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My Jewish Hero – Louis Brandeis - by Rebecca Lenetsky

Louis Brandeis has gone down in legal history as one of the most significant justices of the United States Supreme Court. The first Jew to be appointed to such a position, Brandeis is revered for his ground-breaking legal analysis and unique understanding of social issues. However, Brandeis was not simply a judge who happened to be Jewish; rather, he was a Jew whose legal and judicial legacy exemplify many of the fundamental values embodied in the Jewish tradition. He is notable for continuing in the tradition of many great Jewish leaders in his tenacious commitment to the values of community, tikkun olam, and defense of the vulnerable, as well as for his prominent role in the promotion of American Zionism.

As a Jewish law student, I am particularly aware of the challenge of translating or incorporating one's Jewish identity and sense of purpose into the secular world of the law. The values I have adopted over the course of my Jewish upbringing and education, such as a belief in the importance of community and the pursuit of justice, I now seek to apply in my approach to the legal concepts I grapple with everyday. Brandeis is a role model in the sense that he represents an individual who used his unique talents and position to continue in the tradition of other great Jewish leaders through social action and the defense of basic human rights.

Tikkun olam, the principle of repairing the world, represents to me one of the most fundamental and compelling features of Judaism. As Jews, not only does our heritage provide us with a unique set of values, but instructs us to use the tools and talents we are given for the sake of the greater good. The Jewish ideals with which I have been raised, such as community involvement, social action and personal integrity, provide me with a well-established framework with which to guide this endeavor. Louis Brandeis' legacy embodies the mission of tikkun olam. Brandeis recognized, both as lawyer and judge, the power of law to affect change in society, and throughout his career strove to promote the greater good. Though Brandeis achieved wealth and prominence as a Boston attorney, he used his position to take on pro bono cases and act as a leader of the community. Some people fulfill the imperative of tikkun olam by working on an individual level, such as by volunteering at a hospital or giving charity. Brandeis used his station to affect change on a broader level. The causes he championed, such as social justice and individual rights, and the unflinching conviction with which he did so, are evidence of his innate Jewish sense of responsibility to serve the community.

Long before being appointed to the Supreme Court, Brandeis had gained a reputation as a social advocate, becoming known as "The People's Attorney" for his litigation against big business on behalf of under-privileged labourers. Louis Brandeis was a pioneer in the inclusion of social science evidence in legal arguments. As chief litigator in the case of *Muller v. Oregon*, Brandeis included data from medical and sociological studies testifying to the detrimental effects of long work hours on women's

health. This brief was noteworthy not only for the progressiveness of the interest being defended, but also for the extent to which it changed the face of judicial law-making with its incorporation of social data as support for traditional legal arguments. Brandeis' legal innovation was so significant that to this day a legal brief which includes social science evidence is referred to as a "Brandeis Brief."

This incorporation is similar to Judaism's multi-faceted legal system. In Jewish law, life is not a series of distinct experiences, some which come within the sphere of law and others which do not. A legitimate conception of justice involves a protection of rights pertaining to every domain of life, and must recognize that law touches on every aspect of a person's being. Law, whether secular or Jewish, must concern itself with the person in question and not merely be a mechanistic application of rules.

Brandeis faced significant opposition to his appointment to the Supreme Court, partly based on his identity as a Jew. He was closely familiar the difficulty of overcoming adversity, and undoubtedly drew on these experiences when advocating for the protection of those have similarly faced prejudice and been disadvantaged. From as early as Moses interceding with G-d for the sake of the Children of Israel, Jewish leaders have recognized the necessity of defending those who cannot speak for themselves. Brandeis was one of the few judges on the Supreme Court to defend government regulation of business at a time when the supremacy of freedom of contract was used as a justification for exploitation of workers. Before Brandeis' time on the Supreme Court, government laws that infringed on the interests of large corporations were ruled to be beyond the scope of their legislative power. Brandies, however, recognized the immense disparity in power between business authorities and workers, and ruled in favour of legislation that defended the vulnerable interests.

