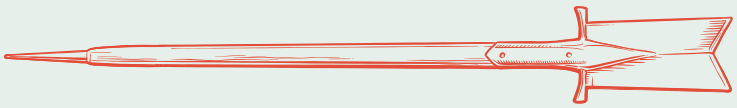

Ne'er-do-well v Wokery: thoughts on Parashat R'eh

Rabbi Gabriel Kanter-Webber, Wednesday 9 August 2023

❇ *The stroppy white middle-aged barrister*

1 Ruby Williams, a black schoolgirl, challenged her school's policy against afro hairstyles. Jon Holbrook, a barrister, tweeted that she was a *"stroppy teenager of colour"* who was enabled by the Equality Act 2010 to *"undermine[] school discipline"*.[i] He was promptly expelled from his barristers' chambers by a vote of the other members.[ii]

2 Holbrook is now suing his former chambers for discrimination,[iii] demanding £3m in compensation.[iv] He is being discriminated against, he claims, on the grounds of belief. The belief in question – the belief he holds which, he claims, explains why he was treated unfavourably – is the belief that the law should not protect people like Ruby Williams,[v] and that, instead, she should have been compelled to *"assimilat[e]"*[vi] by adopting a more English-looking hairstyle.

3 Even leaving aside the glaring irony of someone who opposes the Equality Act using the Equality Act to safeguard their right to oppose the Equality Act, Holbrook's legal papers make for interesting reading. After wading through a lengthy – almost stroppy – diatribe about how he was only expelled in order to *"satiate the*

[i] Aamana Mohdin, "Parent condemns barrister over 'stroppy teenager of colour' tweet", *The Guardian* (26 January 2021): <https://www.theguardian.com/law/2021/jan/26/ruby-williams-parent-condemns-barrister-stroppy-teenager-of-colour-tweet-jon-holbrook>

[ii] Aishah Hussain, "Barrister expelled from chambers over 'stroppy teenager of colour' tweet", *Legal Cheek* (1 February 2021): <https://www.legalcheek.com/2021/02/barrister-expelled-from-chambers-over-stroppy-teenager-of-colour-tweet/>

[iii] *Holbrook v Cosgrove* (Employment Tribunal, amended statement of case, 7 February 2022): <https://web.archive.org/web/20221013090748if_/https://jonholb.files.wordpress.com/2022/10/2022-02-22_et1-amended-statement-of-case_post-14-feb-hearing.pdf>

[iv] Ashish Sareen, "Tweeting barrister vows to appeal discrimination ruling", *Law360* (19 August 2022): <https://www.law360.com/employment-authority/articles/1522614/tweeting-barrister-vows-to-appeal-discrimination-ruling>

[v] *Holbrook*, ibid, paras 14 and 28.

[vi] *Holbrook*, ibid, para 13.

appetites of those who wanted revenge for [his] expression of non-woke beliefs",[vii] one finally gets to the nitty-gritty: the part where he outlines exactly what he alleges the chambers did to discriminate against him.

4 One of the putative instances of discrimination on the grounds of belief is that:[viii]

> [The chambers] made a public statement on Twitter [...which] constituted less favourable treatment because it expressly challenged the merit and worth of [Holbrook's] belief [and] implied that [the chambers' views] were better than [Holbrook's].

This is a quite extraordinary argument, because it begs the question: why should a set of barristers' chambers not tweet its disagreement with a particular belief or ideology?

❇ ***The freedom to disagree***

5 Individuals have a right to freedom of expression. But so too do groups of people. The right is not just personal, but also collective. Barristers' chambers, like virtually[ix] every other organisation in this country, are allowed to take positions on topics of controversy. There is no expectation that they behave with scrupulous impartiality. They might choose to display a Pride flag outside their building (or choose not to). They might choose to support Scottish independence (or to advocate against it). They might choose to sign a petition in favour of free school meals (or to sign one in opposition). They might choose to donate to a charity that supports refugees, or to Help for Heroes.

6 They are certainly free to publish a statement declaring that they *"repudiate [Holbrook's] tweet"*.[x] If Holbrook was allowed to express his view via Twitter, his colleagues in chambers must, likewise, have been allowed to express their disagreement. Disagreeing with someone's politics is absolutely not a form of belief

[vii] *Holbrook*, ibid, para 7.

