Alan Dershowitz's *Chutzpah*: The Making of a "Race Man"

Jim Sleeper

Early in a chapter of *Chutzpah* (Little, Brown $22.95), Alan Dershowitz details with fine vengeance the use of "character" criteria as a pretext to exclude Jews from elite colleges and law firms:

> Leaders of the bar, including future Chief Justices Harlan Stone and William Howard Taft, made no bones about their dislike of Jewish and other immigrant lawyers....Paul Cravath, founder of one of the great law firms in America—himself a lawyer with highly questionable legal ethics—berated lawyers with 'too much imagination, too much wit, too great cleverness, too facile fluency'—qualities of which 'the best clients are apt to be afraid.'

What Dershowitz calls "the attempt to equate Jewish 'racial' traits with unethical behavior" has indeed burdened countless American Jews. He vividly describes his own victimization in 1966 as a top-ranking Yale Law School student looking for summer employment. But such barriers soon crumbled; today the presidents of Harvard, Dartmouth, and Princeton are Jewish, at least by ancestry. Yet to Dershowitz, anti-Jewish exclusions still loom large; his encounters with them seem to have assumed primal dimensions in his life, driving him to adopt and sustain a defiantly pro-Jewish stance that has, in turn, exposed him to every recess and abscess of anti-Semitism in American society.

That exposure has addled Dershowitz to the extent that he fails to distinguish molehills from mountains. Acknowledging frankly what he calls "my 'Holocaust mentality,' my constant state of preparedness for potential persecution," he portrays every affront to Jewish sensibilities as a prod moving all of society down a huge slippery slope toward Auschwitz. He brandishes indiscriminately the atavistic preferences of little old ladies in Winetka, rantings of certifiable kooks, epithets tossed off in the bumpings and grindings of ethnic conflict, and rumblings of anti-Semitism that are truly sinister. All these manifestations of anti-Jewish feeling form the backdrop for a didactic autobiography, a kind of *Pilgrim's Progress* in which Dershowitz plays Christian, wandering through a landscape flickering with old, familiar demons.

We careen from vignettes of Dershowitz as a contentedly insular Jewish child in Brooklyn to his first encounters with the dragons of anti-Semitism in the world beyond: "My journey across the Brooklyn Bridge after college was not nearly as long as my great-grandfather's transatlantic voyage from Galicia to the lower East Side of New York, but in some ways it was almost as traumatic." After a chapter on his experiences of anti-Semitic affronts at Harvard—which prompts many of my observations in this essay—Dershowitz gives us a brief, hair-raising history of anti-Semitism through the ages (entitled, bizarrely, "Going on Television," apparently because the chapter opens with samples of hate mail Dershowitz has received following his TV appearances). Then he takes us on his travels to Jewish communities around the world, salting the narrative with summaries of the many cases he has taken. His clients, from Jonathan Pollard to Michael Milken, often become emblems of Jewish persecution through the ages, while their detractors become the anti-Semites or self-hating Jews of ancient memory. Along the way, Dershowitz ruminates insightfully about quotas, church-state relations, and other staples of American legal discourse.

But mainly it is the collision between what Dershowitz presents as society's free-floating anti-Semitism and his own personal needs for vindication, public acclaim, and legal and political triumphs on behalf of clients that shapes and shadows the world he presents in *Chutzpah*. It is an intensely personal testament, replete with photographs featuring

Dershowitz with elders, friends, heroes, and antagonists, including Golda Meier, Jesse Jackson, Mikhail Gorbachev, and Ron Silver, who played Mr. Dershowitz in the movie based on his book, *Reversal of Fortune*. In a sense, Dershowitz offers himself as proof that chutzpah pays off; his thesis is his life. That makes it difficult to assess his arguments without, at least in part, assessing him personally.

Unfortunately, for this reader, the author's self-portrait is neither wholly convincing nor wholly attractive. Watching Mr. Dershowitz's planet and persona take shape in these pages, I cannot help wondering whether the qualities that potential employers in elite law firms found objectionable in him were simply the ones they unfairly ascribed to all Jews, or whether they also had reason to find Dershowitz unpalatable on a merely personal basis. Dershowitz doesn't tell us exactly how he presented himself at the interviews, but his self-portrait and his flamboyant public record offer us the vivid image of a relentlessly self-promoting man, driven by ethnic loyalties and political passions, who transforms his cases into public causes by skillfully manipulating the press, which he sees as a weapon in his arsenal.

