

VOLUME 3

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EDITED BY DR. RANDI RASHKOVER & JACK BOYD
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at the College of William & Mary

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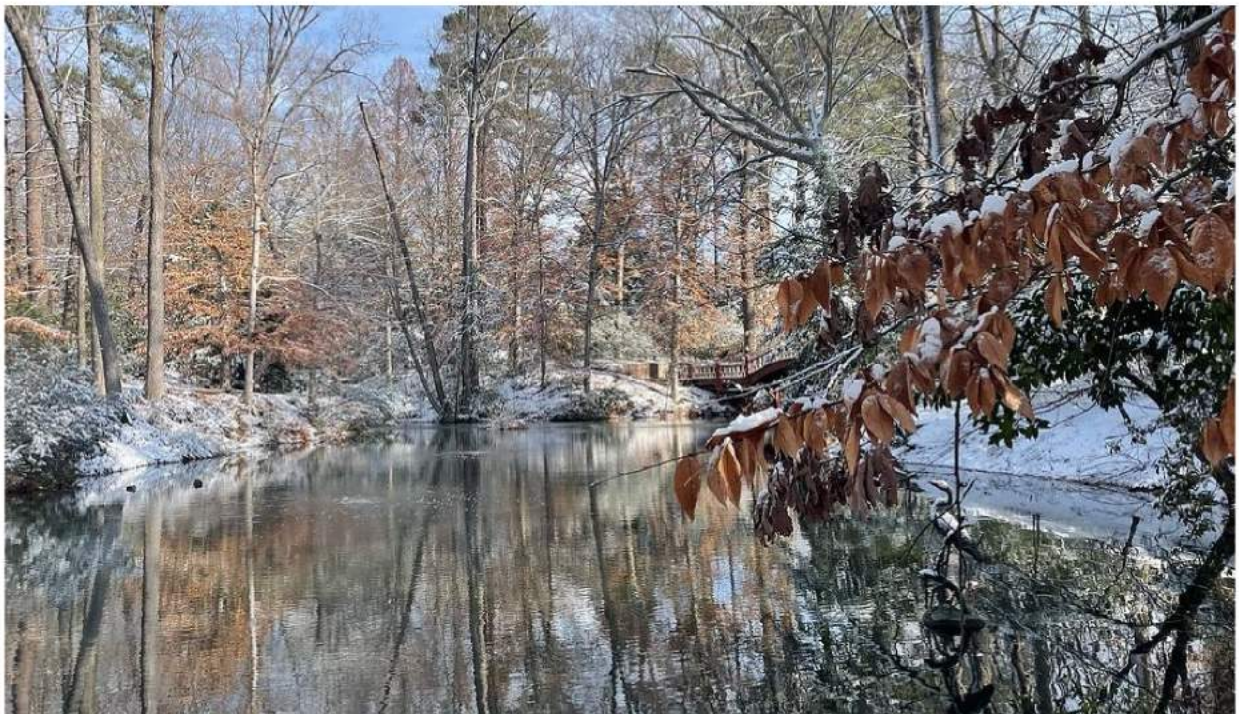
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NOTE FROM THE EDITORS

We joyfully welcome you all to the Winter 2022 issue of The Judaic Studies Review! These past few months shifted perspectives, altered preconceptions, and enthralled students and professors alike. The reviews and essays presented here offer an glimpse into the brilliant work produced by students both on campus and abroad as supported by the Judaic Studies program.

Throughout the fall, Judaic Studies hosted a series of scholarly lectures. Some highlights included: Daniel Vaca, who visited from Brown University to present "Buying is Believing," Michael Berkowitz, who joined students from University College London for a Brown Bag on "New Approaches to American Jews and Movie Making During WWII," and James Charlesworth, Professor Emeritus at Princeton Theological Seminary, who enlightened students with this year's Salasky Lecture "Where Are David and Solomon Buried?" You can find reviews of all three presentations in this issue, written by: Mariana Kornreich and Alayna Barrios.

William & Mary students produced thoughtful and conscientious writings — we are excited to share this work with the wider William & Mary community. You can glimpse a peek into Rachel Zaslavsky's religious, personal, and academic journey at the Pardes Institute of Jewish Studies in Jerusalem with "Learning at Pardes." Later in the issue, we offer you the opportunity to appreciate Jacob Schapiro's "Kidnapped by the Church: Analyzing the Church's Relationship to Modernity through the Mortara and Finaly Affairs," a culmination of his summer research as a James Monroe Scholar. And finally, we invite you to appreciate two of Benjamin Moskalski's recent endeavors, "Religion, Covenant, & Judaism," a refreshing delve into God's connection with the Jewish People, and "Religious Tradition in Secular America: The Interpretive Project in Modern Politics," a deep dive into the philosophical connectedness between the secular American Experiment and our attachment to religious movements in the 'public square.'

Enjoy! We are grateful to our contributors and are thrilled to present their work!



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"New Approaches to American Jews and Movie Making During WWII"

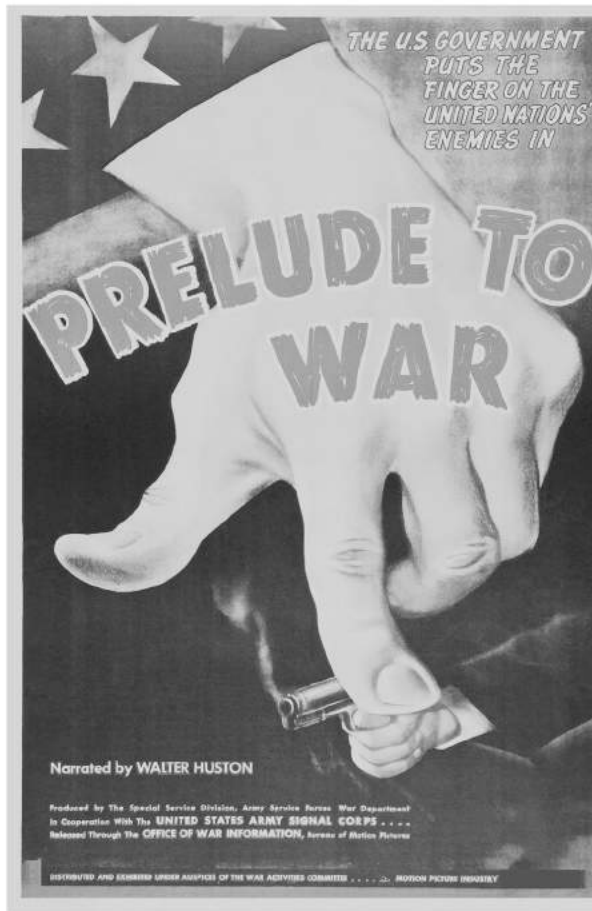
By Alayna Barrios || November 14, 2022



Professor Michael Berkowitz, Professor of Modern Jewish History at University College London, joined Assistant Professor Mary Fraser Kirsh in the Wren Building's Great Hall.

On Monday, November 7th, Dr. Michael Berkowitz gave a lecture in the Great Hall of the Wren Building on "New Approaches to American Jews and Moviemaking during WWII". Dr. Berkowitz particularly discussed the role of Leo Rosten and his position as head of the motion picture division of the U.S. Office of Facts and Figures. In 1939, there was a need for "film people" in America, Canada and the U.K. to make training films for the armed forces and (in America specifically) to educate Americans on what was occurring in Europe. One of the products of this enterprise was the film "A Prelude to War," which was screened for President Roosevelt in order for him to decide whether to restrict its consumption to the armed forces or to put it in the mainstream cinemas. FDR watched this film in the company of Harry Hopkins, Alexander Woolcott and Harpo Marx: advisers on this matter. However, Marx's autobiography neglects to mention this meeting; neither is there any record of the conversation of the four men. Why might this be? Dr. Berkowitz asserts that American antisemitism was so rampant that for Marx to publicize his having the president's ear might be disastrous.

Similarly, a lid was kept on the role of Anatole Litvak in the production of "A Prelude to War". Isolationism and antisemitism in the U.S. Congress at the time was strong; isolationist senators from Oregon and Connecticut claimed



“
... after graduating with his Ph.D., Rosten found it impossible to get a job due to that same pervasive American anti-Semitism.

that “A Prelude to War” was none other than personal propaganda being used by President Roosevelt to secure election to a fourth term. Had they known that Litvak, Jewish and a native of Russia, had been involved with production, their reactions might have been even more drastic. This thought process was widely employed by Leo Rosten during his time at the Office of Facts and Figures Motion Picture Division. He put a myriad of non-Jewish newspaper people (rather than film people) in high places in the American film industry, keeping the roles of Jews working in Hollywood under wraps to avoid antisemitic backlash from both elements of the government and of the public.

Rosten was also concerned, chiefly, with how to shape public opinion. He had gone to school with this in mind, but after graduating with his Ph.D., Rosten found it impossible to get a job due to that same pervasive American

anti-Semitism. After writing scripts for some years, he applied for funding to run a serious academic study on Hollywood’s relationship with public opinion. It was this work that eventually led to his appointment to the Office of Facts and Figures, where he was concerned with the effort not to repeat the mistakes of the Wilson administration, which led to a backlash against the idea of propaganda in the film world. Rosten also learned from the U.K.’s wartime film programs; he made sure to use both 16mm and 35mm film so pictures should be shown in both educational and entertainment contexts, and he required a competent film technician to be on hand whenever films were being shown. Rosten’s efforts in the American wartime film sphere showed an incredible knowledge of the workings of public opinion; this, Dr. Berkowitz explains, was a major reason why he “hid” the enormous role held by Jewish filmmakers during the war years.

Milton & Shirley Salasky Lecture: "Where Are David and Solomon Buried?"

