

Non-State Law Doesn't Exist: Lessons from Kiryas Joel

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Introduction

The title of this paper is a deliberate echo of Stanley Fish's well-known essay purporting to establish that "liberalism doesn't exist,"² that the dream of a liberal state is an illusion. What I aim to demonstrate³ is the obverse of Fish's claim: that non-state law doesn't exist; that the dream of law without sovereignty, law without a state, is an illusion.

I should perhaps preface my statements here by saying that I am not 100% sure that it is true that there is no such thing as non-state law. I submit this claim in the spirit of a deliberate provocation, which I hope will stimulate future thinking about what it is we mean by "non-state law," what we mean by "state" and what we mean by "law," and what the relationship is between them. These are fundamental jurisprudential questions to which I can only contribute some tentative ideas. These ideas have grown out of the nearly twenty years (I'm embarrassed to say) that I've spent studying, thinking and writing about⁴ the Village of Kiryas Joel, a community that epitomizes the aspiration for non-state law.

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² Stanley Fish, *Liberalism Doesn't Exist*, 1987 Duke L. J. 997 (1987).

³ I can't claim to have produced adequate support to "demonstrate" this claim here. To do that would require a much fuller description and analysis of the private law material discussed here than can be presented in the confines of this paper. Eventually (see the book project discussed in note 4), I hope to develop that fuller explication and analysis. Here, my aim is limited to conveying the flavor of the argument and the material upon which it is based.

⁴ Mostly, so far, just thinking, but a book (provisionally titled AMERICAN SHTETL), examining Kiryas Joel through the dual perspectives of Jewish history and American

As has been widely known since 1994, when the Supreme Court handed down a decision addressing the constitutionality of its public school district,⁵ Kiryas Joel is an American town—a village, technically⁶—nestled in the suburban environs of New York City that is populated exclusively by members of a sect of ultra-Orthodox, ultra-separatist Hasidic Jews. Known as Satmars (after the Transylvanian town of Satu Mare where the Satmars originated),⁷ these are traditionalist Jews who have a distinctive way of life that revolves around the twin commitments of strict adherence to traditional Jewish law and fierce resistance to being assimilated into modern secular society. Like other Hasidic groups, the Satmars do submit to the authority of secular government, but the goal of all of their engagements with secular political authorities is to carve out an enclave within which they can insulate themselves from the outside world and erect their own communal and legal institutions, thereby enabling them to abide by Jewish law.

law, with co-author David N. Myers, is in the works. For my previously published work on the Village, see *Bd. of Education of Kiryas Joel Village School District v. Grumet: A Religious Group's Quest For Its Own Public School* in *LAW AND RELIGION: CASES IN CONTEXT* (Leslie C. Griffin, ed., Aspen, 2010); *A Tale of Two Villages (or Legal Realism Comes to Town)*, in *NOMOS XXXIX: ETHNICITY AND GROUP RIGHTS* (Ian Shapiro & Will Kymlicka, eds., New York University Press, 1997); *The Puzzling Persistence of Community: The Cases of Airmont and Kiryas Joel*, in *FROM GHETTO TO EMANCIPATION: HISTORICAL AND CONTEMPORARY RECONSIDERATIONS OF THE JEWISH COMMUNITY* (David N. Myers & William V. Rowe, eds., University of Scranton Press, 1997). See also David N. Myers, “*Commanded War*”: *Three Chapters in the “Military” History of Satmar Hasidim*, 10 *J. Am. Academy of Relig.* 1 (2013).

⁵ *Bd. of Ed. of Kiryas Joel Village School Dist. v. Grumet*, 512 U.S. 687. For a detailed analysis of the judicial opinions delivered by the, see Stolzenberg, *A Religious Group's Quest*, *supra* note 3. For more analyses of the Supreme Court's decision, see Abner Greene, *Kiryas Joel and Two Mistakes About Equality*, 96 *Col. L. Rev.* 1 (1996), Christopher Eisgruber, *The Constitutional Value of Assimilation*, 96 *Col. L. Rev.* 87 (1996), Ira Lupu, *Uncovering the Village of Kiryas Joel*, 96 *Col. L. Rev.* 104 (1996).

⁶ Legal distinction between village and township.

⁷ See Myers, “*Commanded War*,” *supra* note 3, at 2-3.

The ultimate goal is to follow “the way of the holy Rebbe,” Rabbi Joel Teitelbaum, or “Reb Yoilish,” as he is known to his adherents, the founder of the Satmar Hasidim, whose charismatic spiritual leadership has inspired legions of followers. Reb Yoilish first attracted a following in his homeland in Central Europe in the years preceding World War II. After the War, the small number of Satmars who had survived the Holocaust regrouped in the Williamsburg neighborhood of Brooklyn, New York.⁸ As in other Hasidic courts (as the various sects of Hasidic Jewry are referred to),⁹ the Satmar Rebbe’s spiritual authority and his expounding of the requirements of Jewish law extend to every aspect of his followers’ lives. The position of a Hasidic Rebbe is that of a supreme leader whose authority is based upon his learnedness in religious law, his goodness and purity and his spiritual charisma, qualities that signify the true basis of his inspirational authority: his closeness and access to God. It is a dynastic title that ordinarily is passed on to a male descendant, a matter that has, let us say, been subject to complications in the case of the succession of the Satmar Rebbe.¹⁰ In the wake of Reb Yoilish’s death (he died in 1979, just before the house in the newly incorporated Village of Kiryas Joel was built to receive him), two successors have assumed the mantle of the Satmar Rebbe, presiding over a flock of faithful Satmar Hasidim that has grown to over

⁸ The fascinating and bitterly ironic story of the rescue of the Satmar Rebbe with a small band of his followers by the Zionist activist, Rudolf Kastner (who notoriously “bargained with the devil,” Adolph Eichmann, to save 1,XXX Hungarian Jews), is told in . See also Robert Mnookin, *BARGAINING WITH THE DEVIL* (2010). For more on the controversy over the “Kastner transport,” including footage of the Satmar Rebbe’s vocal rejection of the proposition that he owed his life to the Zionist leader (“Kastner didn’t save me, God saved me!”), the documentary “Killing Kastner” is recommended viewing.

⁹ On Hasidism generally, see Myers, *Commanded War*, *supra* note 3.

¹⁰ For more on the complications of succession, see

150,000 worldwide.¹¹ The base of the Satmar community remains in Williamsburg, but from Reb Yoilish's earliest days in the United States, his dream was to establish an "American shtetl," an enclave where the traditional way of life of the European shtetl could be recreated and purified of every contaminant.¹² Purity—physical, sexual, and spiritual purity—was the Rebbe's watchword from his days as a precocious Talmud student and a budding spiritual leader throughout his years in the United States, and it fueled what some have suggested was an obsessive-compulsive quest for ever greater measures of spiritual purification and separation from the pollution of the material world.¹³ As quoted recently in a New York Magazine article, Reb Teitelbaum was wont to say (quoting a rabbinic forbear) that "separatism was of such importance that even if a city had no wicked Jews, it would be worthwhile to pay some wicked Jews to come and live there so that the good Jews would have something to separate from.")¹⁴ Obliging, urban life in New York City makes close proximity and interactions with "the wicked" (both Jewish and non-Jewish) inevitable.¹⁵ The Village of Kiryas Joel was formed with the aim of

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¹² The fundamental irony (in a story where the ironies abound) is that there never was a shtetl in Europe as religiously homogeneous, insular and strict in its level of religious observance as Kiryas Joel. The shtetls of Europe were places with mixed populations, where Jews lived adjacent to non-Jews and no single form of Judaism (such as one particular sect of Hasidism) prevailed to the exclusion of others. Only in America could the degree of self-segregation and communal regulation observed in Kiryas Joel be obtained. Or so we argue in our forthcoming book, hence the title: *American Shtetl*.

¹³ See Myers, *supra* note.

¹⁴ Benjamin Wallace-Wells, *Them and Them*, New York Magazine, April 21, 2013.

