Prophet Isaiah, which are a central feature of the synagogue service:

Like a nation that does what is right, [t]hat has not abandoned the laws of its God, [t]hey ask Me for the right way, [t]hey are eager for the nearness of God: "Why, when we fasted, did You not see? When we starved our bodies, did You pay no heed?" Because on fast day [y]ou see to your business [a]nd oppress all your laborers! Because you fast in strife and contention, [a]nd you strike with a wicked fist! Your fasting today is not such [a]s to make your voice heard on high. Is such the fast I desire, [a] day for men to starve their bodies? Is it bowing the head like a bulrush [a]nd lying in sackcloth and ashes? Do you call that a fast, a day when the LORD is favorable? No, this is the fast I desire: [t]o unlock fetters of wickedness, [a]nd untie the cords of the yoke [t]o let the oppressed go free; [t]o break off every yoke. It is to share your bread with the hungry, [a]nd to take

20. *Id.* at 164.

21. *Id.* at 114.

22. *Id.*

23. *Id.* (citation omitted).

24. *Id.*

25. *Id.* (alteration in original) (citation omitted).

the wretched poor into your home; [w]hen you see the naked, to clothe him, [a]nd not to ignore your own kin. Then shall your light burst through like the dawn [a]nd your healing spring up quickly; your Vindicator shall march before you, the Presence of the LORD shall be your rear guard. Then, when you call, the LORD will answer; [w]hen you cry, He will say: Here I am.²⁶

II. DOUBTS ABOUT THE RELIGIOUS THESIS

I *personally* agree with what Shaffer says about the relevance of religious values and religiously inspired individual role models, to my understanding of legal ethics and to my own law practice. I say “personally,” because I am skeptical about the relevance of religious values to those who do not feel connected to or motivated by those values. In order for religious texts to have personal impact, one must, in some real sense, be touched and influenced by them. And I suspect that many law students and lawyers are not.

Moreover, even for lawyers who do feel connected to, or motivated by, religion and see it as relevant to their professional lives, I want to express my skepticism about religion as a source of authority and inspiration for legal ethics and the practice of law.

First, such evidence, as may exist, that appears to support a claim that religious values are the motivation for social justice activism, is inconclusive at best.²⁷ A person’s *belief* about the reasons for why she does what she does are as likely to be an after-the-fact explanation as they are to be the actual motivation for her behavior. It is equally plausible that individuals who are drawn to social justice

26. *Isaiah* 58:2-9 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)). Isaiah was not the only prophet to exhort the People to do justice. See, e.g., *Amos* 5:24 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“[L]et justice well up like water, [r]ighteousness like an unending stream.”); *Jeremiah* 21:12 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“[T]hus said the LORD: Render just verdicts [m]orning by morning; [r]escue him who is robbed [f]rom him who defrauded him. Else My wrath will break forth like fire [a]nd burn, with none to quench it, [b]ecause of your wicked acts.”); *Micah* 6:8 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“[T]he LORD requires of you: [o]nly to do justice [a]nd to love goodness, [a]nd to walk modestly with your God . . .”).

27. Compare SHAFER, *supra* note 1, at 39-40 (noting that although “the dominant figures in nineteenth-century American legal ethics” were believing Jews or Christians, the Bible was not included in their work in any way that “couldn’t have been based just as well on Jeffersonian American civil religion”), with sources cited *supra* note 7 (supporting the suggestion that the absorption of religious thought and values leads to social justice activism).

work may also find attractive those aspects of religion that encourage socially responsible behavior.

Second, I think it is fair to say that many—if not most—religiously observant individuals, including those who are lawyers, tend not to be social justice activists. Over the centuries, and especially in modern times, the more religiously observant—those who are most knowledgeable about and committed to traditional religious practices and values—have not been social justice activists, and, on the whole, have tended to be politically conservative.²⁸ Like Martha Minow, I am attracted to an interpretation of Jewish tradition that obligates Jewish lawyers to advocate for those who are disadvantaged, and I agree with her that this is only one of several interpretations of what Jewish tradition teaches about the professional obligations of lawyers.²⁹

Finally, and most significantly, not all social behavior that claims religion as its justification promotes justice.³⁰ If religion is cited as the motivation for socially desirable conduct, it is also claimed as justification for socially destructive actions, such as inter-religious violence and religious persecution.³¹

