

Symposium

Jack Bieler

Rabbi Bieler is a day school educator and spiritual leader of Kemp Mill Synagogue in Silver Spring, MD.

JACK BIELER

How one understands the nature of the present-day Jewish mission will directly affect the extent to which he feels that Orthodox Jewry ought to participate in the debates regarding the issues and policies confronting general society. There is no dearth of references concerning the future messianic period that describe how Jewish tradition and values, as exemplified by the entire Jewish people living observantly in their own land, will serve as inspirations and models for other cultures and nations. The assumption on the part of some that the state of Israel already serves such a function vis-à-vis other societies, in the spirit of “*reshit tsemilat ge’ulatenu*” (the beginning of the flowering of our redemption), is movingly articulated by Rav Kook in his essay suggesting a possible singular “silver lining” of the horrors of world war.¹ However, an approach mandated for contemporary Orthodox Jews residing in the Diaspora is less clearly defined.

The key biblical phrase invoked by those who do believe that there is an obligation to contribute proactively and publicly to discussions of issues of the day is found in *Isaiah* 42:6, “. . . *ve-etsorekha ve-etenkha li-vrit am le-or goyim*” (and I formed you and have designated you as a covenantal people, a light unto nations). Although this concept could be viewed as yet another long range aspiration for the Jewish people that will be first fulfilled during some future utopian period, Netsiv² associates the phrase with *Genesis* 9:27, as an extension of an interpretation by the *Amora* Rav Yohanan.³

ve-yishkon be-ohalei Shem [and (Japheth⁴) will dwell in the tents of Shem]: He blessed him [Japheth] with men endowed with wise hearts who will appreciate the wisdom of the offspring of Shem in their tents, which, because such wisdom originally emanates from the Divine, has no limitation or circumscribed purpose. And they [the descendants of Japheth] will come to learn from them [the descendants of Shem] ideas and values as it is written, “*ve-etsorekha ve-etenkha li-vrit am le-or goyim*,” implying that Israel was created to benefit the faith of every nation, referred to as “berit” [covenant], and to enlighten them in terms of “*derekh erets*”. . . .

Symposium: Jack Bieler

The commentator continues in the same vein when he expands upon God's charge to Avraham in *Genesis* 17:4: "*ve-hayita le-av hamon goyyim*" (and you will be a father for a multitude of nations).

but this is what is desirable and the ultimate goal: that all of the nations of the world will know God, while idolatry will cease . . . and in this sense he [Avraham] will serve as the father of a multitude of nations, like a father who instructs his son regarding proper beliefs. And with such an approach will the previous phrase "*hithalekh le-fanai*" [walk yourself before me] become understandable, i.e., that he [Avraham] publicize His Divinity before the nations of the world who are not disposed to accept total conversion.

Although in the second commentary cited above the focus appears to be on theological belief rather than specific political and social policy, monotheism in general and Judaism in particular presume clearly defined standards of ethics and behavior. A specific example of the manner in which Avraham bears witness to the surrounding nations appears in *Genesis* 20:11. When challenged by the local monarch concerning the misrepresentation of his relationship with Sarah, the patriarch speaks to power and asserts that "*rak en yir'at Elokim ba-makom ha-zeh*" (certainly there is no fear of God in this place). Implied in such a comment is not just a theological critique that the society is idolatrous, but also an evaluation of the social fabric of Gerar: its attitudes towards murder, covetousness, adultery, the treatment of the stranger, and the abuses of royalty. Rather than constituting an isolated incident in the life of Avraham, the confrontation with Avimelekh and the mores of his kingdom can be viewed as paradigmatic of Avraham's interactions with the peoples that he met while traversing Canaan and its surroundings. It could furthermore be maintained that God's commandment to Avraham in *Genesis* 12:1 to leave his homeland and take up residence in Canaan was at least in part designed to properly position the patriarch and his offspring to be able to engage in this type of activity in the most appropriate and receptive environment. Although our primary sources can be understood to insist that the Jewish mission to share spiritual values and beliefs with the rest of humanity already begins with Shem, Maimonides, in the course of lauding the unique qualities of Moshe, draws a clear distinction between Avraham and those exceptional spiritual personalities who may have preceded him.

Not one of the prophets—such as the Patriarchs, Shem, Ever, Noah,

TRADITION

Methuselah, and Enoch—has ever said to a class of people: God has sent me to you and has commanded me to say to you such and such things. . . . He who received a great overflow, as for instance Avraham, assembled the people and explained to them by the way of teaching and instruction to adhere to the truth that he had grasped. . . .⁵

While the Jewish people eventually become known as the descendants of Jacob, or *benei Yisrael*,⁶ due to the Jewish tribal structure evolving from Jacob's children, it is Avraham's experiences and activities which ought to serve as a powerful inspiration for contemporary Orthodox Jews to fulfill the principle of *ma'aseh avot siman le-banim* (the deeds of the ancestors are precursors for their descendants) by attempting to formulate perspectives based on traditional sources and to positively influence the degree of *yir'at Elokim*, or moral sensibility, in the societies in which we reside. I believe that it is particularly important for Orthodox Jews to realize, in the spirit of Avraham, that while we might view our tradition as concerned with the preservation of our unique identities and the resistance against the temptations and negative influences to which we may be subjected from without, nevertheless the purpose of preserving that very identity is not an end in itself. Our attempt to retain our distinctiveness is in order to play a role vis-à-vis the rest of humanity—representing a specific religious and ethical approach to life and social interactions that can potentially be illuminating to others.

There is clearly a difference between reaching a *pesak halakha*—a specific binding legal decision in accordance with Jewish law for a Jewish person who finds himself facing a dilemma whose resolution is complex—and developing philosophical and ethical guidelines with respect to the development of public policy. Even from a technical perspective, the manner in which elements of the Noahide Code are defined for Jews as opposed to non-Jews indicates that an attempt to arrive at universal *piskei halakha* is nonsensical. What is much more realistic and appropriate is to define the general criteria and assumptions that constitute the variables taken into consideration by a *posek* or *bet din* during the course of their deliberations. I would maintain that the effort required to codify such material would not be monumental; what would be required is a measure of consciousness on the part of halakhic experts regarding the key factors, as well as their respective underlying philosophical assumptions, that play pivotal roles in their day-to-day halakhic decision-making. Where additional time, effort, and (more

