

Rabbi Zevulun Charlop

God in History and Halakhah from the Perspective of American History

This presentation will deal with the centrality of history—more specifically, with God's role in history as it is viewed in *Yahadut* and how this notion is refracted through the prism of American history. It will focus particularly on an intriguing halakhic formulation of the Rambam in his *Mishneh Torah* and will show how American history provides us with a perspective possibly not found elsewhere from which to understand this very important text.

The first Rashi on Torah begins, אמר רבי יצחק, לא היה צריך להתחיל את התורה אלא מהחדש הזה לכם שהיא מצוה ראשונה שנצטוו ישראל. Why does the Torah begin with the story of creation, of Avraham, Yizhak, and Ya'akov, and the early life of Moshe? It should have begun with החדש הזה לכם, the first *mizvah* expressly given to the Jews as a people, found in the twelfth chapter of Shemot? After all, even the three *mizvot* which do appear in Bereshit, e.g., procreation, circumcision, and the prohibition against eating *gid ha-nasbeh* (the thighbone), could have been easily incorporated among the other commandments. Indeed, circumcision is repeated in Parshat Tazri'a (Lev. 12:3). Implicit in this question posed by Rashi is the assumption that the Torah is essentially a manual of laws and not a history book. Rashi answers:

ומה טעם פתח בבראשית משום (תהלים קי"א) כח מעשיו הגיד לעמו לתת להם נחלת גוים שאם יאמרו אומות העולם לישראל לסטים אתם שכבשתם ארצות שבעה גוים הם אומרים להם כל הארץ של הקב"ה היא הוא בראה ונתנה לאשר ישר בעיניו ברצונו נתנה להם וברצונו נטלה מהם ונתנה לנו!

It was to firmly establish the Jewish claim to Erez Yisrael that the otherwise word-efficient Torah adds the long narrative record of Sefer Bereshit, e.g., the stories of creation, the flood, the tower of Babel, the war among the kings, the Patriarchs, Joseph and his brothers, etc. Yet, much more than the legitimization of real estate ownership, however transcendently hallowed it may be, accounts for the ancient chronicle which introduces the Divine Law.

Indeed, the Torah begins and ends with a summons to history. In Bereshit, the Torah refers to itself as a history book: זה ספר תולדת אדם: זה ספר תולדת אדם: ביום ברא אלקים אדם בדמות אלקים עשה אתו (Gen. 5:1). More pointedly, perhaps, is the Divine injunction to study history found in Moses' magnificent valedictory at the end of Devarim: זכור ימות עולם בינו שנות (Deut. 32:7). Rashi (s.v. *binu*) understood the text to mean: לכהיר להבא שיש בידו להיטיב לכם ולהנחיל: לכם ימות המשיח ועולם הבא.

But there is another and even more telling example of the preeminence of history in the consciousness of Judaism, one which goes to the heart of the active presence of God in history. Among the Torah readings in the synagogue prior to the *Yamim Nora'im* we find an interesting sequence of passages which, although they immediately follow one another in the Biblical text, escapes our notice because we do not read them together. In fact, their juxtaposition suggests a basic historical truth of our faith and provides possibly the most important instruction for us in this portentous juncture in our national life which we currently face.

I refer to the urgent and insistent call to "remember what the Amalekites did" to us, which comes at the end of Parshat Ki Teze (Deut. 25:17-19) and the commandment of *bikkurim*—the bringing of the first fruit, which begins the very next portion of Pashat Ki Tavo (Ibid., 26:1-11). Amalek, of course, has come to typify the arch villain in Jewish history, whose annihilation for the purposes of our own survival and the survival of decent society at large is solemnly enjoined upon us. Amalek earned this dubious distinction not only because it launched a totally cowardly and unprovoked attack against the old, infirm and defenseless Israelites as they were trekking through the wilderness but also because it wanted, and very nearly succeeded, to destroy our spirit and the special relationship that exists between God and the seed of Abraham.

By using the word *korkha* in this context (Ibid., 25:18), the Torah indicates that it considers the attack of Amalek to be an assault against the fundamental theology of our people. This Hebrew word has various

meanings, e.g., “met you” or “cooled you off,” and it is also a form of the word *mikreh*, i.e., “who happened or chanced upon you.” Our tradition understands the choice of this word as a deliberate attempt to convey the idea that Amalek, in its encounter with the Israelites, attempted to “cool them off” from their devotion to God by asserting the notion that the world is governed by happenstance or *mikreh*. They insisted that there is no Godly design in the transpirings of men and nations; that there is no God in history.