Mariana Kornreich || November 15, 2022

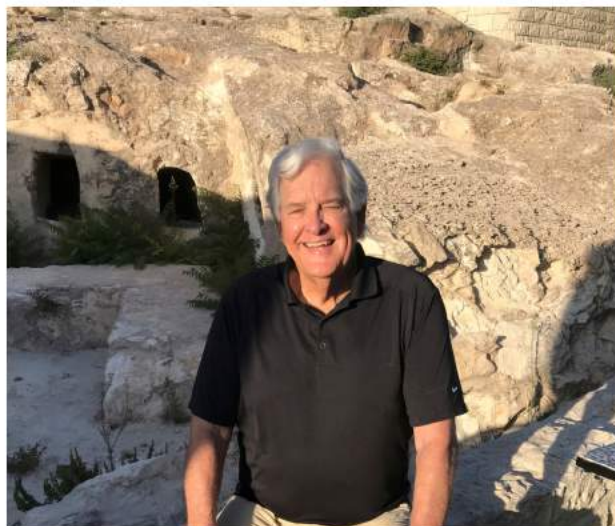
On November 15, 2022, Judaic Studies presented the Milton and Shirley Salasky Lecture. The talk, entitled: "Where are David and Solomon Buried?" was given by Dr. James H. Charlesworth, a renowned scholar of biblical studies. Charlesworth is currently the George L. Collord Professor of New Testament Language & Literature Emeritus at Princeton Theological Seminary. Prior to jumping into the content of the lecture, Charlesworth delighted in sharing that he had served as Professor Michael Daise's doctoral advisor and spoke in admiration of his academic and personal attributes.

Interwoven throughout the lecture were pieces of advice on scholarship, but one in particular guided and structured the talk. Following a debriefing of biblical history, Charlesworth addressed the audience and emphasized that "You are here to learn how to ask questions." The logic behind this, he explained, is that in order to avoid arriving at dogmatic conclusions, one must always be asking questions. This philosophy of questioning empowered Charlesworth in his and other scholars' search for the location of Solomon and David's tombs.

Tour guides, Charlesworth explained, will often direct visitors to the site of the Abbey of the Dormition as the site of David's burial. Consulting archaeological maps, biblical portions of Nehemiah, and ancient Israelite funerary customs, Charlesworth explained the logic for locating the site for the two kings' tombs. Attention to the differing chisel marks

on the tombs revealed which burial spot would have likely belonged to which king.

As the evening drew to a close, Dr. Charlesworth announced that he would be donating a 2000-year-old glass bottle to William & Mary's Special Collections. The bottle was likely a bottle of funerary perfume used as a means of covering the odors of decaying bodies. He also shared with the audience a similarly aged, but more ornate, patina glass bottle potentially functioning as a woman's perfume.



Charlesworth is known for his *Old Testament Pseudepigrapha*, a key factor in catalyzing the post-Holocaust phase of Biblical Studies; his *Dead Sea Scrolls Project* is widely hailed widely for refining these documents into critical and precise English translations.

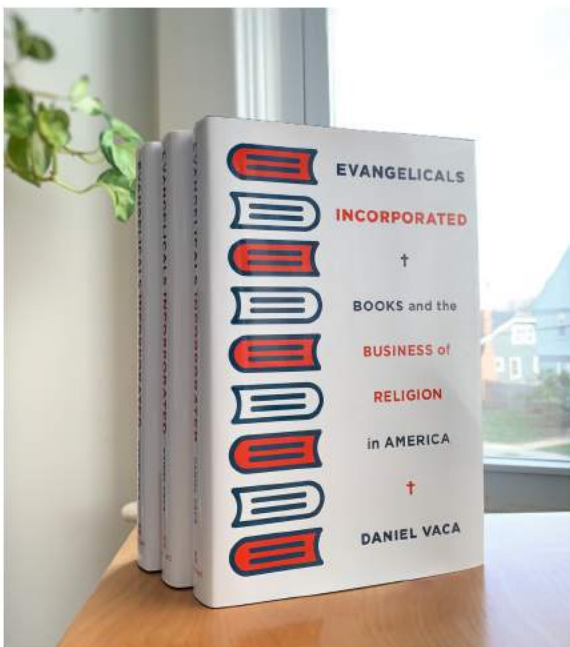
"Buying is Believing: Capitalism and Religion in Modern America"

Alayna Barrios || November 3, 2022

Daniel Vaca (William & Mary '02) gave a lecture Thursday, October 27, on the ways in which capitalism and religion intertwine and have intertwined in America, particularly regarding the rise of evangelicalism and the role that market segmentation played in this. Dr. Vaca discussed how markets are not a naturally occurring phenomenon, and how consumer behavior does not just reflect or express who we are; it shapes who we are. Markets, in other words, have targets, and the way these targets behave shapes both the markets and the targets themselves. Market segmentation, or niche marketing, as a marketing strategy originated in the mid-twentieth century and is based on the idea

that consumers are fundamentally not the same as each other.

This strategy emerged in contrast to mass marketing, which takes consumers to be fundamentally the same, and encourages assimilation. Market segmentation by contrast can create and sharpen the boundaries of identity groups, and can be gendered, raced, aged, or based on another determining factor. Market segmentation thus led to the sharper definition of an American Evangelical culture in the 1960s and '70s, due to survey organizations such as Gallup asking Americans whether they had had a "born-again" experience, or would classify themselves as "evangelical", which led to a



Vaca's award-winning first book, *Evangelicals Incorporated: Books and the Business of Religion in America* (Harvard, 2019), shows how commercial strategies and corporate ambitions helped evangelical Christianity to become socially coherent, prominent, and pervasive during the twentieth century.



Daniel Vaca is the Robert Gale Noyes Assistant Professor of Humanities at Brown University. His research and teaching focus on histories of religion and culture in the United States, with an emphasis on the relationship between religious and economic life.

self determination, and thus popularization of Evangelicalism. Dr. Vaca also pointed out the explosion of commercially available kosher products in the 1950's and '60's as another key example of market segmentation. As Evangelicalism grew more popular, its slice of the commercial market grew in proportion, which in turn led to a narrower, more homogenous culture (or market segment) among Evangelicals. Dr. Vaca asserted that

“**Consumer markets, he pointed out, monetize social division...**

market segmentation has a lot to do with why most American Evangelicals are White. Books such as Richard Warren's *The Purpose Driven Life*, which targeted chiefly White suburbanites ("Saddleback Sams"), contribute to and perpetuate this.

in the Evangelical market are concerned with much bigger enterprises than the Evangelical market segment alone; Dr. Vaca estimated that Newscorp owns about 70% of the Bible market. Consumer markets, he pointed out, monetize social division, and as we are pulled into smaller and smaller segments, those divisions can only become larger in both number and magnitude. All of this contributes to a constant narrowing and reshaping of what it means to be an Evangelical in America, and shows how inextricably that meaning is intertwined with capitalism, the interests of corporations, and the segmented market.

The lecture was followed by a question-and-answer session, in which an engaged audience raised several topics, including that of corporations' interest in broadening their consumer base and how that interacts with segmentation, and the ways that the proliferation of specialized products, particularly Bibles or other religious matter, can increase polarization and the same social division that consumer markets thrive on.



JOURNAL: LEARNING AT PARDES

RACHEL ZASLAVSKY

Amidst the grumblings that today's Jews lack Jewish literacy, I was one of about a hundred other Jews sitting in Pardes Institute of Jewish Studies in Jerusalem, ready for the first day of yeshiva. Pardes is a co-ed and pluralistic yeshiva, or school of Jewish learning, where people of all ages and from all over the world come to study classical Jewish texts. With different Jewish backgrounds, political beliefs, religious practices, first languages, and stages of life, we were united in our desire to learn, in our commitment to brave living in a foreign country, and in our belonging to *Am Yisrael*, the people of Israel.

I came to Pardes to discover how I wanted to live a Jewish life, and to gain literacy in the Jewish tradition, particularly in its texts and laws. The goal of the Institute is to offer students the skills they need so that they may continue to study Torah throughout their lives. Specifically, I gained an understanding of basic biblical Hebrew, how the halachic system works, and how to utilize rabbinic commentaries. This is not to say I could not have learned this at William & Mary; in my senior year, I am taking classes that build on these foundations. The difference is the type of learning environment Pardes provides.

Learning at Pardes is rooted in student collaboration, not in lectures, and thus is more handsfree than traditional university education. The tools employed for student reflection and analysis greatly differed from the essays and exams of college life. Pardes highlights the method of learning, not only the learning itself, so that students can learn outside of the yeshiva setting. Initially, it was a rough transition to the yeshiva style of study.

Education in Jewish contexts revolves around chavruta. Chavruta is when a pair or small group of students study a text together. It is a dynamic, collaborative process. At Pardes, teachers provided us with source sheets in chavruta to aid our grappling with Jewish texts. Jewish understanding of religious texts relies on the commentaries of esteemed historical rabbis. Commentaries provide literal and interpretive meanings of the text. Source sheets would recommend the relevant rabbinic commentaries to help students work through the 'difficulties' in the original Hebrew of the Tanakh, the Hebrew Bible, and the Mishna, the compilation of oral law. Source sheets were the key

to deciphering the biblical Hebrew and understanding the deeper meaning of the selected verses.

The importance of chavruta is that one is not left behind in grappling with the text alone. Rather students learn from each other and develop ideas together. The ability to hear unique ideas about the material and to work through difficult verses with my fellow students allowed for meaningful student engagement. Struggling together lent itself for a richer understanding of the text. Exploring the nuances of the material with others helped me to develop a more complete analysis. Together, we were able to arrive to conclusions by guiding each other. I was part of a team of peers, not in rivalry with them.