Even the Prophets—perhaps, especially the Prophets—are problematic role-models for law students and lawyers. In his essay, *Priest and Prophet*, the turn-of-the-century Hebrew writer and intellectual, Ahad Ha'am, offered a skeptical view of the Prophets as real-world actors.³² He described the prophet as a one-dimensional man, obsessed by an *idée fixe*—Absolute Justice.³³ The prophet views the world through the prism of this ideal that he demands be put into practice.³⁴ Throughout his lifetime he proclaims, exhorts, scolds, and nags, expending all of his energy on

28. See also SHAFFER, *supra* note 1, at 39-40.

29. Martha Minow, *On Being a Religious Professional: The Religious Turn in Professional Ethics*, 150 U. PA. L. REV. 661, 679-80 (2001).

30. E.g., *infra* notes 67-75 and accompanying text.

31. E.g., *infra* notes 67-75 and accompanying text.

32. Ahad Ha'am, *Priest and Prophet*, in *SELECTED ESSAYS OF AHAD HA'AM* 123, 136-38 (Leon Simon ed., 1962); see also AUERBACH, *supra* note 3, at 49-68 (describing the longstanding difficulties in translating prophetic ideals into attainable societal goals); cf. Marc Galanter, *A Vocation for Law? American Jewish Lawyers and Their Antecedents*, 26 FORDHAM URB. L.J. 1125, 1128-31 (1999) ("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.'" (footnote omitted)).

33. See Ha'am, *supra* note 32, at 130-31, 133, 137.

34. *Id.* at 130-31.

demanding the realization of this ideal, to the point of being oblivious to what is humanly possible in the world around him.³⁵

By nature the prophet is a fanatic.³⁶ Because he can never achieve his ideal, he is always seething with anger and anguish.³⁷ He is a man of strife and contention.³⁸ People mock him and call him crazy.³⁹ His truth is a truth that is revealed in prophecy, but can never be realized in action.⁴⁰

In contrast, the pragmatic idealist—the human rights lawyer, the poverty lawyer—does not ignore reality. Rather, she makes a pact with reality. Unlike the prophet, who demands from the People what they will not and cannot give, the pragmatic idealist demands what *is* not, but *can* be, and struggles for its realization. She acts within the existing legal system, and employs existing legal tools, to champion the cause of the poor and dispossessed.

I do not view Charles Huston, or Thomas Shaffer, or other legal role models that Shaffer cites, as prophets. They are pragmatic idealists, motivated by a social ethic to use their intelligence, energy, skill and training—their “legal toolbox,” in Thomas Shaffer’s language—to strive for the realization of achievable goals in this world. Some of them may even be inspired by religious values and commitments. Even if they are not, their passion for justice is certainly consistent with some religious values.⁴¹

III. RELIGIOUS VALUES AND SOCIAL JUSTICE

For the past sixteen years, during the first weekend in March, the Society of American Law Teachers has sponsored a public interest law retreat at Boston University’s Sargent Camp, an outdoor recreation center in Peterborough, New Hampshire.⁴² The retreat honors the memory of Robert Cover, who died in 1986, at the age of

35. *See id.*

36. *See id.*

37. *Id.* at 131.

38. *Id.*

39. *Id.*

40. *See id.* at 130 (explaining that a prophet’s “gaze is fixed always on what *ought* to be in accordance with his own convictions; never on what *can* be consistently with the general condition of things outside himself.”).

41. *See, e.g., AUERBACH, supra* note 3, at 21-22 (stating that a passion for justice was part of the unconscious inheritance that Jews brought to this country); Morgan Leyh, *Finding Social Justice at the Point Where the Legal System and Christianity Meet: The Role of a Christian Attorney in Seeking Justice for the Poor*, 15 REGENT U.L. REV. 153, 163 (2002) (examining Biblical passages supporting the social justice objectives of poverty lawyers).