This was the same world outlook that, many centuries later, was to shape the wicked Haman’s obsession to decimate the Jewish people. When Mordecai sent a message to Esther to alert her to the horrendous fate that awaited her kinsmen, the Bible says that he told her through a messenger, “*et kol ’asher karahu*,” “all that had happened” (Esther 4:7). Like *korkba*, *karahu*, which derives from the same root, also intimates chance or happenstance. The Midrash notes that Mordecai was relaying to Esther the nature of the enemy, informing her that he was a descendant of Amalek who believed, as did his forebears, that the world is subject to happenstance and that the universe is governed by chance.² Indeed, Israel’s extermination was to be determined purely by chance—by the “lots” from whence Purim takes its name. It was precisely for this reason that Haman despised the Jews, for they believed so devoutly in the God of history.

Later, after Haman had to humiliatingly parade Mordecai through the capital city of Shushan and proclaim, “This shall be done to the one whom the king desires to honor” (Esther 6:11), he told his wife “all that occurred” (*karahu; ibid.*, 6:13). Even now he considered what happened to him merely to be the result of a roll of the dice. However, his confidants and wife knew better for they recognized that his downfall was irreversible because it was part of a Divine historical process.

Immediately following the account of Amalek, the Torah presents the commandment of *bikkurim* which affirms the historic destiny of the Jew and which underscores that theirs is a God-directed history. An integral and central part of the rich and colorful ceremony attached to the bringing of this offering is the brief, albeit encompassing, historical account of the Jewish people which every Jew had to recite beginning with, “My father served an Aramean . . .” (Deut. 26:5). Amalek denied the God of history. He avowed chance and happenstance to be the explanation of existence. In quick, immediate response, the Torah presents the commandment of *bikkurim* and its declaration which vigorously rejects that hapless and haphazard view and proclaimed instead the God of history.

Our rabbis make a curious statement about *bikkurim*, עשה מצוה *bikkurim*, (ספרי, מובא בתורה תמימה) האמורה בענין שבשכרה תכנס לארץ. On the

face of it, this summons is hard to understand. The *mizvah* of *bikkurim* can only be fulfilled *after* entry into the Land. So what do our Rabbis mean when they say, "as reward for doing this *mizvah* you *will* enter the Land?" However, if *bikkurim* is understood as an affirmation of God's direct role in our history, then whenever and wherever a Jew avows this belief, even without the *bikkurim* themselves, it can be said, in a symbolic sense at least, that he has fulfilled this *mizvah*. Interestingly, the phrase "spoken about in this matter" is a curious one. It should have read more simply, "Do the *mizvah* of *bikkurim*." But, in fact, the text can be understood to mean, "Do that part of the *mizvah* which is spoken; articulate your conviction in God as the Supreme Mover and Maker of events." For if you really believe that there is a Divinely orchestrated plan in history and that nothing is simply *mikreh* or chance, then that *zekhut* or merit will bring you to Erez Yisrael. Indeed, notice the repeated use of various forms of the verb אמר here. The declaration made upon the bringing of *bikkurim* (ודוי ביכורים) begins with ועניית ואמרת, "And you shall speak and say." (Deut. 26:5). And what is God's response? את ה' האמרת היום, "You have avowed the Lord this day" (Ibid., 26:17). And one verse later, וד' האמירך היום להיות לו לעם סגולה, "And the Lord has avowed you this day to be His treasure." It is this sense of God in history as expressed in the *bikkurim* declaration which is the antithesis of *mikreh* or the happenstance of Amalek. Awareness of this will bring the Jewish people into Erez Yisrael and allow us to prosper there.

This is, after all, what may be a stake in the argument of the State of Israel with virtually the entire world and also with many of our own people as well. They cannot understand why we persist in pressing our religious/historical claims to the land. The fact of the matter is that it is this which makes us a people. Otherwise, we have no claim at all—not to the land nor to our individuality as a nation-faith community posited on a singular and irrevocable covenant with God.

It was recently reported that no less than the institutional leader of that branch of American Judaism which, from the time of its establishment, has defined itself as the conservator of Historical Judaism, and who, himself, is a professor of Jewish history, averred in a public address that he is troubled by the Jewish preoccupation with history which, "cripples our political judgement and makes us blind to the opportunities of the new era . . . Concern with the past may yet well sink us, may leave us unequipped to handle the novelty and the opportunity of the present and future."³ Apparently, he is prepared to disregard the centrality of history which, until now, has been not only a principal foundation of our faith, but was also accepted as the basis upon which the founders of Conservative Judaism, of which he is a premier spokesman today, rested their then newly minted expression of Jewish tradition and law. He is

compelled to this rejection of his movement's essential theology in order to undermine the biblical legitimacy of Jewish aspirations for Judea and Samaria which do not accord with his own political views. One may not agree with the politics of Jewish settlers in the so-called West Bank, but for a Jewish religious figure, especially from his quarter, to deny the overriding role of history and especially biblical history is an intellectual scandal.