¹⁵ One of the more prominent and interesting examples of such "wicked Jews" is Martin Needleman, director of Brooklyn Legal Services, a lifelong denizen of Williamsburg, an Orthodox but non-Satmar Jew, who has spent most of his life as a lawyer, since the late 1960s, battling with the Satmar community over anti-

escaping from the pressures and seductions of city life and perfecting the implementation of the Satmar Rebbe's separatist impulse. Outside the city, in a walled-off enclave, it was thought that it would be possible to ward off contaminants and adhere to rabbinic law and the Rebbe's holy way to the fullest extent possible. To that end, designated members of the community negotiated with gentile political authorities, while business leaders were charged with the tasks of negotiating real estate deals and managing the commercial enterprises necessary to establish a satellite community in the outskirts of the city. These engagements with the outside world were undertaken for the sole purpose of establishing and protecting their own autonomous legal and spiritual community. All Satmar engagements with the outside world are, by decree, limited and instrumental, performed in the service of advancing and protecting the separatist enterprise. In the words of Reb Yoilish, the goal in creating Kiryas Joel was to establish "four pure cubits,"¹⁶ an island of purity, where his followers could insulate themselves from the contamination of the outside world, and dedicate themselves to observing *halakhah* (Jewish law) and preserving the ancient ways of the Torah.

In its commitment to strict adherence to traditional Jewish law and its equal commitment to resisting the imposition of the values of secular society, the Satmar community would seem to be the epitome of non-state law, with an equal emphasis on "non-state" and "law." Not only have the Satmars of Kiryas Joel aspired to create

discrimination lawsuits brought against the public housing authorities in Brooklyn, where Satmars are alleged to have benefited from special treatment to the detriment of Latinos and African-Americans with regard to access to public housing. [Get citations]

a substate community organized around the observance of the *halakhah* (Jewish law), they have actually succeeded in fulfilling that aspiration to a truly remarkable degree. Within the confines of their separately incorporated municipality, the Satmars have been able to form all of the essential communal institutions—political, familial, economic, commercial, educational, legal and of course religious institutions—that constitute their way of life. Their population has grown exponentially and their community has thrived.¹⁷ Notwithstanding its growth, the Satmars' observance of strictures against interacting with people from outside the community, which includes bans on watching television, listening to the radio, using the internet or reading books, magazines or newspapers that connect with the non-Hasidic world, has effectively, if imperfectly, served to insulate the group from exposure to external influences.¹⁸ If any group has succeeded in isolating itself from the mainstream culture and establishing its own system of non-state law, it would seem to be the Satmars.

Yet years of study and seeking to understand how such a community has been able to take root in American soil, with the apparent facilitation of American law, has led to my growing skepticism that the system of law established in Kiryas Joel is truly non-state law. More broadly, it has led to my skepticism that such a thing as non-state law can ever really exist. To put it in a more circumspect way, my

¹⁷ Statistics from the latest census.

¹⁸ It is often noted that these strictures, in particular the prohibition on using the internet for any thing other than specifically sanctioned purposes, is widely honored in the breach. [Citations]

study of Kiryas Joel has led me to reformulate my understanding of what non-state as opposed to state law is, and to question the distinction between them.¹⁹

Undeniably, the Satmars have succeeded in establishing a way of life that is governed by a strict interpretation of Jewish law, which is expounded by the Rebbe and other rabbinic authorities under his supervision, and implemented in a network of largely autonomous legal, educational and religious institutions: rabbinic courts, where disputes are settled and edicts concerning matters both ritual and political are declared; the synagogue and the *mivkah*, where rituals of spiritual hygiene are performed; boys' religious schools (*yeshivas*) where the main curriculum is Jewish (legal) learning, separate girls' religious schools, and houses of learning where adult men dedicate themselves to a lifetime of study of Jewish law. Without a doubt, Kiryas Joel (and the Satmar community at large) is a community that is saturated in (Jewish) law. And, equally undeniably, the content of this law is different from, indeed markedly at odds with the content of American secular law. The religious law by which Satmars abide prescribes gender segregation and enforces a traditional code of family roles and sexual morality that offends modern norms of gender equality and freedom of choice with respect to sex and marriage. It deems secular and professional education to be dangerous pathways, and reserves the

¹⁹ This questioning of the distinction between state and non-state law is part of a broader project of questioning the distinction between secular and religious law, a legal theory and intellectual history project that goes beyond my work on Kiryas Joel, though the latter fits into the larger project. This larger project remains a work-in-progress but tentative formulations of the critique of the conventional religious-secular law distinction can be found in Nomi Maya Stolzenberg, *The Profanity of Law* in *LAW AND THE SACRED* (Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey, eds., 2007); *Political Theology With A Difference*, forthcoming in *Irv. L. Rev.*; *Divine Accommodation and Dirty Hands: A Different Political Theology*, forthcoming in *J. Contemp. Legal Issues*.

study of Jewish law—the most exalted occupation in the community—for males only. Women are believed to be divinely ordained vessels for the sacred task of reproduction, and encouraged to have as many babies as possible, and discouraged from working outside the home, the biblical injunction to be fruitful and multiply occupying pride of place alongside the injunction to study Torah in the mesh of commandments that guide Satmar life. (Indeed, from the standpoint of the Satmars' worldview, the two injunctions, to study Torah and be fruitful and multiply, could be seen as two aspects of one: to reproduce and perpetuate the holy community of strict Torah observers by projecting it into the future). Marital relations, including sexual relations, are regulated according to strict rules of purity and impurity relating to the woman's cycle, which is subject to rabbinic inspection at a level of detail that "shocks the conscience" of secular outsiders who usually pride themselves on being shock-proof and value-neutral when it comes to other people's sexual practices.²⁰ Marriages are arranged, all personal issues are submitted to the

²⁰ A spate of recent exposés of the life of the women in the Satmar community, a number of them authored by former female members, give lurid descriptions of the sexual customs of the Satmars. *See, e.g.*, DEBORAH FELDMAN, UNORTHODOX: THE SCANADALOUS REJECTION OF MY HASIDIC ROOTS (2012). One practice in particular, the sending of a woman's underwear to the rabbis to inspect ambiguous discharge, is already something of a meme on the internet and elsewhere. As the subtitle to Feldman's book makes clear, these writings conform to a long-established tradition of American scandal literature focused on the horrors of polygamy, "white slavery," female concubinage and other shocking sexual practices to which females have supposedly been subjected by "weird" religious groups. Nonorthodox sexual (and marital) practices are a standard feature of nonmainstream religious groups, and expressions of shock and horror, including the idea that the heterodox sexual practices of nonmainstream religions are oppressive to women, have long been a staple of popular literature. *See* HAL D. SEARS, THE SEX RADICALS: FREE LOVE IN HIGH VICTORIAN AMERICA (1977). For a sensitive counterpoint to the recent spate of exposes of Satmar sexual culture in the scandalous mode, see the blog entry by Shpitzele Shtrimpkind (the pen name of a woman who grew up in Kiryas Joel and has since

Rebbe for his sage counsel (often delivered with a dollop of cash), and even the casting of political ballots is—infamously—dictated by the Rebbe’s decree.²¹ Strict dress and dietary codes that raise the traditional standards of *kashrut* and modesty to ever greater levels of stringency; celebrations, song and dance; practices of charity and mutual support; rules covering virtually every aspect of daily life—all emanate from the Rebbe’s pronouncements about the proper way to observe the commandments. All of this would seem to be proof, if proof were even needed, of the existence of a very robust institution of non-state law.