Symposium: Jack Bieler

importantly) motivation and commitment would be required beyond what such individuals already know and think about, is in the need for familiarization with the scenarios and situations that are constantly unfolding and confronting general non-Jewish society. *Posekim* understandably have invested general research and inquiries into the issues that typically concern individuals within the Jewish community who pose to them their queries. There is a significant difference in the thinking, conceptualization, and understanding required for, on the one hand, rendering a finite decision with respect to a particular question confronting a specific couple, family, or even community, and, on the other, making recommendations designed to influence legislative or budgetary governmental initiatives. The desire to create, promote, dissuade, or modify views being considered as potential cornerstones for contemporary policy issues will require not only expert familiarity with Jewish sources, but also the challenges, technologies, economics, politics, diplomacy, and social dynamics of the day. Such interdisciplinarity could prove fascinating for those capable of responsibly and competently developing such ideas. However, there appears to be no specific sector of Jewish professional activity—*rosh yeshiva*, communal rabbi, university professor of Judaic studies—which would approach the development of such policy statements as little more than an esoteric sideline. Theoretically this would be the ideal role of individuals serving in the capacity of Chief Rabbi of a country, as exemplified by the late Lord Immanuel Jakobovits, Chief Rabbi of Great Britain from 1966 until 1991, who carried out this function so effectively that he was elevated to the peerage for his efforts. However, for the most part, attempts at this type of analysis and perspective appear currently only in the context of the occasional lecture or journal article. In order to assure ongoing work in this area, university chairs and institutes, regular lectures, think tanks, and/or a specialized journal have to be initiated.

With respect to partnering with other religious groups in order to attempt to influence social and legislative policy development, it would appear that this ought to be the challenge and goal of all of humanity, let alone individuals associating with one another because of commonly shared religious beliefs. Assuming that specific principles of Jewish faith and practice are not compromised and unique aspects of Jewish perspective are not blurred over the course of trying to advance a specific program or agenda, the creation of a more wholesome social fabric should outweigh concerns arising from the fear of implicitly granting legitimacy to other religious groups, whatever their specific orientation.

TRADITION

To pass up opportunities to advance the possibility of perfecting general society because doing so will require joining forces with those who believe and practice in different ways, will in effect result in Orthodox Jews being reduced to thinking of and acting on behalf of no one but themselves, hardly a fulfillment of “*or la-goyyim*” befitting the spiritual descendants of Avraham.

NOTES

1. *Orot*, “*Ha-Milhama*,” Jerusalem, 5723, pp. 13-17.
2. Rabbi Naftali Tsevi Yehuda Berlin, *Ha’amek Davar* (*Va’ad ha-Yeshivot be-Erets Yisrael*), 5727, p. 36a.
3. *Megilla* 9b. It is of interest to note that R. Kook studied in Volozhin while Netsiv was the *rosh yeshiva*.
4. The standard understanding of the masculine singular pronoun suggested by “*ve-yishkon*” is God Himself, which paradoxically would lead to a totally opposite implication from that proposed by Netsiv: i.e., that Divine matters should reside exclusively in the province of Shem and his descendants, and are not to be disseminated!
5. *Guide for the Perplexed* (Chicago, 1963), vol. II, 2:39, p. 379.
6. See, for example, *Genesis* 32:33, based upon 32:29.

Meir Soloveichik

Meir Soloveichik is Assistant Rabbi at Congregation Kehillath Jeshurun in Manhattan, and a doctoral student in philosophy of religion at Princeton University. An Associate Fellow at the Shalem Center in Jerusalem, he is a contributing editor of its journal, *Azure*.

MEIR SOLOVEICHIK

*And you shall be for me a segula from among the nations:
In this you will be an elite, because you will be a nation
of priests to understand and teach to the entire human
race, so that they may all call in the name of God, to
serve Him together, as it is written: "And you, the Priests
of God will call out."*

-Seforno

In singling us out as a "nation of kingly priests," God selected the people of Israel to serve as ministers to humanity, working to create a more moral society. The moral blueprint that the Talmud provides for the world is referred to in the halakha as the *sheva mitsvot benei Noah*. As such, it is first and foremost upon the principles and prohibitions of the Noahide code that an authentically Jewish public policy must be founded. As Rabbi J. David Bleich put it:

It is the strong inclination of this writer that there should be a Jewish response to many of the social problems on the contemporary agenda. . . . Advocacy in the public and political arenas should be an expression of cogent and principled positions reflecting halakhic norms applicable to non-Jews as well as to Jews. There should emerge carefully articulated policy statements regarding such topical issues as abortion, health-care plans and sexual mores as well as capital punishment and legislation addressing rights of homosexuals.

At times, however, looking to the Noahide laws, or to other halakhot, is insufficient for the formulation of public policy on a particular issue, and it is with this point in mind that I would like to focus upon the symposium's second question: what sources ought to be used in Orthodoxy's political deliberations. In answering this question, we must begin with a striking *sugya* in *Sanhedrin* (75a):

A man once conceived a passion for a certain woman, and his heart was

TRADITION

consumed by his burning desire [his life being endangered thereby]. When the doctors were consulted, they said, “His only cure is that she shall submit.” Thereupon the Sages said: “Let him die rather than that she should yield.” Then [said the doctors]: “let her stand nude before him”; [They answered] “sooner let him die.” “Then,” said the doctors, “let her converse with him from behind a fence.” “Let him die,” the Sages replied, “rather than she should converse with him from behind a fence.” Now R. Ya’akov b. Idi and R. Shmuel b. Nahmani dispute therein. One said that she was a married woman; the other that she was unmarried. Now, this is intelligible on the view that she was a married woman, but on the latter, that she was unmarried, why such severity [with regard to her even speaking with him from behind a fence]? . . . R. Aha the son of R. Ika said: “So that the daughters of Israel not become morally dissolute.”

A Jew lies in the throes of death; the doctors are in agreement that a particular procedure (allowing him to speak with the object of his lust) will save his life. Furthermore, according to the Talmud, the suggested cure is not forbidden by the Torah. The halakhic question seems simple; the overriding value of *pikuah nefesh* demands that we act on the patient’s behalf. And yet the Rabbis prohibit such a course of action, out of *public policy* concerns. What, they ask, will come of a society in which women are treated as objects of man’s every perverse will and whim? And as the patient breathed his last, the Rabbis were certain that they had acted rightly; for while every human life is precious beyond measure, even *pikuah nefesh* could not override a larger value, socio-religious in nature—“so that the daughters of Israel not become morally dissolute.”

This *sugya* in *Sanhedrin* has, I believe, enormous implications for an Orthodox community attempting to formulate a distinctly Jewish public policy. In deciding whether to support a particular policy, the legalization or prohibition of a practice or procedure, we must consider not only what specific activities are *asur* and *mutar*, what actions are prohibited by the Noahide law or the *Shulhan Arukh*, but what sort of society we are creating, and on what sort of slippery moral slope we might be setting foot.