Through source sheets and chavruta, I learned how to study Jewish texts. I understand the importance of utilizing rabbinic commentaries; the meaning of the Torah and the Mishna is impossible to grasp by reading these texts without commentary. Furthermore, choppy biblical Hebrew syntax can be misunderstood and Hebrew literary devices can go unnoticed without reading the commentaries. Source sheets taught students how to learn without heavy supervision of the teacher, and now I am able to study without any supervision at all.

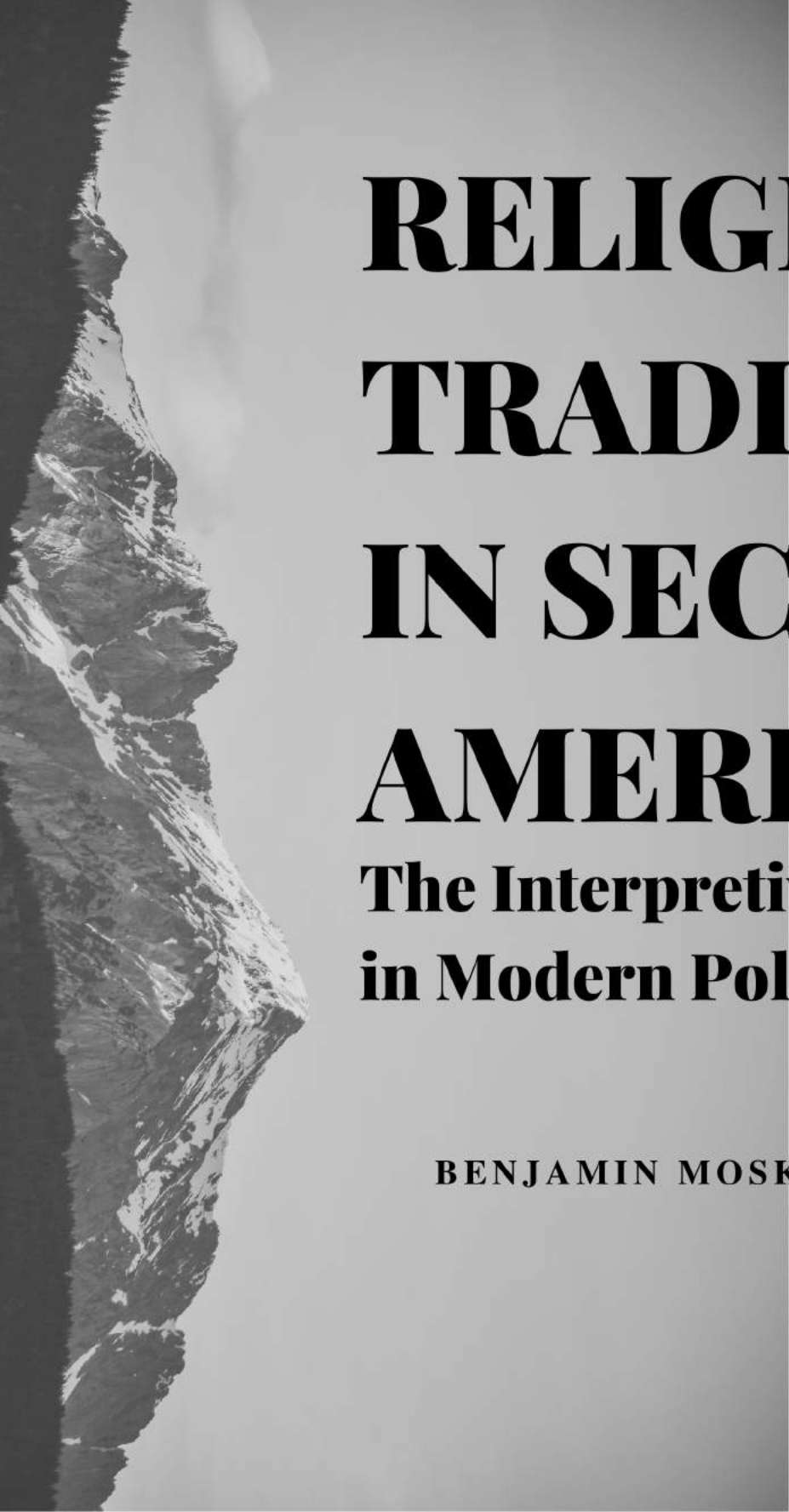
In truth, chavruta was tough for me at first. I missed my university lectures. I greatly enjoy listening to engaging professors who share my excitement about learning. Being able to absorb the wisdom and learn from the scholars I admire is what brought me to William & Mary. It was difficult to leave this system, but I grew to enjoy the challenges and the benefits of chavruta's collaborative learning. In lecture, the model is the expert, the professor. In chavruta, the model is the fellow student. Chavruta teaches you how to think when approaching Jewish texts through the example of other students.

Upon returning to university, I have been welcomed back with lectures, but also with chavruta. In two of my Judaic Studies courses, lecture time is broken up with chavruta time, in which students analyze primary sources in pairs. This combination of both traditional Jewish study and academic lecturing is my preferred choice. I am able enjoy lectures while solidifying my grasp of concepts through discussion and analysis



with a partner. Engaging with course material in different ways yields positive results in my academic endeavors.

Thanks to the funding I received from the Judaic Studies Department, I was able to study at Pardes. I am beyond grateful that I had this opportunity. Now I am capable of learning through different methods, I have more clarity in how I will build my Jewish life, and I am gaining infinitely more from my Jewish history classes now that I have a strong foundation of Jewish knowledge. My Pardes experience has allowed me to be a better student at W&M.



**RELIGIOUS
TRADITION
IN SECULAR
AMERICA:
The Interpretive Project
in Modern Politics**

BENJAMIN MOSKALSKI

In a world where empirical study prevails, does religion remain valuable to the American political system? Or is it the remnant of a bygone era impeding the advance of a new age? Competing visions of political progress war over the sea of American political thought. These visions are quick to accuse their opposition of simply refusing to “face the facts.” Reason alone, not personal beliefs, should dominate public policy, it is said. But is “reason alone” even possible? American political rhetoric frequently refuses to acknowledge the underlying presuppositions that have to be made before an individual can ever “face the facts.” Different philosophical visions rely on radically estranged metaphysical assumptions, no “zone of neutrality” exists. It is impossible to leave these assumptions at home when going to the polls, lest political theory be left naked of the interpretive project which is its foundation. Religion takes basic hermeneutics and their presumptions to transform them into story, enabling adherents to actively engage their interpretive lens. This interpretive dialogue takes place through the platform of history, giving beliefs the chance to mature as they develop more coherent visions of the world. The American experiment relies on religion’s continuing presence in this dialogue; otherwise, politics will be left increasingly bare as it rejects what traditional religion has to offer to the interpretive dialectic.

One question is often at the center of legal debate: what even is law? The most prominent answer to this challenge has been given by H.L.A Hart and other legal positivists, who believe that, at the end of the day, we all fundamentally agree on what law is even if we cannot collectively define it. For positivism, and its friend constitutional originalism, law is an internal system separated from theories of morality; legal reasoning, therefore, aims to analyze and determine the correct answers to legal questions based on the plain reading of that internal system. According to these theorists, incorrect legal answers result from merely rejecting the facts and conclusions of the law, from refusing to “face the facts.” Ronald Dworkin, however, points out the problem with this type of legal reasoning: *we do disagree on the question of what law is.*¹ Legal decisions do not differ only because judges disagree on whether they want to

¹ Ronald Dworkin, *Law’s Empire* (Cambridge: Harvard University Press, 1986), 31-44.

follow the law or not; rather, they disagree on what it even means to follow the law in the first place. Is law the product of past conventions? Or is it the rules producing practical solutions to making a better, more efficient society? Perhaps law is the human enforcement of a divine constitution?

The fact that we disagree on what law *is* does not mean there cannot be a best answer in legal reasoning. To explain how dialogue might take place, Dworkin establishes three stages of interpretive reasoning. The first stage, pre-interpretive identification, associates certain practices with each other, creating a group of concepts, such as “law.” Among these concepts, certain practices are paradigms, meaning they are an essential example of the concept, and others are border-cases, meaning they can be removed or adjusted without confusing the concept altogether. The second stage, analysis, makes sense of why this group exists in the first place through the formation of an interpretive lens. And finally, in post-interpretation, the practices within the group are altered in light of the purpose established for them in the second stage.² Different interpretative hermeneutics excel more than others. The theory that “clothing is primarily a weapon of war” is significantly less plausible than “clothing is meant to provide safety from the elements.” Good theories are able to both coherently explain the paradigms of a concept and provide a clear vision of how it should be adjusted.³

In the absence of a series of interpretative assumptions, it is impossible to make a judgment about what a concept *is*. Even the terms we choose to include in a specific concept depend on widely different presuppositions in practical reasoning. Conclusions about ideas like justice, happiness, and law depend on the epistemological foundations they are built upon. The skeptic materialism of Hobbes’s epistemology, for example, will yield radically different philosophical traditions from those reliant on Thomistic accounts of practical reasoning. To reason we must first make assumptions about how we reason; we cannot exist outside an epistemological tradition which defines the way we interpret knowledge. Overtime, we might adjust our relationship with this tradition, but we can never enter a space where “reason alone” rules. Philosophical beliefs are

² Ibid., 45-113.