Indeed, what makes the Satmars a particularly interesting case study for testing the proposition of the non-existence of state law is the fact that their pursuit of a separatist enclave dedicated to the observance of Jewish law is embedded in a quietist theology that repudiates the state and political sovereignty altogether. This does not mean that they actively rebel against the state; to the contrary, that would go against their quietist theology. Quietism counsels withdrawal from worldly politics, not active resistance or rebellion. It counsels walling off the community

left the community and is now a graduate student in Women’s Studies at Sarah Lawrence), “On Chasidic Women,” at www.oyveycartoons.com/2012/05/25/on-chasidic-women/. See also ANOUK MARKOVITS, *I AM FORBIDDEN: A NOVEL*, another portrait of growing up female in the Satmar world, this one (as its subtitle indicates) fictionalized and set largely in Paris, where a small Satmar community took root, and less in the mode of scandalous expose than of sensitive exploration the varying forms of female experience, from resistance and flight to submission and romantic fulfillment, albeit with unhappy consequences. Another sensitive counterpoint to the scandal mode is the lovely new film, “Fill the Void,” by the Israeli film director, Rama Burshtein (who has been called “a Jane Austen of the ultra-Orthodox [not specifically Satmar] world,” in which she grew up), which portrays with subtle eroticism the elements of constraint and choice, duty and sexual feeling that can coexist in an arranged marriage. See <http://www.ynetnews.com/articles/0,7340,L-4276631,00.html>

from any and all impurities and spiritual pollutants. The goal is turn one's back on the material world, including both worldly goods and worldly politics, to leave the dirty business of politics to others (i.e., gentiles), and to concentrate solely on keeping oneself holy and spiritually pure. To do so, of course, requires some intercession with outside gentile authorities so as to prevent their encroaching upon the holy community. But from the standpoint of the theology of quietism, such political encounters, as already noted, are purely instrumental. The political state and political action generally are understood to be inherently corrupt and corrupting forms of human association. All worldly politics on this worldview are profane, as is its cognate, secular law. (From this theological standpoint, state law is by definition secular law).²² It is because all politics and state law are viewed as inherently secular and profane (corrupt and dirty) that the only permitted forms of participation in worldly politics are instrumentalist engagements, those limited forays into the outside world deemed necessary to secure the ability of the holy community to remain aloof from politics. The law of the state is recognized, but only as a practical necessity, and the object of those limited political engagements with gentile authorities is to ensure that the reach of secular law into the community is as supportive and protective but also as limited as possible.²³

²² For an elaboration of this equation, see my articles cited in note 16.

²³ For discussions of this traditional *halakhik* principle of *dina de-malkhuta dina* (the law of the state is the law), which serves to justify submission to the authority of state law on the basis of Jewish law, see the articles in the 1991 Cardozo Law Review symposium including Suzanne Last Stone, *Sinaitic and Noahid Law: Legal Pluralism in Jewish Law*; J. David Bleich, *Jewish Law and the State's Authority to Punish Crime*; Aaron Kirschenbaum and Jon Trafimow, *The Sovereign Power of the State: A Proposed Theory of Accommodation in Jewish Law*; Perry Dane, *The Maps of Sovereignty: A Meditation*; Malvina Halberstam, *Interest Analysis and Dina de-*

Importantly, the condemnation of “gentile” political sovereignty that issues from this basic posture of theological quietism is not reserved for non-Jewish states. Indeed, in the Satmar worldview, there is no greater abomination than a Jewish state, as God alone has the authority to restore Jewish sovereignty over the land of Israel. The state of Israel is the object of intense vilification, Jewish political sovereignty being viewed as a kind of unholy oxymoron since political sovereignty is, by definition, gentile authority, an unholy exercise of power, at best a necessary evil, at worst, a sacrilege, the supreme act of human hubris, a usurpation of the power to rule over others that belongs only to God. All sovereign states are seen as involving such a usurpation, but Jewish political sovereignty is the worst sacrilege because it makes Jews, whose chosen mission is to be a holy community, into gentiles, that is, people who by virtue of their unchosenness and unholiness willingly dirty their hands with the inherently profane business of government and political rule.²⁴

Embedded in such an intensely quietist theology is a political theology that is unequivocally anti-politics, anti-state, and anti-state law—in short, an anti-political theology. The Satmars’ dream of a life governed by *halakhah* is a dream of holy community governed by holy law, where the holiness of the law is measured precisely by the absence of political sovereignty and the coercive apparatus of a state (things that are the natural accouterments of the inherently gentile state). Of course, there is a spiritual leader, the Rebbe, who in many respects resembles a

Malkhuta Dina: A Commentary on Aaron Kirschenbaum. See generally GIL GRAFF, SEPARATION OF CHURCH AND STATE: DINA DE-MALKHUTA DINA IN JEWISH LAW (2003); SEPARATION OF CHURCH AND STATE IN THOUGHT AND PRACTICE (1982);

²⁴ Cf. Suzanne Stone.

political ruler inasmuch as his word “dictates” every aspect of his followers’ lives. Indeed, the Satmar Rebbe’s reign over his followers is explicitly referred to by the Satmars as the “Kingdom of Satmar,” suggesting an awareness of the political nature of the Rebbe’s rule at odds with the quietist injunction against the assumption of political power by Jews. In addition to issuing his own pronouncements and rulings, the Rebbe presides over other rabbinic authorities, who teach and administer Jewish law under his tutelage in the community’s houses of Jewish learning and its *beit din* (rabbinic court). The community has even developed all manner of enforcement mechanisms, from the now infamous “modesty committees,” which have been the subject of a number of recent media stories, to the “public security committees” made up of off-duty and retired police officers whom the Village of Kiryas Joel contracts to “keep the peace.”²⁵ But none of this is, from the standpoint of American law, public law enforcement. And all of this is, from the standpoint of the Satmar’s quietist theology, precisely *not* political rule. It is not political rule from the standpoint of theological quietism, because (or for the very same reason that) it is not secular rule, which by definition is a gentile species of authority, spiritually polluted and profane. Secular rule involves the exercise of power of others. Spiritual authority, by contrast, is not supposed to be an exercise of human power over other human beings; what makes the subjects of the holy law holy is that they willingly submit to the law that governs them, the law being the law of God, not the product of human legislation.²⁶ Religious law, from this point of view, is the very antithesis of state law (state law, secular law and gentile law all being so

²⁵ [Sources]

²⁶ Cf., Suzanne Law Stone

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many synonyms for that which is inherently corrupt: human systems of power which necessarily entails violence and unjust applications of law). Only God has the powers of omniscience necessary for *just* rule. Therefore, a holy people will renounce the project of establishing, or participating in, a system of political rule altogether. These are the basic theological premises that give rise to the renunciation of participation in worldly politics. Such theological quietism represents the apotheosis of a non-statist, indeed anti-statist conception of religious law.

This is the basic worldview of the Satmars. A more emphatically non-statist conception of law than the Satmars would be hard to imagine. Why, then, one might ask, am I skeptical about the non-statist character of the Satmars' system of law? Why my insistence, or my provocation, that such a thing as non-state law doesn't exist?

As explained more fully (albeit sketchily) below, the basis for my skepticism about non-state law is twofold. First, I have become increasingly aware of the pervasive, albeit largely invisible role that is played by American private law in constituting the community of Kiryas Joel. What began long ago as the glimmer of an intuition that the public law institutions in Kiryas Joel are epiphenomenal, the tail that wags the private law dog, has evolved into a long-term project of mapping the extensive use of American private law by members of the Satmar community. To the extent that American private law penetrates into the community not merely to protect what it calls private freedom but actually to supply the legal mechanisms whereby the community secures its homogeneity and enforces its "internal"

religious law, that calls into question the non-statist nature of those mechanisms of exclusion and internal regulation and the very dichotomy between the external law of the state and the internal law of the community.