From its earliest beginnings, America was founded on the notion, oftentimes expressly acknowledged to be a Jewish one, that there is a Divine progression and purpose to history, and, moreover, that its founders were the new people of Israel who had come to the new Canaan. This is almost axiomatic in early American historiography. Two examples from outstanding interpreters of the American experience will suffice.

Harvey Wish opened his review of American historiography with the following sentence: "New Englanders read sympathetically the Old Testament epic of the Israelites wandering through the wilderness to a promised land under the guidance of God who transmitted the most minute directions to Moses. Calvinists felt that this story, but for a few alterations of names and places, was essentially their own."⁴ J. Franklin Jameson, in his slender but classic *The History of Historical Writing in America*, quoted Cotton Mather who wrote that William Bradford, first governor of Plymouth, ". . . attained unto a notable skill in languages; the Dutch tongue was become almost a vernacular to him as the English; the French tongue he could also manage; the Latin and the Greek he had mastered; but the Hebrew he most of all studied . . ." Eight manuscript pages of Hebrew roots with English equivalents have been found written in his handwriting and prefaced with these remarks:

Though I am growne aged, yet I have had a longing desire to see, with my owne eyes, something of that most ancient language, and holy tongue, in which the law and oracles of God were writ; and in which God and angels spake to the holy patriarchs of old time; and what names were given to things, from the creation. And though I cannot attaine to much herein, yet I am refreshed to have seen some glimpse hereof (as Moyses saw the land of Canan afarr of). My aim and desire is, to see how the words and phrases lye in the holy texte; and to discern somewhat of the same, for my owne contente.⁵

Beyond this, more than any other prior group of nation builders in history, our Founding Fathers incarnated in themselves, individually and collectively, the halakhic criteria for חסידי אומות העולם. And it would not

be untrue to say that they were representative of many Americans of their time.

The Rambam states (Hil. Melakhim VIII:11):

כל המקבל שבע מצות ונוהר לעשותן הרי זה מחסידי אומות העולם ויש לו חלק לעולם הבא. והוא שיקבל אותן ויעשה אותן מפני שצוה בהן הקב"ה בתורה והודיענו על ידי משה רבינו שבני נח מקודם נצטוו בהן. אבל אם עשאן מפני הכרע הדעת אין זה גר תושב ואינו מחסידי אומות העולם ולא מחכמיהם.

There are actually two textual versions of the Rambam's text. Our text reads "nor of their wise men," "ולא מחכמיהם," But another version reads, "but of their wise men." According to the latter text, while those who recognize God solely on the basis of their own reason are not מחכמיהם or of their wise men,⁶

Where did the Rambam derive this sweeping idea? While the Radvaz is silent on this point, the *Kesef Mishneh* suggests that he based it on his own logic: ומה שכ' והוא שיקבל וכו'. נראה לי שרבנו אומר כך מסברה דנפשיה: ונכונה היא Today we know at least part of the source for this ruling, of which Rambam's original expositors were apparently unaware. It is found in *Mishnat Rabi Eliezer*, which states:

הפרש בין חסידי ישראל לחסידי אומות העולם. חסידי ישראל אינן נקראים חסידים עד שיעשו כל התורה, אבל חסידי אומות העולם, כיון שהן עושין שבע מצוות שנצטוו בני נח עליהן, הן וכל דקדוקיהן הן נקראים חסידים. בד"א, כשעושין אותן ואומרים, מכח שצוה אותנו אבינו נח מפי הגבורה אנו עושין, ואם עשו כן, הרי הן יירשו העולם הבא כישאל, ואע"פ שאינן משמרים את השבתות והמועדות, שהרי לא נצטוו עליהן. אבל אם עשו שבע מצוות ואמרו, מפי פלוגי שמענו, או מדעת עצמן, שכך הדעת מכרעת, או ששיתפו עם ע"ז, אם עשו כל התורה כולה, אין לוקחין שכרן אלא בעולם הזה.⁷

At first glance it would appear that this Maimonidean criteria for חסידי אומות העולם, i.e., that they accept the seven Noahide laws not out of the dictates of their reason but out of the conscious knowledge that God commanded them in the Torah given to Moses is entirely unrealistic. How can one expect a gentile, reared in a non-Jewish society, to even apprehend such a belief, let alone commit himself to it?

