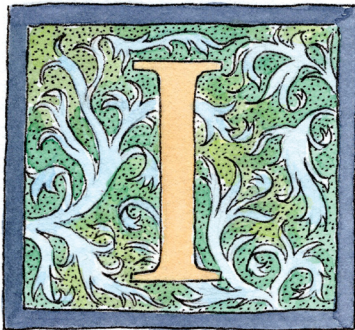


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New York's New Untouchables



HAVE WHAT my family considers to be an irrational affection for New York. While I was at Columbia Law School, a professor asked us to introduce ourselves and explain why we had chosen Columbia. My answer was that it is the best law school in the country near a New York City subway stop. My kids recently got me to spring for tickets to an overpriced new tourist-trap observation space by arguing that it had unparalleled views of Manhattan.

All of which is to say that where others see flaws and imperfections, I see character and spirit.

So I never let the epithets and indignities that identifiably Orthodox Jews inevitably encounter here get me down. Those were the random acts of a lunatic fringe, not a representative sample of New York. Antisemitism surely existed, but not in any institutional way.

The past several years have forced me to reexamine that attitude. The change is not because of inanities uttered by graduation speakers. It's not even because of an increase in physical violence committed against Orthodox and other Jews, deplorable and dangerous as those are.

What concerns me most are the multiple government actions that undermine religious life and institutions. Even scarier, each discriminatory rule was accompanied by a politician who publicly congratulated himself for having the courage to stand up to the Orthodox Jewish community.

The soft bigotry of low expectations is apparently too good for the Orthodox. What we get is the harsh bigotry of double standards.

The challenges to religious life here began a decade or so ago, when New York City cited a concern about neonatal herpes to require signed consent forms prior to certain forms of circumcision. This was the first regulation of circumcision ever adopted in the United States. That became a point of pride for Mayor Bloomberg, who claimed “that nobody else would take that on” because “who wants to have 10,000 guys in black hats outside your office, screaming?”

In October 2020, just as the harshest pandemic restrictions were being eased, Governor Cuomo created gerrymandered districts covering Orthodox Jewish neighborhoods where houses of worship were subject to severe limitations on attendance. Churches in those zones were also affected, but the governor openly declared that his target was “these ultra-Orthodox communities, who are also very politically powerful.”

Only Orthodox Jews are targeted for harsh treatment and simultaneously described as (too) politically powerful. The message is that they deserve what they get.

Most recently, New York and its most powerful media institution have unleashed dangerous rules and rhetoric aimed at religious schooling. Yeshivas have been educating students in New York for

more than 120 years, and the laws governing private schools have been on the books even longer. That history signifies deep satisfaction with the yeshiva system, but it is dismissed because, as the *New York Times* wrote, those “who might have taken action have instead accommodated a Hasidic voting bloc.”

The *Times* had a unique take on this onslaught, running a news article with a sub-headline claiming, “Elected officials rarely embrace positions that could antagonize Hasidic leaders.”

The Orthodox community may not have the political power attributed to it, but it does have lawyers. All three sets of rules targeting Orthodox Jewish life were challenged. We prevailed each time. Given my role in these litigations, I’d love to chalk the victories up to brilliant lawyering. What surely helped was that in each case, New York applied a double standard to religious activity.

The federal court assessing the circumcision regulation noted that it “purposefully singles out religious conduct performed by a subset of Orthodox Jews” and “pertains to religious conduct with a small percentage of HSV infection cases... while leaving secular conduct associated with a larger percentage of such infections unaddressed.”

The rules imposing limitations on synagogues were enjoined by the U.S. Supreme Court, which observed that “they single out houses of worship for especially harsh treatment” and that “statements made in connection with the challenged rules can be viewed as targeting the ultra-Orthodox Jewish community.”

New York State’s attempts to regulate yeshivas have fared no better in court. And no one can miss the irony of a government that focuses so intently on yeshivas enrolling a few thousand students whose parents choose religious education while it ignores the systemic failure of New York’s public schools entrusted with over a million children.

Despite my role in these litigation victories, my primary reflection is one of sadness. The Orthodox Jewish community cannot litigate

its way to acceptance and safety. Sure, courts can wipe discriminatory rules off the books. But the mindset that created and promoted them remains, and the climate of hostility that they foster spreads rather than dissipates.

A judge can't undo the harm created when Orthodox Jews were made out to be perpetrators rather than victims of the pandemic virus. A court can't enjoin an attitude that caricatures Orthodox Jews as rule-breakers who don't care about their children. The judicial system can't police the systemic effort to dismiss policies preferred by the Orthodox community as nothing more than the product of a political voting bloc.

The cumulative effect is to turn Orthodox Jews into New York's untouchables. We are being made into a people tainted by birth and belief, not entitled to the full privileges of citizenship.

Let me be clear: I don't believe that New York's mayors and governors are antisemites. But the New York we inhabit at the moment reflects the convergence of the nanny state and the secular state. There is little deference to individual or parental autonomy, and even less respect for religious activity. The result is government limitations on circumcision, prayer, and religious education.

Whatever was in the hearts of the political leaders who crafted these policies, there is no doubt that they unleashed ugly sentiments about Jews that resided in the hearts of others.

The IHRA definition of antisemitism wasn't something I bothered to look at until this week. It includes "a certain perception of Jews" that may involve "rhetorical and physical manifestations... directed toward Jewish... community institutions and religious facilities."

The shoe is ugly, but it fits.

My two daughters do interesting and important work in the public sector. They are smart and talented and, as they ought to be at their age, idealistic and hopeful. Two recent experiences are worth sharing.

My younger daughter texted me one afternoon to ask how she should respond to a colleague — an educated and pleasant man — who asked whether it is true that all Jews are smart and rich, and that Jews control the government. My older daughter recently shared details of a planned trip to Israel with a colleague, who responded, “Enjoy your visit to the homeland.”

These are the words and thoughts of just two people. Both would surely chafe at the suggestion that they harbor any antisemitism.

I can’t draw a straight line between policies marginalizing Orthodox Jewish life and these comments. Yet one surely created the climate that welcomes the other.

My oldest son lives in Jerusalem with his family. These days, I can’t help but wonder which of us is 6,000 miles from home. *