The second basis for my skepticism about the existence of non-state law derives from the content of that internal law itself. This too is a species of private law, at least from the American legal standpoint. From its own standpoint, of course, it is God's law, hardly private but hardly statist either. The religious law of the Satmars, as we have seen, is embedded in their underlying theology of political quietism, a theology that rejects secular law and politics as an irredeemably corrupt and dirty business, the only solution to which is political withdrawal and retreat. Yet, as my work aims to show, the very impulse toward separatism and withdrawal from politics that defines theological quietism necessitates participation in politics in order to negotiate for the shelter from political interference upon which the separatist community depends.²⁷ Crucially, this is not just a matter of involvement with the legal and political system of the "outside" secular world. It also involves the elaboration of a system of secular power *within* the holy Jewish community, and the articulation of a doctrine of separation between secular and spiritual authority within Jewish law that justifies the exercise of secular political power and the resort to secular law by Satmar leaders (or even mere members). Even this most hyper-separatist, hyper-spiritualist, anti-materialist, anti-political, anti-secularist form of quietist Judaism ends up, I would say inevitably, endorsing its own version of a

²⁷ Robert Cover made a version of this point long ago, citing to the important work of Carol Weisbrod on the usages of contract law in forming (and dissolving) religious utopian communities. See Carol Weisbrod, *BOUNDARIES OF UTOPIA*

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principle of a separation between secular and spiritual spheres and arguing for the necessity of secular law. The result is that secular law is not just something that penetrates into the community from the outside in the form of the intervention of American (private) law; secular law is also something that is extruded by the Satmars' own "indigenous" legal institutions and conception of Jewish law. Further complicating matters is the existence of an intensifying schism within the Satmar community, which has produced rival interpretations of this indigenous theory of separation between spiritual and secular matters, and rival *halakhik* theories about how it applies to disputed claims to leadership which are threatening to tear the community apart. Called upon to adjudicate this internal dispute over leadership of the Satmars' main synagogue, which holds the keys to the Satmar "kingdom," the American courts have had no choice but to take sides with one or another of the parties to this internal dispute. (Even the decision not to adjudicate the dispute has the effect of empowering one side—that which has de facto possession of the keys to the Kingdom—over the side, which claims that the keys were stolen.) The internal controversy over how the Satmar's indigenous theory of separation between religion and state applies has confounded the secular courts' application of America's "own" principle of church-state separation. At the same time, it has demonstrated that the Satmars' themselves appeal to, and depend upon, instrumentalities of secular law—both their own "state" law *and* (to protect their own structures of secular governance from internal usurpation) that of the American polity. Therein, I argue, lies the ultimate falsification of Satmar law's supposedly non-statist character.

There are thus two species of private law—American private law and the internal law of the Satmar community, its version of Jewish law—that operate in tandem in Kiryas Joel in ways that raise serious questions about the nature, if not the very existence of the community’s “non-state law.” The role of these two species of private law in shaping the life of the community is not unknown,²⁸ but the full extent of their significance (and their interaction) has been obscured by the tendency of outsiders to focus on the public face of Kiryas Joel: its public institutions (the Village and the public school district) and questions that pertain to the constitutionality of those public institutions and their compliance with American public law.²⁹ Focusing on the public law aspect of Kiryas Joel, as I have said before, is rather like the tail wagging the dog.³⁰ The exercise of public power in Kiryas Joel of course matters, but it is basically epiphenomenal, an excrescence of so-called private power, which is subject to the rules of private law. The public law aspect of Kiryas Joel is just its outer casing. It is private law that is the locus of the regulatory action that really matters in producing the community, maintaining its boundaries, securing its homogeneity and enforcing its religious norms.

Precisely *how* private law matters, how it works, where it works and what it really consists of is less than obvious. I have spent many years trying to untangle the web of private law that has penetrated into and emanated out of Kiryas Joel—and a tangled web it is. What follows is a very abbreviated description of some of

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²⁹ See e.g., Abner Greene, *Kiryas Joel and Two Mistakes About Equality*, 96 Colum. L. Rev. 1, 2 (“The exercise of public power by idiosyncratic, homogeneous, and often separatist, exclusionary groups, is the problem at the center of Kiryas Joel.”)

³⁰ See Nomi Maya Stolzenberg, *The Puzzling Persistence of Community: The Cases of Airmont and Kiryas Joel*, in FROM GHETTO TO EMANCIPATION:

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the strings of that web, some of which are spun out of American law, some of which are spun out of Jewish law as understood by the Satmars, and some (all?) of which are built of fibers of Jewish and American law that have been woven together. The web of private law transactions and private law litigation that pervades Kiryas Joel is alas too vast and too complex to document in anything like its entirety. Even after years of assembling all the cases and painstakingly analyzing them, the thicket of private litigation emanating out of Kiryas Joel is so dense and voluminous, I'm still not sure I have a complete handle on it all. For one thing, it just keeps on going. The amount of private litigation generated in the "Kingdom of Satmar" is so dense and tangled, it boggles the mind. Between all of the procedural feints, the jurisdiction hopping and forum shopping, the consolidations of cases and voluntary dismissals that invariably lead to reincarnations of the self-same suit, the myriad consent decrees and violations of consent decrees, the contempt of court proceedings, the allegations of judicial harassment, the end runs around *res judicata*, the dressing up of old defeated claims in new causes of action, the piggybacking of new causes of action onto decades-old claims, the bankruptcy proceedings, the mortgage foreclosure proceedings, the guardianship proceedings, and the endless pursuit of an arbitration proceeding to adjudicate a contested synagogue board election on which control over the communal assets—and the community itself—depends, it is very, very hard even to just compile all of the private lawsuits that revolve in and around Kiryas Joel, let alone get a grasp on how they all fit together. Measures of such things are hard to come by, but the Satmars may have the honor of being not only the poorest community in the United States (as measured by the recent

census)³¹ but also among the most litigious, and they spend a lot of time litigating against one another. The irony in all this is that the Satmars subscribe to the traditional view according to which one of the most fundamental principles of Jewish law is never to go to the secular courts. That principle itself has become more grist for the Satmars' endlessly churning secular litigation mill.

And of course, private law litigation is only a small piece of the way private law structures and governs daily life. A full account of the role of private law in Kiryas Joel goes beyond the ceaseless litigation to analyze the role that private law plays in structuring private transactions and enabling families and educational and religious institutions to structure their internal affairs. Bargaining and transacting in the shadow of the law is no less a feature of life in Kiryas Joel than it is anywhere else, and the way in which the Village of Kiryas Joel was built, developed and settled in the shadow of the law, or to put it otherwise, in the free market, is also an important part of the story.

Most people with any familiarity with Kiryas Joel are familiar with the civil litigation that reached the Supreme Court in 1994. Striking down a special statute enacted by New York's state legislature allowing the Village to have its own school district, Grumet v. Board of Education of Kiryas Joel Village School District was a quintessentially public law case, which in fact did nothing to prevent the Satmars of Kiryas Joel from establishing their own public school system; it merely required the authorizing statute to be rewritten in a way that would comport with the norms of

neutrality and generality currently favored by the Court.³² The most important lines of that ambiguous decision are these: “we do not disable a religiously homogeneous group from exercising political power.”³³ (The full line goes: “We do not disable a religiously homogenous group from exercising political power conferred on it *without regard to religion.*”³⁴) It was left to the Scalia-authored dissent, which was strongly in agreement with this portion of the majority’s reasoning despite Justice Scalia’s typical lambasting of it, to clarify that the “conferral of power upon a group of citizens” who “share the same faith” is not the same as a “conferral of power upon a religious institution,” i.e., upon the religion to which those citizens belong.³⁵ So framed, Grumet constructs the existence of a geographically concentrated “group of citizens” who “share the same faith” as something that just “happens,” outside law, without state action.

But of course, whether or not “we are all legal realists now,”³⁶ we all know that nothing “just happens”; it takes concerted action to produce a territorially based community, to secure its homogeneity and its critical mass, and to establish

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³³ *Grumet*, 708.

³⁴ *Id.*

³⁵ In his dissent, Justice Scalia asserted that “Justice Souter’s position boils down to the quite novel proposition that any group of citizens (say, the citizens of Kiryas Joel) can be invested with political power, but not if they all belong to the same religion.” *Id.* at . In fact, Justice Souter’s opinion did nothing of the kind, as his insistence that “we do not disable a religiously homogenous group from exercising political power.” On this point, all of the Justices, save for Justice Stevens who wrote a separate concurrence condemning the statute for its promotion of segregation (and, possibly, Justice Kennedy, who analogized the statute to a gerrymander), were in agreement.

³⁶ See Joseph Singer, *Legal Realism Now*, 76 Cal. L. Rev. 465, 503 (1988).

its own “order without law,”³⁷ or “non-state law,” or “private” system of law and legal regulation. (America has its own fantasies of non-state law, which go by many names; in addition to these familiar nomenclatures, we call it “contract,” or “the free market,” “private arbitration” or family “privacy,” or just simply, freedom, where freedom is understood to imply the right to contract into rules, obligations and commitments binding one to others while being free from state intervention and submission to the regulatory power of the state.)