Allow me to illustrate my meaning with the following example. The donation of organs can be a very great *mitsva* (assuming the donor is not killed in the process); thousands die because there are not enough organs available. Imagine if America allowed its citizens to *sell* their organs; extra kidneys while they were alive, hearts and lungs after they died. Millions more would donate; millions more would live. If we are

only considering the narrow issues of *issur ve-heter*, one would think that we should institute such a practice; we should do everything that we can in order to save lives. Furthermore, the Noahide code is in no way violated by organ sales; nor, for that matter, does such a practice contravene any law in the *Shulhan Arukh*. Yet consider what sort of society we would be creating: human life as a whole could be disastrously devalued; we would cease to see people as people, and instead as organ banks. Imagine, as bioethicist Wesley Smith suggests, turning on the television and seeing the following financial report being broadcast:

April 10, 2010: The Investor's Network reported today that the price of human kidney futures dropped two points in heavy trading. Insiders attributed the downturn to the loosening of expected supplies caused by the recent drop in the price of stocks and the ripple effect it is having on the economy. With more people out of work and/or deeply in debt, it is expected that more people will be willing to sell a kidney, thereby lowering prices overall.

The scenario is chilling and eerie; and, upon hearing it, we realize that there would be something very wrong if organs were used en masse in this fashion. Organ sales would no doubt save many lives; and yet, countless countries, America and Israel included, continue to ban them, not because lives would be lost but because they *would be worth less in the eyes of society*. Smith's point is that bioethical public policy questions relate not merely to how many lives can be prolonged but also *how our society should be structured, and what should be the weave of its moral fabric*. In the words of University of Pennsylvania's Arthur Caplan, "calls for markets, compensation, bounties, or rewards should be rejected because they convert human beings into products, a metaphysical transformation that cheapens the respect for life and corrodes our ability to maintain the stance that human beings are special, unique, and valuable for their own sake, not for what others can mine, extract, or manufacture from them." In other words, while increasing organ availability is a reasonable goal, even a commendable goal, it does not justify creating a society in which transplant transactions, the marketing of human beings, are the norm. The prolonging of lives is important, but not if *life itself* will be cheapened in the process. While the laws found in the *Shulhan Arukh* regarding *sakkana* and *pikuah nefesh* appear to indicate that we ought to allow organ sales, no Orthodox rabbi has urged our society to do so, no doubt because of concerns about what sort of society we would become when people may barter their bodies as merchandise.

TRADITION

Thus far, I have merely given a hypothetical example of how the *Sanhedrin* passage's ruling could be applied today. Yet the passage is particularly pertinent to a live domestic policy dispute. Though this symposium addresses Jewish public policy in general, I will discuss at length a specific area of policy because it will so drastically affect the world in which we live, and because I believe that Orthodoxy has ignored the importance of approaching this issue with the "slippery slope" in mind: bioengineering, and more specifically human cloning. At present, a large majority of the United States Congress supports a ban on what is called "reproductive cloning"—the creation of a baby that is the genetic clone of another human being. The political parties are split, however, on whether to ban "therapeutic cloning," the creation of cloned embryos for research. This procedure has attracted the opprobrium of conservative Christians, who consider these embryos human beings, and therefore an improper subject of experimentation. By contrast, the Orthodox Union came out in support of therapeutic cloning, explaining in its press statement that

[the] Torah commands us to treat and cure the ill and to defeat disease wherever possible. . . . Moreover, our tradition states that an embryo *in vitro* does not enjoy the full status of human-hood and its attendant protections. Thus, if cloning research advances our ability to heal with greater success, it ought to be pursued since it does not require or encourage the destruction of life in the process.

In other words, because the halakha does not grant human status to embryos outside the womb, the possible gains of cloning research, and the obligations incurred by *pikuah nefesh*, indicate that we ought to support such experimentation. It would seem, however, that this bio-ethical quandary is similar to that in *Sanhedrin*; just as the classic rules of *pikuah nefesh* would obligate us to support therapeutic cloning, a "public policy" approach would lead us to oppose it. For in a world in which cloning is permitted and possible, it is not only ethical individuals who will harness this power; and in developing a moral perspective about any new procedure, we must realize that the scientific and technological advancements made by man, while potentially quite valuable to human existence, can all too often lead humanity perilously astray.

This, Rabbi Norman Lamm explained in his investiture address at Yeshiva University, is the significance of the story of Adam in paradise. He was presented by God with two botanical specimens: the *ets ha-hayyim*, the tree of life; the *ets ha-da'at*, the tree of knowledge; and told

Symposium: Meir Soloveichik

not to eat of the latter. R. Lamm noted that Torah, in spite of the fact that it is intellectually demanding, is referred to as the *ets ha-hayyim*, and not the *ets ha-da'at*. For true Torah is more than learning, it is life; education is only valuable if it makes us into better human beings. In R. Lamm's words:

That learning must be more than knowledge, that it must enhance life, was expressed in a startlingly poignant way by the Zohar. . . . The biblical Tree of Knowledge, it taught, possessed within it yet another tree . . . the *ilana de-mata*, the Tree of Death. When man combines knowledge and life, he is capable of suppressing the Tree of Death. But if he pursues knowledge alone, unconcerned . . . with human compassion and love and gentleness—he releases the noxious Tree of Death in all its many and ugly manifestations. Our generation . . . has repeated the mistake of Adam and Eve. We have learned nothing from our primordial forbears. We have blithely ignored the Tree of life and passionately bitten into the fruit of the Tree of Knowledge. But the fruit is poisoned with the taste of Death. Within the contours of the Tree of Knowledge—science and technology and even philosophy and art and literature—there has taken shape the dreaded Tree of Death, with its variety of deadly fruit: nuclear disaster, ecological cataclysm, genetic manipulation for sinister purposes. . . . The Zohar's insight is the anticipation of Huxley's Brave New World—a paradise turned into a hell.

R. Lamm, at his investiture twenty years ago, saw the small seedling of the *ilana de-mata* already starting to sprout; that tree has now begun to flourish. Articles in established journals of bioethics have argued that terminally ill and unconscious patients ought to be seen as organ banks open for the taking. Assisted suicide has already been legalized in Oregon. Meanwhile, those who refuse to wait for a family member to grow up before killing him now have the option of traveling to The Netherlands; that country allows the euthanasia of children. Recent advances in the field of reproductive biotechnology are chilling as well. Scientists in France have, of late, successfully combined the genetic material of a pig and a human being, allowing this “pig-man” to develop several embryonic stages before destroying it. A recent issue of *Policy Review*, published by the Hoover Institution, reported that Japanese researchers are working on creating artificial wombs, so that people eventually need no longer bother themselves with a traditional family structure in order to have children.