³ Ibid.

products of their own assumptions about practical reasoning. This is why so much philosophical debate seems to consist of talking past each other - most people judge the success of opposing traditions using their own, assumed epistemological standards. Nonetheless, this does not mean there is no such thing as success and failure for a philosophical tradition. If an interpretive system is inconsistent with its own principles or is unable to coherently explain the historical and scientific events which challenge them, then it must adapt.⁴

Many enlightenment theories, instead of acknowledging the existence of interpretive assumptions, often purported to offer a neutral reading of the facts based on plain “reason.” The rise of empiricism offered the chance to objectively study facts and make “non-interpretive” conclusions from them.⁵ This empiricism was spread to more than just scientific study, eventually entering the realm of politics, religion, and philosophy. Lockean liberalism, incredibly influential on the American founding,⁶ was a prominent example of this experiment. Locke believed that government was the result of individuals contracting to enforce a divinely ordained natural law. Locke’s political philosophy, however, relies on epistemological presuppositions whose assumptive quality he fails to acknowledge. According to Locke, knowledge is obtained wholly by sense perception and reflection. He believed that, through proper reasoning, everyone could arrive at political conclusions the same way mathematical principles were found.⁷ These conclusions, however, rely on Locke’s assumptions about practical reasoning, presuppositions he took for granted to be true. These assumptions may make light of Locke’s political thought, but they do not offer a standard by which to judge competing traditions.

David Hume advanced this breakdown of the interpretive project, playing an instrumental role in the publicizing of “reason” and the privatization of religion. Hume’s epistemology, a skeptic materialism, led him to reject religious thought. Hume,

⁴ On the relationship between rationality and philosophical traditions, see Alasdair MacIntyre, *Whose Justice? Whose Rationality?* (Notre Dame: University of Notre Dame Press, 1988).

⁵ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1984).

⁶ C. Bradley Thompson, “John Locke and the American Mind,” *American Political Thought* 8, no. 4 (2019): 575–593.

⁷ Franziska Quabeck, *John Locke’s Concept of Natural Law* (Berlin: Lit, 2013).

however, dangerously assumed his assumptions to be evident facts. His presupposition that his specific interpretive tradition was the only acceptable form of practical reasoning led him, as it has led many modern Americans, to believe religion does not belong in the public square.⁸ This claim, however, relies on evaluating religious philosophical traditions based on Hume's assumptions. Hume's thought, like Locke's, does not offer a neutral ground of "plain reason," it comes with its own beliefs about what reason is. Empiricism cannot be some sort of common ground for political dialogue; rather, it must exist in dialogue with other philosophical traditions in the interpretive project, acknowledging its own foundational presumptions.

Every philosophical tradition has both its modern and ancient proponents. The "march of progress" is often cited in favor of one tradition or another, but "progress" is a dubious term. For many, the advance of empirical thought in science is progress. For others, liberalism's domination in the political sphere is progress. And for others still, the spread of religious fervor is progress. In a couple centuries, there may be entirely different ideas of progress. Traditions mature and interact overtime, either providing flourishing foundations for community or squandering as they are forgotten to the annals of time. When a tradition is faced with a crisis in its philosophy that it cannot account for, it is forced into the analytical dialectic. This dialectic provides the tradition with the opportunity to adjust its assumptions, or the conclusions it draws from them, to more coherently explain different concepts.⁹ Traditions can also choose to reject the maturation process; ignorant or incoherent explanations will always have their proponents. Nonetheless, the assumption that "progress" has preordained the success of one particular tradition requires accepting the assumptions of that tradition. Progress cannot be abstractly argued as evidence for the value of one tradition over another.¹⁰

The maturation of a tradition benefits from the dialectical involvement of its adherents. A philosophical project unable to engage the people who advance it is doomed to fail. The form of this engagement is called culture, the arena through which

⁸ MacIntyre, *Whose Justice? Whose Rationality?*

⁹ Ibid.

¹⁰ Richard Neuhaus, *The Naked Public Square: Religion and Democracy in America* (Grand Rapids: William B. Eerdmans Publishing Company, 1984).

interpretive dialectic takes place. The deeper the engagement, the increasingly "thick" the culture.¹¹ The incorporation of disenfranchised groups into this activity allows for richer dialectical depths, each person bringing with them their own unique contributions and challenges. The development of a tradition is, in many ways, a process of culture-building, whereby communities become better equipped to explain and interact with the assumptions they make about the world, themselves, and truth itself. This development occurs in its most evident form at philosophical debate; even more importantly, however, it takes place at social events, in media, and through modes of communication. More pressing than the next treatise on government is often the local form of dance, the language passed on by one's forefathers, or the farmer's market that everyone visits on the weekend.

The cultural dialectic around interpretive traditions manifests itself through story. Stories make a tradition's metaphysical assumptions and conclusions historically available to its adherents in an accessible way; traditions can more readily enter cultural activity when they have a story to tell. Since the interpretive project aims to analyze humanity's *historical* experience through *historical* dialogue, it will naturally do so using purportedly *historical* explanations. Some stories claim to have actually taken place, others aim to analogically express a general historical reality. No matter the form the stories take, it is by them that a tradition gains life. Social Darwinists, for example, give articulation to their interpretive assumptions through evolutionary theory, a story in its own right. For Lockean liberalism, the social contract; for Judaism, the covenant at Mount Sinai; for Christians, the incarnation of Jesus Christ. Religion is simply the collection of stories which express an interpretive tradition as it attempts to articulate a coherent and clear vision of the world.

Different foundational presuppositions mean different types of stories. Polytheism interprets the world as chaotic and full of suffering, embodied in a pantheon of warring gods; modern empiricism interprets scientific data as proving a cold and random world, expressed through evolutionary theory and scientific laws; Jews and

¹¹ "Thickness," meaning the complex beliefs, interactions, and rituals belonging to a culture, taken from Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973).

Christians interpret life as inherently covenantal, informing biblical stories detailing the relationship between the monotheistic God and His people. When stories meet each other, a stalemate often results; other times, however, different stories and traditions are able to build together something greater. Certain Christian traditions, for example, find it helpful to adopt elements of evolutionary theory and, in turn, empiricists frequently take lessons from Christian morality. Religious stories also furnish communities with activities which make dialogue between an individual and their tradition possible. Rituals, prayer, celebrations, art, music, and architecture all advance philosophical dialectic while keeping them prevalent to immediate life. Since interpretive traditions are explanations of human experience, traditions that do not retain a proximate location to the day-to-day experiences of its adherents are unlikely to thrive.

Political theories rely on the assumptions contained in religious story to inform what law and government *is*. A bare secularism that is unable to regularly engage its adherents through religious and cultural activity is unable to offer mature answers to political questions or remain relevant to the lives of citizens.¹² Perhaps secular religion, the rule of empirical reasoning, could one day develop to provide a full religious experience, sufficient to coherently and accurately answer humanity's big questions. If this could ever happen, however, it has not yet. Society is neither organized around nor regularly engages in secular religion as a culture-producing system in the same way it does with traditional religion. Additionally, there are serious challenges that the infant project of secular religion has been unable to account for on its own, such as the source of political legitimacy and the relationship between facts and moral values. If the secular religious tradition is to come to maturity, a controversial possibility in its own right, it will have to first learn from traditional religion through a long-period of cultural dialectic.¹³ Regardless of secularism's eventual future viability, traditional religion will be necessary for the organization of a healthy civil society for a long time to come.

What does traditional religion have to offer to law and government? Traditional religious views offer substantive accounts of political legitimacy and morality from

¹² Neuhaus, *The Naked Public Square*.

¹³ See Joseph Cardinal Ratzinger and Jurgen Habermas, *Dialectics of Secularization: On Reason and Religion*, trans. Brian McNeil (San Francisco: Ignatius Press, 2005)

which the public square stands to benefit greatly. Religious communities organize their members towards the culture-building process by building a relationship between the adherent, his community, and his ultimate good. For Jews, this relationship is lived out in Torah law; for Christians, the Law of the New Covenant; for Muslims, Sharia. These forms of "divine law" are, in many religious traditions, often accompanied by ideas of "natural law."¹⁴ This natural law is made up of the rules which govern the inherent constitution of humanity: the internal structure of the family, the temporal welfare of persons, and the norms of safety between individuals are all examples. Some religious traditions use different names but have similar concepts to natural law, such as the Noahide covenant in Rabbinic Judaism.¹⁵ While divine law enables transcendent relationship with God, natural law regulates the internal mechanism of man, observed in his natural biology and history. Both natural and divine law are necessary, but the former, being more easily observable than latter, is more likely to be shared among a range of cultures. This cross-cultural compatibility, however, does not divorce the intimacy between the natural law and religion; conceptions of natural law are always grounded in a community's interpretive background.

Since an element of social cohesion is required for a community to organize itself towards the divine law, it will incontrovertibly be lived out in local contexts.¹⁶ When it comes to enacting the natural law, however, local communities may find it beneficial to contract with other communities to form larger states. The cross-cultural discourse which can occur around natural law makes this social contract between communities possible, establishing larger governments to handle those functions which local governments cannot.¹⁷ According to Aristotelian-Thomistic theology, the state's

¹⁴ For a Thomistic perspective on Law, see Thomas Aquinas, *Treatise on Law: The Complete Text*, trans. Alfred J. Freddoso (South Bend: St. Augustine's Press, 2009).

¹⁵ On the relationship between Judaism, the Noahide covenant, and the natural law, see David Novak, *Natural Law in Judaism* (Cambridge: Cambridge University Press, 1998).

¹⁶ On how religion is lived out by a people and not a state, see Yeshayahu Leibowitz, "The Religious Significance of the State of Israel," in *Jewish Legal Theories: Writings on State, Religion, and Morality*, ed. Leora Batnitzky and Yonatan Y. Brafman (Waltham, MA: Brandeis University Press, 2018), 204-205.