42. *Public Interest Law Retreats: Retreat Dates and Information*, Soc’y of Am. Law Teachers, at <http://www.saltlaw.org/publicinterest.htm> (last visited Sept. 26, 2003)

forty-two.⁴³ Cover was a beloved law professor and social activist who was himself inspired and motivated by religious values.⁴⁴ At the retreat, law students, law teachers, and public interest lawyers spend the weekend together, learning from, supporting, and encouraging one another in their common pursuit of social justice.⁴⁵

One of those retreats, several years ago, happened, coincidentally, to take place during the Jewish festival of Purim, on which observant Jews go to the synagogue to listen to the public reading of the biblical Book of Esther.⁴⁶ The holiday commemorates the role of Esther and her uncle, Mordecai, in the deliverance of the Jews of Shusan from a threatened massacre planned by Haman, the chief courtier of King Ahashuerus.⁴⁷

I brought photocopies of an English translation of the Book of Esther to the retreat, hoping that some of the participants might be willing to join me in a public reading and discussion of the text. Many of the students, teachers, and lawyers in attendance joined me in reading and discussing the biblical text, among them two of the perennial retreat participants, Milner Ball,⁴⁸ a Protestant minister and lawyer who is a law professor at the University of Georgia, and Henry Schwarzschild, who was a long-time prominent advocate for abolition of the death penalty.

The violence of the narrative of the Book of Esther came as a surprise to many in the group. The story has accounts of capital punishment,⁴⁹ revenge killings,⁵⁰ and a bloody massacre.⁵¹ Many

[hereinafter *Retreat Dates and Information*] (providing information on the Public Interest Law Retreat in honor of Robert Cover).

43. Stephen Wizner, *Repairing the World through Law: A Reflection on Robert Cover's Social Activism*, 8 *CARDOZO STUDIES IN L. & LITERATURE* 1, 2-3, 13 (1996); *Public Interest Law Retreats: Robert Cover*, Soc'y of Am. Law Teachers, at <http://www.saltlaw.org/publicinterestcover.htm> (last visited Sept. 26, 2003) (providing bibliographical information on the late Robert Cover).

44. See Cover, *supra* note 17, at 65.

45. *Retreat Dates and Information*, *supra* note 42 ("The Retreats provide a time for faculty, students and practitioners to come together, share ideas, and recommit themselves to working for social justice and change.").

46. Chaim Coffman, Project Genesis, Inc., *Purim: Basic Concepts and Laws*, at <http://www.torah.org/learning/yomtov/purim/purimbasics.html> (last visited Sept. 26, 2003) (explaining the meaning of the Purim holiday and its manner of celebration by feasting, gift-giving and reading the story of Esther); see *Esther* 1:1-10:3 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)).

47. See Coffman, *supra* note 46.

48. For another account of this interaction and the ensuing debate, see MILNER S. BALL, *THE WORD AND THE LAW* 71-72 (1993).

49. *Esther* 8:7.

50. *Id.* at 9:1-5.

were also offended by the portrayal of women, especially of two of the king's wives, Vashti and Esther.⁵² Vashti, according to the story, is banished for refusing to dance before the king and his male courtiers,⁵³ and Esther joins the king's harem at the direction of her uncle, Mordecai,⁵⁴ where she employs her beauty and seductive powers to persuade the king to have Haman hung and to save the Jews.⁵⁵

At the conclusion of the reading Henry Schwarzschild, in an outburst of prophetic outrage, denounced me for "luring" a group of "innocents" into reading this "terrible story," and passionately repudiated the violence and sexism of the biblical narrative. Milner Ball gently responded that Queen Esther, properly understood, should be seen as a "public interest lawyer", subordinating her own personal interests to her advocacy for her People, and that the violence of the story should be seen as a literary device and as incidental to the themes of advocacy and justice.⁵⁶

Why do I recount this story? Because the exchange between Henry Schwarzschild and Milner Ball exemplifies a point I want to make about the problematic nature of biblical texts as sources of authority and inspiration for social justice lawyering. While it is certainly true that there is much in the Bible—and especially in the books of the prophets—that supports a claim that these foundational religious texts promote a vision of tolerance and social justice,⁵⁷ there is also in those same texts a contradictory message, one that encourages religious and social particularism, nationalism, intolerance, and violence directed at those who are not members of the particular religious group.⁵⁸

51. *Id.* at 9:5-16.

52. See *infra* notes 53-55 and accompanying text. See generally Brenda Smith, *Battering, Forgiveness and Redemption*, 12 AM. U. J. GENDER SOC. POL'Y & L. 921, 945-46 (2003) (explaining that the negative portrayal of women in the Bible is connected to incidents of domestic violence).