Obviously, it is private action that produces the demographic facts that enable communities use the modalities of local democratic politics and majority rule to form their own local government entities, and it is the same private action that legitimates such “seizures” of political power by religious groups. All the really important action necessary to produce the “group of citizens who share the same faith” and stand ready to seize the opportunities presented by local democracy and the rules of local government takes place in the domain of private action. But from the point of view of public law, as illustrated in Grumet, all of this private action takes place as it were off-stage, outside the domain of public institutions exercising state power and enforcing state law.

I have spent many years wandering around this back stage, opening doors, stalking the corridors, discovering secret passageways and hidden staircases that link one room to another. I’ve run into locked doors, trapdoors, blind ends and more than a few overstuffed closets. The overall effect is sometimes like being stuck in an Escher painting, at other times more like finding oneself in a hall of mirrors in

³⁷ ROBERT ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991).

a grubby Palace of Versailles, a place where legal briefs and documents are filed and piled high and secular law and Jewish law reflect off of one another in a strange and surprising sort of infinite ingress, confounding the distinction between them.³⁸ It is here in the backstage precincts of private law that we find the real legal circuitry of the Kingdom of Satmar. And what we find here is that this circuitry is neither purely non-state, nor purely state law. Instead what we find is that the quest for legal purity is itself self-defeating.

In the book that my co-author, David Myers, and I are in the middle of writing, we explore this legal circuitry in elaborate detail. Here, in the confines of this conference paper, I can do little more than enumerate and summarize some of this circuitry's most important nodes. Even with a complete description, which I can't provide here, there are obvious dangers in trying to resolve conceptual questions on the basis of an empirical inquiry—the perennial is/ought issues abound. But I present this material in the belief that theoretical insights can be gained by way of empirical inquiries. So long as we remain outside of “alien” belief systems and ways of life, we run the risk of oversimplifying and mischaracterizing them, overstating their otherness—in this case, their nonstateness. Only by getting inside the worldview of Satmar culture can we begin to see how its quintessentially anti-statist doctrine of theological quietism turns itself inside out to generate not only the need for some kind of secular/state law and government, but also its

³⁸ Let me be clear that “grubby” is meant to describe the American courthouses, lawyers’ offices and politicians’ meeting grounds where much of this story unfolds, not any site in Kiryas Joel.

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theological justification, a resort to secular power both masked and manifested by private law.

So without further ado, I want to share with you this very compressed overview of the multiple channels and nodes of Kiryas Joel's private law circuitry that we have mapped. In the interests of achieving maximal suggestiveness in a minimal amount of words, I'm going to present this material in the form of an old-fashioned table of contents ("wherein Elizabeth learns that Mr. Darcy ..."), my hope being that, despite the paucity of analysis and the coy style, these few broad strokes will suffice to convey, if nothing else, how intricate and convoluted, and how pervasive and interconnected these nodes and channels of private law are. I am aware that just showing that American private law is pervasive is not enough to refute the existence of non-state law. If all that American private law does is to facilitate Satmar activities and cloak them with protection, then the claim that state law pervades Kiryas Joel and undermines the non-statist character of its Jewish law, will be true in only the most trivial sense. To move beyond this banality requires showing that in the legal circuitry of Kiryas Joel, the cables of state law and Jewish law become in a meaningful sense truly intertwined. Here, in this glorified table of contents, I can only gesture at the evidence and arguments that support this claim. But I hope it will suffice at least to interest you in the material and the broader (here admittedly inadequately supported) argument.

To give an overview, the table of contents below contains seven "chapters."
(In the book, these will all be integrated into one (seamless!) chapter on the private

law of Kiryas Joel).³⁹ The first four—(1) Building Kiryas Joel, (2) Settling Kiryas Joel, (3) Expanding Kiryas Joel, and (4) Leaving Kiryas Joel—are concerned with the general infrastructure of the community. Although they include episodes of litigation involving public as well as private regimes of regulation, they are more about transactional law and the ways that social institutions are shaped by law outside the context of litigation. By contrast, the next three “chapters” all concern particular episodes of conflict between members of the community, which ultimately found in expression in civil lawsuits—indeed, a veritable riot of lawsuits—that were filed in New York’s state courts. Reflecting the character-driven nature of these legal battles, and seeking to convey the important plot developments in the unfolding social and legal history of Kiryas Joel, I have titled these “chapters” (5) The Rebbe’s House, His Widow and the Trusty Advisor, (6) The First Dissident’s Expulsion and The Dissidents Fight Back: From Private Property to Theocracy, and (7) The Chairman of the Board and the Heir to the Throne: Corporation Law and the Keys to the Kingdom of Satmar. If nothing else, the summary of the contents of each of these “chapters” of private law transactions and litigation will make your head spin—welcome to my world, as they say.⁴⁰ I hope you will join me in thinking through these voluminous materials and help me to

³⁹ Other chapters of the book in progress explore the historical roots of Hasidism and the Satmar community, the history of the Satmars in the United States, the public law face of the Village of Kiryas Joel, and a comparative analysis that situates Kiryas Joel in a broader history of self-segregated religious (and nonreligious) communities both in American and abroad.

⁴⁰ A necessary cautionary note. I have tried to avoid inaccuracies but because of the extreme compression, some inaccuracies may have crept in with regard the order of events, names of some of the actors and their corporations, and some other aspects of the legal minutiae. Please bring any inaccuracies you observe to my attention.

think about what they have to teach us about the nature and existence of “non-state law.”

1. Building Kiryas Joel—*in which the Rebbe sends out emissaries to the suburbs of New York to scout for land in the 1970s; in which purchasing agents for the Satmars buy land in the Township of Monroe using false identities to evade suspicious townspeople who don't want to sell their land to the Satmars; in which real estate transactions involving the purchase of land in the Township are entered into and residential developments are planned, permitted and built; in which rumors of a “Satmar takeover” spread and the Township warns the Satmar developers not to build in violation of the local code (which, in typical “exclusionary zoning” fashion, prohibits the kind of high-density housing necessary for the Satmars’ large and largely poor families); in which the Satmars trick zoning inspectors with false reassurances and false fronts, and call into question the constitutionality of zoning laws that exclude people who are “different” and without ample means; in which zoning controversies between the Satmars and their non-Satmar neighbors in Monroe intensify; in which the zoning controversy is defused by the Satmars’ voting to secede from the Township of Monroe and to form their own separate municipality; in which the few non-Satmar families included within the originally proposed boundaries of the new Village insist that the boundary be redrawn so that they can get out the newly created jurisdiction; in which the outcome is an officially recognized Village populated exclusively by Satmars; in which residential developments are supplemented by commercial real estate developments in the newly formed Village, and the building of a grand central synagogue, a mikvah, a shopping plaza and the all-important religious schools; in*

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which a new home for the Rebbe and his wife is built and prepared to receive them in style; in which the Rebbe dies before he can move into Kiryas Joel.

