

Community Sanctions, Jewishness and the *Chillul Ha-Shem* of Nursing Home Scandals*

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THE professional literature continues to expand on how to Judaize and how to maintain the Jewishness of Jewishly sponsored schools, community centers, social welfare agencies, hospitals, and nursing homes. Customarily the articles first go about justifying the intensification of ethnic and religious particularism in a secular society subject to homogenizing and desecularizing tendencies. Then the articles spell out the techniques to bring about deeper Jewish consciousness: Jewish nursing homes contain a spectrum of Jewish religious, cultural, and recreational activities, paintings, photographs, and symbols; holiday visitations by Jewish adults and children in organized groups; adoption by synagogue and home-for-the-aged organizations—all designed to invigorate Jewish identity and to strengthen the linkages and insights of clientele, staff, and community. Rather than lamely rehash this literature, I present today some random but related comments of a Jew with the special knowledge of the commissioner of a city health department preoccupied with the problems of quality and cost control of proprietary nursing homes.

Some elements of the current nursing home scandal in New York City owe their origin to the peculiarities of Jewish communal life in this city and the personal histories of Jewish nursing home owners and administrators, most of whom are immigrants and refugees. In order to maximize the Jewishness of Jewish nursing homes, we had better first review some indelicate social

realities that we ordinarily refrain from discussing outside the immediate family. Bear the following fact in mind: with but possibly a few exceptions, every proprietary nursing home in New York City is under Orthodox Jewish ownership and management. This is not true outside of New York City. Nevertheless in the country as a whole, Jews own and run proprietary nursing homes in numbers out of proportion to the percentage of Jews in the total American population. Like it or not, the nursing home problem is now a Jewish problem. Make no mistake. The current nursing home scandal is a reproach to the Jewish community.

Apologia

Oh I know all the ploys:

1. Like other ethnicities the Jews are certainly entitled to their own share of scoundrels.
2. Unlike other ethnicities the Jews have more than their share of humanitarians and Nobel laureates.
3. The motivation of some of the critics is suspect. If not avowedly anti-Semitic, the motivation is often political in its most pejorative sense. What is sought is a denunciatory headline ascribing all inadequacies of nursing home care to villains rather than to systems. Villains are always human beings, and human beings by definition have to belong to an ethnic group. Systems are not human beings and can never be Jewish.
4. Social attitudes toward the elderly, the chronically ill, and the non-productive ultimately determine what is allowable in nursing homes. Policies and programs are but the dependent variables of a society that transcends

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the Jewish community—of a society that lusts after youth, of a society that is tolerant only of short term illness, of a society that disdains non-productivity as non-cost-beneficial.

That these arguments are soothing balm and ointment—that these arguments are indeed self-serving propagandistic ploys—in no way detracts from their validity. But let us put aside all valid apologia and once more extract the lessons of recent events. I say “once more” because we Jews, with recurring historical monotony, first learn, and then forget and then painfully have to relearn certain fundamental truths about our destiny. In short, the standards of the rest of the world do not apply to Jews, nor should we expect otherwise.

“Like All The Nations”

The elders of Israel come to Samuel, the Prophet, at Ramah, and say to him, “Behold, you are old and your sons do not walk in your ways; now appoint for us a King to govern us like all the nations.”

Now the issue here is not exclusively one of disagreement between Samuel and the elders of Israel over the relative merits of governance by theocracy of a prophet vs. the proposed monarchy of a future king. On the surface the request is certainly not unreasonable. After all, Samuel’s own sons, Joel and Abijah “did not walk in his ways, but turned aside after gain; they took bribes and perverted justice.” Moreover, our ancestors were surrounded by a ring of hostile and marauding peoples. Effective military and civilian leadership was essential. When Samuel remonstrates with them, pointing out the predictable oppression that accompanies every monarchy, “—The people refused to listen to the voice of Samuel, and they said, ‘No! but we will have a king over us, that we may be like all the nations.’”

Twice, then, do we hear the refrain “like all the nations” — the plaintive yearning to slough off the burden of uniqueness.

All of Jewish history can be said to reflect this perpetual tension. There are those who argue for total immersion in the ethical and social norm of the majority. There are the contrary views of the sages who reject any loss of Jewish cultural nerve. Even a modern Zionism that deliberately has imposed geographic, cultural, and social normalization upon the Jewish people has not gone all the way to make us “like all the nations”—Tshernikovsky and the abortive Canaanite Movement in Israel notwithstanding.

It would appear that I have wandered far afield from the Jewishness of Jewish nursing homes into a *D'var Torah*. Not at all. I advert to this historic theme because we dare not dismiss the current shame of the Jewishly owned and Jewishly run nursing homes by invoking arguments that would be appropriate only if we were indeed “like all the nations”. Since Abraham left Ur of the Chaldees, our normative religious standards of behavior have been otherwise. Accordingly, we cannot afford the academic tolerance of objective sociologists and political theorists. We dare not hug to our breasts the excuses of philo-Semitic apologists. Least of all should we take seriously some of the self-serving comments of our self-selected spokesmen.