53. *Esther* 1:10-21. "If it please Your Majesty, let a royal edict be issued by you . . . so that it cannot be abrogated, that Vashti shall never enter the presence of King Ahasuerus. And let Your Majesty bestow her royal state upon another who is more worthy than she." *Id.* at 1:19.

54. See *id.* at 2:5-20.

55. *Id.* at 7:1-10.

56. See BALL, *supra* note 48, at 71-72.

57. See, e.g., Leyh, *supra* note 41, at 163-64 (examining Biblical passages supporting social justice and encouraging Christian lawyers to work toward such objectives with a sense of obligation, despite the fact that Biblical texts are no longer binding law).

58. E.g., *infra* notes 63-64 and accompanying text.

CONCLUSION

In the *Mishnah*—a second century redaction of Jewish law—toward the end of the tractate known as *Pirke Aboth*, or the “Sayings of the Fathers,” a man by the curious name of Ben Bag Bag, speaking of the Torah, is quoted as saying: “Turn it and turn it for all is in it.”⁵⁹ While the point of Ben Bag Bag’s words may have been that everything that one needs to know to lead a righteous life can be found in the Torah, the text invites an alternative reading. One can find in the Hebrew Bible support for almost any social or political conduct, including actions that are religiously particularistic and intolerant.⁶⁰ As Irving Howe has observed, “With enough wrenching one could find ‘ancestors’ in the Jewish past for almost any opinion.”⁶¹

While there is much in Jewish theology that can be read as requiring the pursuit of social justice as a religious obligation, there is also within Jewish theology, a contradictory message, one that encourages religious and cultural particularism and nationalism.⁶² Throughout the Bible the Israelites are portrayed as a special, “chosen,” insular People.⁶³ They attack their enemies, they wage war, they seize land, they shun contact with followers of other religious traditions, they look out for their own.⁶⁴ There is in Jewish religious tradition an emphasis on separateness, holiness, sacrifices,

59. *Mishneh Torah, Seder Nezikin, supra* note 4, at 5:22; see also *Pirke Aboth* 5:25 (The Ethics of the Talmud: Sayings of the Fathers (1962)).

60. *E.g.*, *infra* note 64 and accompanying text.

61. IRVING HOWE, *WORLD OF OUR FATHERS* 623 (1976).

62. *E.g.*, *infra* notes 63-64 and accompanying text.

63. *E.g.*, *Deuteronomy* 7:6 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“For you are a people consecrated to the LORD your God: of all the peoples on the earth the LORD your God chose you to be His treasured people.”); *Psalms* 33:12 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“Happy the nation whose God is the LORD, the people He has chosen to be His own.”).

64. *E.g.*, *Deuteronomy* 20:16-18

In the towns of the [other] peoples . . . which the LORD your God is giving you as a heritage, you shall not let a soul remain alive. No, you must proscribe them . . . as the LORD your God has commanded you, lest they lead you into doing all the abhorrent things that they have done for their gods and you stand guilty before the LORD your God.

Id.; *Joshua* 8:1-29 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (describing how Joshua led Israel to siege and burn the city of Ai, slaughtering its people and impaling its king at the Lord’s command); *Leviticus* 26:7 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (“You shall give chase to your enemies, and they shall fall before you by the sword.”).

Temple ritual, and many *mitzvot* (obligations) that deal only with matters of personal and ritual purity, and religious observance.⁶⁵

But even more to the point, history is replete with instances of individuals, groups, and nations acting in violent and intolerant ways in the name of religion.⁶⁶ Murderous persecution and violence between Pagans and Christians,⁶⁷ Jews and Muslims,⁶⁸ Hindus and Muslims,⁶⁹ and among Muslims, Ba'hais, and Zoroastrians,⁷⁰ all in the name of religion, have produced such historic injustices as the Crusades,⁷¹ the Spanish Inquisition,⁷² pogroms,⁷³ and, in our day, territorial occupation⁷⁴ and terrorism.⁷⁵

As a liberal, social activist, Jewish lawyer, I choose to adopt those aspects of the religious tradition into which I was born that

65. *E.g.*, *Deuteronomy* 7:3-4 (forbidding interfaith marriages that could turn future generations "to worship other gods"); *Genesis* 17:10-13 (Tanakh: The Holy Scriptures, The New JPS Translation According to the Traditional Hebrew Text (1985)) (requiring circumcision of every Jewish male or male slave of a Jewish family as a sign of the covenant between the Jewish people and the Lord); *Leviticus* 11:1-47 (specifying dietary requirements for observant Jews).