2. Settling Kiryas Joel. In which the first settlers of Kiryas Joel are recruited; in which the process of renting and selling units in the newly built developments is implemented and more (and more and more and more) housing is built by Satmar developers; in which Section 8 housing subsidies become the norm; in which patterns of daily life are established, with 1/3 of the adult male population commuting to work in the city (in the famed electronic shops of 42nd Street) with others attending the kolel (the house of study) and with women, whose primary occupation is housekeeper/wife/mother, also performing the roles of teacher's aids, mikvah attendants and working in and sometimes developing their own small businesses; in which commercial enterprises, kosher stores, small businesses, wedding halls and a maternity convalescent center are established to cater to the needs of the local population; in which state and federal grants are sought and obtained to fund "community development projects" and tackle the growing problem of widespread unemployment in the community; in which controversies arise over the obtaining of state and federal grants; in which Mexican laborers are hired to work in the poultry processing plant, the one sizable industry in the Village, and a labor camp is briefly established in the Village to house the immigrant workers; in which immigrant women from Poland and the Ukraine are hired by the wealthier families as housekeepers and nannies, leading to the 1% fraction of the Village population that is non-Satmar; in which babies are born, and more babies are born, and school enrollment expands, leading to various negotiations with the regional school district to provide school

buses to transport KJ's children to the private religious schools they attend; leading to further controversies over women school bus drivers, and still further controversy over the education of the burgeoning population of Satmar children with special needs; leading to the passage of legislation authorizing the creation of a public school district in Kiryas Joel in order to accommodate Satmar disabled children's special needs; leading to the constitutional case of Grumet

3. Expanding Kiryas Joel. *In which the exponentially growing population demands a greater land base, leading to efforts at annexation; in which KJ annexes 300 acres in 1978; in which the Village continues to scout for new opportunities to acquire and annex more land; in which allegations of land grabs and fights over water and other scarce resources lead to conflicts with the adjacent communities; in which lawsuits over water diversion projects make manifest the hidden "externalities" that always accompany grants of "private" rights and inevitably give rise to public law disputes.*

4. Leaving Kiryas Joel. *In which a small but growing number of defectors emerge (even as the overall rate of defection remains very low); in which the obstacles to leaving the community become clear, most especially the threat of losing custody of one's kids; in which custody is reportedly commonly lost by the parent who leaves to the parent who remains in the community on the grounds of stability & the judicial presumption in favor of preserving the status quo, plus the fact that the parent who has left, typically the mother, usually has no high school diploma or means of support; in which "spiritual custody" decrees are handed down by the state family courts, specifying the details of permitted and prohibited parental behavior down to the*

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thickness and manufacturer the tights that girls are required to wear, what products they can eat, what books they can read, and who the children are allowed to associate with (no one outside the Satmar community unless approved by the Satmar parent), etc., details which the parent who has left the community is required to observe; in which the threat of losing their children leads an undeterminable number of Satmar parents contemplating leaving the community not to do so, and leads many of those who do leave and sue for divorce to settle their custody disputes out of court, a settlement process that predictably favors the Satmar parent because of the widespread perception that the courts will rule in their favor; in which a few extraordinary women succeed in gaining custody of their children despite their fears and their having defected from the community; in which these women join with other ex-Hasids, or people in the process of transitioning out of their communities, to form fledgling organizations devoted to helping people leave, and focused in particular on overcoming the obstacles to winning custody of their children.

5. The Rebbe's House, His Widow and the Trusty Advisor. *In which, in the early days of the development of the Satmar community in the U.S., a private residence is provided for the Rebbe and his wife, Feiga, the "rebbetzin" (this being the Rebbe's second wife, the first having died in Europe in 1936) on Bedford Avenue in Williamsburg; in which the Satmar Rebbe's personal approach to the dilemma of material possessions is developed, with his preference for abstemiousness and humble surroundings distinguishing his personal style of "kingly reign from other Hasidic rebbes; in which the distinction between spiritual and material possessions, and the ambiguities of the distinction, are explored: the position of Grand Rebbe (like the*

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position of rabbi, generally) is a spiritual vocation, not a job; he is no one's employee, there is no salary or official payment for the performance of this spiritual vocation; by its nature, and by his spiritual nature, the vocation of rebbe is incompatible with material rewards; and yet, the Rebbe has to live; and not only to live, but to give, providing both materially and spiritually for his flock as well as his own family; in every Hasidic Court, this dilemma of reconciling the spiritual nature of the vocation with the material needs of the Rebbe has to be confronted, and it has been resolved in various ways (with some Rebbe's opting to live in a more opulent kingly style befitting the "royal" office, while others, like the Satmar rebbe, opt to live in humbler fashion befitting its spiritual, anti-materialist nature); but the tension between the spiritual and the material nature of the Rebbe's position can never be completely resolved; witness the Rebbetzin's famed open pockets, her charitableness (an expected and ritualized function of the Rebbe's household) helping to compensate for her childlessness (and some would say churlishness) in the eyes of the community. In which, because of the reputation she gains for her generosity and her own forceful personality, Feiga manages to attract a loyal following of her own, a reputation that depends to a not insignificant degree on commanding financial resources and presiding over a residential property that (despite the Rebbe's preference for modest appointments) is nonetheless possessed of the scale and grandeur that befits a Satmar "King" who must receive and provide for the members of his "court"; in which the Bedford Avenue Property becomes drawn into the housing discrimination suit that rages for decades in Brooklyn, becoming subject to a consent decree; in which the Bedford Avenue property is conveyed in a court-supervised proceeding (Yetev Lev v. 26

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Adar Corp.) to a newly established corporation, "Beit Joel," (House of Joel), in order to obtain a \$1,000,000 building mortgage loan to fund the building developments in Kiryas Joel under the guidance of the Rebbe's trusted business advisor, an importer and exporter of electrical instruments by the name of Nathan Brach; in which the Rebbe dies, heirless, leaving a power vacuum; in which his nephew assumes the position of new Grand Rebbe, over Feiga's objections; in which Feiga, now ensconced in her new home in KJ, with Brach and other loyalists, becomes a rival power center; in which, under Brach's supervision, "Beit Jacob" (the first corporation formed by Brach) transfers the Bedford Avenue property to a newly formed corporation, "Beit Feiga," (house of Feiga) with leave of the court; in which the Moshe faction (now counterpoised by the Feiga faction) disputes Feiga's claims to ownership over the Bedford Avenue Property (and, by extension, the other properties its mortgaging has funded), claiming that the Rebbe was never the real (legal, material) owner and therefore Feiga cannot lay claim to ownership either of the Bedford Avenue Property, or of the properties whose purchases were funded by the mortgaging of the Bedford Avenue Property, making manifest the material nature of the Rebbe's spiritual possessions and the claims of the secular leadership to control over the "Kingdom's" material (or spiritual?) assets; in which Feiga and Brach and others in the opposition camp do lay claim to various properties, including a property attached to the back of KJ's grand synagogue where a rival synagogue is established; in which Brach becomes so disillusioned that he grows alienated from his religious beliefs but remains loyal to Feiga; in which the Village of KJ and its zoning authority claim that the holding of religious services in the property in back of the main synagogue is in violation of the

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Village's zoning laws; in which Feiga and her followers claim that the zoning laws are not being implemented legally; in which Feiga and Brach are barred from entering the main synagogue [in KJ?]; in which Feiga and Brach retaliate by installing a metal gate at their synagogue at the Bedford Avenue Property [or is it the property in back of the Grand Synagogue in KJ, or still another property possessed by Feiga??] to keep the Moshe faction out; in which the Congregation (led by Moshe) is reinstated into possession pending a hearing; in which Beth Feige petitions the court to sell its property to 26 Adar (Brach's corporation); in which the Moshe faction challenges the legality of the 1978 transfer from Beith Joseph to Beith Feiga; in which an injunction is issued enjoining Brach's entry (which remains in place until 1994); in which the Brach case is placed on indefinite hold and later consolidated with the election cases that arise out of the growing schism; in which Brach and the Adar Corp. cease to make their mortgage payments; in which a mortgage foreclosure case is brought; in which the zoning controversy over the property in back of the main synagogue in KJ escalates, resulting in melees, to which the Village responds by bringing its privately contracted "public security committee" (critics would say "goon squad") to "keep the peace"; in which the entrance to Feiga and Brach's rival synagogue in back of the main synagogue in KJ is padlocked and (?) bulldozed by the Village to make it impossible to enter; in which a new religious corporation, Khal Charedim, is formed by Feiga's followers; in which Khal Charedim seeks, and is denied, building permits to expand the synagogue in "Feiga's property"; in which Khal Charedim brings a lawsuit in Orange County challenging the denial of a zoning permit, alleging that the Village violated the plaintiff's free exercise rights, right to assembly, and the equal protection and due

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process clauses; in which the trial court issues a preliminary injunction enjoining occupancy and future construction; in which the appellate court overturn's the trial court's injunction and directs the Village to consider Khal Charedim's zoning application; in which Khal Charedim commences another action the Southern District of New York; in which the state's highest court rejects the Moshe faction's challenge to the validity of the transfer of the Bedford Avenue property to Beth Feiga and the original 1978 transfer of title is deemed valid, ending the injunction against Brach's entering the Bedford Avenue (?) property; in which the Village brings suit in federal court; in which, fearing assignment of the property to the Congregation controlled by Moshe, Brach and Adar bring an action to forestall foreclosure on the property; in which the successor in interest to the original lender of the mortgage reassigns the mortgage to yet another corporation called "535 Bedford Association Corporation" which in turn assigns it to religious corporation called "CBR," which purchases Feiga's note and mortgage with funds borrowed from "CAC and Star City Sportwear," the corporate interest of Moshe Kestenbaum, a trustee of CBR (and another Feiga supporter?), who three years later will sue CBR in rabbinic court for failure to repay CAC; in which CBR commences a mortgage foreclosure proceeding; in which the mind boggles but we begin to see how "spiritual property" is alternately materialized and de-materialized within the Satmar's own (Jewish) legal worldview and, by extension, how religious property morphs into legal (material) property governed by state (and federal) law, how one property (i.e., the Bedford Avenue Property in Brooklyn) morphs via mortgaging and lending practices into ownership of other properties (in Kiryas Joel); how "private law" property matters morph into matters of public law and land

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use regulation (from zoning controversies to constitutional challenges), and how mundane property proceedings ultimately determine who has control over the assets—and leadership—of the community.