As Jews, the feeling of being voiceless is not a novel phenomenon. We have struggled over the centuries with being a minority and having our rights constantly challenged. However, in the Jewish tradition even within the community the under-privileged are given special recognition. We are constantly reminded in the Torah that we as Jews must be sensitive to the vulnerability of others, for we too know what it means to be "strangers in a strange land." The torah and halacha are replete with guidelines concerning a sensitive treatment for the defenceless. The protection of the disadvantaged members of society is presented in Judaism as a matter of justice - the leaving of fallen wheat in one's field for the needy is a rule of law, not a suggestion of charity.

Brandeis' dissenting court opinions were often considered radical and controversial, though were later revealed to be progressive when his rulings in said judgments were affirmed in later landmark cases. For instance, his dissenting opinion in *Olmstead v. United States* in favour of the individual's right to privacy was adopted as law almost forty years later in a case which overturned *Olmstead's* majority decision. Like Brandeis, Judaism also has a history of progressive law-making. Long before concepts such as the minimum wage and worker protection were incorporated as pillars of Western society, the Torah introduced laws stipulating that one must pay workers the day the work is finished. Brandeis' persistence and tenacity are also characteristics of the Jewish people,

a nation of people who battled everything from expulsion to pogroms while maintaining their religious identity.

Brandeis' judgments were often labeled derisively as judicial activism, another concept which is not foreign to Judaism. There is an evolving nature to both Jewish and secular law, a need for re-interpretation in order to acknowledge thus far unforeseen circumstances. The famous story of Moses amending the laws of inheritance for the sake of the daughters of Zelophehad illustrates the recognition that Though precedent and tradition is of fundamental importance in both Judaism, a strict and formalistic interpretation of the law can result in even greater injustice.¹ Similarly Brandeis recognized that a new age called for a new degree of protection for individuals, one which could not be mitigated pleas for legal positivism. Brandeis stated, "The old idea of a good bargain was a transaction in which one man got the better of another. The new idea of a good contract is a transaction which is good for both parties to it."

Brandeis stands as an exemplary Jewish role model for his leadership in the Jewish community, in addition to his contribution as member of the legal community, Like another modern Jewish hero, Theodore Herzl, Brandeis was raised secularly and only developed his passionate devotion to Zionism later in life. Already a prominent lawyer and public-interest advocate, Brandeis' interest in the Zionist movement was sparked upon learning about his uncle's devotion to the cause. Like Herzl, his desire to work for a Jewish homeland was increased upon hearing of the plight of fellow Jews in Europe. Brandeis' involvement was characterized by the same fervour and devotion as to all his work, so it is no surprise that he eventually became chair of The American Provisional Executive Committee for General Zionist Affairs. Brandeis is noted for being one of the first vocal mainstream advocates of Zionism. He is often credited as responsible for popularizing the Zionist Movement, and for having done more than anyone to entrench and legitimize amongst American Jewry a commitment to the idea of Jewish homeland in Palestine.

Equally admirable is the tone adopted by Brandeis in his promotion of Zionism. His arguments contain no wild-bouts of emotional rhetoric, but are persuasive and well-reasoned. Brandeis convinced American Jewry of the compatibility of Zionism and American identity, stating that "The highest Jewish ideals are essentially American in a very important particular. It is Democracy that Zionism represents. It is Social Justice which Zionism represents, and every bit of that is the American ideal of the twentieth century."

Brandeis to me represents a paradigm of the modern Jew, able to synthesize both Jewish values and those of our social democratic society by recognizing that the two are in fact entirely reconcilable. Much of the Jewish tradition involves looking far into the past for inspiration. Louis Brandeis is a model of a contemporary Jewish leader who stood by the courage of his convictions and embodied the spirit of the Jewish value of Tikun Olam.

¹ For further discussion of this example in a modern legal context see Jackson's article ...
Judaism and the Foundations of American Law part 4