It is my opinion that rabbis must consider the “slippery slope” when it comes to contemporary questions of public policy, especially

TRADITION

those pertaining to medical ethics; for if, like *Hazal*, we consider not merely a particular medical procedure in itself but the social context in which it would take place, there is much reason for concern. Consider an issue such as therapeutic cloning. An Orthodox *posek* or public policy specialist may conclude that as pre-implanted embryos do not have human status in halakha, there should be no reason to prohibit such research. But once we are cognizant of the already well-greased slippery slope, then we must conclude that if therapeutic cloning is allowed, *reproductive* cloning must soon follow. As Leon Kass and Daniel Callahan wrote in *The New Republic*:

Once cloned embryos exist, it will be virtually impossible to control what is done with them. Created in commercial laboratories, hidden from public view, stockpiles of cloned human embryos could be produced, bought, and sold without anyone knowing it. As we have seen with in vitro embryos created to treat infertility, embryos produced for one reason can be used for another: Today, “spare embryos” created to begin a pregnancy are used—by someone else—in research; and tomorrow, clones created for research will be used—by someone else—to begin a pregnancy. Efforts at clonal baby-making (like all assisted reproduction) would take place within the privacy of a doctor-patient relationship, making outside scrutiny extremely difficult. Worst of all, a ban only on reproductive cloning will be unenforceable. . . . Should an “illicit clonal pregnancy” be discovered, no government agency is going to compel a woman to abort the clone, and there would be understandable outrage were she fined or jailed before or after she gave birth. For all these reasons, the only practically effective and legally sound approach is to block human cloning at the start—at producing the embryonic clone.

Were science morally self-regulating, then we would have, perhaps, nothing to fear from the cloning of non-implanted embryos. But in an age in which, as R. Lamm notes, the Tree of Death has begun to bloom, we must tread with extreme caution, and fear that reproductive cloning will follow soon after therapeutic cloning. In fact, New Jersey allows the cloning of embryos, as well as their implantation in a woman’s womb for research purposes, *as long as the clone is aborted before it is born*. A member of the OU’s bioethics panel supported the organization’s decision by telling the *Jewish Week* that “it is really the opinion of anybody who is working in the field and is up to date, that there is no *meshugenah* who wants to clone a human being.” Of course,

Symposium: Meir Soloveichik

the news was then inundated with stories about “*meshugenahs*” who aimed to do precisely that. We are only a few small steps away from the stories of science fiction novels.

A Nobel Prize-winning experimental physicist, when testifying before a congressional committee about the building of an atomic superconductor for research, was asked by a congressman if his conductor would help defend America. He responded, “No, but it will help make America worth defending.” On an issue such as therapeutic cloning, advocates such as the Orthodox Union are right in asserting that it could save many lives in America. But will it make America worth saving? Cloning has, medically, positive potential. But do we want to live in a society in which, as Professor Kass put it, we will be able to bring conception and gestation “into the bright light of the laboratory, beneath which the child-to-be can be fertilized, nourished, pruned, weeded, watched, inspected, prodded, pinched, cajoled, injected, tested, rated, graded, approved, stamped, wrapped, sealed and delivered”?

When asked why the organized Orthodox community opposed *reproductive* cloning—the creation of an actual human clone—another member of the OU’s committee responded, in the words of the *Washington Post*, “‘it is not something we would recommend’ for a variety of reasons, including the high chance of deformities and question of parentage. ‘If a woman clones herself, who is the legal father?’ he asked. ‘We would be creating people of ambiguous lineage.’ ” And perhaps these are the only reasons to pronounce reproductive cloning an action discouraged by the halakha *in and of itself*. But are there not other, public policy reasons for banning such a procedure, reasons that derive from our most basic Orthodox values? When the world will be given the ability to muck around with the human genome, then for some, everything—intelligence, emotions, every bit about us that makes us who we are—will become fair game. And in an age when it is already fashionable to devalue lives based on ability, and when scientists show no hesitation in violating our most basic biological and ethical norms, this eugenic scenario is all too possible an outcome: children chosen and designed at people’s will and whim, and the best products then cloned. In a time when much of the respect for the weakest of human life has died, there is, I think, much to fear from this vision. Perhaps the *rabbanim* and scientists to whom our community turns for advice considered this possibility; yet the public statements by Orthodox bioethicists seem to focus on whether any specific halakhic violations occur in the act of therapeutic or reproductive cloning. I believe, however, that Leon Kass and others

TRADITION

make a persuasive case that the cloning of embryos must be banned, and that we Orthodox Jews, based on these arguments, should support such a ban *even if* preimplanted embryos are not considered human beings by the halakha.

And so this symposium's second question is particularly important for public policy issues that we will face in the twenty-first century. Regarding many of the issues debated today—issues such as abortion and homosexual marriage—there are, I believe, clear-cut halakhic laws that can guide us. Yet over the next century, it is particularly the moral dilemmas raised by biotechnology that Orthodox bioethicists, *rabbanim*, and public-policy specialist will be forced to confront, and regarding which scant halakhic literature exists. Should America allow the cloning of human beings in order to create biological kin for those in need of an organ match? Should society sanction the usage of artificial wombs so that infertile families could experience the joy of raising a child? Should America and Israel allow their citizens to sell their organs? I am convinced that the specter of a “Brave New World” obligates us to respond to each of these questions with a firm “no.” It is all too likely, however, that Orthodoxy's political advocacy organizations will respond more positively than I; but I would hope that in making this decision they do more than scour the *Shas* in search of a specific *lav* violated by any of the above activities. It is not enough, in confronting these moral dilemmas, to ask a rabbi whether actions such as bioengineering are *asur* or *mutar*. Our community must seek the advice of scholars who may not be Orthodox Jews, but who have much to say of the possible impact biotechnological advances may have on our society. At the moment, however, it is largely members of other communities—conservative Christians, as well as Jews such as Leon Kass and William Kristol—who publicly raise concerns about the possible advent of a “Brave New World,” and who are doing everything in their power to stop it. Let us work together with them to make this world a garden of life once again.

Suzanne Last Stone

Suzanne Stone is a Professor of Law and Director of the Program in Jewish Law and Interdisciplinary Studies at Cardozo Law School. For 2005, she is the Caroline and Joseph Gruss Visiting Professor in Talmudic Civil Law at Harvard Law School.