6. The First Dissident's Expulsion and the Dissidents Fight Back: From Private Property to Theocracy. *In which Moshe appoints his older son Aaron to be the Chief Rabbi of the Village of Kiryas Joel, and his younger son Zalman to be the head of the Williamsburg Congregation, setting up a classic biblical struggle over succession in which the younger son will up-seat the older son but not without (endless) struggle; in which some parents in KJ, frustrated with the Village's yeshiva, form their own alternative yeshiva, Bnai Joel ("sons of Joel"); in which Aaron makes known his displeasure and requires the closing of Bnai Joel and the return of the students to the UTA yeshiva (the established boy's school); in which Joseph Waldman emerges as the leader of the dissident parents; in which Brach and other members of Feiga's faction make common cause with Waldman and his followers; in which Waldman's children are expelled from school, and the Brach faction, now including Waldman, is formally expelled by rabbinic decree from the synagogue and denied access to the community's religious institutions; in which Waldman begins to wage his legal campaign against the Village's secular and religious authorities, starting with an appeal to the rabbinic court to reinstate his children who were expelled from a school, which he loses, prompting him to file a lawsuit in state court seeking reinstatement of his children who were expelled from school; in which Waldman runs in the first school board election after the law is passed authorizing the creation of the Kiryas Joel public school district and loses to the slate of 7 candidates approved by Aaron; in which Waldman*

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emerges as the leader of the “dissident” movement in Kiryas Joel; in which Waldman and his cohort bring a lawsuit seeking dissolution of the Village on the grounds that the Village is a “theocracy,” which Waldman sees as a violation of the original Rebbe’s commitment to theological quietism and withdrawal from worldly politics, and on the further grounds that it exercises its zoning powers in ways that violate statutory and constitutional antidiscrimination laws and constitutional guarantees of religious freedom and separation of church and state by disfavoring the dissidents and extracting fees in return for building permits designed to support the “ruling” religious faction; in which Waldman’s suit is dismissed as part of a settlement decree, in which the Village agrees not to discriminate against the dissidents in the provision of benefits and services, further agrees to issue a building permit for one of the dissidents’ building projects, further agrees to preclude officers on the Village’s Board of Trustees (i.e., its city council) from sitting on other Village boards (i.e., the zoning board), and a monetary settlement; in which, notwithstanding their agreement as part of this settlement decree to a voluntary dismissal of their lawsuit with prejudice, Waldman and his cohort bring suit seeking dissolution of the Village on the grounds of its allegedly theocratic and discriminatory nature again. And again.

8. The Chairman of the Board and the Heir to the Throne: Who Holds the Keys to the Kingdom of Satmar?. *In which, shortly after the second circuit, Judge Calabresi presiding, holds that Waldman’s second “theocracy” lawsuit is barred by res judicata, the brewing feud between followers of Aron (the “Aronis”) and followers of Zalman (the “Zalis”) escalates; in which the board of trustees of the synagogue, formally incorporated as a religious nonprofit corporation under New York’s*

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corporation laws and headquartered in Williamsburg, splinters; in which the Aroni camp, branded by the Zalis as “dissidents” (just as, confusingly, the Aronis within their jurisdiction of Kiryas Joel branded their opponents led by Waldman as “dissidents”), convenes an emergency meeting of the board of trustees of the synagogue to hold an election for a new corporate board and to transfer ½ interest in the cemetery to the KJ Congregation, a conveyance which is legally effected; in which this faction of the board (the Aronis) are formally expelled from the congregation by the rabbinical court under the supposed authority of Moshe, who is now in his dotage; in which rival elections to the board of trustees are held, on different days, one convened by the Aroni faction in which Satmars living in KJ and Satmars living in Brooklyn are allowed to vote, the other, convened by the Zalis, in which only the Brooklynites are granted the right to vote for the election of the board of trustees of the Williamsburg Congregation; in which the Aronis bring a proceeding under New York law to compel arbitration of the disputed election claims by a rabbinical court in Kings County, NY, and bring other lawsuits contesting the validity of the Zali election and seeking recognition of the validity of their own election in another court in a different jurisdiction (Orange County); in which endless complex litigation ensues; in which the Zali faction argues that the U.S. Constitution prohibits judicial intervention in religious matters; in which the Aronis counter by arguing for the existence of a separation between religious and secular authority within Satmar society, which renders matters pertaining to the synagogue board secular matters, appropriately subject to judicial intervention to ensure compliance with New York State laws governing the governance of religious and nonreligious nonprofit corporations; in which the Zali’s legal theory is that the

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Satmars' secular leadership's authority is subsumed under, and subordinate to, the spiritual authority of the Rebbe, and that the spiritual authority of the Rebbe is unlimited, extending to all matters, "secular" and "spiritual," in effect denying the existence of separate secular and spiritual jurisdictions in the Satmar world; on the basis of the absence of a Satmar principle of separation between religious and secular authority, the Zalis argue that the American principle of separation of religion and state must be observed, not permitting judicial intervention; the Aronis' diametrically opposed legal theory is that Satmar law itself draws a distinction between secular and religious (Satmar) authority, which places limits on the spiritual authority of the Rebbe, his powers not extending to matters pertaining to the selection of the community's secular leaders, which are therefore appropriately subject to state regulation (i.e., the rules imposed by the law of nonprofit corporations); in which the upshot is that the state courts are required to determine which of these competing views of the authority of Satmars secular leaders is correct; in which Moshe, still the chief Rebbe, even as his sons are positioning themselves to be his successor, is summoned to testify in court to address the dispute over the extent of his power over Satmar's secular leaders; in which motions are made to prevent the Rebbe from having to testify and a separate guardianship proceeding is brought to give Zalman's supporters guardianship over Moshe, whose mental faculties are faltering; in which the judges in the Orange County and Kings County lawsuits arrive at opposite outcomes; in which an injunction is issued denying the Aronis access to the main synagogue in Williamsburg during the holiday of succot; in which mayhem ensues; in which appeal upon appeal is taken, new lawsuits are filed, lawsuits are consolidated,

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lawsuits are dismissed, and a lawsuit challenging the denial of access to the cemetery is commenced, once again highlighting the fluid boundary between sacred/spiritual property and secular claims to legal title.

What can be learned from this mind-boggling (and still ongoing) set of legal developments? Most, perhaps all, of the American private law regimes that are described and analyzed in these “chapters” can be classified as one or another species of private property law. Even the family law cases can be seen as being about a certain kind of property: children. Children are indeed the community’s most important spiritual resource, without which the community would be unable to fulfill its most basic commandments: to be fruitful and multiply and (thereby) perpetuate a holy community dedicated to observing the words of the holy Torah. In children, one sees the same dialectic that one sees with regard to the Rebbe’s own spiritual vocation and calling, whereby what is first conceived of as a form of spiritual property inevitably morphs into a kind of material property, generating material needs that can only be met by secular law. In the “spiritual custody” battles between parents who have left the community and those who have remained, children truly are a kind of property over which state courts exercise jurisdiction, although family law judges often use their jurisdiction to defer to Satmar law.