¹⁷ For one Jewish perspective on the potential for social contract between culturally thick communities, see David Novak, *The Jewish Social Contract: An Essay in Political Theology* (Princeton: Princeton University Press, 2005).

government then enacts specific legislation to practically implement the natural law within a given political context.¹⁸

Traditional religion's accounts of practical reasoning offer lenses through which to evaluate political morality. Prince among these lenses for Jews and Christians is the covenant relationship between God and man.¹⁹ Jews, Christians, and Muslim thinkers have also drawn on Aristotelean philosophy in their accounts of political morality. For Aristotle, everything possesses a proper end, or *telos*. Morality is reasoned from the proper ends of humanity, whom he believed were naturally meant for political community. Every person has the *telos* to propagate the common good; it is in light of this common good that positive laws are made.²⁰ For most Aristotelean-influenced religious traditions, law gains its legitimacy from the natural law when pursuing the common good; in other words, law ceases to be law when divorced from a conception of the common good.²¹ Religious traditions of the natural law profit the public square by furnishing the state with a full concept of the natural common good.²² Common good interpretations of the law do not mean judicial activism seeking to codify natural law through the courts. For most religious traditions, there is nothing inherent to the natural law which stipulates how legislative functions are to be divided; implying deference should be given to the state's legislative body. Judges are not asked to adopt unconstitutional legislative power, only to enforce already-legislated law through the interpretive lens of the common good.²³

Aristotelian religious traditions provide mature and coherent accounts of political legitimacy and morality; political dialogue stands to profit from incorporating those traditions into the conversation. Indeed, most American citizens maintain fidelity to religious traditions; a healthy democracy allows the interpretive systems of its

¹⁸ See Adrian Vermeule, *Common Good Constitutionalism: Recovering the Classical Legal Tradition* (Medford: Polity Press), 2022.

¹⁹ Novak, *The Jewish Social Contract*.

²⁰ Aristotle. *The Politics of Aristotle*. Translated by Peter L. Phillips Simpson. Chapel Hill: The University of North Carolina Press, 1997.

²¹ Vermeule, *Common Good Constitutionalism*.

²² On the intimacy between law and the interpretive hermeneutics provided by religious tradition, see Robert Cover, "Selections from the Writings of Robert Cover," in *Jewish Legal Theories: Writings on State, Religion, and Morality*, ed. Leora Batnitzky and Yonatan Y. Brafman (Waltham, MA: Brandeis University Press, 2018), 38-41.

²³ On natural Law and judicial deference, see Robert P. George, *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis* (Wilmington: ISI Books, 2001).

citizens to enter into the civil process.²⁴ Communities must justify their political engagement according to the stories of their own interpretive beliefs, not through an acultural lens.²⁵ What justifies political participation in larger, multi-religious states for religious traditions? A religious community's motivation is, first and foremost, selfishly pragmatic: larger states are often better suited to organize resources. Secondly, a community might also be moved by charity, bringing its own particular philosophy to the public square for the enhancement of the interpretive project.

Liberalism in America offers new ideas that give traditional religion the opportunity to evolve in response, liberalism in turn learning from traditional religion as it navigates the public square. Local communities do not have the option of completely disengaging from the surrounding political reality of the state,²⁶ a reality which has far too many practical consequences on the local community to be ignored. The resulting political process between and within communities will never be perfect; but the goal is not perfection, the goal is dialectic. Even imperfections can assist in this process, political inefficiencies and daily inconveniences are frequently transformed into shared cultural experiences which advance philosophical engagement. Compromise is only possible when acknowledging that the incorporation of more people into the political system is sometimes better for the interpretive project than perfect policies. For religious traditions, this requires making a conceptual distinction between the politics of humans and the ideal kingdom they seek after. The political reality of man may be intimately tied to the political reality of God, but the former's imperfection does not change the latter's perfection. Religion dependent upon societal perfection is not transcendental, but rather a human farce; interpretive tradition without culture, on the other hand, is disconnected and incapable of societal engagement. A healthy political

²⁴ Neuhaus, *The Naked Public Square*.

²⁵ For a Jewish account on social contract between Jewish and Gentile communities, see David Novak, *The Jewish Social Contract: An Essay in Political Theology* (Princeton: Princeton University Press, 2005).

²⁶ For an example of this proposal, see Rod Dreher, *The Benedict Option: A Strategy for Christians in a Post-Christian Nation* (New York: Sentinel, 2017).

process will balance the two, enhancing the art of religion which makes human flourishing possible.²⁷

In these pages, I have attempted to repropose the American experiment. The prophet Isaiah wrote, "Remember not former things, and look not on things of old. Behold I do new things, and now they shall spring forth, verily you shall know them: I will make a way in the wilderness, and rivers in the desert."²⁸ The American experiment is a *new thing*. The future must be connected to the past, but it can never be its mere repetition. Cultures differ, and that is a good thing. We are fundamentally unique beings living within particular historical contexts; if culture at all times and places were the same, then it would be inhuman. Variety is not always desirable - some interpretive hermeneutics are better than others. Nonetheless, when it comes to engaging with religious truth through cultural practice, those cultures must be adapted locally.

The American experiment proposes the incorporation of the liberal tradition into that cultural dialectic. It enters an ongoing conversation between traditional religion and liberalism for the mutual development of both to create a *new thing*. This experiment has not always been successful, but it is the experiment we find ourselves in. If we are to faithfully enter into the culture-building process, we cannot simply abandon the present state of things and start over. We must encounter the civil institutions which are our inheritance with a certain reverence, but that encounter must come from the position of our culturally thick backgrounds. What happens if we enter the conversation naked of that background? We will inevitably look to the government to clothe us. Government religion has already begun to adopt its sacraments and liturgy, edging towards authoritarian control of American civil life. Does the potential for authoritarianism make the government inherently malicious? No. But when we leave behind the traditions which act as society-organizing devices, we will surely look for something new to fill the space left behind. Authoritarianism is the natural outgrowth of cultural abandonment.

²⁷ For an account of healthy political discourse among religious groups in a democratic state, see Richard Neuhaus, *The Naked Public Square: Religion and Democracy in America* (Grand Rapids: William B. Eerdmans Publishing Company, 1984).

²⁸ Isa. 43:18-19 D-R

The desertion of public religion has often occurred under the pretense of religious liberty. True religious liberty in a democracy, however, encourages public religion's participation in the political process. It is when religion is excluded from the political process, when it is suppressed in the name of equality, that religious liberty is infringed. Religious freedom is freedom from state involvement in religion, not from religious involvement in the state. The state, after all, is left naked without the religious interpretive foundations which brought it into being. A certain secularity, regardless, can be established between communities with differing religious traditions, provided that each community is allowed to bring its own interpretive lens to the political conversation. Secular dialogues, ultimately, can never be wholly separated from the traditions which inform them.

It is possible a new, secular religion will replace its former competitors. Or maybe the historical claims of traditional religion will be vindicated overtime. Either way, this interpretive project will be lived out in the everyday cultural experience of Americans. So, perhaps when choosing where to live, incorporate into your decision the cultural thickness at your destination. Plant your roots somewhere, go to local events, engage with traditional rituals. Learn your history, delve into the language your great-grandparents spoke, incorporate religion into your cultural decisions. Even if you no longer subscribe to the religion of your childhood, let it inform how you participate in your philosophical quest. Make that quest a priority and live it out socially and through religious story, for without it both you and the American political system will be left bare and confused. The American experiment, indeed the whole of the secular West, relies on this new engagement with religion.



**KIDNAPPED
BY THE
CHURCH:**

**ANALYZING THE
CHURCH'S
RELATIONSHIP TO
MODERNITY
THROUGH THE
MORTARA AND
FINALY AFFAIRS**

JACOB SCHAPIRO

As of 2020, there were 1.36 billion Catholics worldwide, comprising about one-sixth of Earth's population.¹ For many of these people, the official views of the Catholic Church hold enormous power. Today, the Church is headed by Pope Francis, who has gained a reputation as a reformer, putting greater emphasis on the Church's mission to help the poor, has empowered the laity, and even said, "If someone is gay and he searches for the Lord and has good will, who am I to judge?"² All of this has provoked a furious reaction from within the Church. Gerhard Müller, Prefect of the Congregation for the Doctrine of the Faith (meant to spread and defend Church doctrine), publicly criticized the Pope for softening the Church's stance on granting Communion to divorced people.³ Many traditionalists see the Pope's willingness to adapt to modern times as threatening the integrity of the Church. They "believe that the church should set the agenda for the world" and are opposed to those who think that "the world must set the agenda for the church."⁴ These differing viewpoints have generated a large amount of conflict within the Catholic Church.

Perhaps unsurprisingly for an institution that has existed for 2,000 years, this is not the first time that the Church has had to deal with new circumstances that forced it to either adapt or retrench. Two incidents, nearly a century apart and bearing remarkable similarities, illustrate the Church's torturous path to coming to terms with much of modern society. Both of these incidents, the Mortara affair and the Finaly affair, involve the Church's relationship to the Jewish people. Emancipated in the nineteenth century throughout much of Europe, Jews were freed from the legal discrimination that had restricted their lives for millenia. These new Jews served as representatives of the modernity that the Church historically abhorred. Thus these two affairs, their resolutions, and the changes that have occurred since then, can shed light

¹ "Vatican: Number of Catholics worldwide rose by 16 million in 2020," *Catholic News Agency*, February 11, 2022, <https://www.catholicnewsagency.com/news/250362/number-of-catholics-in-asia-and-africa-continues-to-rise>.

² "Pope: The poor are often victims of injustice," *Politico*, November 14, 2021, <https://www.politico.com/news/2021/11/14/pope-francis-poor-injustice-521896> and "Pope Francis Discusses Gay Catholics: 'Who Am I To Judge?'," *NPR*, July 29, 2013, <https://www.npr.org/sections/tetwo-way/2013/07/29/206622682/pope-francis-discusses-gay-catholics-who-am-i-to-judge>.

³ Tom Kington, "Conservative opposition to Pope Francis spurs talk of a schism in the Catholic Church," *Los Angeles Times*, April 17, 2017, <https://www.latimes.com/world/europe/la-fg-pope-conservatives-2017-story.html>.