It is American history which uniquely provides us with a way of understanding this Rambam and, perhaps, even of explaining that the two versions of the end of the text are not mutually exclusive but reflect two separate types of gentiles. The key lies most clearly in the writings of John Adams, the second president of the United States. His role as a Founding Father always loomed large but his significance has become even more appreciated as his letters and writings have been published over the last twenty years. In 1809, nearly a decade after completing his term as president, Adams wrote the following to Judge F. A. Van der Kemp:

... in spite of Bolingbroke and Voltaire, I will insist that the Hebrews have done more to civilize men than any other nation. If I were an atheist, and believed in blind eternal fate, I should still believe that fate had ordained the Jews to be the most essential instrument for civilizing the nations. If I were an atheist of the other sect, who believe or pretend to believe that all is ordered by chance, I should believe that chance had ordered the Jews to preserve and propogate to all mankind the doctrine of a supreme, intelligent, wise, almighty, sovereign of the universe, which I believe to be the great essential principle of all morality, and consequently all civilization.⁸

In a later letter to Van der Kemp, Adams addressed himself, almost uncannily, to the distinction made by Maimonides:

My friend again! the question before mankind is,—how shall I state it? It is whether authority is from nature and reason, or from miraculous revelation; from the revelation from God, by human understanding, or from the revelation to Moses . . .⁹

John Adams here is clearly echoing the Rambam's description of one category of *hasidei 'umot ha-'olam*, i.e., those who recognize that the seven Noahide laws came from Hashem and from Moses. In fact, he does not only recognize the authority of the written law, but extends his acknowledgement to the oral law as well. Elsewhere, he wrote to Jefferson:

If I had Eyes and Nerves, I would go through both Testaments and mark all that I understand. To examine the Mishna Gemara Cabbala Jezirah, Sohar Cosri and the Talmud of the Hebrews would require the life of Methuselah, and after all, his 969 Years would be wasted to very little purpose. The Daemon of Hierarchical despotism has been at Work, both with the Mishna and Gemara. In 1238, a French Jew, made a discovery to the Pope (Gregory 9th) of the heresies of the Talmud. The Pope sent 35 Articles of Error, to the Archibishops of France, requiring them to seize the books of the Jews, and burned all that contained any Errors. He wrote in the same terms to the Kings of France, England Arragon, Castile Leon, Navarre and Portugal. In consequence of this Order, 20 Cartloads of Hebrew Books were burnt in France: and how many times 20 Cartloads were destroyed in the other Kingdoms? The Talmud of Babylon and that of Jerusalem were composed from 120 to 500 Years after the destruction of Jerusalem. If Lightfoot derived Light from what escaped from Gregorys fury in explaining many passages of the New Testament by comparing the Expressions of the Mishna, with those of the Apostles and Evangelists, how many proofs of the Corruptions of Christianity might We find in the Passages burnt?¹⁰

This is quite a statement by a non-Jew! Adams speaks of תורה שכתב, the written law, and תורה שבעל פה, the oral law.

Jefferson, however, looked at Judaism in a markedly darker light than did Adams. This is evident especially when one contrasts Adams' peroration with Jefferson's letter to him which occasioned his response in the first place:

To compare the morals of the old, with those of the new testament, would require an attentive study of the former, a search thro' all it's books for it's precepts, and through all it's history for it's practices, and the principles they prove. As commentaries too on these, the philosophy of the Hebrews must be enquired into, their Mishna, their Gemara, Cabbala, Jezirah, Sohar, Cosri, and their Talmud must be examined and understood, in order to do them full justice. *Brucker, it should seem, has gone deeply into these Repositories of their ethics, and Enfield, his epitomiser, concludes in these words. 'Ethics were so little studied among the Jews, that, in their whole compilation called the Talmud, there is only one treatise on moral subjects. Their books of Morals chiefly consisted in a minute enumeration of duties. From the law of Moses were deduced 613 precepts, which were divided into two classes, affirmative and negative, 248 in the former, and 365 in the latter. It may serve to give the reader some idea of the low state of moral philosophy among the Jews in the Middle age, to add, that of the 248 affirmative precepts, only 3 were considered as obligatory upon women; and that, in order to obtain salvation, it was judged sufficient to fulfill any one single law in the hour of death; the observance of the rest being deemed necessary, only to increase the felicity of the future life. What a wretched depravity of sentiment and manners must have prevailed before such corrupt maxims could have obtained credit! . . .*¹¹

It is possible then to identify three distinct categories of non-Jews in the Enlightenment period and relate them to the various versions of the Maimonidean statement discussed above:

1. The type exemplified by John Adams and his school who acknowledged the possibility of Moses as the supreme law giver and the Torah as the chief source of morality. They also shared a benevolent sense of the oral law. They belong to the highest category of חכמיהם, their wise men, and are considered חסידיו אומות העולם or among the righteous of the peoples of the world.