[viii] *Holbrook*, ibid, para 55 (and see also para 59).

[ix] The main exception relates to public authorities, which, as emanations of the state, do not (necessarily) have the right to freedom of expression: see eg *McLaughlin v London Borough of Lambeth* [2010] EWHC 2726 (QB), [2011] EMLR 8 at [51]. But contrast *R v Lewisham London Borough Council ex p Shell* [1988] 1 All ER 938 (QB), 952b-c; and *R (Jewish Rights Watch) v Leicester City Council* [2016] EWHC 1512 (Admin), [2017] 3 All ER 505 at [11].

[x] Cornerstone Barristers, Twitter (23 January 2021): <https://web.archive.org/web/20210123163644/https://twitter.com/cornerstonebarr/status/1353018708034256903>

discrimination. The very right that Holbrook seeks to vindicate for himself, he seeks to deny to others.[xi]

7 The marketplace of ideas is not a true marketplace if Holbrook can establish and enforce a monopoly simply by setting out a stall and then crying 'discrimination' when another trader critiques his produce.

8 But, of course, disagreeing with his views was only half of what the chambers allegedly did to discriminate against him. The other half was expelling him.

❇ ***The subverted town***

9 This Shabbat, Jewish communities read Parashat R'eh, which contains the law of the subverted town:[xii]

> If, of one of your towns which the Eternal One your God gave you to live in, you hear it said, "Some ne'er-do-wells from among your number have gone out and subverted the locals, saying to them, come, let us worship other gods who you have not experienced before," you should investigate and inquire and interrogate intensively. If it turns out that it was true, that it did indeed happen that this abhorrent thing was done in your midst, then you shall surely strike down all of the locals by sword; obliterate them and everything in the town, and all of its cattle, by sword. Gather all of its spoil into the town square, and burn with fire the town and all of its spoil, completely, so it shall be an offering to the Eternal. And a city shall never again be built there. Let nothing that has been proscribed stick to your hand, in order to turn God away from fury, and receive compassion. For you are heeding the voice of the Eternal One your God, and keeping the commandments that I command you this day, and doing what is praiseworthy in the eyes of the Eternal One your God.

According to Maimonides, this law extends not only to idolatry but also to any other form of wrongdoing which becomes prevalent in a town.[xiii] Its incredibly brutal nature has always cried out to commentators to soften it – often to the point of disapplying it altogether. Indeed, as early as the 2nd century the rabbis declared that it never had been and

[xi] To be fair to Holbrook, he is far from the only person to attempt such a thing. See eg *Fahmy v Arts Council England* 6000042/2022 (Employment Tribunal, 21 June 2023), in which an Arts Council employee claimed that it was a form of belief discrimination, *inter alia*, for people in the office to express the view that the LGB Alliance – whose ideology she supported – *"has a history of anti-trans activity"*: see [2.1(a)] and [82]-[100].

[xii] Deuteronomy 13:13-19.

[xiii] *Guide to the Perplexed* 3:41

never would be invoked.[xiv] Yet, despite the law being set aside on practical grounds, its ambit has still been the subject of much debate and exploration. Some of that debate is extremely pertinent to the question of the dispute between Holbrook and his chambers.

10 I will start my analysis of the passage with three commentaries. Firstly, from the Mishnah (2nd century):[xv]

> If [the town's] subverters are from outside [the town], behold, they are judged as individuals (הרי אלו כיחידים).

Secondly, from Ralbag (14th century):[xvi]

> If [the townsfolk] turn back from their ways with a full and proper return (חזרו בתשובה מוטב), [they are saved, because] the Torah says [that the death penalty is imposed on] *"the residents of <u>that town</u>"*, but now [after repenting] they are considered to be entirely different.

Thirdly, from the Lubavitcher Rebbe (20th century):[xvii]

> Even though repentance does not serve to annul a judicially-imposed punishment, when the people of a subverted town turn back in repentance, they become individuals once again. Their previous status as a single entity – as the community of townsfolk [including those who subverted them] – is annulled ... Their repentance alters their very reality [...and] they revert to being individuals once again (הם הופכים להיות שוב למציאות של יחידים).