The most obvious and pervasive type of property law on which the community is—literally—founded is the law that governs private real estate. Not all real estate law is private law, of course. Zoning laws, which are public in nature (embodied in local government ordinances, involving the exercise of the police

powers of the state) have been a significant factor in the history of Kiryas Joel, beginning with the Village's initial formation, which occurred when Satmar residents voted collectively to secede from the Township of Monroe, and to form their own separate municipality. The immediate impetus for the Satmars' secession was a controversy over the Township's zoning laws: like many suburban municipalities, the Town of Monroe favored low-density (critics call them "exclusionary") zoning laws, which depress the availability of affordable housing that can accommodate large families or multiple families under one roof by requiring large lot sizes and limiting the scale of dwellings. The Satmars, whose bank accounts tend to be small (Kiryas Joel was measured as the poorest community per capita in the last census),⁴¹ and whose families are very large (it is not atypical for a Satmar family to have eight, ten, twelve, fourteen, even sixteen children) favor of a very different model of housing. Their surreptitious efforts to evade the obstacles to building housing that would accommodate their financial and family needs quite predictably angered the longstanding residents of Monroe, who viewed the newcomers with suspicion. To them, the ways of the Satmars, who spoke Yiddish, dressed out of another century, and kept to themselves, were alien; their predilection for high-density housing was anathema; their presence and their refusal to bow down to the majority community's preferences threatened to change the character of the community.⁴² With or without the added dash of anti-Semitism that the non-Jews and "wicked Jews" of Monroe were accused of harboring, the zoning controversy was more than enough to spark the movement for secession

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42 For a description of similar tensions, see Samuel Heilman, *JEW VS. JEW*.

from the Town of Monroe, which led in turn to the formation of the Village of Kiryas Joel as a separate municipality.

But if it was a public law dispute over zoning which was the immediate catalyst to the Village's formation, the Satmars would never have been in a position to form the Village, indeed they would never have been in a position to spark the zoning controversy in the first place had they not first established residence in the Township of Monroe. It was only because they were already *there*, settled residents in Monroe, concentrated in a single area, with not a single non-Satmar living in their midst, that they had the critical mass and concentration to prevail in a popular vote to secede and form a new municipality. And it was because they occupied contiguous residential properties, with not a single "wicked Jew" or gentile in their midst, that the boundaries of that new municipality (once they were adjusted at the request of the few non-Satmars whose properties were originally placed within the Village)⁴³ contained the whole Satmar community, and nothing but the Satmar community.

There is nothing terribly surprising about the role played by the law that governs real estate transactions in building and sustaining Kiryas Joel. The mere fact that the law that governs property acquisitions and development literally lays the foundation of Kiryas Joel does not disprove the non-state character of Jewish law in Kiryas Joel, and it only confirms the presence of state law in a weak sense, though it does serve to remind us of the pervasiveness of private state law. Even without the mountain of litigation that would eventually erupt out of the Satmar

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community, it stands by itself as refutation of the claim made by communitarian critics of liberal legal regimes, who maintain that such regimes are inimical to the ability of “strong communities” to maintain themselves. Contra the communitarian critique, which holds that a market-based regime of individual rights will atomize society into disconnected, deracinated individuals, sweeping away traditional forms of authority and community, the history of how Kiryas Joel was built demonstrates that one of the chief products of liberal market-based regimes is “communitarianism from the bottom up.” Like all products in a capitalist system, this product is not accessible to everyone. Acquiring communitarianism from the bottom up requires access to capital. It takes access to capital to invest in the purchase and development of real estate, making “communitarianism from the bottom up” of the sort exhibited by the Satmars of Kiryas Joel a privilege of wealth—but not a privilege of the wealthy. One of the curiosities about the economic life of the Satmars is that it combines high levels of poverty with a highly effective system of *machardom*. Without a cadre of prosperous businessmen, like Nathan Brach, who fund the building of communal institutions and provide the poorer members of the community with the necessary financial support to be able to dedicate themselves to a life that eschews the material pursuits, Kiryas Joel could never have come into existence. But with their support and financial savvy, a largely impoverished community was able to take advantage of the market opportunities that the laws of private property and commercial transactions present to anyone with access to capital. And that in turn has enabled them to live a life dedicated to pursuing spiritual goods and purity instead of material goods and power.

Again and again, we see the same dynamic whereby the pursuit of spiritual purity and the repudiation of material property and power is dependent on the provision of material support that only secular law can provide. In America, that law is the law of the private domain, the law of the family and spiritual custody, and the law of the market and private property. The same market mechanisms that fueled racial and economic residential segregation enable groups like the Satmars to “self-segregate” by exercising their “individual rights” to contract and purchase property. The observation is banal, but it is an important reminder of the legal rights—private rights of property and contract—that underlie the demographic realities that just “happen” to exist from the standpoint of public law. By itself, this may not signify much. But by—literally—laying down the territorial foundation for a concentrated population of members of a group, the transactional laws of real estate create a platform for all of the other private law action described above. It is when we see how the law of real estate transactions interacts with these other bodies of law—private nonprofit corporation law, family law, etc.—that the full picture of the effect of private property law begins to come into view.

More than that, it is an important reminder of the Americanness of Kiryas Joel. Kiryas Joel takes its place in a long history of religious separatist communities, whose existence was facilitated and enabled by American private law. It takes its place in a long history of group-based residential segregation that goes beyond the peculiarities of separatist religious communities. There is in fact nothing peculiar at all about the existence of homogeneous self-segregated community; it is completely of a piece with the existence of racially segregated communities and communities

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segregated by wealth and class, all phenomena that are products of America's commitment to private rights and private law. The joint view of Justices Souter and Scalia, that "there is nothing in our Constitution to prevent a community that shares the same faith from being endowed with political power" is just a particular application to the case of religion of the more general "principle" of American law that there is nothing unconstitutional about political entities whose population base is all, or majority-white (or affluent). So long as the demographic realities that enable a community to translate its private assets into public power are the product of private law (bottom up formations), not top-down government dictates, then—according to the prevailing understandings of public and private law—there is nothing that makes a liberal legal regime incompatible with strong and exclusionary forms of community.

If all of this goes to show (the old realist/crit point) that the private-public distinction breaks down, with private power readily converted into public power by groups with the economic and cultural capital (and the will) to do so, the case of Kiryas Joel also suggests the porousness of the boundary between religious and secular law. Undeveloped still in this paper, but of the utmost importance in supporting my general claim, is the way in which the Satmars espouse a distinction between religious and secular matter that makes secular law, state law, a necessity from their own theological point of view. The secular state law is viewed from their theological standpoint not only as a matter of external necessity, but also, more importantly, as an internal theological necessity, as a necessary response to the material needs that are necessitated by the quest for spiritual purity. Of course, the

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proposition that secular law is a necessity is at odds with the basic position of theological quietism (as Waldman argued in pressing his case that the Village of a Kiryas Joel is a “theocracy”—something he viewed as a contradiction of the Rebbe’s vision of a spiritually pure community. That is what makes the Satmars’ concessions to secular law so notable. There is nothing very novel about their theological argument for a division of secular and spiritual jurisdictions, for limits on the sphere of the Rebbe’s authority, in short, for a species of (internal) secular authority and law. This was (and remains) the orthodox view of the relationship between religious and secular power in traditional Jewish law. What makes the appearance of this traditional theological argument for state power here in the context of the Satmars’ disputes so striking is that this is exactly what theological quietism, the Satmars’ philosophy, rejects. The Satmars represent the heterodox response to the political-theological predicament, the quietist response that rejects the orthodox view of the necessity of engaging in, and even exercising, secular legal power. In the end, however, political quietism defeats itself. As shown by the various lawsuits, the pursuit of spiritual purity and separation from the material world generates material needs that can only (from the *Satmars’ halakhik* standpoint) be provided for by secular authorities. Hence the indigenous theory of separation between secular and spiritual jurisdictions that arises (paradoxically) out of the Satmars’ quietist theology. It is in this theory that one sees the impossibility of non-state law.