2. Voltaire, the father of the French Enlightenment, and others like him are at the other end of the spectrum entirely. Voltaire is known for his hatred of the Jews, writing extensively against them. Whenever he had an opportunity, he bespattered Judaism and the Jews of the past and present with his obscene satire. Scholars have long struggled to explain how this great and original libertarian could have turned so viciously against the Jews.¹² Some suggest that his hostility arose from several unfortunate business experiences he had with Jews in London and Berlin. "It was too trifling for Voltaire to avenge himself upon the individual Jew who had contributed to his humiliation; he determined to make the

whole Jewish nation feel his hatred.”¹³ One can hear here echoes of the Haman of old: “But it seemed contemptible in his eyes to lay hands on Mordecai alone; for they had made known to him the people of Mordecai, wherefore Haman sought to destroy all the Jews” (Esther 3:6). Voltaire’s vehement contesting of the Mosaic authorship of the Pentateuch in his *Traité sur la tolérance* and his hatred of Jews expressly removes him from the Maimonidean definition of *hasidei ’umot ha-’olam* and also wrests from him the right to be counted “even among their wise men.”¹⁴

Joining Voltaire in this group would be Lord Bolingbroke. Although hardly known today, if at all, his influence in some of these matters was nearly as great as Voltaire’s. Many of the Founding Fathers read his writings even though they were often hard to obtain. Reflective of his stance are the following assaults on Torah: “The whole history, from Noah to Abraham, and from Abraham to the Exode, is a series of tales that would appear fit to amuse children alone.”¹⁵ Even more egregious is his claim that it is impossible to read Moses’ account of the creation, “without feeling contempt for him as a philosopher and horror as a divine.”¹⁶ He and Voltaire would fit into the category of men of reason who are neither *מחסידי אומות העולם* nor *מחכמייהם*.

3. Jefferson belongs in the middle category. To be sure, his place there is less certain than those associated with the other categories. In an absolutely invidious comparison between Moses and the founder of Christianity, Jefferson wrote that the object of the latter,

was the reformation of some articles in the religion of the Jews, as taught by Moses. That sect had presented for the object of their worship, a being of terrific character, cruel, vindictive, capricious and unjust . . . Moses had bound the Jews to many idle ceremonies, mummeries, and observances of no effect towards producing the social utilities which constitute the essence of virtue.¹⁷

He continued that Christianity’s founder had to be careful lest he fall,

within the grasp of the priests of the superstition, a blood-thirsty race, as cruel and remorseless as the being whom they represented as the family God of Abraham, of Isaac and of Jacob, and the local God of Israel.¹⁸

Nevertheless, although it cannot be denied that Jefferson was undoubtedly influenced by Voltaire and his followers and in some ways identified with their views about Moses and Judaism, and notwithstanding some of the atypical diatribes noted above, there is generally none of the crusading venom of the Frenchman in his writings on the Jews. Moreover, his essential liberalism made him a warm champion of their rights no less than the rights of any other people. In a letter to Adams about a new book defending Judaism that had come to his attention, there emerges a strand of the essential fairness that was Jefferson and, more importantly

for our analysis, indicates his ambivalence to Judaism and Moses which removes him from the company of Voltaire and his coterie.

I have been lately amusing myself with Levi's book in answer to Dr. Priestley. It is a curious and tough work . . . He alledges that the Jews alone preserve the doctrine of the unity of god. Yet their god would be deemed a very indifferent man with us: and it was to correct their Anamorphosis of the deity that (the founder of Christianity) preached, as well as to establish the doctrine of a future state. However Levi insists that that was taught in the old testament, and even by Moses himself and the prophets . . . He must be fearfully embarrassing to the Hierophants of fabricated Christianity; because it is their own armour in which he clothes himself for the attack. For example, he takes passages of Scripture from their context (which would give them a very different meaning) strings them together, and makes them point towards what object he pleases; he interprets them figuratively, typically, analogically, hyperbolically; he calls in the aid of emendation, transposition, ellipsis, metonymy, and every other figure of rhetoric . . . and finally avails himself of all his advantage over his adversaries by his superior knolege of Hebrew, speaking in the very language of the divine communication, while they can only fumble on with conflicting and disputed translations. Such is this war of giants. And how can such pigmies as you and I decide between them?¹⁹

Jefferson's ambivalence expressed here as well as his total and uncompromising commitment to equality and political rights for Jews as much as anybody else would place him in the category of חכמייהם, or "one of their wise men." Certainly, even if one was to deny Jefferson's separate classification and assign him to the category of "ולא מחכמייהם" there are a substantial number of his contemporaries, such as Washington, Madison, and Franklin, who would quite comfortably fit into the category of חכמייהם. They may never have expanded so positively about Moses and Judaism as did Adams. But, by the same token, their writings lack any of the harshness of Jefferson and their attachment to liberty for all, including the "seed of Abraham" who resided in the colonies at that time, was no less fervid than his.

