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Law, Literature, and History

A Fateful Rendezvous with the Shoah

By

Richard H. Weisberg



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For Cheryl



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Preface: Sources and Methods

I begin with the question asked by one of my guides along the path to understanding this difficult subject: “Who am I to say so?” James Carroll, whose *Constantine’s Sword*¹ lies side by side on my desk with several other masterpieces of religious frankness, wondered aloud about his own “credentials” in challenging from the inside the behavior of his beloved Catholic Church. His entire book, and perhaps especially its first half-dozen chapters, adopt a highly personal auto-biographical tone that I will endeavor to replicate at the beginning of my own work. Carroll, deeply upset by the construction of a Carmelite crucifix at Auschwitz in the mid-1980’s, thought first about how his traditionally Catholic upbringing left him ignorant and unprepared to think about Jewish people in an informed way:

As is obvious by now, I had been raised with an anachronistic idea of Judaism: the Scribes and Pharisees, worship at the Temple, the stereotype of the vengeful Old Testament God. Catholics like me knew nothing of the living tradition of Jewish thought and observance, ignorance that reflected the Christian assertion that after Jesus, Israel had been superseded by the “new Israel,” the Church.

SWORD, 47

Then, still in autobiographical mode, Carroll identifies a single moment that provoked his inquiry, here occasioned by the sight of a *crucifix at Auschwitz*:

The small crosses were taken away by Polish officials, but the large cross remains at Auschwitz to this day. What does the cross of Jesus Christ mean at such a place? What does it mean to Jews? What does it mean to Christians? Or to Polish Catholics? Or to those for whom religious symbols are empty? What does the cross there signal about our understanding of the past? And what of the future? If Auschwitz has become a sacred center of Jewish identity, what does the cross there imply about the relations between Judaism and Christianity? These questions were on my mind one November morning as I stood alone before that cross I could imagine the eyes of a Jewish protester as he detected in prayers offered before the cross at Auschwitz echoes of the old refrain “Jews out!” – only now it was Jewish anguish that was expected to yield before Christian

1 *Constantine’s Sword, The Church And The Jews* (Boston: Houghton Mifflin, 2002).

hope? If Auschwitz must stand for Jews as the abyss in which meaning itself died, what happens when Auschwitz becomes the sanctuary of someone else's recovered piety?...Perhaps the voice a troubled Christian most needs to hear is that of the Jew who says the Holocaust must be made to teach nothing. *SWORD*, 5–6

But that the Holocaust requires us, personally as well as institutionally, to understand how such events were prepared for by other events is an absolute moral legacy. The question posed itself not to me but to history: How did the cross of Jesus Christ become the cross at Auschwitz?

JAMES CARROLL, *Constantine's Sword*, p. 54

Carroll's entire book suggests that, at least for him, the Holocaust is a source of teaching. And my work, in his footsteps, furthers that teaching. My "crucifix-at-Auschwitz" moment came, less shockingly for me perhaps than for Carroll, when I blanched each time I read the over-used adjective "Judeo-Christian." For others, too, the hyphenated adjective smarts. As Arthur Cohen put it some years ago:

How can it be that Christianity, regarding itself the successor and completion of Judaism, should have elected to take into itself the body and substance of that Jewish teaching which it believed to be defective, which it regarded itself as having in measure rejected ... How can it be that Judaism, the precedent in principle and progenitor in history of Christianity, should have remained not only independent of but unassimilated by the doctrinal vision and historical pressure of Christianity? ... Where Jews and Christians divide, irreparably, is that for Jews the Messiah is yet to come and for Christians he has already come. That is irreparable.²

With each successive repetition of "Judeo-Christian," unable to shake off my increasing crucifix-at-Auschwitz-type revulsion, I realized the necessity for this book-length refutation of that seductive but oxymoronic phrase. I also sensed that my intensive practice of the field of "Law and Literature" replicated in a different set of disciplines James Carroll's integration of his own practice in the priesthood. As this book pervasively integrates "Law and Literature" scholarship into discussions of the Holocaust, so I will rely on such pioneering

² See Arthur A. Cohen, *post*, Introduction, n. 14; see also <https://www.commentary.org/articles/arthur-cohen/the-myth-of-the-judeo-christian-tradition/>.

scholars as Frank Kermode,³ on the under-appreciated prophetic Protestant scholar Franklin Littell,⁴ on Bart D. Ehrman,⁵ on the irrepressible Shakespearian Harold Bloom (whom I met in his apartment in Greenwich Village late in his life and who encouraged me, in signing the book I think he will someday be best known for, to proceed with this book project),⁶ and on David I. Kertzer.⁷ Each in his way has argued that the progression in early Christian thought from a total rejection of the older religion to a felt need to retain it and to map the “Old Testament” onto the New wreaked havoc with theology, history, and common sense. This retention of the “Old” while proclaiming something “New” was hardly necessary given the vast divide between the new faith system and so much of what came to be (often virulently) detested in the “Old.” Once the decision was made to link them, though, a grammatical way of accommodating the strategy came to be embodied by the adjective “*Judeo-Christian*.” *This must be reformed.*