Finally, from Rabbi Laura M Rappaport (21st century):[xviii]

> This [passage] calls for radical and unprecedented social change. The chasm between the worldview advocated by the God of the Israelites and the worldview of contemporaneous cultures is of inconceivable width and depth. This God ... demands from followers a shift in values, priorities, ethics and behaviour ... This God requests no less than individual and communal revolution. Inspiring human beings to make a complete break from the status quo has never been a simple task ... There is no room for subtle nuance in the parlance of revolution. Everyone must be clear that big changes are on the horizon. Radical social reform requires incendiary words of passion to motivate new adherents to act. Overstatement is the trademark of incipient movements for change. This may strike postbiblical ears as dangerously extreme, but no one can deny that social change

[xiv] t.Sanhedrin 14:1

[xv] m.Sanhedrin 10:4

[xvi] Ralbag to Deuteronomy 13:16

[xvii] Likkutei Sichot 9, R'eh 2: p 115.

[xviii] Rabbi Laura M Rappaport, "A time to tear down, a time to build up" in Rabbi Elyse Goldstein (ed), *The Women's Torah Commentary* (Woodstock, Vermont: Jewish Lights Publishing, 2000): 351-357.

requires some destruction of the existing order. Even young children recognise the bulldozer as the pre-eminent sign of a building project. Whether it be Judaism or modern feminism, establishing a new mindset necessitates some razing and smashing.

Armed with these commentaries, we can see a clear link between the subverted town and the right to expressive association. A number of key principles emerge from our commentaries:

a There is a qualitative difference between insiders and outsiders (Mishnah).

b A change in the composition of a community can effectively turn it into a different community (Ralbag).

c Distancing from a bad influence requires qualitative and compositional change (Ralbag).

d A community which distances itself from wrongdoers is not held responsible for them (Mishnah, Lubavitcher).

e A community which unquestioningly tolerates wrongdoers is judged as a whole (Lubavitcher).

f A bad influence left unchecked can damn an entire community (Ralbag, Lubavitcher).

g Ideologically-driven social change is only enacted when like-minded people group together (Rappaport).

h It can be inferred that people who are together are like-minded (Lubavitcher).

i This is controversial stuff, and specific instances of these principles being applied may be considered radical, unkind or unjust (Rappaport).

❊ ***Their way or the highway***

11 Once we have acknowledged that the chambers has the right to an ideology of its own, it seems indisputable that the right to express that ideology extends not only to the use of words but also to the regulation of its membership. To compel an organisation with an ideology to admit (or to refrain from expelling) a member who actively and publicly denounces that ideology and thus undermines the agreed collective approach, is itself an interference with the organisation's rights to freedom of speech and freedom of association. In American

jurisprudence, there is a special term for the combination: the right of expressive association.[xix]

12 To put it in terms of our parashah, every organisation is akin to a town vulnerable to subversion. If the town cannot take pre-emptive measures to prevent itself from being subverted – for example, by excluding the ne'er-do-wells liable to corrupt its townsfolk – it is being set up for failure. The biblical provisions for exterminating a subverted town are very much a last resort. Even the post-biblical provisions for repentance only come into play *ex post facto*. Prevention is better than cure, and if an ideological organisation can avoid the entry of ne'er-do-wells in the first place, everyone is better off. The ne'er-do-wells can continue doing no well elsewhere if they so choose, and the organisation can avoid nonconsensual transformation into something 'entirely different', as foreshadowed by Ralbag.

13 The relationship between an individual and an group is complex. Some organisations are completely non-ideological. A tennis club is unlikely to have strong collective views, and its admission of any particular person probably does not send any sort of message. At the other end of the spectrum, a political party is quite explicitly ideological, and its decision to admit or expel a particular person would appear to denote something.