Better, instead, that we keep in mind the ironic couplet of a certain poet:

“How odd
Of God
To choose
The Jews”.

“Religious” Owners And Administrators

In the history of mankind there is nothing new about the creature who scrupulously abides by religious ritual

only to be sloppy about his ethics. Tartuffe has always been a figure of ridicule in literature. Foes of organized religion have customarily used this grotesque human type to discredit organized religion. But before we jettison organized religion, we had better acknowledge that no statistically valid epidemiological studies exist to suggest that observance of religious ritual is correlated with bad human behavior. Indeed the extant data indicate the contrary. Statistics show a lower incidence of violent crime among the religiously devout than among those who have left the synagogue and church. Moreover, what has fallen into intellectual disrepute is the theory of the noble savage unsullied in his bucolic environment until the coming of the white man with his tainting religions and polluting diseases. There has been a revisionism among cultural anthropologists. The noble savage has been deromanticized. We know too much now about the actual cruelties and horrors of the noble savage's society. The coming of Christianity and Islam may not always have been a totally benign historical incident in the lives of pagan societies. Nevertheless both faiths were generally a vast improvement over the terrible cultic rites and social structure that preceded them.

My first contact with a religiously affiliated hospital was my birth in St. Catherine's Hospital, Brooklyn. The nuns took down the crucifix in my mother's room so as not to offend my Yiddish speaking grandmother who wore a sheitel. In any event I have been professionally associated with too many religiously affiliated health and educational institutions of technical excellence, extraordinary devotion, and human compassion to attribute the poor quality of health services to religious piety, or the poor quality of nurs-

ing homes to Orthodox Judaism. What is wrong is not Orthodox Judaism. What is wrong is the *Chillul Ha-Shem* perpetrated by some of those who profess to practice Orthodox Judaism.

dor ha-midbar

It was in Beersheba where I was working as Acting Chief of Medicine in 1958 at the Hayim Yassky Memorial-Hadassah Hospital, that I first encountered a strange group of Jews, who as a matter of principle held government in contempt. For them the injunction *Dina D'Malchuta Dina* (The law of the land is the law) might as well never have been proclaimed. On the Rumanian-Hungarian-Russian border one either smuggled successfully or one starved to death. If one wished to emigrate, one routinely bribed the corruptible and corrupted border guards. Government — any government — was oppressive, inquisitive, acquisitive. Government — any government — represented organized theft, and was potentially murderous. It was a wonder that this attitude of the "generation of the wilderness", as they were called, did not poison the entire Israeli body politic. Moses had 40 years of attrition in the Sinai wilderness to get rid of the generation with the enervating slave mentality. Israel does not, and America does not. As a Jewish sage once said: "It is easier to remove the Jew from the Diaspora, than the Diaspora from the Jew".

Let me share the following vignette with you: The protagonist in each case is a member of the *Dor Ha-Midbar* — "The generation of the wilderness".

1. My wife, Talah, customarily locked the door of our stone hut in the hospital compound in Beersheba when she went shopping. Evidently this locking of the door was unusual. Her behavior became a subject of discussion among the hospital employees, many of

whom were Rumanian. There was speculation about why she locked the door.

One of the men approached her one day and said: "I know *G'veret* Bellin that we Rumanians have a reputation of being *lakchanim* ("takers" or pilferers). But we understand that you are from a Rumanian family yourself. You really needn't lock your door from now on. We Rumanians never take from our own."

2. In 1972 I resigned my post as First Deputy Commissioner of the New York City Health Department to join the faculty of the Columbia University School of Public Health as Professor of Public Health.

In 1973 I presented a talk on quality control of publicly funded health care services to a group of nursing home administrators.

One nursing home administrator approached me after the lecture and said:

"You know, Dr. Bellin, now that you're no longer a public official with the New York City Health Department, I feel free to make a confession to you. The accusations you used to make about the nursing home industry were absolutely correct. But, Dr. Bellin, in our industry there are two kinds of stealing.

"Two kinds?" I asked.

"Yes, there is *clean* stealing and *dirty* stealing. I can say with pride that I've done only clean stealing. I never do dirty stealing."

"What's the difference between clean stealing and dirty stealing?" I asked.

He replied: "Clean stealing is when you steal only from the government. For example, when you bill the government for 500 thiorazine pills, but, in fact, you order only 100 and you split the difference with the druggist. Here you steal from the government and not from the patient."

"And dirty stealing?" I asked.

"Dirty stealing," he replied, "is when you steal from the patient—like when you don't give the patient all the food coming to him, or when you don't change the sheets, or when you don't give him nursing care. I never do dirty stealing."