But the progenitor of us all in taking the axe to the hyphen in “Judeo-Christian” is Friedrich Nietzsche, the brilliantly straightforward German Lutheran who wrote a century before the Holocaust of Jewish-Christian differences, always favoring the People of the Book to Protestant and Catholic authorities and contemporaries. Warped into being an anti-Semite by distorted readers of his magnificently philosemitic aphorisms, Nietzsche sharply distinguished between the heroic Old Testament, which he adored, and the “New,” which lacked everything vital (including the truth!) that was to be found in the Jewish Bible. He prophesied a catastrophe for Europe, calling out in many works the duplicity and the *ressentiment* of early Christian story-tellers and exegetes, especially in *The Genealogy Of Morals*, *Dawn Of Day*, and *Beyond Good and Evil*.⁸ This philologist, philosopher, and aphorist was sickened by the deliberate and (in his view) absurd misreadings of the Jewish sacred texts to fit the program of Christianity at its origins and as it progressed into full power over

3 Kermode, *Pieces Of My Mind: Essays And Criticism*, 1958–2002 (N.Y.: Farrar, Straus & Giroux, 2003). For more on Kermode, see here Chapter Two (A).

4 *The Crucifixion Of The Jews: The Failure Of Christians To Understand The Jewish Experience* (N.Y.: Harper & Row, 2001). See especially Chapter Two (B).

5 *Misquoting Jesus: The Story Behind Who Changed The Bible And Why* (N.Y.: Harper Collins, 2005).

6 *Jesus And Yahweh* (London: Penguin, 2005).

7 *The Popes Against The Jews: The Vatican's Role In The Rise Of Modern Anti-Semitism* (N.Y.: Knopf, 2001).

8 *The Genealogy Of Morals*, Trans. Francis Golffing (N.Y.: Doubleday, 1956). *Beyond Good And Evil*, Trans. Marianne Cowan (Chicago: Regnery, 1966). *Dawn Of Day*. See in the same exact vein, Harold Bloom, *Jesus And Yahweh*, *op. cit.*, Preface, n. 6.

the continent of Europe and its minions. The spread of Christianity, for thinkers like Nietzsche, was predicated in large part on a *textual lie*:

However much the Jewish scholars protested, everywhere in the Old Testament there were supposed to be references to Christ and only to Christ and particularly his cross. Wherever any piece of wood, a switch, a ladder, a twig, a tree, a willow, or a staff is mentioned, this was supposed to indicate a prophecy of the wood of the cross; even the erection of the one-horned beast and the brazen serpent, even Moses spreading his arms in prayer, even the stick on which the Passover lamb was roasted – all are allusions to the cross and as it were preludes to it! *Has anyone who asserted this ever believed it?* But they were conducting a war and paid more heed to their opponents than to the need to stay honest.

NIETZSCHE, *The Dawn of Day*, aphorism 84, emphasis added

The select few who write about this set of hermeneutic distortions may seem (as we shall see Harold Bloom pointing out in *Jesus And Yahweh*) to be fighting a losing battle. Has not Christianity won the day, parrying every such attack, and matching interpretive victories with martial conquests, all in support of what Bloom calls the “resentful child” of the “vast and magnificent Tanakh”⁹? One of those stratagems, indeed, is the very phrase “Judeo-Christian,” which hides millennia of cruelties inflicted by the latter, quite selectively and as a specific object of resentful malice, upon the former, who generally wish only to be left alone with their own traditions as they understand them – not as imposed by degrading interpretations. I join to Bloom’s strangely overlooked efforts here some exemplary literary works that inform my approach to the historical and political issues in this book.

Far from a passive observer of the courtroom and its often legal-religious dimension, I am also an occasional litigator, and I have participated actively in several US federal cases on behalf of Holocaust survivors or their heirs against various European institutions for genocidal wartime misconduct. These experiences have brought me together with people on all sides; one of the most successful cases, involving stolen Jewish bank accounts during the dark French period known as “Vichy,”¹⁰ set in motion a still ongoing

9 Bloom, *Jesus And Yahweh*, *op. cit.*, Preface, n. 6, p. 33, using the Hebrew short-form “Tanakh,” for the entirety of the Jewish Bible.

10 Bodner vs Banque Paribas, EDNY (2000), per Judge Sterling Johnson. This decision in favor of Holocaust victims led to settlements by 26 banks who had ripped them off under color of Vichy law.

restitution mechanism¹¹ in which to the present day I have been privileged to play a central role.¹² (The latest meetings in Paris were in June 2024.) With the cooperation of the French and American governments, and many individual actors of good will, the French agency known as CIVS¹³ has restituted hundreds of millions of Euros to victims of the wartime Vichy regime's antisemitic laws. Relatedly, through a program I innovated at the Benjamin N. Cardozo Law School in New York,¹⁴ I teach and write about the striving for a rule of law that might answer people's hopes for "Never again!" after they learned of the horrors of the Holocaust.