14 What that 'something' is, though, is often difficult to define. An example may be helpful. Imagine that a synagogue hosts a series of debate nights. There might be a debate on vegetarianism, a debate on euthanasia and a debate on the introduction of a maximum wage. But there would never be a debate on whether or not antisemitism is acceptable; such a thing is inconceivable. Why is that? It can't be because the synagogue would risk being seen to endorse the view that antisemitism is acceptable, because hosting a debate, by definition, means that they do not endorse every view expressed. It is obvious that the synagogue does not both support and oppose euthanasia. Rather, the antisemitism debate would never take place because, by hosting it, the synagogue would be giving an imprimatur – a הכשר or הסכמה – to the validity of both arguments. The message is not: 'We agree with this.' Instead, it is: 'We declare that this is a valid point

[xix] See eg Dale Carpenter, "Expressive association and anti-discrimination law after *Dale*: a tripartite approach", 85 Minn L Rev 1515 (2001).

of view suitable to be ventilated in our (holy) space.'[xx] The latter allows for a very wide range of views to be held and articulated within the synagogue, but there are, nonetheless, limits.

15 Every ideological organisation's leadership has the challenging job of drawing the line. The important conclusion, though, is that there is – or at least can be, at the organisation's discretion – a line. The RSPCA has an official policy of not accepting members who seek the decriminalisation of foxhunting.[xxi] Various trade unions have an official policy of not accepting members who are officers of racist political parties.[xxii] For those two organisations, they are lines that cannot be crossed, and there is nothing unreasonable about that.[xxiii]

16 Consider the saga of Nigel Farage's luxury bank account with Coutts. Let us accept, for argument's sake, his claim that it was downgraded to a mere ordinary NatWest account because he vociferously *"support[s] Brexit [and doesn't] think putting rainbow flags on the front of the bank is right"*.[xxiv] Conservative government ministers were quick to condemn the bank, repeatedly highlighting that Farage's views were *"lawful"*.[xxv] Unless this is a misprint for 'awful', I struggle to see the relevance. It is certainly not any sort of trump card, because Farage is not the only rights-holder involved here. The bank's views are also lawful. If a bank has an ideology supportive of Pride flags, it must be allowed to clean its hands by ceasing to facilitate the political activity of someone like Farage, who promotes an ideology opposed to Pride flags. The government would rightly be horrified if a bank forced its customers to fly Pride flags outside their houses; that would be a gross interference with customers' freedom. Yet the same government is perfectly comfortable forcing the bank to assist, and, through the

[xx] Cf Eugene Volokh, *The Law of Compelled Speech*, 97 Tex L Rev 355 (2018), 366, noting that it may be assumed that somebody who voluntarily hosts speakers *"in some measure endorses those speakers (even if just endorsing their thoughtfulness without agreeing with their bottom lines)"*.

[xxi] *RSPCA v Attorney-General* [2002] 1 WLR 448 (Ch)

[xxii] *ASLEF v United Kingdom* 11002/05, (2007) 45 EHRR 34

[xxiii] Cf John Healy, "Social Sanctions on Speech", 2 J Free Speech L 21 (2022), 47-48.

[xxiv] Jasper Jolly, "Nigel Farage calls for NatWest bosses to go after chief executive resigns over Coutts row", *The Guardian* (26 July 2023): <https://www.theguardian.com/business/live/2023/jul/26/nigel-farage-natwest-rbs-alison-rose-resigns-chief-executive-coutts-bank-government-gb-news-business-live?page=with:block-64c0c1128f0857661ecd4a1c#block-64c0c1128f0857661ecd4a1c>

[xxv] Andrew Griffith, Twitter (26 July 2023): <https://twitter.com/griffitha/status/1684064782234558464>

payment of interest, contribute financially to, Nigel Farage's political activities. That cannot be right.