SUZANNE LAST STONE

This symposium asks us to consider whether halakhic values and principles require Orthodox Judaism to take on the role of a public, as opposed to a private, religion in American society. A public religion assumes a role in the political or civil life of the polity by engaging in political activities, in political society, or by participating in open debates about the common good in the undifferentiated sphere of civil society.¹ Until quite recently, a silent consensus existed between religions and constitutional theorists about the “wall of separation” and about “dialogic neutrality,” the banishing of religious language from public discourse in order to promote equal access to the public square. Both agreed that religion “should remain private and implicit, rather than public and explicit.”² Religious individuals could enter public life, but they did so as indistinguishable citizens. Today, the wall of separation is far more porous, and even constitutional theorists have come to see restrictions on the use of religious language in the public square as unfairly forcing citizens to abandon their religious identities in public. This has paved the way for a new form of public religion in American society, in which religions enter the public sphere as a corporate body, not as discrete individuals, and state their views in explicitly religious language. Should Orthodox Judaism assume this public role?

Of course, in the eyes of American society, Judaism, along with Catholicism and Protestantism, has already taken its place among the major public religions in America. Judaism’s inclusion in this trio, despite its minuscule size by comparison with the other two, is a tribute to the massive efforts of Jewish organizational life. But the general perception within American society that Judaism is already one of the three major “public religions” in the United States also stems from a subtler but no less critical factor. In the view of American society, a public religion is not only one that participates in the political sphere to further its own particular interests through coalitions and lobbying. A public religion contributes to the general welfare of the polity as a whole by freely

TRADITION

sharing its perspectives on public issues, public affairs, and the good of the commonwealth. It does so in order to create a better society, a society that will flourish and thrive if the perspective of the particular religion is brought to bear on the important issues of the day. American society assumes that Judaism, as the source of all three biblical religions, continues to be a repository of wisdom and a valuable moral and intellectual resource for civilization. It assumes that Judaism wishes to bring, and, indeed, already has brought, its sources of wisdom into the public square of ideas.

How did this perception come about? To a large extent, this perception follows from the early penetration of Reform Judaism into the public square. Reform Judaism not only redefined the mission of Judaism as social action; it also presented its social agenda, its “prophetic” mission, as the embodiment and sum content of Jewish teachings. Most Americans, including many non-Orthodox Jews, have an extremely vague sense of the sources of wisdom Judaism actually contains. Few are actually aware of the existence of the halakhic tradition, and even those who are aware of its existence lack a sense of its depth and scope. Even Jews who are aware of the immensity of learning within halakha rarely imagine that this tradition may speak to issues of the day. The myth of a shared Judeo-Christian tradition that pervades American culture stems from viewing Judaism as a biblical religion, primarily defined by Scripture, rather than by the talmudic tradition.

Public ignorance of the halakhic tradition persists to this day because American Orthodox Judaism, the only branch with serious knowledge of and deep commitment to the halakhic tradition, has not yet found its full public voice. Although the Orthodox community has very successfully entered political life, mobilizing institutional resources to help Orthodox Judaism thrive in America, it has neither entered into public intellectual and social debate in a serious and ongoing way, nor has it clarified internally whether halakhic perspectives should in fact be communicated to society at large. This absence of an audible public voice on the critical issues of the day deprives not only “others”—that is, our non-Jewish fellow citizens—of a halakhic perspective; it also deprives non-Orthodox Jews of access to the teachings of Judaism.

In what follows, I argue that a major obstacle to advancing Orthodox participation in the public square is the tendency to cast the issue almost exclusively in terms of political participation, rather than in terms of a more open-ended and collaborative process of intellectual and civil engagement. Yet Orthodox thought, in my view, compels par-

ticipation in the public square of ideas far more than it compels participation in the public square of politics.

I

Nearly ten years ago, the Orthodox Forum sponsored a conference on Social Responsibility in Jewish Thought and Law.³ In the introduction to the published proceedings, the editors of the volume stated the case for Orthodox Jewish participation in the public square. This topic, they wrote, “has special resonance for Jews who believe that integrating Judaism with general culture constitutes an ideal.” The editors introduced their case with a lengthy citation from a statement delivered by Rabbi Abraham Isaac Kook at the dedication of the Hebrew University in 1925. R. Kook noted that “[t]wo tendencies characterize Jewish spirituality.” The first is internally directed, and its highest concrete expression is in Torah institutions such as yeshivot. But, in addition to deepening the sacredness of Torah, R. Kook also referred to the dialectical process of *hotsa’a* and *hakhnasa*—the propagation and absorption of ideas. Jewish ideas and values should be propagated “from the private domain of Judaism into the public arena of the universe at large.” At the same time, Jews “absorb the general knowledge derived by the collective effort of all humanity, by adapting the good and useful aspects of general knowledge” to the private domain of Judaism. Ultimately, they return a synthesis of general knowledge and Torah values to the world at large.⁴

The editors noted that Orthodox efforts at integration have so far primarily consisted of *hakhnasa*, the absorption of ideas from general culture into Orthodox Judaism. Less attention has been paid to *hotsa’a*, the flow of ideas in the opposite direction, from Judaism to the outside world. It seemed obvious, however, that Orthodox thought, reflected in the writings of R. Samson Raphael Hirsch and R. Joseph B. Soloveitchik, as well as R. Kook, obligated Jews to convey Jewish ideas and values to the universe at large. Accordingly, they expected the conference to end with a call to the modern Orthodox community to engage in such social action. Instead, the papers delivered at the conference questioned whether such an obligation actually existed and raised a variety of problems that social action would engender.

Many of the papers produced for the conference focused on the problems posed by communal participation in the political sphere, as do most of the questions addressed to the participants in this symposium.

TRADITION

Indeed, much of the internal discussion within Orthodoxy about whether Orthodox Jews should bring halakhic viewpoints into the political sphere centers on the following sorts of questions: should Orthodox positions be reflected in legislation, through the drafting of bills, or through lobbying activities on pending legislation? Should Orthodox Jews engage in other forms of advocacy, such as the preparation of policy statements to governmental bodies? Should Orthodox Jews support or oppose political candidates based on the views he or she espouses; should Orthodoxy enter into alliances with other religious groups that share a policy position with us? This virtually exclusive focus on political participation is understandable. It stems in part from the increased professionalization of Orthodox Jewish life, its communal, organizational structure, and the fact that American Orthodox Jews are increasingly in positions of power, making public policy decisions for the nation, Jew and non-Jew alike.

Yet Orthodox thought as reflected in R. Kook's remarks does not address policy advocacy, policy planning, or legislation; it addresses the communication of Jewish teachings, ideas, and values. Moreover, political forms of participation raise a set of very difficult problems for Orthodox Judaism as a community that, in many respects, are unique to Orthodox Judaism. They have no clear counterparts in other religions that have assumed a public role in American society.