Beyond the individual theological positions of Adams and other like-minded Americans of his time, what is significant for our purposes is how their view of God and religion was and is reflected in the nation they helped to create and how it markedly differed from the view of revolutionaries across the ocean in Europe. Unlike the French fraternalists, the architects of our republic were essentially religious men who admitted the indispensability of religious training and belief for a well-ordered, decent and free society. They established the doctrine of separation of church and state almost as much out of solicitude for the

ultimate good of religion as for the well-being and preservation of free government. In the *Zorach* decision of 1952, the Supreme Court avowed, "we are a religious people whose instructions presuppose a Supreme Being."²⁰ The noted American critic Edmund Wilson wrote: "Our conception itself of America as a country with a mission in the world comes down to us from our Mosaic ancestors."²¹ Even Christian divines before and during the revolution built their sermons almost exclusively upon texts drawn from the Hebrew Bible. The preeminent influence of the "Old Testament" upon the molders of our republic is an often-told and well-known story.

Although exact figures for that period are not available, authorities generally agree that, "by the end of the colonial period there had come to be more unchurched people in the American colonies in proportion to the population than were to be found anywhere else in Christendom."²² This can be directly traced to the spirit of Unitarianism and Deism which, as the Beards put it, "was to hasten the retirement of historic theology from its empire over the intellect of American leaders and to clear the atmosphere for secular interests."²³ Indeed, the first four presidents of the United States were either Deists or Unitarians. They are usually considered to have been Deists but, in fact, the dictionary definition of Deism in almost every instance does not apply to the Founding Fathers. Even Thomas Paine and Benjamin Franklin, who were the chief targets of religionists, believed in a providential God. Paine went so far as to acknowledge a Hereafter and accepted the doctrine of Reward and Punishment. While they rejected many, if not most, of the orthodox beliefs of the Christian church, they believed unquestioningly in a divine creator to whom reverence is due. The prevalence of enlightened theistic ideas among the founders of America was undoubtedly at least partly responsible for the absence of any commitment whatsoever, even in the most general terms, to any Christian ideas. And while organized Christianity many have sorely deplored this state of affairs, from the point of view of Jewish monotheism such belief and practice on the part of non-Jews could hardly be faulted, consonant as it was with the expectation of the Noachide laws.²⁴

It may well be that this insight into the religious consciousness of early America provides the historic logic that best explains the tensions and incongruities that have always characterized church-state relations in the United States. Since the founding of the Republic, purists have agonized over the contradictory reality of this church-state separation. While the Constitution, as its authors themselves clearly attested in their writings and utterances, calls for the absolute divorce of government and ecclesia, in actuality there exists a wide range of exceptions that palpably deny this principle and yet enjoy official sanction and acceptance.

This circumstance flows almost inevitably out of a basic religious dilemma that inheres in the national soul: how to preserve unbreached the proverbial wall of separation dividing church and state which, essentially, is chiefly directed against Christian trespass into civil affairs (as Christianity constitutes the overwhelming and predominant majority of our society) while, at the same time, remaining a religious and God-fearing nation. This dilemma was thrust to the fore once again, in all its elusive complexity, in the most recent Supreme Court decisions touching on the Establishment Clause of the First Amendment.²⁵

The Court declared a Nativity creche displayed in an Allegheny County courthouse in Pennsylvania to be unconstitutional and found the display of a Chanukah menorah only one block away to be constitutional. These disparate case by case rulings were explained in terms of context. The creche standing alone, without any moderating secular or pluralistic accompaniment, was deemed unconstitutional. The Menorah, set next to a Christmas tree and a city sign saluting liberty, was pronounced constitutional. A reading of the various court opinions, however, leads me to conclude that another factor weighed no less decisively, if not so blatantly.

Justice Blackmun who wrote the majority decision noted that, ". . . the menorah, one must recognize, is a religious symbol . . . But the menorah's message is not exclusively religious. The menorah is the primary visual symbol for a holiday that, like Christmas, has both religious and secular dimensions. The display of the menorah is not an endorsement of religious faith, but simply a recognition of cultural diversity. For purposes of the Establishment Clause, the city's overall display must be understood as conveying the city's secular recognition of different traditions for celebrating the winter holiday seasons."²⁶ It is a dim line, indeed, that separates constitutional trespass from constitutional sanction—a distinction that eluded those, on the one hand, who felt the creche to be consonant "with our history and precedents"²⁷ and those, like Justice Brennan on the other hand, who dissented in the menorah decision because it has "the effect of promoting a Christianized version of Judaism."²⁸ But it is precisely this indefiniteness which characterizes what has been called America's "public religion." In *Marsh v. Chambers*, Chief Justice Burger defined "public religion" probably as well as anyone else before him. When reviewing the long history of legislative prayer, he formulated what has become known as the "acknowledgement exception." He noted that to "invoke Divine guidance on a public body entrusted with making the laws . . . is simply a *tolerable acknowledgement* of beliefs widely held among the peoples of this country." Public religion, he concluded, is not an unconstitutional establishment but rather a recognition by the government that the majority of this country's

inhabitants adhere to certain religious beliefs. The state is simply fashioning shared enactments out of “particles of ritual” supplied by the people themselves.²⁹ And it is this “public religion” that has proven to be a remarkable sieve for it holds back specific Christian encroachment into our civil life even as it allows the entrenchment of the original Jewish doctrine of a Providential God who, in His goodness, bequeathed to men the gift of free will and the birthright of liberty. The *Abington School District v. Schempp* decision striking down school prayer avowed even more emphatically than the *Zorach* decision cited above that, “the Founding Fathers believed devotedly that there was a God, and that the unalienable rights of man were rooted in Him,” and that, the unconstitutionality of school prayer notwithstanding, “today, as in the beginning, our national life reflects a religious people.”³⁰