Mightn't his interviewers at the elite firms have had at least some intimations of this brilliant but problematic *modus operandi?* Mightn't they legitimately have asked themselves whether they wanted a loose cannon on board? By Dershowitz's own account, it wasn't Paul Cravath and his ilk but the principal of an orthodox Jewish Yeshiva who first warned him, as a youth, "You've got a good mouth, but not much of a *yiddisher kup* (a Jewish head). You should do something where you use your mouth, not your brains...You should become either a lawyer or a Conservative rabbi." While that advice might seem to justify Dershowitz's choice of career, and hence his application to elite firms, it was not necessarily their obligation to adopt the Yeshiva principal's counsel and hire the young Dershowitz. Time has amply vindicated Dershowitz's legal skills. After clerking for David Bazelon, Chief Judge of the United States Court of Appeals, and for Supreme Court Justice Arthur Goldberg, he became Harvard Law School's youngest tenured professor. Yet, in private institutions, some things are legitimately matters of communal tradition, style, and taste. If the yeshiva principal objected to Dershowitz's style, why shouldn't the old firms?

Even if one sets aside Dershowitz's personal qualities and considers only his intensely insular Jewish standards of communal line-drawing, it is unclear that elite firms or private colleges such as the old Harvard and Yale—to which he tells us he didn't dare even apply as a prospective undergraduate—ought to have felt bound to admit him had he tried. Here is a champion of Jewish parochial interests, animated above all by love of his people, railing against WASPs for, in effect, loving themselves.

Dershowitz acknowledges the argument for exclusion with a citation from Judge Learned Hand, who summarized it in order to rebut it: "A college may gather together men of a common tradition, or it may put its faith in learning," Hand wrote, criticizing Harvard President A. Lawrence Lowell's avowed intent to limit admission of Jews to that college for Christian gentlemen. "If [it puts its faith in learning]," Hand continued, "it will I suppose take its chance...that a company of scholars will prove better than any other company." In principle, Dershowitz, like Hand, wants institutions such as Harvard to "choose learning" rather than a "common tradition." But should they? And does Dershowitz really believe his own argument?

In practice, it might be argued, Dershowitz has found the company of Jews better, on balance, than any other. At the same time, he doesn't want WASPs in their private colleges and firms to be ethnically or racially selective. He never really explains, however, why they shouldn't be.

When does love of one's people turn into the oppression of others? The answer is far from clear. Suppose that the Harvard of the early 20th century, which Henry Adams described as a congregation of elitist Protestant dunderheads, had refused to transform itself—as it eventually did—into a vital, quasi-public institution as good as City College of New York was on its way to becoming, or as Brandeis University might have become had Harvard continued to restrict Jewish admissions. The country might be better off today had Harvard simply kept to itself and, in due course, faded away as a parochial oddity. Similarly, suppose that Dershowitz, rejected by the elite firms, had founded his own law firm, instead of becoming a Harvard law professor. It would probably be highly successful, even eminent, today. But would many of its partners be WASPs? Would it matter if all of them were Jews?

In any case, had Harvard remained a parochial WASP institution, the country would have been spared the tortured reminiscences of Harvard's "first Jewish Jew." Dershowitz might have been better off, too. Being a Jewish Jew ought to be a wonderfully rich and complex vocation, but for him it seems an eerily fitful and hollow experience, defined almost solely by the affronts Jews suffer at the hands of aliens and enemies. It is almost as if Dershowitz is Jewish *because* he is at Harvard. For this self-described Yeshiva slacker, who, after leaving

Brooklyn, continued his observance of Jewish religious laws only out of habit, Jewishness takes on an electric charge only when he experiences frustration in his aspiration to leave Jewish Brooklyn behind for what he repeatedly calls "first-class status." At the center of his Jewish identity, at least as it is represented in *Chutzpah*, is defiance of those who have snubbed or hated him for being Jewish, coupled with a lifelong attachment to a small circle of Brooklyn Jewish friends with whom he shared adolescence. All the rest of the Jews' epic, searing, incredible history comes across as merely a reprise of his abrasions.

Dershowitz is aware that he has defined Jewishness negatively, but he seems unable to come up with anything better. All he succeeds in doing is making clear, in the concluding passages of *Chutzpah*, that the problem is not his alone:

> If anti-Semitism and anti-Zionism were, in fact, to begin to disappear—an unlikely prospect, in my view—would American Jewry be able to define a more positive consensus? After all, among the core of common values in today's Jewish community has been opposition to anti-Semitism and anti- Zionism.
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> Leonard Fein likes to remind us that the law protects against rape but not against seduction. We have survived—sometimes by the skin of our teeth—millennia of rape attempts against the Jewish body and soul....Now the dangers are more subtle: willing seduction, voluntary assimilation, deliberate abdication....Can we develop Jewish techniques for defending against our own success?...
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> As we become stronger in the face of our external enemies, we must prepare to confront ourselves. As Jewish Americans, are we prepared to demand the first-class status we have earned in America? As American Jews, are we prepared to insist on being treated as first-class Jews, rather than as exiles from our only true and normal home, Israel? The answer to these questions is largely, if not entirely, in our own hands. One conclusion is certain: unless we regard ourselves as first-class Americans and as first-class Jews, no one else will so regard us.