A major obstacle to political participation, as Rabbi J. David Bleich delineated in the conference proceedings, arises from the dual systems of obligation, one for Jews and the other for non-Jews, contained within halakha.⁵ As is well known, the halakha contains two models of social and moral order. Torah law is particular, covenantal, and aspirational. Noahide law is universally obligatory and contains those obligations necessary to create a civilized and morally and politically well-ordered society. The presence of these two disparate systems of obligation raises several difficult questions for Orthodox participation in the political square. First, there is halakhic controversy over whether there is an obligation to disclose Noahide law to non-Jews. Second, Noahide law is also not well developed as of yet. Third, there is controversy over which system of obligation, Torah law or Noahide law, ought to govern in the American public sphere, which is comprised mostly of non-Jews. One can hardly advocate one public policy for Jews and another for non-Jews. Advocating the adoption of Torah law as a standard for public policy in a primarily non-Jewish society would impose a higher obligation on society than Jewish law itself deems necessary or even wise.

As the Ran observed, Torah law alone does not necessarily aim at or provide for a realistic, well-ordered political society. It aims to create an ideal society and its concerns are spiritual perfection.⁶ Yet if Jews advocate, instead, the adoption of policies based on Noahide law, which reflects the halakhic standard of behavior for non-Jewish society, Jewish values may be adversely affected. Policies that are appropriate for non-Jews may be inappropriate for Jews. Policy planning requires the reconciliation of conflicts between the two systems, which may not always be possible.

Second, when formulating policy or legislation, one must offer a single and clear statement of *the* Jewish viewpoint on a complex public issue. Given the range of halakhic sources and the diversity of legitimate halakhic opinions, this is an exceedingly difficult end to achieve. Halakhic positions are rarely simple, clear, and univocal. Achieving consensus within the halakhic community on a complex public issue is rare. Moreover, the presentation of a halakhic perspective in the form of an “answer” necessarily raises the important question of the role of halakhic expertise and of *pesak* in the process of formulating such an answer.

II

The focus on policy implementation, legislation, and policy advocacy is both premature and unduly narrow and restrictive. We first need to enter the public square of ideas. Rather than react to a specific request for *the* halakhic viewpoint about an issue already debated, formulated, and extensively analyzed in the general public sphere of society, the Orthodox Jewish community should participate from the beginning, directly and robustly, in current social and intellectual debates within civil society. In accordance with R. Kook’s model, we should absorb ideas from general society, consider how they challenge or modify our own assumptions, and then ascertain and communicate the perspectives of Torah law.

The process of *hakhnasa* and *hotsa’a*, as Rav Kook describes it, does not require the formulation of policy; rather, it requires the propagation of ideas and values. Moreover, the process of *hakhnasa* and *hotsa’a* does not require making choices between Noahide and Torah law; it assumes that both will be conveyed as part of the larger whole of Torah. The process of *hakhnasa* and *hotsa’a* does require, however, deeper engagement with Jewish and general sources, discussion,

TRADITION

debate, and study—among ourselves and with others outside the halakhic community who are engaged in the public intellectual and social arena. It requires moving internal debates from the cloistered environments of the synagogue, the yeshiva, and the university and into the larger setting of the public square of ideas. The goal is to add a critical, moral voice, based on the unique and aspirational perspective of Torah law, as well as to absorb the critical perspectives offered by political and ethical models in general society. General ethical and political concepts are not antithetical to halakha; they are part of halakha, properly conceived.

While this form of participation in civil society, in the public square of ideas, does not require us to formulate specific or single answers to contemporary controversial issues, it still raises the question about how the halakhic sources of our tradition are used. The model I advocate is one that takes the variety of normative Jewish views on how Jewish society itself ought to be governed and presents them as possible alternative models for general society, pointing out areas of similarity and difference with existing models in general society and explaining their respective underlying premises. Disparate views on capital punishment and collective punishment, for example, appear throughout the Talmud and medieval sources. Taken together, these disparate views have a discernable and stable set of concerns, many resting on premises that are thought provoking and relevant for general society to consider.

To be sure, excellent articles and papers have been published, and talks delivered, that do precisely this, many through the efforts of the Orthodox Forum. Still, they have not been done within an ongoing, organized, collaborative, institutional framework—which would increase the level of conversation and thought. Nor, for the most part, have they been done in a context that collaboratively engages the larger public sphere of general society. The public sphere today actively welcomes such engagement. The general culture in which we now live is far more interested in religion and its role in society than a mere forty years ago, and intellectual borders have expanded dramatically to encompass many traditions beyond the classical Western.

III

Today, with the rise of religious civilizational identities, the pressing global political issue is the co-existence of religion with democracy. Can a religious state be democratic and, if so, what forms of democra-

Symposium: Suzanne Last Stone

cy are possible for religious traditions? These are neither theoretical issues nor issues of exclusively non-Jewish concern. Within the last decades, a Jewish state has emerged that is, for better or for worse, at the center of world politics and that is beset by internal divisions exacerbated by the absence of an adequate “Jewish” theory of democracy, civil society, and tolerance. Halakha itself must grapple with the contemporary challenges of democracy and pluralism. These questions are as relevant for American Jews as for Israelis. First, American Orthodox Jews, who have experienced life in a robust, pluralistic democracy over a long period of time, have a unique perspective to offer on this issue. Second, American Orthodox Jews themselves interact with others in the workplace, on campus, and in ordinary social life, exchanging views on the issues of the day. They, too, require a better sense of how halakha views the friendship of citizens and what norms of mutuality are appropriate in a mixed society.

Finally, we are seeing the transformation of the American public square itself “into a world domestic policy arena,” in which public issues become normative issues for all of humanity. The broader society in which American Orthodox Jews live is no longer confined to the American nation. With globalization, the bonds of solidarity have expanded to include all humanity, putting the question of human rights and obligations, world peace, and the fair distribution of world resources, at the fore of political life. With terrorism, the justness of preemptive wars and of collective punishment are matters of daily conversation. With the expansion of scientific-technological frontiers, giving humanity powers of self-creation and self-destruction, public policy now penetrates all spheres of life, including the most private. These momentous ethical issues demand religious reflection; they do not just affect the world out there, they affect us. They, too, are Jewish as well as general issues.

IV

Why the relative silence of American Orthodoxy in the pervasive debates within civil society about these issues? Are there reasons for this silence that would still counsel hesitation or is the silence a result of the peculiarities of the Orthodox Jewish condition that must be acknowledged and overcome?