66. *E.g.*, *infra* notes 67-75 and accompanying text.

67. *See, e.g.*, David Keys, *Sculptures Depict Pagan Age That Ended in Violence*, THE INDEPENDENT (London), July 27, 1990, available at LEXIS, News Library, Bglobe File (describing violent pagan-Christian conflicts known to have occurred circa AD 350 between a pagan state consisting of Britain and Gaul and the Christian Roman empire).

68. *E.g.*, Greg Myre, *3-Year Mideast Conflict Shapes Lives on Both Sides*, N.Y. TIMES, Sept. 29, 2003, at A3 (discussing effect of conflict between Palestinian Muslims and Israeli Jews on the lives of those in the region).

69. *E.g.*, Amy Waldman, *In Massacre of Hindus, A Grim Omen for All India*, N.Y. TIMES, Sept. 26, 2002, at A12 (reporting on an attack by Muslim gunmen at a Hindu cultural complex, evidencing persistent Muslim-Hindu conflict).

70. *See* Bill Samii, *Episonage, Religion, and Politics*, RFE/RL IRAN REPORT, June 21, 1999, Vol. 2, No. 25, (describing tensions in Iran between Muslim governing authorities and citizens of minority religious groups, such as the Zoroastrians and Bahais), available at <http://www.rferl.org/iran-report/1999/06/25-210699.html>.

71. *Crusades*, THE CATHOLIC ENCYCLOPEDIA VOL. IV (Kevin Knight ed., Online Edition 2003), at <http://www.newadvent.org/cathen/04543c.htm> (last visited October 15, 2003).

72. *Inquisition*, THE CATHOLIC ENCYCLOPEDIA VOL. IV (Kevin Knight ed., Online Edition 2003), at <http://www.newadvent.org/cathen/08026a.htm#IIB> (last visited October 15, 2003).

73. *See, e.g.*, Mary Sibierski, *Poland's Jews Mourn Victims of 1941 Jedwabne Pogrom*, DEUTSCHE PRESSE-AGENTUR, July 6, 2001, (discussing commemorative services for the victims of the July 10, 1941 Jedwabne pogrom, a series of murders which were part of the overall Nazi plan to exterminate the Jews), available at LEXIS, News Library, Bglobe File.

74. *Iran Rejects US Accusations of Sponsoring Terror in West Bank Attacks*, FINANCIAL TIMES INFO., Apr. 3, 2002, (describing the tension and violence erupting out of competing Palistinian and Israeli land claims, with both sides citing to religion in support of their right of possession), available at LEXIS, News Library, Bglobe File.

75. *Id.*

support my own moral views about legal ethics and the practice of law, while treating as history or myth those that might justify selfishness, intolerance, violence, or revenge.

And, like Thomas Shaffer, when I use the word "ethics," I mean *ethics*. In striving to be an ethical lawyer I am guided by the question, "What am I to do as a lawyer, and for whom?" I do not reduce legal ethics to a set of rules about how to avoid getting into trouble with clients and the bar.⁷⁶ Striving to be an ethical lawyer motivates me to pursue social justice because, as I look at the world, this is what I believe it means to be an ethical lawyer. The fact that I belong to a religious tradition that commands me to pursue justice provides some support for my social and professional commitments as a lawyer and law teacher. But as I look around me, I see people behaving in ways that are unethical, that are evil, in the name of religious values,⁷⁷ and I am therefore wary of claiming religion as a blueprint for what is to be done.

76. I thank Milner Ball for teaching me this understanding of legal ethics. See BALL, *supra* note 48, at 96; see also SHAFFER, *supra* note 1, at 85-89 (disapproving of the idea that a lawyer should separate his ethical self from his professional self and allow his client's morality and conscience to replace his own).

77. *E.g.*, *supra* notes 67-75 and accompanying text.