A more "positive" consensus? Jewish "techniques" to cope with "success"? This is Jewishness rendered in a language of corporate teamwork, devoid of religious and cultural content. In Dershowitz's vision, the Jews, their enemies vanquished, still end up worrying about how others regard them—a tremendous waste of what he might well call "human potential."

Dershowitz portrays himself as an embattled Jewish warrior, asserts the need for Jews to be increasingly attentive to anti-Semitism in America, and exhorts them to be more militant in responding to it. Yet he cites few tangible denials of rights and opportunities associated with "first class" citizenship or cultural participation in this country. He does note Sunday store-closing laws, the continuing exclusion of Jews from a few elite resorts and private boardrooms, and the dim prospects that a Jew could be elected President of the United States. These are, of course, legitimate concerns. But (with the exception of the Presidency), it is hard to think of any pinnacle of American life, from athletics and entertainment to business and public office, which Jews haven't scaled. It is harder still to think of any institutional or structural expressions of anti-Semitism that actually blight Jewish aspirations. What Dershowitz seems obsessed with are the attitudes of losers who take out their frustrations on Jews and on what he thinks is the predisposition of some Jewish leaders to downplay such provocations. That is different, however, than actions which concretely thwart the aspirations of American Jews. Indeed, his most recent accusation of anti-Semitism, hurled on behalf of his client Michael Milken at James B. Stewart for his portrayal of Jews on Wall Street in *Den of Thieves*, arises from a controversy which turns not on the exclusion of Jews but on some Jews' success at beating some WASPs at their own game.

Dershowitz's incessant talk about becoming a "first-class American" suggests that, for him, the vocation of being what he calls a "real American" is as ill-defined as that of being a Jew. One senses a void here, not unlike the one that bedevils certain clubs whose prestige rests more in their power to exclude others than in their capacity to affirm anything much about themselves. In fairness, that problem is America's as much as it is Dershowitz's. The country's spiritual and cultural elusiveness is its genius as well as its weakness. As Dershowitz has argued brilliantly in other contexts, the Constitution at the heart of our national life facilitates, but does not define, the pursuit of happiness. That is a project for religions and cultures—for Jewishness, for example—or for the creators of some new, multi-cultural American vision. Dershowitz is at his best cavorting on the high wire that runs between Jewish parochialism and American freedom, examining the terms under which we negotiate our rights in a pluralist arena. The moment he steps off the wire, to one side or another, he becomes almost insufferably banal—a "first class" American, a quintessentially tribal Jew.

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I was at Yale with Dershowitz, but I was five years younger, an undergraduate in the old, all-male college while he was in the law school. My Class of 1969 was the first to admit more students from public than from private schools. But if WASP preppies were on their way to being a minority when I entered in the fall of 1965, they remained the single most cohesive, authoritative group: versatile, seemingly all-knowing, a little intimidating—"first class." By 1971, their grip on campus life had been loosened by the college's changing demographics and the country's changing culture. But, before then, a suburban Jew like me, or the occasional urban black, or the even rarer orthodox Yeshiva graduate, had to spend a year or two coming to terms with the preppie ethos by assimilating, accommodating, rebelling, or practicing a kind of internal secession, as I did, escaping to Columbia on weekends to work on *Response*, a Jewish student magazine.

Coming from a mostly Yankee New England town in 1965, I surely faced much less of an adjustment to WASPdom than did Dershowitz, who arrived at Yale from Brooklyn in 1964. Yet I think we both experienced a pale version of what Shelby Steele calls "integration shock" and that both of us "rediscovered" our Jewishness in order to cushion the blow. "Integration shock," according to Steele,

> is essentially the shock of being suddenly accountable on strictly personal terms. It occurs in situations that disallow race as an excuse for personal shortcomings and it therefore exposes vulnerabilities that were personally hidden....When one lacks the courage to face oneself fully, a fear of hidden vulnerabilities triggers a fright-flight response to integration shock. Instead of admitting that racism has declined, we argue all the harder that it is still alive and more insidious than ever. We hold race up to shield us from what we do not want to see in ourselves.

It was not anxiety about our academic performance that Dershowitz and I experienced, but something more subtle. As he puts it, "Despite our apparent success, deep down we [Jews] see ourselves as second-class citizens—as guests in another people's land." In other words, we were our own worst enemies; our deference was not so much exacted from us by others as it was offered by us to apologize for our unwelcome presence in the room.