According to this ethical calculus it is acceptable to steal from that abstract impersonal thing called government. It is another thing entirely to steal directly from the patient.

Query: How long before *clean* stealing merges imperceptibly into *dirty* stealing? Or in a world of finite resources, is clean stealing in fact nothing more than a subset of dirty stealing?

Coordinating The Jewish Community

In our age, allegedly so bereft of traditional faith, paradoxically there persists a durable belief in belief. The public trappings of personal religious commitment continue to provoke a sense of awe in the skeptic as well as in the faithful. Where familiarity conceivably might breed contempt, unfamiliarity breeds reverence. Accordingly the *yarmulke*, *peyot*, and *kapote* impress the Christian no less than the priest's collar and the nun's wimple impress the Jew. That religious costume can also intimidate is illustrated by the recent case where a priest-attorney was ordered by the judge to divest himself of his Roman collar before returning to court in behalf of his client. Obviously the question looms even larger in the Jewish community where the concept of worker-clergy is not so alien. Many *musmachim*, i.e., the rabbinically ordained, are physicians, lawyers, accountants, educators, governmental employee, etc., with no intention of working as full time professional clergymen. Rather than a guarantee of religious vocation, then, the *smicha*, the certificate of rabbinical ordination, is but the

formal recognition of a certain degree of mastery of Jewish religious law. Although ordained as teachers and preachers in Israel, more and more *musmachim* do not practice as such, except occasionally. This being the case, it is prudent for officials in government and functionaries in the Jewish community to treat them as laity, albeit learned laity. The external vestments of Jewish piety among the staffs of publicly funded health, educational, or welfare programs should cause no relaxation of administrative controls over expenditure of public funds in these health, educational, or welfare programs. Regrettably it is unwise here to depend exclusively on the conscientiousness of government officials. More so it is foolhardy to depend on such conscientiousness to preserve and protect the good name of the Jewish community.

Where do we go from here?

Secular authorities—some of whom happen to be Gentile, many more of whom happen to be Jewish (given the demographic realities of New York City)—are now moving in to try to constrain the weirdest abuses in the nursing home field. Whatever will be the ultimate impact of their efforts, the Jewish community, *qua* Jewish community, has been put on notice by the events of the past six months. Good religion, good humanitarianism, and good politics all demand that the Jewish community address certain realities.

It is time to organize the New York City Jewish community into a more coordinated structure. We lack a *Kehilla*, which means we lack disciplined community under unitary governance. Instead we are affiliated with a rampant and antic entrepreneurism that proclaims itself as unity in diversity. In such a system operative accountability to the entire community is hard to implement.

Yes, it is hard to implement, but it is not impossible.

Although the Jewish community of New York City is not monolithic, it is not yet anarchic. Surely factionalism is not new to our history. We have successfully dealt with factionalism in the past when adversity threatened our survival. The European *Kehilla* and the Palestinian *Yishuv* are two models that deserve study. Unless the Jewish community works out a practical method to control the excesses of its own outlaws we abdicate all control to the secular authorities. Surely a beginning can be made. There is still the *Beth Din* to whose rulings the Orthodox can be subject. As the Moreland Commission and the State Legislature prepares its legislation, is there not an analogous task of the Jewish community to develop its own strategy of internal governance? A community that can award honorifics, and position and status can also withdraw these. A *Va-ad Ha-Kashrut* that can award a *Heksher* to a nursing home can withdraw the *Heksher* for good cause.

Is the Jewish community in America permanently destined to be a toothless, clawless tiger that periodically must scamper sniveling to the secular state for assistance? In our anxiety lest we become an oppressive Jewish theocracy, have we opted instead for community impotence? We can and we must develop a political structure that has the potential of imposing community sanctions when the member does scandalous violence to community morality.

Government must cooperate as well. At the very least every publicly supported health, education and welfare enterprise within any ethnic community should be subject to routine review and comment by a responsible organized body within that ethnic community. Such review and comment need be no community assault upon the religious

or civil liberties of any citizen. Government would always be free to support any program if in its opinion the community's objections to the specific program are irrelevant. In the Jewish community, the Jewish Federation can make reasonable distinctions between excellence and charlatanism. Before government awards a contract or grant to a hospital, nursing home, school, or other social agency, it would be simple prudence for government to check with the Jewish Federation which maintains or could maintain a continuous audit on quality of agency performance.

We can and must develop means to hold nursing home owners and ad-

ministrators accountable to the Jewish community whose approval and support they covet. The task will be difficult. The political opposition will be formidable.

Let us not wait for other scandals because I promise you that other scandals in health, education, and welfare projects are on the way. Wherever there is public funding of services in the absence of adequate controls there are bound to be scandals.

My theme is simple. We shan't re-Judaize our Jewish nursing homes until we re-Judaize the nursing home owners and administrators.