I have also helped bring performance and drama to Law and Literature by staging scenes from such works as *The Merchant of Venice* and then leading a debate among lawyers, judges, and story-tellers about the legal approach of Venice to the beleaguered Jew who tries to enforce his contractual rights against the Merchant, Antonio.¹⁵ The many "moot courts" based on stories such as Melville's *Billy Budd* have also brought to a wider audience the dilemmas that Christian law *creates*, paradoxically perhaps, as it steps forth self-importantly to *resolve* conflicts within a fictional setting.

Just as the intensely personal approach of James Carroll identified as the generative moment for his shock at seeing a crucifix at Auschwitz, so everything in my life as scholar and secular Jew has led me to shock and distress at the use of the adjective "Judeo-Christian." I have been privileged to lead a full postwar life in the academies, the courthouses, and the administrative agencies in the United States and abroad. Non-traditional in my practice of Jewish rituals, I have had the immeasurable good fortune throughout my life to study Jewish sacred texts with Orthodox rabbis and scholars. One of these, Rabbi Simon Langer, prepared me for my Bar Mitzvah in New York some years after he had prepared the grandson of Alfred Dreyfus in Marseille just after Hitler had occupied Paris. In 2008, I met Charles Dreyfus, and the coincidence emerged of our two secular lives so affected by the same Orthodox influence. Thanks to Rabbi Langer and other teachers – including my beloved

11 On "The Washington Accords of January, 2001," which resolved the victims' case against Banks during Vichy, see Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, And The Unfinished Business Of World War II* (N.Y.: Perseus Books, 2003), pp. 336–7.

12 <https://www.civs.gouv.fr/images/pdf/Programme20ans.pdf> Remarks of Prof. Richard Weisberg, 11/19/2019. For my work beginning in 1995 as a litigator and then progressing to a quasi-diplomatic role, the French government awarded me the Legion d'Honneur in 2008.

13 Commission pour l'Indemnification des Victimes de la Shoah.

14 Cardozo Law Institute in Holocaust and Human Rights (C.L.I.H.H.R.), founded 2003.

15 *New Yorker*, "The Talk of the Town," Dec. 22 and 29, 2008.

older brother of blessed memory, Rabbi David B. Weisberg – I am reasonably conversant with the Biblical texts in their original Hebrew. I have written about the “Old” and “New” testaments in three prior books and in many articles.¹⁶ My most recent book, *In Praise Of Intransigence*,¹⁷ set me to thinking out loud about the ways religious upbringing affects otherwise secular lives. I argued there, and have developed my argument in view of the many responses to the book, that there is a fundamental difference between Christian and Jewish ways of seeing the world, that this difference comes to the surface cyclically, as it did during the Holocaust, and that, finally, it constitutes so fundamental a divide as to be unbridgeable. All of my professional work sustains me in that very non-ecumenical claim, which I hope to prove in the pages that follow.

Still, answers to the “Who am I to say so?” (again, James Carroll) question lie more in experience than in disciplined training. I ask the reader’s indulgence as I intersperse into what follows more than one glimpse at what has shaped me individually. For, as the theologian Donald Dietrich has said in commenting on Carroll’s idiosyncratic approach: “Carroll’s historical analysis can be characterized as very personal, since his own life has become the lens through which he ‘reads’ the facts. But such an approach is not bad Carroll has concluded that the Catholic Church itself has used an ahistorical theology to function in a world of contingent events and so has frequently hurt people. A personalized approach to history may help provide the remedy to some of the evils that have been perpetrated.”¹⁸

The cruelties imposed on Jews through the thousands of years since Saint Paul and others “proved” that Jewish sacred texts somehow predicted and justified the new faith’s belief-system and values have often been announced by some of the wisest and most daring of Christian “insiders.”

Some born to the Christian faith have gone further even than James Carroll in their critique of the vast religion. Some have proclaimed the death itself of Christianity. When Friedrich Nietzsche, the son of a Lutheran minister, proclaimed the death of God, he had in mind a *specifically Christian trinity* and all it had wrought in Europe over an agonizing 1900 year span. My thoughts here develop theirs into a post-Holocaust Jewish perspective, that of a “Law and Literature” scholar and activist whose own claims to “the truth” derive from his work in the fields of this amazing inter-discipline as it inter-relates, fatefully, with history.¹⁹

16 Vichy, *op. cit.*, Introduction, n. 16. *Failure Of The Word*, *op. cit.*, Introduction, n. 4.

17 *In Praise Of Intransigence: The Perils Of Flexibility* (N.Y.: O.U.P., 2014).

18 “Antisemitism and the Institutional Catholic Church,” *Holocaust And Genocide Studies* (publication of U.S. Holocaust Memorial Museum), v 16:3, pp. 415–26.

19 See text at note 1 to this book’s Introduction.

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