Although deference based on fear or a sense of inferiority is surely inappropriate in the citizen of a free country, I am not sure there was anything so terribly wrong about a freshman or first-year law student deferring on different grounds to some of the traditions we encountered at Yale in the early 1960s. Yale had been around a lot longer than we; others had built it; we had asked to be admitted; and "they" had admitted us more or less on their terms, or so it seemed before the counter-culture of the 1960s challenged all hierarchies and granted instant and equal cultural authority to any audacious claimant. Before then, those of us unhappy at old Yale could fairly easily have gone somewhere else. Perhaps I should have gone to Columbia, for instance, where one could achieve excellence less encumbered by custom and the insecurities it visits upon those not to the manner born.

But, in retrospect, I am sure that, despite old Yale's tremendous hypocrisies and all that was insipid in its genteel traditions, there were some things worth respecting and defending in its culture, and I regret having fled them or held them at arm's length as often as I did. The things I have in mind—the best of WASP culture's classic understatement and felicity of expression, its emphasis on plain living and high thinking, on learning to assume institutional leadership and to bear pain with grace—seem never even to have touched Dershowitz, except, one suspects, in the negative ways Steele describes. The best of WASP culture exposed a young Brooklyn Jew's "personal shortcomings" and "vulnerabilities that were personally hidden." Dershowitz's response was not Steele's "fright/flight"; it was "fight." But it was an avoidance reaction all the same.

He might have kept his powder dry awhile longer and learned something. Instead of obsessing about the moment when classmates made fun of his marinated-in-Brooklyn accent, he might have braved something far

more threatening: acceptance, honest curiosity about his background, hands of friendship extended across the cultural divide. If I was offered that at Yale College, surely Dershowitz could have found it in the more cosmopolitan, more tolerant law school.

But if he did get such offers, Dershowitz doesn't tell us, and I wouldn't be surprised if he has long forgotten them. Armored in a kind of late-adolescent Jewishness, he would be far less likely to receive them today.

One who obsessively trumpets his entitlement to "first-class" status is really marking himself as a permanent outsider. He is unlikely ever to learn that "understandings," unspoken assumptions about the importance of "character" and "discretion" in the conduct of public life, are not only devices for exclusion; they also form the cartilage, the indispensable tissue of trust, without which no institution or social undertaking can escape legal gridlock and decay through relentless, debilitating contention. Our challenge is to learn how to separate what is narrow and exclusionary in the informal life of institutions from what is warming and life-giving in them. And nothing of that sort comes pure.

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It is not by accident that I cite Shelby Steele; the resonance for blacks of Dershowitz's experience as a Jewish "race man" is inescapable. The dilemma Steele explores lurks in Dershowitz's narrative, as well: can one best combat racism or anti-Semitism by monitoring its every glimmer, living one's life in a permanently defiant, fist-clenching stance (or, equally often, for both blacks and Jews, in a defensive crouch)? Or might such a defensive posture itself foreclose opportunities for acceptance and equality? Mightn't one be wiser to act, in as many situations as it is safely possible to do so, as if racism did *not* exist?

The argument for taking the second stance is twofold. First, one's presumption of personal entitlement becomes, in many instances, a solvent of racism. As one acts upon it, meeting the standards and expecting the rewards recognized by others in one's professional or social realm, one puts other people of good will at ease and disarms those who may be looking to criticize. Second, when racism or anti-Semitism does rear its head, as it is bound to do, one's sense of indignity is likely to be all the greater and, hence, one's response all the more telling and effective. My point is not to counsel naivete, but to urge an intelligent balance of expectations, a search for self-fulfilling prophecies that are positive, not negative.

Unfortunately, some people find it far more emotionally satisfying to hurt than to hope. But if every group needs its full-time monitors—people who, like Dershowitz, are drawn to every hint of an external threat, and who are skilled at mobilizing communal responses—every group also needs members who move easily in and out of the fortress, living deliberately as if battles had been won, or winning those battles themselves in the small increments of understanding and respect that come with normal human interaction. At any rate, that is how a healthy democratic society sustains its strongest antibodies against racism and anti-Semitism.

Of course, such normal interaction poses dangers to group solidarity. Racial, ethnic, and religious groups have developed within relationships of domination and subordination and have been nourished by mutual suspicion. That Americans increasingly recognize an overlay of common bonds and claims linking us one to another across old boundaries on terms of equality if not mutual respect, is disorienting and problematic.

Where do we go to find the mythic wellsprings human beings seem to need in order to give themselves grounding? That question opens a new prospect in the human journey—the need for a universal culture. Our society is in the vanguard of that journey. For better, on balance, than for worse—and despite all the apparent conservative restorations of recent years—millions of Americans are now generations removed from any easily recoverable, traditional religious, ethnic, or racial identity. The nation has no choice but to keep faith with them, for they, not separatists, are the country's future. There may be much to mourn in what we have lost, but there is new ground to gain, and, in any case, there is no turning back. Race men, like Alan Dershowitz, bringing up the rear in humanity's straggling line of march, are ill-equipped to lead us into a new promised land. ■