17 Sometimes, perhaps often, an organisation's red line will intersect with legally protected religious or non-religious beliefs. But maintaining such a line is not the same as belief discrimination. A gay rights charity which declines to employ, as its campaign manager, an outspoken, Evangelical Christian opponent of same-sex marriage can hardly be faulted for its decision.[xxvi] Similarly, an anti-abortion charity cannot be faulted for sacking a communications officer who frequently blogs about how her Liberal Jewish values lead her to support women's right to choose.[xxvii] In neither case has the person of faith been the victim of discrimination: they were not treated less favourably because of their beliefs *simpliciter*, but because of specific behaviour which conflicts with the prospective employer's mission and ethos.[xxviii] The fact that I endorse the ideology of the first charity, and am repulsed by the ideology of the second, is of course irrelevant. Any ideological organisation has the right to promote its views and to appoint its staff on the basis of who will be most effective in doing so. Forcing them to employ individuals implacably opposed to their

[xxvi] This case is similar, though not identical, to the facts of *Peterson v Hewlett-Packard* 358 F.3d 599 (9th Cir 2004), in which Reinhardt J found that Hewlett-Packard was entitled to dismiss a Christian employee for printing out biblical verses condemning homosexuality and pinning them up around the office. The employee's beliefs were at odds with the company's position of celebrating the LGBTQ community, and a direction to re-hire *"would … have inflicted undue hardship upon Hewlett-Packard because it would have infringed upon the company's right to promote diversity and encourage tolerance and good will among its workforce"*: see p 608. Hopefully the employee used a Hewlett-Packard printer when creating his posters.

[xxvii] This case is similar, though not identical, to the facts of *Slattery v Hochul*, no 21-911 (2nd Cir 2023), in which Menashi J upheld the right of an anti-abortion charity to *"hire[] or retain[] only personnel who effectively convey its mission and position regarding reproductive health decisions"* and to filter out employees who *"engage in conduct antithetical to [its] views"* so as to ensure that it only employs *"reliable advocate[s]"*: see p 15.

[xxviii] See eg *Page v NHS Trust Development Authority* [2021] EWCA Civ 255, [2021] ICR 941 at [68]-[69], holding that *"[i]n the context of the protected characteristic of religion or belief [there is] a distinction between (1) the case where the reason [for the supposedly discriminatory act complained of] is the fact that the claimant holds and/or manifests the protected belief, and (2) the case where the reason is that the claimant had manifested that belief in some particular way to which objection could justifiably be taken. In the latter case it is the objectionable manifestation of the belief, and not the belief itself, which is treated as the reason for the act complained of."*

mission – whether through Equality Act litigation or otherwise – is a violation.

18 Holbrook's chambers provides a real-life example of this. If the barristers who make up the chambers wish to adopt a collective position in favour of racial minorities being protected by the Equality Act, they may do so. And if they conclude that continuing to list Holbrook – who is outspokenly, and aggressively, hostile to that viewpoint – on their website as a valued partner in their enterprise would undermine the position they have taken, they have to be free to remove him from their midst.

19 Moreover, it is not just about external perceptions. It is also about internal autonomy. Professor Seana Shiffrin has argued:[xxix]

> [T]he wrong of compelled association is not [limited to] the risk that outsiders will misunderstand the association's message or that the association's message will somehow become garbled and less intelligible … Associations have an intimate connection to freedom of speech values not solely because they can be mechanisms for message dissemination or sites for the pursuit of shared aims. Associations have an intimate connection to freedom of speech values in large part because they are special sites for the generation and germination of thoughts and ideas.

Holbrook's legal papers recount how he once *"spent a couple of days walking around [his chambers] and explaining his [anti-woke] beliefs"*.[xxx] Crudely, this makes him sound like an unutterable bore. This is not just a flippant observation. His colleagues undoubtedly have a right not to have to have in their midst somebody who spends his time in the workplace irritatingly preaching values in conflict with their own and with those of the workplace. It is not difficult to see just how great was the potential for him to undermine chambers' efforts to discuss and debate its own, collective, values. Wandering round talking at people is not a debate and does not assist with the generation and germination of thoughts and ideas. It is a blunt instrument which distracts and exhausts the (captive) audience. When a group sits down to discuss how best to pursue their shared agenda in favour of equality and diversity, why should they first have to re-argue – at a serial

[xxix] Seana Shiffrin, "What is really wrong with compelled association?", 99 NW U L Rev 839 (2005), 840-841.