⁴ Andrew Brown, "The war against Pope Francis," *The Guardian*, October 27, 2017, <https://www.theguardian.com/news/2017/oct/27/the-war-against-pope-francis>.

on the Church's current culture wars and how those conflicts may eventually be resolved.

The French Revolution began in 1789 and with it, ideals of personal freedom, equality before the law, and representative government burst onto Europe's political scene in a way that they never had before.⁵ Though suppressed at the Revolution's end, these hallmarks of modernity would spread throughout the nineteenth century, ushering in new ways of living that would have been unimaginable a century earlier. But all this change was greeted with hostility by many governments and institutions; few groups were more opposed to the advent of modernity than the Catholic Church. To the Church, everything that modernity stood for—separation of church and state, freedom of religion, freedom of the press, and free speech—was anathema to the proper order of things. And that proper order included Jews living on the margins of society.⁶

Influenced by the Enlightenment and its ideals of liberalism, individual rights, and religious toleration, by the mid-nineteenth century, much of European society had advanced in its treatment of Jews. Even the Catholic Church was a part of this progress, to a certain degree: Pope Pius IX ended the requirement that Rome's Jews attend sermons aimed at converting them and tore down the ghetto gates.⁷ This progress, however, only went so far, as was made painfully clear in the Mortara affair.

In 1858, the Mortaras were a Jewish family living in Bologna, then a part of the Papal States, which were ruled directly by Pope Pius IX. That year, under the orders of Bologna's inquisitor Father Pier Feletti, the police confiscated Momolo and Marianna Mortara's six-year old son Edgardo. While at first the family were not told why this was happening, they eventually found out that a Christian servant of theirs, Anna Morisi, had secretly baptized Edgardo when he was an infant.

Church doctrine held that Jewish children should not be baptized without their parents' consent, unless the child was at risk of dying, as the child's soul was at stake. When he was a baby, Edgardo had fallen ill and Morisi, fearing that he might die, had performed the secret baptism; Edgardo eventually recovered. Years later, Father Feletti

⁵ Jeremy D. Popkin, *A New World Begins: The History of the French Revolution* (New York: Basic Books, 2019), 2.

⁶ David I. Kertzer, *The Popes Against the Jews* (Alfred A. Knopf: New York, 2001), 11.

⁷ David I. Kertzer, *The Kidnapping of Edgardo Mortara* (Alfred A. Knopf: New York, 1997), 49.

discovered the secret baptism and so ordered Edgardo seized—the child was now, in the eyes of the Church, a Christian, and thus could not be raised by Jews. Instead, the Church would bring him up, instructing him in the ways of a proper Christian.

An occurrence like this was by no means unprecedented. Though technically illegal, many Jewish families employed Christian maids, as they could perform labor on the Sabbath, unlike Jews, who are prohibited from working then. Secret baptisms and forced confiscations of children had happened before. However, this time would be different. Much of European Jewry, having been emancipated decades ago, were more willing to kick up a storm over such antisemitism, instead of handling it privately, as had usually occurred in the past.⁸ This, combined with increased freedom of the press, would turn the Mortara affair into an international cause célèbre, of interest to both Jew and Gentile.⁹

Newspapers all across Europe printed articles about the affair. In England, the *Spectator* wrote:

Europe is at this moment in full astonishment, which has not yet had time to kindle into indignation, at one of those acts of the Romish Church which show that it retains in an unmitigated shape that habit and even necessity of stupid and terrible tyranny, which makes it the very enemy of mankind. Not all the fire and sword with which she desolated the world in the sixteenth and seventeenth centuries was so horrible in principle as the theft of the child of Mortara, the Jewish inhabitant of Bologna; a theft, moreover, which renders dangerous in the highest degree every sort of intercourse between Romanist and Protestant households.¹⁰

⁸ There is controversy over whether to spell it ‘antisemitism’ or ‘anti-Semitism.’ Following the lead of the Ant-Defamation League and the International Holocaust Remembrance Alliance, I choose to use ‘antisemitism.’ This is done so as to not suggest that there is a Semitic race, an idea that is based on racial pseudoscience.

⁹ Kertzer, *Kidnapping*, 43.

¹⁰ *The Spectator*, October 23, 1858, p. 1116.

The Mortara case permeated society even outside of the press: Giuseppe Massari, an Italian patriot, commented in his diary that his friend Boggio, who wanted to sue the Bishop of Ivrea, was “jealous of the Mortara boy’s fame.”¹¹

With the inherent drama of a son being ripped away from his loving parents, the affair lent itself well to the theater, albeit with a fair amount of exaggeration. Numerous plays, either based on or inspired by the affair, were produced. *La Tireuse de cartes* (The Fortune-Teller) premiered in Paris in December 1859, attended by Emperor Napoleon III himself. The *Monitore di Bologna* applauded the play for “re-evoking and supporting a cause that moved the whole world.”¹² In Italy, the play *La famiglia ebrea* (The Jewish Family) disparaged papal authority and looked forward to the day of Italian unification; after the father is reunited with his son, he declares to the Cardinal Legate: “Christians and Jews, Protestants and Catholics, will form one family alone. They will shake hands on the altar of the nation and will have but a single name: Italians!”¹³ In America, *Mortara—or The Pope and His Inquisitors* fully embraced the anti-Catholicism that was prevalent in the US, featuring a scene where the Inquisitor dislocates the fingers of Mortara (the father) and pours hot oil on him, all while threatening to roast his son’s flesh.¹⁴ To much of Western liberal society, the Catholic Church had become the embodiment of reaction, superstition, and intolerance, incompatible with modern society.

On the other side of the Atlantic, American Jews, who enjoyed more political and religious freedom than their European counterparts, got involved, with synagogues holding meetings on how to help. The whole affair aroused lots of attention: in just one month, *The New York Times* ran more than twenty articles on the case.¹⁵

Though the affair was deadly serious, members of the public sometimes used humor to communicate the absurdity of the situation. At one meeting in Boston, Raphael De Cordova, a popular Jewish humorist, wondered whether, if a group of Jews

¹¹ Giuseppe Massari, *Diario dalle cento voci, 1858-60* (Capelli, 1959), p. 97.

¹² *Monitore di Bologna*, January 15, 1860, p. 1-2.

¹³ Riccardo Castelvecchio, *La famiglia ebrea. Dramma in quattro atti ed un prologo* (1861).

¹⁴ H. M. Moos, *Mortara—or The Pope and His Inquisitors; a Drama* (1860).

¹⁵ Timothy Verhoeven, *Transatlantic Anti-Catholicism: France and the United States in the Nineteenth Century*, (Palgrave Macmillan: New York, 2010), 58.

circumcised the Pope against his will, he would then be a Jew. “Surely, that would not make the Pope a Jew, any more than the sprinkling of water made a child of a Jew a Christian.”¹⁶ *Punch* stated that Cardinal Wiseman, the Archbishop of Westminster, had a fire-engine filled with holy water and was going to spray members of the Protestant Association at their next meeting, so the Protestants should bring their umbrellas.¹⁷

The Catholic Church and its defenders did not passively absorb these attacks, but fought back in the press. Central to the Church narrative was the supposed miraculous transformation of Edgardo Mortara, who, once he had been removed from his family, had instantly become a devout Christian. The Church also relied upon old antisemitic canards, with *La Civiltà Cattolica*, a Jesuit periodical, writing that the Jews had been able to cause such an uproar because the Jews “are extremely rich in Europe today, indeed on possession of the most powerful libertine newspapers in Germany, Belgium, and France, it is hardly surprising that these same papers band together in their defense, especially when they can at the same time assault the Pontiff and his government.”¹⁸ All the negative coverage of the Church only served to further entrench a siege mentality, whereby the Church was heroically resisting Jewish persecution. In this version, Jews, pulling the strings of the liberal press, were intent on destroying the Church by imposing modern, un-Catholic ideas.

In the end, despite international condemnation and all the outrage from the press, the Mortara affair had a sad ending. Pope Pius IX refused to return Edgardo to his parents, and the boy grew up to become a priest. He would eventually reconnect with his family, but their relationship was strained by his desire for them to convert and their refusal. Ultimately, the Mortara affair illustrated the limits of how much the Catholic Church had evolved in its treatment of Jews. There may have been some small reforms, but the Church still viewed the Jews as a people in need of saving and who, until they were saved, were not entitled to the rights of a Catholic. Fundamentally, despite the advancements occurring all around them, the Church, as a whole, was not going to

¹⁶ Betram Korn, *The American Reaction to the Mortara Case: 1858-1859* (Cincinnati: American Jewish Archives, 1957), 48.

¹⁷ Raphael Langham, “The reaction in England to the kidnapping of Edgardo Mortara,” *Jewish Historical Studies* 39 (2004): 93.

¹⁸ “Il piccolo neofito Edgardo Mortara,” *Civiltà Cattolica* 9, no. 12 (1858): 391.

change. The Church’s hostility to modernity and its hostility towards Jews—both intimately bound together—would lay the groundwork for one of the greatest tragedies in the history of humanity.

Adolf Hitler was appointed chancellor of Germany on January 30, 1933. While Hitler came to and retained power in Germany due to many factors, the Catholic Church certainly played a role. The *Reichskonkordat*, negotiated by Cardinal Secretary of State Eugenio Pacelli—the future Pope Pius XII—was the first bilateral treaty that Nazi Germany negotiated with another nation. Agreed to in July 1933, it gave legitimacy to the new regime, at a time when Hitler was looking to consolidate his hold on power.¹⁹ The Church would later use the *Reichskonkordat* to defend the Pope to Hitler, with members of the clergy saying, “Pope Pius XI [who was the pope when the treaty was signed] spoke high praise of you...Millions in foreign countries, Catholics and non-Catholics alike, have overcome their original mistrust because of this expression of papal trust, and have placed their trust in your regime.”²⁰

Catholics made up about one-third of Germany’s population and there were more people in Catholic youth groups than in the Hitler Youth in 1933. Hitler wanted to remove any potential opposition and the Church acquiesced, with the Center Party, a Catholic political party that had existed before modern Germany was even formed, shutting down (though Pacelli was unhappy that the party ended before the *Reichskonkordat* was signed). In return for the Church controlling its internal religious affairs, it agreed to abstain from politics.