One explanation is rooted in the sociology of the American Ortho-

TRADITION

dox community over the last decades. Participation at this level requires serious engagement with the world beyond our own borders and serious intellectual thought, the kind that modern orthodoxy alone aspires to do. Beginning in the mid-fifties, a strong interest in the application of the halakha to contemporary issues of public concern emerged. This was one of Yavneh's (the Orthodox college student association) chief missions. In 1955, it has been reported, R. Joseph B. Soloveitchik publicly pointed to the lack of serious reflection about halakhic perspectives on contemporary, controversial issues and cited the Harvard Divinity School's Institute of Social Ethics as a model,⁷ a theme he pursued indirectly in his 1964 essay in this journal, "Confrontation."⁸ But modern Orthodox energy these days seems redirected almost exclusively inward either to the pursuit of intensified Torah study, one of the two poles of Jewish spirituality that Rav Kook describes, or to internal controversial issues, such as women's role in Judaism.

Another reason lies in historical circumstances. Due to centuries of exile, and the late emancipation of Jews into political and civil society, which was punctuated by the Holocaust and the mobilizing of Jewish energy to reconstruct Jewish life, halakhic authorities had little reason to address issues of world concern rather than issues of exclusively Jewish concern. For most of the last two thousand years, the pressing challenge facing Jews was to protect the halakhic way of life for a minority within host states. The Rav, in "Confrontation," clarifies that "the limited role" Jews played in the "universal confrontation" of man with the world was a result of historical circumstance, not ideology, and, therefore, subject to change as historical circumstances change.⁹ Yet, the historical developments of the last fifty years, the creation of a Jewish state, and the emergence of Orthodox Jews in America as full partners in a society no longer perceived as a host but, rather, as our own, have far preceded halakhic development of the sources that speak to the realities of this new age—an age of democracy, fellowship among citizens, war, and human rights. This state of affairs should be viewed as a challenge, rather than a barrier, to the dissemination of Jewish ideas on contemporary issues. The project of developing the relevant halakhic sources falls to this and succeeding generations.

Finally, one must confront the question whether Jews, indeed, have a halakhic obligation to convey Torah values and Jewish teachings to society at large. While modern Orthodox thought strongly points to the dissemination of halakhic values and ideas as both a spiritual ideal and a logical corollary of the halakha's own approach to religion as

inseparable from society and the public domain, the precise source of such an obligation is still unclear. Is this obligation rooted in halakha, hashkafa, or moral principles?

A strong argument can be made that Judaism's mission to the world is most authentically implemented by teaching through example.¹⁰ With the creation of the state of Israel, teaching through example takes on a genuinely public dimension. In Israel, Jewish issues are nearly all public issues as well. There, Jews carry the burden of representing Judaism publicly before the world and serving as a model. This is the thrust of R. Kook's vision that the life lived by the Jewish people on its land will be a teaching for all humanity.¹¹ But Israel then becomes the exclusive center of the public dimension of Jewish life, while American Orthodoxy remains a private religion.

This split between the two communities with respect to the role of halakha in society is deeply unhealthy. It reduces American Orthodoxy to bystanders, rather than participants, in the development of halakha in society. Moreover, it deprives the Orthodox community in Israel of a halakhic perspective on contemporary issues in the public and global domain that is informed by a different social setting. American Orthodoxy, for example, has a long experience with democracy and with life within a pluralistic society. American Orthodoxy also still has the capacity to contemplate difficult issues relating to war and punishment, even in today's age of global terror, free from the overriding issues of security that pervade daily Israeli life. A major strength of the halakhic tradition historically has been the contribution made to it by diverse communities situated in different cultural and social settings.

Is there, however, a concrete halakhic obligation to go beyond the advocacy of Jewish interests for the sake of the Jewish community, and to enter the public sphere solely in order to better society? This is a difficult issue. Indeed, the very need for modern orthodoxy to further theorize about this issue is itself a reflection of the preoccupation until now with internal concerns. Some have argued that an halakhic obligation to teach Jewish values and ideas may stem from Maimonides's view that Jews are obligated to enforce Noahide law, although the issue is complex and disputed.¹² Rabbi Aharon Lichtenstein has reasoned that such an obligation may be inferred from the Talmud (*Shabbat* 54b), which refers to the command of *tokhaha*, and poses responsibility to rebuke family members and even fellow citizens, where the capacity to effect change exists.¹³ The most compelling argument, in my view, derives from ethical obligations inherent in more general halakhic principles

TRADITION

that underlie specific norms. The principle of “*darkhei shalom*,” which promotes peaceful relations between groups in society, should be understood today not as an instrumental expression of Jewish self-interest—the need to fend off Gentile hatred—but, rather, as an ethical imperative that is rooted in reciprocity, mutuality, and gratitude.¹⁴ This halakhic principle obligates us as individuals to work to better the society in which we have so flourished and to promote the peace of the city in which we dwell and thrive.

Whether we also are obligated to contribute to society not solely as individuals but as a community is another matter. In “Confrontation,” R. Soloveitchik speaks of a universal responsibility deriving from the charge to Adam and Eve and rooted in our identity as human beings.¹⁵ This is a responsibility that devolves on each Jew as a citizen and need not have a special Jewish dimension. Yet, the Rav also seems to address, as Gerald Blidstein points out, the Jewish community as such, implying that “the Jew must answer to the human imperative both as individual and as community.”¹⁶ A communal obligation clearly must have a Jewish dimension. This special Jewish dimension is discharged through the process of *hotsa’a*. Thus, we are obligated to contribute to society, not solely as individuals, but as a community as well, sharing sources of wisdom and critical reflection with all others with whom we dwell.

NOTES

1. See Jose Casanova, *Public Religions in the Modern World*, Chicago, 1994.
2. Jose Casanova, “What is a Public Religion?” (unpublished paper).
3. See David Shatz, Chaim I. Waxman, and Nathan Diament, *Tikkun Olam: Social Responsibility in Jewish Thought and Law*, New Jersey, 1997.
4. The translation is Shnayer Z. Leiman’s from *Tradition* 29:1 (Fall, 1994).
5. See J. David Bleich, “*Tikkun Olam*: Jewish Obligations to Non-Jewish Society,” in *Tikkun Olam*, pp. 61-102.
6. See Rabbi Nissim Gerondi, *Derashot Ha-Ran*, Eleventh Homily.
7. Reported in Lawrence Grossman, “Mainstream Orthodoxy and the Public Square,” in Alan Mittleman, Jonathan D. Sarna and Robert Licht, *Jewish Polity and American Civil Society*, Lanham, 2002, pp. 289-90.
8. *Tradition* 6:2 (1964), pp. 5-29.
9. Although the Rav explicitly addressed technological advances, the context of his essay, as Gerald Blidstein points out, was development in the political and social spheres. See Gerald J. Blidstein, “*Tikkun Olam*” in *Tikkun Olam*, p. 19.
10. See Blidstein, pp. 22-25.