[xxx] *Holbrook*, ibid, para 22.

dissenter's behest – the very question of whether or not equality and diversity are good ideas?[xxxi]

20 A requirement to host a ne'er-do-well can harm an organisation's reputation. It can interfere with its internal autonomy. But also, there is a simple question of conscience. As Baroness Hale P has observed, *"there is no requirement that the person who is compelled to speak can only complain if he is thought by others to support the message"*.[xxxii]

❊ *Conclusion*

21 Our passage of Deuteronomy ends with the following injunction: "Let nothing that has been proscribed stick to your hand."[xxxiii] This law is not taken literally such that it only prohibits the looting of property from condemned towns. For example, it has been understood as encompassing a prohibition on bathing in a bath-house 'attended' by a statute of Aphrodite.[xxxiv] Why might it apply in that situation? Because somebody is voluntarily associating themselves with something wrongful.

22 It could, therefore, very well be seen as a commandment that organisations police their own boundaries. Of course, what is 'proscribed' by one organisation may be bread and butter to another, and this essay is not a plea for ideological conformity. I do not suggest that everybody must think the same thoughts (not even 'woke' thoughts). Diversity of viewpoint is the very essence of freedom of expression.

23 Rather, this essay recognises that freedom of expression is not something practised alone by private individuals. It is an activity that groups engage in. Professor Dale Carpenter has observed:[xxxv]

> [F]reedom of expressive association contributes to equality by allowing people in groups to find strength and confidence in numbers, bolstering their civic and political power and contributing to the flow of ideas so needed for democratic government.

[xxxi] Cf Maxime Lepoutre, "Can 'more speech' counter ignorant speech?", *Journal of Ethics and Social Philosophy* 16 (2019), 155-191: 156-157.

[xxxii] *Lee v Ashers Baking Company* [2018] UKSC 49, [2020] AC 413 at [54]

[xxxiii] Deuteronomy 13:18

[xxxiv] See eg m.Avodah Zarah 3:4

[xxxv] Carpenter, ibid: 1518.

Speech, then, is often a more powerful weapon in the hands of an army than in the hands of a lone soldier. And just as an army needs all of its soldiers to march in the same direction, so too does an ideological organisation have a legitimate interest in ensuring that its members are davening from the same siddur.

24 Those who want to daven from a different siddur, can.[xxxvi] If Jon Holbrook wants to spend his time publishing increasingly frenzied online screeds about how *"the woke tend to be sceptical of objective truth"* and how their *"narrative of 'diversity, equality and inclusion' … actually promotes favouritism"*, he is free to do just that.[xxxvii] Even his comparison between himself and Martin Luther King is protected by the right to free speech,[xxxviii] ironic as it is that he should invoke MLK's name to defend his decision to hurl racial epithets at a black teenager. What he may not do, though, is foist his presence on those who do not want it.[xxxix] As John Stuart Mill put it:[xl]

> We have a right … to act upon our unfavourable opinion of anyone, not to the oppression of his individuality, but in the exercise of ours. We are not bound, for example, to seek his society; we have a right to avoid it … for we

[xxxvi] Exclusion from a particular organisation, or denial of a particular platform, does not interfere with the excluded person's right to freedom of expression. As Coffin J observed in *Redgrave v Boston Symphony Orchestra* 855 F.2d 888 (1st Cir 1988), *"[t]o permit a newspaper … freedom to turn down some who would write letters or columns … is to permit the newspaper to deprive certain speakers of an audience … But for the government to guarantee even some of those speakers a newspaper platform … itself risks interfering with the newspaper's editorial freedom."*: see p 904. Or, as the European Court of Human Rights put it in *Appleby v United Kingdom* 44306/98, (2003) 37 EHRR 38, the right to freedom of expression *"does not bestow any freedom of forum for the exercise of that right"* (at [47]).

[xxxvii] *Holbrook v General Council of the Bar of England and Wales* (**Holbrook II**) (Employment Tribunal, amended statement of case, undated), paras 11 and 27: <https://web.archive.org/web/20221201121637/https://jonholb.files.wordpress.com/2022/11/2022-11-03_statement-of-claim.pdf>

[xxxviii] *Holbrook II*, ibid, para 11.

