Religious Certainty and Religious Liberty

Shabbat Vayeira 5781

November 6, 2020 Rabbi Barry H. Block

This week, the Supreme Court heard a case filed by Catholic Social Services against the City of Philadelphia. The city has barred Catholic Social Services from participating in its foster care program, because it discriminates against some married couples who seek to be foster parents. I refer, of course, to same-sex couples.

Justice Amy Coney Barrett asked a pointed question: Could the city refuse to partner with an agency that would not work with other married couples, for example, on religious grounds that oppose interracial marriage. A U.S. Justice Department attorney answered "that 'there's a particularly compelling interest in eradicating racial discrimination.' Justice Elena Kagan pressed [the same attorney] to say whether the eradication of discrimination on the basis of sexual orientation was also a compelling state interest. [Speaking on behalf of the current Administration,] He said[: …] 'we haven't taken a position on that question.'"[i]

Justice Kagan worded her question carefully. The Federal Religious Freedom Restoration Act, which our Reform Jewish Movement worked hard to adopt, protects the free exercise of religion unless a "compelling state interest" overrides religious liberty.

I'm reminded of a conversation with a colleague a few years ago, after I had written in support of religious liberty. He urged me to change the term "liberty" to "freedom." The two are synonyms in my dictionary, but my friend argued that "religious liberty" has come to mean the right to discriminate on the basis of one's religious convictions. I responded that I refuse to cede a cherished American value—or even terminology, like "religious liberty"—to those who would abuse it to harm others.

To be fair, though, Reform Jews do not struggle between religious certainty, on the one hand, and discrimination, on the other. Catholic doctrine would seem to be clear: Two people of the same gender may not be married. Why? Because that's God's will, in the teaching of the Church. Reform Jews, by contrast, do not claim to be as convinced that God takes so many positions. We are guided by Torah, but usually more broadly. We are comfortable making decisions on the basis of general principles: "Love your neighbor as yourself," the conviction that we are all created equally in God's image, "Remember the stranger for you were strangers in the Land of Egypt," and "Justice, justice shall you pursue."

Rabbi David Segal, examining this week's Torah portion, reminds us of a time when ancient Israelites struggled over religious certainty.[ii] After all, this portion includes the binding of Isaac. Rabbi Segal writes: "The *Akeidah* [or binding of Isaac] is the tale *par excellence* of a faith-possessed zealot embracing barbarism under the banner of piety. What kind of free exercise of religion are we defending if the *Akeidah* is our paradigm?"[iii] If we were as certain of what God wants as Abraham seems to be, when he "gets up early in the morning" to head off and fulfill Divine instruction to sacrifice his son, we, too, might exercise religious freedom in ways that harm others.

Abraham is rewarded in Torah, because he so "fears God" that he is willing to sacrifice his son.[iv] And yet, Rabbi Segal argues, even in this same portion, "fearing God" comes to mean something entirely different. Abraham and Sarah go to the Negev, where Abraham passes off his wife as his sister. You see, our patriarch is afraid that Abimelech, the king there, will kill him in order to have Sarah as his wife. Abimelech quickly learns the truth, and he's appalled that Abraham thinks him so brutal that he would murder a man to take his wife. "Abraham replied, 'I thought, "There is no fear of God at all in this place, and they will kill me for my wife."'"[v] But Abimelech does fear God. In this case, religious conviction does not mean sacrificing one's son at Divine command, but rather acting piously and doing the right thing.[vi] Abimelech sends Abraham and Sarah away without harming either of them—showering them with gifts instead.

Abraham's own religious conviction takes him even further in another story, also in this portion. God proposes to destroy Sodom and Gomorrah, but decides to share the plan with Abraham first. Instead of going along blindly with God's destructive plan, as he does when commanded to sacrifice his son, Abraham argues with God for mercy.[vii] As Rabbi Segal summarizes, "A major thrust of Jewish tradition amplifies the humane ethical version of [fearing God], in contrast to Abraham's fanatical devotion [in the binding of Isaac].[viii]

In short, even our Jewish tradition, in microcosm in this week's Torah portion, includes examples of religious certainty that would bring harm to the vulnerable—in this case, Isaac. It also includes a definition of religion that is merciful and flexible.

We do have an interesting example in the United States of how even religious people who are certain in their convictions can reach a compromise that forbids discrimination in most instances. In June, the Supreme Court ruled that a person could not lose their job or be demoted on the basis of their sexual orientation or gender identity. Even though the ruling did not address religious

employers or a wide variety of other kinds of discrimination that people face on those bases, it was a tremendous step.

Five years earlier, though, months before the Supreme Court made same-sex marriage the law of the land, perhaps the most religious state in the Union adopted a law that goes somewhat further. No, not Arkansas, where until June an employer could legally fire a person solely because they are gay or transgender. I'm talking about Utah. With the full support of the Church of Jesus Christ of Latter-Day Saints, the Utah Legislature adopted a bill called the "Utah compromise," which "aims to protect people in the LGBT community from employment and housing decisions based on their gender identity or sexual orientation, while still shielding religious institutions that stand against homosexuality."[ix]

Religious liberty is a cornerstone of all that permitted Jews to thrive in the United States. We may wish that more people were like us—less certain of God's specific demands—but we cannot, and really should not want to control other people's religious faith. What we can demand is that religious certainty must not be an excuse for discrimination. Then, let us all answer Justice Kagan's question: The United States of America has a compelling state interest to combat discrimination on the basis of sexual orientation and gender identity.

Amen.

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[i] Adam Liptak, "Supreme Court Weighs Legacy of Same-Sex Marriage Case," The New York *Times*, November 4, 2020.
[ii] Rabi David Segal, "The Abraham Bind: The *Akeidah* and Religious Freedom," unpublished manuscript for *The Social Justice Torah Commentary*, forthcoming from CCAR Press, 2021.
[iii] Ibid.
[iv] Genesis 22:21.
[v] Genesis 20:12.
[vi] Segal.
[vii] Genesis 18:20-33.
[viii] Segal.
[ix] Lindsey Bever, "Utah—yes, Utah—passes landmark LGBT rights bill," The Washington *Post*, March 12, 2015.