The Catholic Church did not cause the Holocaust, but it did contribute to an environment that permitted the Holocaust to happen: “The Church’s failure to denounce publicly or privately early Nazi violence aimed at Jews, a failure rooted in the Church’s own antisemitism and its own theology, was part of what allowed the violence to become genocidal.”²¹ Policies and ideologies that underlay the Holocaust had their genesis in the Catholic Church, even if the Nazis themselves were not officially

¹⁹ James Carroll, *Constantine's Sword: The Church and the Jews, A History* (Houghton Mifflin Company: Boston, 2001), 498.

²⁰ “Denkschrift der Deutschen Bischöfe an Hitler,” in *Katholische Kirche und Nationalsozialismus: Dokumente, 1930-1935*, ed. Hans Muller (Munich: Nymphenburger Verlagshandlung, 1963), 377.

²¹ Carroll, *Constantine's Sword*, 522.

affiliated with Catholicism: “Who was it who developed the tradition in Europe of requiring Jews to wear colored badges so that they could be readily identified? Who for centuries taught that any contact between Jews and Christians was polluting to Christians and should be punishable by force?”²²

During the Holocaust, as Jews were rounded up and deported to death camps, many parents hid their children; in France, 10,500 Jewish children were sheltered from the Nazis, often with the help of priests and nuns inside Catholic religious institutions.²³ While looking after the Jewish children, some of those Catholic leaders performed baptisms on their wards, without the consent of the children’s parents. In the eyes of the Church, these children were now Catholic and it was thus the responsibility of the Church to raise them as such. This inevitably led to conflict when the children’s relatives came to reclaim them after the Holocaust. While there were many examples of this scenario, one in particular stands as a flashpoint in Catholic-Jewish relations post-WWII. The Finaly affair, named after the two boys at the center of it, took place almost a century after the Mortara affair; its occurrence and its outcome illustrate both what had changed and what had not in terms of the Church’s view of the Jewish people and its own temporal power.

Robert and Gerald Finaly, born 1941 and 1942 respectively, were the sons of Dr. Fritz Finaly and his wife Anni, Austrian Jews who had fled to France to escape the Nazis. In 1940, the Nazis invaded and took over France. Fearful that they would be arrested, Fritz and Anni hid their sons in a local nursery—a few days later, the parents were detained by the Gestapo and deported to Auschwitz, where they were murdered. The nursery owners transferred the boys to Our Lady of Zion, a local convent, which was run by Antoinette Brun. After the war, one of the boys’ aunts learned of what had happened and contacted Mother Brun, thanking her for looking after the boys and asking to return them. The nun refused, and in 1948, she had Robert and Gerald secretly baptized.²⁴

²² Kertzer, *Kidnapping*, 301.

²³ Katy Hazan, “Récupérer les enfants cachés: un impératif des oeuvres juives dans l’après-guerre,” *Archives juives*: 17.

²⁴ Joyce Block Lazarus, *In the Shadow of Vichy: The Finaly Affair* (New York: Peter Lang, 2008), X.

What began as a small conflict between some nuns and Jews would eventually spiral into a press storm and an international affair. Another one of the boys' aunts, Hedwig Rosner, hired a lawyer, Moïse Keller, to help in her case. Keller fought to have the boys returned to their aunt, and in 1952, the French court finally ordered Mother Brun to turn over the boys. Instead of doing so, she had the boys spirited away, arranging for priests to lead them over the Pyrenees and into Spain. Miss Brun and various other clergy were then arrested on charges of kidnapping in February 1953.

This event received an enormous amount of publicity, just like in the Mortara affair, and soon all of France was debating the Finaly affair. Newspapers such as *La Croix* and *Le Méridional*, which were Catholic, sided with Mother Brun. *La Croix* has “long been considered by the French to represent the official position of the Roman Catholic Church.”²⁵ On February 10, its editor-in-chief, Father E. Gabel, wrote: “Faith and eternal salvation are the supreme good of man; the Church has, by a valid baptism, spiritually created a Christian; this spiritual maternity imposes duties. The Church is a perfect society which has authority over men who have become its members by baptism.”²⁶ *Le Monde*, the most famous and influential French newspaper did not take a side, instead giving multiple perspectives. On March 10, a priest named Father Deroo wrote: “The Church respects the rights of the family, but it cannot avoid its own duties; baptism makes the child a Christian, and the child comes under the jurisdiction of the Church.”²⁷ As in the Mortara affair, the Church asserted its right as caretakers for the souls of children who—in their view—were no longer Jewish. To the Church, these children had to be protected from Jewish family members who would endanger their salvation, and thus, the Church had a moral necessity to keep hold of the children.

Also similar to what happened in the Mortara affair, this defense of the Church soon bled into outright antisemitism, with a piece in *La Croix* on March 20 saying: “There is a primitive, violent reaction to some Jews, particularly those who come from Central Europe... Drawn to hating Christians, these Jews carried uneasily the burden of gratitude... The Brun-Finaly affair gives them (the Jews) peace of mind by freeing them

²⁵ Lazarus, *Vichy*, 73.

²⁶ Lazarus, *Vichy*, 72-3.

²⁷ Nicholas Baudy, “The Affair of the Finaly Children,” *Commentary*, June 1953, 555.

from the burden of gratitude.” Whether intentionally or not, many newspapers reported false information that painted the Finaly family in a negative light. *Le Figaro* even made up a Dr. Yssiron of Jerusalem and then quoted him saying, “if the children were to be separated from the affection of their ‘mother’ (Miss Brun)...it is doubtful that they would ever be happy...”²⁸ The article did not mention that Mother Brun had only seen the boys once or twice a year over the past few years and that they were instead cared for by maids.

As in the Mortara affair, supporters of the Jewish family used humor to get their point across. On April 29, *Le Canard enchaîné* declared that its journalists had kidnapped Miss Brun and would not reveal her location; instead, they would force her to read Voltaire and Diderot to make her to think freely.²⁹

What was not known until recently was how complicit senior officials of the Church hierarchy were in the affair. In 2020, the Vatican opened its archives covering the papacy of Pius XII, who was in office from 1939-58. New documents show the Holy Office, a major Church congregation, advising Cardinal Gerlier, who led the area where the Finaly boys lived, to keep the boys, no matter what: If the French court ruled against Mother Brun, “one must delay its execution as long as possible, appealing to the Court of Cassation and using all other legal means.” If the final court ruling went against the Church, “advise the woman to resist...” The Holy Office would later tell Gerlier that the Vatican’s role in this had to be kept a secret “so as not to compromise the Holy See in such a delicate and sensational dispute.”³⁰ These new materials have only intensified the debate about whether or not Pius XII should be canonized.

Due to the unceasing determination of Moïse Keller and his supporters, as 1953 progressed, public opinion began to turn increasingly in favor of the Finaly family. On an individual level, this is seen by the case of François Mauriac, who had won the Nobel Prize in Literature the previous year. In February, he suggested that the Finaly boys should decide which religion to follow, but in June he reversed himself and

²⁸ Lazarus, *Vichy*, 77.

²⁹ Chantal Thoinet, “Au nom des valeurs républicaines et de la mémoire des leurs. Les militants de la laïcité face à l’Affaire Finaly,” *Archives juives* 37.2 (2004): 59.

³⁰ David I. Kertzer, “The Pope, the Jews, and the Secrets in the Archives,” *The Atlantic*, August 27, 2020, <https://www.theatlantic.com/ideas/archive/2020/08/the-popes-jews/615736/>.

castigated the Church for its silence. Almost one hundred French intellectuals released a manifesto in April that read:

They (the signers) are astonished that there could be, in our country and at this time, a physical right exercised by the Church over baptized children...

They consider that the law, expression of the general will of the people and open to everyone's understanding may never become subordinated to any religious dogma or philosophical system...³¹

Moïse Keller noted this confluence of opinion, remarking that “newspapers of diverse ideological tendencies—communist, socialist, radical, independent, apolitical, including some Catholic newspapers—demanded that the forces of law and order intervene to end the exorbitant demands of the Church.”³² Ultimately, the boys were handed over to their aunt, who then flew them to Israel, where they received a Jewish education. Today, the Finalys live in Israel, retired, and remain committed Jews.

Taken together, the common beginnings but differing results of the Mortara and Finaly affairs demonstrate what had changed over the course of a century. While the Church may have felt itself under attack from the forces of modernity and liberalism in the 1850s, it still retained a considerable amount of power, temporal as well as spiritual. By the 1950s, with the Papal States long gone and the separation of church and state triumphant, the Church no longer had the power to enforce its will. Despite this, it still had the support of a significant amount of the French public, enough to conceal the Finaly boys for months. The Church still clung to its traditional beliefs regarding Catholic superiority and Jewish inferiority. But that would not last for long.

Pope John XXIII convened the Second Vatican Council (Vatican II) in 1962 so that “the Church would show itself more and more capable of solving the problems of the people of this age.”³³ With Vatican II, the Church took great strides towards

³¹ Lazarus, *Vichy*, 83.

³² Lazarus, *Vichy*, 84.

³³ Vatican Council II, *Humanae Salutis*, Vatican.va, 6.

reconciling itself to modernity. During the Council, the Church released *Nostra aetate*. This document, which condemned antisemitism, revolutionized the Church's relationship with the Jewish people, opening the door for a Catholic-Jewish dialogue that continues to this day. However, even in the present day, tensions between Church teachings and modern, liberal values still exist for many Catholics.