It is, parenthetically, noteworthy and surprising that Justice Blackmun, in building the argument for his decision, wrote, “*Perhaps* in the early days of the Republic, these words [the Establishment Clause] were understood to protect only the diversity within Christianity, but today they are recognized as guaranteeing religious diversity and equality to the infidel, the atheist, or the adherent of a non-Christian faith such as Islam or Judaism.”³¹ In point of fact, notwithstanding some aggressive and strident attempts to consider America as a Christian country, it was expressly understood from the very beginning that the Establishment Clause enclosed within its protective embrace not “only the diversity within Christianity” but the broadest compass of belief and practice. In a reference to his bill for establishing religious freedom passed by the Virginia General Assembly in 1786 and which was the immediate forerunner and model of the Establishment Clause in the Constitution, Thomas Jefferson noted that it was, “meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mohametan, the Hindu, and the infidel of every denomination.”³²

Less than a decade later, in 1797, the following provision was included in the treaty entered into between the United States and Tripoli, possibly the only official government statement on this matter: “As the government of the United States is not, in any sense, founded on the Christian religion, as it has in itself no character of enmity against . . . Musselman . . .”³³ One would, therefore, have expected more from Justice Blackmun than this doubtful speculation concerning the original intention of the Establishment Clause, especially when it is apparent that the language he uses is a clear echo of Jefferson’s.³⁴

In sum, American church-state separation, precisely in its inconsistencies, represents probably the most practical response that the expedient genius

of our nation could devise to cope with this inescapable dilemma. The fact remains that the religious test clause and the First Amendment have generally succeeded in frustrating explicit sectarian intrusions into our body politic while, at the same time, allowing Americans to maintain themselves as a religious people whose common denominator, it would be fair to say, is Mosaic monotheism and the Hebrew scriptures. This allows, as possibly never before, the actualization of חסידי אומות העולם as the Rambam defined it.

NOTES

1. See also, Ramban, *ad. loc.* It is parenthetically interesting that God first had to tell this truth to the Jews, כח מעשו הגיד לעמו (Ps. 111:6), for if the Jew is not convinced of God's proprietorship of the world, then he cannot expect the other nations to accept this fact of life which may be invidious to their own individual interests.
2. See *Esther Rabbah* VIII:5.
3. *J.T.A. Daily News Bulletin*, April 28, 1989.
4. H. Wish, *The American Historian* (New York, 1960), 3. [See also M. Walzer, *Exodus and Revolution* (New York, 1985).—ED.]
5. J. F. Jameson, *The History of Historical Writing in America* (New York, 1969), 16-17.
6. [For sources which cite the version of אלא מחכמיהם, see *Enziklopedia Talmudit* VI (1954), 290, n. 11. For a discussion of this textual issue, see J. Faur, *Iyyunim bi-Mishneh Torah le-ha-Rambam* (Jerusalem, 1978), 151, n. 43; N. Lamm and A. Kirschenbaum, "Freedom and Constraint in the Jewish Judicial Process," *Cardozo Law Review* I (1979), 116-19. See also Rav A. Kook, *Iggerot Re'iyah* I (Jerusalem, 1962), 99-100.—ED.]
7. H. Enelow, ed., *Mishnat Rabi Eliezer* (New York, 1933), 121.
[This text as the source for the Rambam was first suggested by Dr. B. Revel, first president of Yeshiva University, "le-Birur Da'at ha-Rambam be-Inyan Sekhar ve-Onesh," *Horev* II (1935), 112-15 and by M. Guttmann, "Maimonide sur l'universalite de la morale religieuse," *REJ* IC (1935), 39-41; *idem.*, "Zur Quellenkritik des Mischneh Thora," *MGWJ* LXXIX (1935), 152-53. The suggestion was accepted by J. Katz, *Exclusiveness and Tolerance* (New York, 1969), 175, n. 5 but was challenged by S. Schwarzschild, "Do Noachites Have to Believe in Revelation?" *JQR* LII (1962), 306.—ED.]
8. See N. Cousins, *In God We Trust* (New York, 1958), 102-03.
[Adams continued, "I cannot say that I love the Jews very much neither, nor the French, nor the English, nor the Romans, nor the Greeks. We must love all nations as well as we can, but it is very hard to love most of them." See Cousins, *ibid.*—ED.]
9. *Ibid.*
10. See L. J. Cappon, ed., *The Adams-Jefferson Letters* (Chapel Hill, 1959) II, 396-97.
11. *Ibid.*, 383. The italics are mine.
12. See, for example, H. Graetz, *History of the Jews* (Philadelphia, 1956) V, 338-46.
13. *Ibid.*, 340.
14. See N. L. Torrey, *Voltaire and the English Deists* (New Haven, 1930), 119-20.
[For more on Voltaire's attitude towards Jews and Judaism, see A. Hertzberg, *The French Enlightenment and the Jews* (New York, 1968).—ED.]
15. N. L. Torrey, *ibid.*, 150.
16. See Sir L. Stephen, *History of English Thought in the Eighteenth Century* (New York and Burlingame, 1962) I, 150.