[xxxix] See eg *Taylor v Kurtstag* [2004] 4 All SA 317 (W). This was a case in which a South African Jew failed to pay maintenance to his ex-wife in accordance with his divorce agreement, and a beit din put him in cherem, thereby barring him from being counted in a minyan or receiving any mitzvot in services (at [57]). He challenged the beit din in court, arguing that the cherem was a human rights violation. Malan J dismissed his application, holding that *"the applicant has made out no case to overcome the respondents' rights not to associate with him [...and] it will be offensive to observant Orthodox Jews to be forced to associate with a person seen by them as deliberately and provocatively flouting Jewish law, custom and authority"* (at [58]).

[xl] John Stuart Mill, *On Liberty* (1859; New Haven: Yale University Press, 2003): 139-140. See John Healy's analysis of this passage, ibid, 29 n 26.

> have a right to choose the society most acceptable to us. We have a right, and it may be our duty, to caution others against him, if we think his example or conversation likely to have a pernicious effect on those with whom he associates. We may give others a preference over him … In these various modes a person may suffer very severe penalties at the hands of others … but he suffers these penalties only in so far as they are the natural, and, as it were, the spontaneous consequences of [his] faults themselves, not because they are purposely inflicted on him for the sake of punishment. A person who shows rashness, obstinacy, self-conceit … who cannot restrain himself from hurtful indulgences, who pursues animal pleasures at the expense of those of feeling and intellect – must expect to be lowered in the opinion of others, and to have a less share of their favourable sentiments; but of this he has no right to complain.

If the way Holbrook expresses himself repels others, he cannot compel those others to be his friends. He cannot compel those others to invite him to their parties (or to accept invitations to his). He cannot compel those others to date him (if applicable). He cannot compel those others to instruct him as their barrister. And he cannot compel those others to let him remain in their chambers at the expense of that chambers' mission to promote the values of diversity, equality and inclusion on which he pours scorn. If this seems harsh, Holbrook can comfort himself with the knowledge that the organisations whose values he respects and admires are safe from infiltration by the *"woke"*: the same principle works both ways and protects everybody.[xli]

25 We might worry that this is 'ideological cleansing' which risks leaving those who hold unpopular views unable to find employment (or, indeed, unable to find cakes). Yet it is not really about the view itself, but about the frequency, manner and trenchancy with which it is expressed. Consider a flat-earther. Their view is daft but inoffensive. In and of itself, it is unlikely to cause them any difficulty in finding work. The only reason it would interfere with job-seeking is if they don't just hold it as a belief but actively seek to propagate it (bang on about it) at every opportunity, including in job interviews. Of course, our flat-earther has a right to do so. But equally, they can hardly complain if the interviewer rolls their eyes and immediately

[xli] Similarly, in a sense it was sad when the courts held that a Christian baker could legitimately refuse to ice a cake with a slogan supporting same-sex marriage – as in *Lee* – and that a Christian web designer could lawfully turn down a commission to design a website for a gay couple – as in *303 Creative v Elenis* 600 US ___ (2023) (slip op). But those rulings also protect the right of gay bakers to refuse to bake cakes declaring that homosexuality is an abomination, and gay web designers to refuse to design websites for the Democratic Unionist Party.

starts thinking about the next candidate. Indeed, the interviewer might have the same reaction even to a mainstream belief – support for net zero, or a desire to rejoin the EU – if a candidate raised it irrelevantly, repeatedly and obsessively. That is not to say that Holbrook should learn to keep his views to himself. It is simply an observation that if Holbrook chooses to promote his views, he cannot expect to do so in a vacuum in which there are no consequences and no doctrine of cause-and-effect.

26 The right to distance oneself from advocacy one perceives to be repugnant is an integral part of the right to freedom of expression, the right to freedom of association, and the right to individual and collective autonomy. Parashat R'eh reminds us that a group can, and should, resist the entreaties of ne'er-do-wells, and that failure to do so changes the group's nature.

27 Ne'er-do-wells are pervasive and intrusive; they're *"sticky"*.[xlii] Sometimes what is necessary in order to safeguard the rights of others is a clean break. They go their way, you go your way. And, crucially, nothing wrongful is sticking to your – or your community's – hand.

[xlii] Lepoutre, ibid: 157.