In 2018, the US-based Catholic journal *First Things* published an article by Romanus Cessario, a Dominican priest and professor of theology at St. John's Seminary in Boston. In the article, titled "Non Possumus," Cessario defended the Church's conduct in the Mortara affair. Cessario states: "Since baptism causes birth into new life in Christ, children require instruction about this form of new life... This law was not unreasonable, moreover. Even today, the *Code of Canon Law*, can. 794 §1, assigns to the Church the task of educating Catholics."³⁴ While he admits the heartbreak inherent in separating a child and his parents, he nevertheless says that "the honor we give to mother and father will be imperfect if we do not render a higher honor to God above. Christ's authority perfects all natural institutions—the family as well as the state. This is why he said that he came bearing a sword that would sunder father and son."³⁵

Numerous publications denounced Cessario's piece. *The American Conservative* called it "grotesque," while the *National Catholic Reporter* wrote that Cessario should be "sacked and sacked publicly."³⁶ Differing views on the Mortara case are indicative of the current culture war within the Church. As was mentioned earlier, many traditionalists are angry at Pope Francis and what they perceive to be his modernizing tendencies. Many of these traditionalists look fondly back on the past, when the Church held temporal power and see the subsequent decline of that power as a tragedy. And yet, "they're not just waxing nostalgic about the good old days when an almighty pope could do as he pleased. They're making a larger theological argument—about divine doctrine trumping human morality, and about religion taking precedence

³⁴ Romanus Cessario, "Non Possumus," *First Things*, January 2018, <https://www.firstthings.com/article/2018/02/non-possumus>.

³⁵ Cessario, "Non Possumus."

³⁶ Rod Dreher, "The Edgardo Mortara Case," *The American Conservative*, January 9, 2018, <https://www.theamericanconservative.com/the-edgardo-mortara-case/>. and Micheal Sean Winters, "Fr. Cessario's Edgardo Mortara essay is inexcusable," *National Catholic Reporter*, January 19, 2018, <https://www.ncronline.org/news/people/distinctly-catholic/fr-cessarios-edgardo-mortara-essay-inexcusable>.

over civil rights.”³⁷ To them, the Church should not fit itself to society, but should shape society.

Today, the Pope holds no temporal power, except over Vatican City, a nation that is 109 acres large. In 2015, the Vatican’s Commission for Religious Relations with Jews announced that Catholics should no longer attempt to convert Jews.³⁸ Because of these developments, it is extremely unlikely that anything like the Mortara or Finaly affairs could ever occur again. However, one element of the Mortara affair that still exists today is the Church’s position regarding when an infant should be baptized: “An infant of Catholic parents or even of non-Catholic parents is baptized licitly in danger of death even against the will of the parents.”³⁹ That means that if Anna Morisi had baptized Edgardo Mortara today, she would still have acted correctly in the eyes of the Church.

In spite of this, the Church’s relationship with the Jewish people has improved by leaps and bounds from what it was 160 or 70 years ago, when the Mortara and Finaly affairs took place. Despite its historical antipathy towards Jews and the modern notion of religious tolerance, the Church, due both to internal and external pressure, adapted to fit the times. If the Church, despite almost two millenia of consistent antisemitism, was capable of reform then, it remains capable of reform now. However, just as the Church’s reform regarding the Jewish people was not predetermined—and only occurred after a genocide—the Church reforming itself today is by no means inevitable. It will take time, perseverance, and pressure from both the rest of society and members of the Church itself. But change is possible.

³⁷ Anna Momigliano, “Why Some Catholics Defend the Kidnapping of a Jewish Boy,” *The Atlantic*, January 24, 2018, <https://www.theatlantic.com/international/archive/2018/01/some-catholics-are-defending-the-kidnapping-of-a-jewish-boy/551240/>.

³⁸ Gaia Pianigiani, “Vatican Says Catholics Should Not Try to Convert Jews,” *The New York Times*, December 10, 2015, <https://www.nytimes.com/2015/12/11/world/europe/vatican-says-catholics-should-not-try-to-convert-jews.html>.

³⁹ “Code of Canon Law, Book IV: Function of the Church, Part I: The Sacraments, Title I: Baptism, Chapter III, Can. 868, §2,” https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib4-cann834-878_en.html#CHAPTER_III.



**RELIGION,
COVENANT,
& JUDAISM**

BENJAMIN MOSKALSKI

At Mount Sinai, God creates something unique, something not seen elsewhere in history: a special covenant with a chosen people. Having rescued the Israelites from the bondage of slavery in Egypt and while leading them to the promised land in Canaan, He stops to inform Moses that He something to give His people: laws. 613 of them, in fact. While a strange gift it might seem at first, these laws form the heart of the relationship between God and Israel. They are an expression of the unconditional love God has for them, the mode by which Israel enters into its covenant with the Lord. The covenant is the relationship of love between God as the ultimate political authority and His people, who are specially ordained to cooperate with Him through the law in caretaking His creation. For the Jew, the law is not a burden, but a gift. By Torah law, Israel not only swears and renews its allegiance to its ruler, YHWH, but joins with Him in forming the ideal society, a society which will satisfy the Jew's deepest desires as a human. Before the people might receive this gift, however, they must first be assured that this God has their best interests at heart. YHWH must establish through revelation, in the form of a historical prologue, His unconditional love for Israel prior to giving the stipulations of His covenant.

Before laying down His commandments, the Lord addresses Israel saying, "I am the Lord your God, who brought you out of the land of Egypt, out of the house of bondage" (*RSV 2nd CE Bible*, Exodus 20:2). The fact that He rescued Israel from slavery gives them rational motivation to conclude that this law will, in fact, be good for them. Another historical prologue can be found in the three opening chapters of Deuteronomy, which recount the deeds of the Lord as Israel wandered the desert. Later, having entered the land of Israel and preparing to renew the covenant, the God's prophet Joshua reminds them not only of how He saved them from slavery, but also relates His love for their forefathers Abraham, Isaac, and Jacob. By reminding Israel of God's past faithfulness, the Israelites rationally conclude that these new laws are for their own good.

A parallel to this covenant can be seen in suzerain vassal treaties of the ancient Near East. Prominent examples of these came from the Hittites, who established treaties with their vassal states in order to ensure their political loyalty. These treaties would

feature a historical prologue detailing the relationship between the Hittites and the vassal state before giving stipulations and the blessings and curses which accompanied them (Levenson 26). By recounting this relationship, the Hittites reminded their vassals of the mutually beneficial loyalty that had been established between them, thereby motivating assent to the law of the treaty. This is exactly what occurs in the biblical text; before ever giving His law to the Israelites, YHWH first enters into a historical prologue that reminds them of the reasons why they should do what He commands. After this prologue, the stipulations, blessings, and curses of the covenant follow, the principal goal of Mount Sinai.

Revelation is good for the Jews because it leads to the law, not vice versa (Levenson 43). This is why the historical prologue is established first, just as in suzerain vassal treaties. If the purpose of the law were instead to engage with historical revelation, then the historical prologue should not be a prologue at all - it should be an epilogue. God does not have a dramatic epilogue; rather than continue His dramatic involvement in the lives of the Israelites, God withdraws from public revelation once His people have been given the law. Now, when He speaks, it comes in the form of a whisper in a prophet's ear (*RSV 2nd CE Bible*, 1 Kings 19:9-13). Revelation has its end the relationship of the covenant, which is lived out through the law. For this reason, when Israel commits idolatry in the desert, they are reprimanded for breaking the law, not for forgetting His revelation. "And the Lord said to Moses, "Go down; for your people, whom you brought up out of the land of Egypt, have corrupted themselves; they have turned aside quickly out of the way which I commanded them; they have made for themselves a molten calf" (*RSV 2nd CE Bible*, Exodus 32:7-8A). If law was merely a reminder of revelation, then God should be more angry at Israel for having forgotten how He saved them. Instead, YHWH blames the Israelites for having turned from His commandments; He points out that He brought them "up out of the land of Egypt " to show that their disobedience is a result of forgetting His historical fidelity. Disobedience, nevertheless, is the cause of His wrath, not forgetfulness.

The Christian tradition offers a contrast to this Jewish conception of the relationship between revelation and law. For the Christian, the revelation at the cross

does motivate and establish a divine law that makes relationship with God possible. However, the way this divine law makes such a relationship possible is by entering into the mystery of the cross itself. Rather than history being a story of God's withdrawal from public revelation, the Christian sees history as centered around the dramatic event of the incarnation. God becomes more obviously present over time, not less. The movement from Sinai to prophets like Elijah is not God becoming less involved, but more intimate - an intimacy most profoundly revealed in the Word made flesh. When Christians receive the sacraments, engage in prayer, or follow the law, they have as their end the entrance into the intimate mystery which is the life of Jesus Christ. This mystery is necessitated by the Christian presupposition of universal sin. Partnership with God is only made possible by a radical intervention in history – the incarnation. The mosaic law given at Sinai, to the Christian, lacks the full incarnational purpose it presupposes is central to the law.

For the Jew, on the other hand, the revelation contained in the historical prologue motivates obedience to the law, but is not the end of the law itself. The covenant relationship does not find its culmination in the historical actions of YHWH, but in the performance of Torah law. The Christian sees the revelation of the incarnation and the covenant as mutually identifiable; the Jew understands revelation as the mode by which the covenant is established, not the covenant itself. Both conceptions require an understanding of the importance of revelation as the vehicle by which God demonstrates His unconditional love. They require, also, an understanding of the law as good for man because it lives out the covenant relationship between the Lord and His chosen people, whose best interests He has in mind. Uniquely central to Judaism, however, is the idea that revelation is merely the prologue to something bigger, a covenant which is conceptually separable from revelation. The historical prologue is not a goal in-of-itself.

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