Of course, there are many others of that time who were prominent figures in the intellectual ferment of the period who could fit into one of these categories. I choose Bolingbroke because he was specifically mentioned by Adams in his correspondence with Jefferson.

17. See N. Cousins, *op. cit.* (n. 8), 153.
18. *Ibid.*
19. See L. J. Cappon, *op. cit.* (n. 10), 468–69.
20. *Zorach v. Clauson*, 343 U.S. 306 (1952).
21. See *The New York Times Book Review*, May 30, 1965, 16.
22. See W. W. Sweet, *Religion in Colonial America* (New York, 1965), 334.
23. See C. A. and M. R. Beard, *The Rise of American Civilization* (New York, 1927) I, 449.
24. For a revealing analysis of the religious beliefs of the Founding Fathers, see N. Cousins, *op. cit.*
25. *County of Allegheny, et. al., Petitioners v. American Civil Liberties Union Greater Pittsburgh Chapter et. al.; Chabad, Petitioner v. American Civil Liberties Union, et. al.; City of Pittsburgh, Petitioner v. American Civil Liberties Union of Greater Pittsburgh Chapter, et. al.* 87–2050, 88–90, 88–96.
26. *Ibid.*, U.S. Lexis 3468, 67–77.
27. *Ibid.*, 132.
28. *Ibid.*, 116.

Justice Brennan's analysis is altogether noteworthy:

The government-sponsored display of the menorah along-side a Christmas tree also works a distortion of the Jewish religious calendar. As Justice Blackmun acknowledges, "the proximity of Christmas [may] account[t] for the social prominence of Chanukah in this country." Ante, at 9. It is the proximity of Christmas that undoubtedly accounts for the city's decision to participate [*117] in the celebration of Chanukah, rather than the far more significant Jewish holidays of Rosh Hashanah and Yom Kippur. Contrary to the impression that the city and Justices Blackmun and O'Connor seem to create, with their emphasis on "the winter-holiday season," December is not the holiday season for Judaism. Thus, the city's erection alongside the Christmas tree of the symbol of a relatively minor Jewish religious holiday, far from conveying "the city's secular recognition of different traditions for celebrating the winter-holiday season," ante, at 43 (Blackmun, J.), or "a message of pluralism and freedom of belief," ante, at 14 (O'Connor, J.), has the effect of promoting a Christianized version of Judaism. The holiday calendar they appear willing to accept revolves exclusively around a Christian holiday. And those religions that have no holiday at all during the period between Thanksgiving and New Year's Day will not benefit, even in a second-class manner, from the city's once-a-year tribute to "liberty" and "freedom of belief." This is not "pluralism" as I understand it.

29. 463 U.S. 783 (1983). See Y. Mirsky, "Civil Religion and the Establishment Clause," *The Yale Law Journal* 95 (1986), 123f. where he develops the concept of public religion in America and presents a very fine and concise summary of the relevant court decisions as well as offering his own personal and insightful interpretation of this not uncomplicated matter.
30. 374 U.S. 203. For an elaboration of this decision and other pertinent church-state rulings, see Mirsky, *ibid.*
31. *County of Allegheny, op. cit.* (n. 25), U. S. Lexis, 3468, 29. The italics are mine.
32. See A. P. Stokes and L. Pfeffer, *Church and State in the United States* (New York, 1964), 71.
33. *Ibid.*, 89.
34. Actually, as the background material accompanying the decision indicates, this particular language was taken from *Wallace v. Jaffree* (472 U.S. 38, 52 1985). But, as

we have shown, it can be traced all the way back to Jefferson through the court's earlier decisions. What is important, however, is that somehow this continuity was lost and therefore allowed Justice Blackmun to intimate what, in fact, was not so. As a result, the clause was robbed of the incalculable authority that was from the first vested in it, since, in fact, the more encompassing understanding was, indubitably, the original intention of its authors.