Symposium: Suzanne Last Stone

11. *Orot ha-Kodesh*, Jerusalem, 1963, 1:155.
12. See Laws of Kings, 8:10, and compare Bleich, *supra*, with Michael J. Broyde, "The Obligation of Jews to Seek Observance of Noahide Laws by Gentiles: A Theoretical Review," in *Tikkun Olam*, pp. 103-43.
13. Rabbi Aharon Lichtenstein, Audiotape, "The Interface of Religion with Politics" (1992), quoted in *Tikkun Olam*, p. 7.
14. See Blidstein, *supra*, pp. 6-39; and "Halakha and Democracy," *Tradition* 32:1 (1997).
15. "Confrontation," pp. 20-21.
16. Blidstein, *supra*, p. 20.

Tzvi Hersh Weinreb

Rabbi Dr. Weinreb is Executive Vice President of the Orthodox Union.

TZVI HERSH WEINREB

It was the Reform leader Samuel Holdheim who more than 150 years ago issued a statement that has come to be the central challenge for those who would attempt to remain fully committed observant Jews and yet have an influence upon the broader society. Holdheim wrote, “There is before the Jew but one single question: he either remains within the four cubits of rabbinic Judaism and lives outside of time (outside of history), or he lives in time (in history) and in the process ceases to be a rabbinic Jew.”

Orthodox thinkers from Samson Raphael Hirsch onward have disputed Holdheim’s contention. Hirsch’s concept of the “*Adam Yisrael*” epitomizes his response. He felt that a Jew could be both “rabbinic” in the fullest sense of the word and yet live in history. The history of Orthodox Judaism in the past 150 years can be seen as a series of efforts to confront Holdheim’s challenge.

At this point in time, in the early years of the 21st century, the challenge continues. However, it is no longer clear that the “rabbinic Jew” has the choice to remain outside of history, despite the temptation of that choice. All Jews have been thrust, not only into history, but, into its very vortex. This condition seems to intensify daily as the Jewish people, and particularly the religious Jew, are thrown willy-nilly into the epicenter of world history and once again, whether we like it or not, are the protagonists in the world’s daily drama.

The question that remains for us is whether we respond actively and thoughtfully to this inescapable fact, or we allow ourselves to be pummeled by the winds of time.

It is my contention, and to me it is obvious, that we must bring all the forces we can muster to bear upon the circumstances that we face and try not only to defend ourselves against the storms that beset us, but to influence them, transform them, and perhaps set them in different directions.

I am further convinced that this active stance that I am advocating is only possible if we are convinced that we indeed have a contribution to make, stemming from our own tradition and history, upon the rising storm of societal and political forces which surround us. We must act

Symposium: Tzvi Hersh Weinreb

out of conviction that our traditional sources and our historical experience have taught us lessons and provided us with material that can be brought to bear upon the entire range of post modern problems, and that we have learned from our experience enough to be able to share it with the rest of humankind.

One need not be a messianist to believe that we live in a time when we must actively assert our role in history, indeed our place at the center of history's stage. The concept of the Jewish people as a *mamlekheth kohanim ve-goy kadosh*, as a people which must be exemplary to others and which has a priestly role to play vis-à-vis the rest of the world, is one that we must revive in our every day activities and consciousness. We must re-study those of our thinkers who have paid attention to the role of the Jewish people in the world, going back to the earliest biblical sources and continuing in the works of Rav Kook and Rav Hirsch.

There is no question but that it is our very Orthodoxy which compels our participation in the public policy debates of the broader society in which we live, and that it is our Orthodoxy which must inform that participation and guide it. The task is not an easy one, for it necessitates translating ancient concepts into terms adequate to address extraordinarily complex issues that the world faces today: politically, economically, technologically, scientifically, and ethically. Translating from our traditional sources into the vocabulary of the post modern society takes extraordinary creativity and daring, and will require that rarest of combinations, the willingness to think originally (in contemporary jargon "out of the box"), and an authentic commitment to halakhic rigor, and dedication to understanding the halakhic process as the expression of nothing less than the will of God.

II

The question assumes that when confronted with the "questions of the day," the Jew concerned with halakha "looks things up." This notion of the halakhic process as being somewhat akin to library research and consulting references is especially dangerous in this day and age when we have so much access to categorized and organized information in cyberspace. However, the truth is that the halakhic process, while it does require such issue based research, can really only be done by individuals who are truly steeped in learning, and who are constantly involved in intensive Torah study even in those areas of Torah that do not seem to relate to the specific issues being investigated. There are

TRADITION

few statements as true in this regard as the talmudic passage which reads, “the words of Torah are poor in one place and rich in another place.” This means simply that often talmudic material or halakhic responsa dealing with subjects seemingly totally unrelated to the topics under investigation can be clarified, if not resolved, by far flung sources which do not seem to relate, at least from a superficial perspective, to the issues at hand.

That being said it is still obvious that there are numerous specific sources to look for in addressing public policy questions. One is the study of the biographies of those of our leaders who have indeed struggled with such issues. Accessing authentic biographical material of *gedolei Yisrael* throughout the generations is itself difficult because of our growing tendency to idealize and homogenize these biographies. Nevertheless, we have sufficient material about *gedolei Yisrael* from those *Tanna'im* who had their relationships with the Roman occupiers of Judea, through Maimonides, especially in his letters, continuing to pre-Holocaust figures such as Rav Meir Shapiro and Rav Aharon Levin who were undisputed talmudic sages but very active in the hostile parliament of pre-World War II Poland. So there is much to be learned from systematic study of the approaches of these historical figures.

There are also works which focus directly upon issues of connecting Torah to public policy. Two which come to mind are the works of Rav Herzog in his attempts to influence the governance of the nascent state of Israel from a Torah perspective, and the voluminous *Mishpat ha-Ivri* of Menachem Elon which represents such an attempt and which at least is an example of one man’s struggle to draw from traditional sources and connect them to public policy questions.

III

The term rabbis is a very vague term and I am afraid increasingly so. There is clearly a rabbinic role in this process but the rabbis in question must be those who are familiar with both horns of this particularly frustrating dilemma. That is, rabbis who play a role in this process must be truly steeped in Torah scholarship but must also be thoroughly familiar with the public policy questions under consideration. Occasionally familiarity with these public policy issues can be achieved by the briefing or brief consultation, but more often familiarity consists of closeness to the situation, expertise in the technical issues, and appreciation of historical

Symposium: Tzvi Hersh Weinreb

background of the questions which comes only after a period of serious education in the matter.

The question of determining what is a halakhic issue requiring a formal *pesak* is indeed an intriguing one. I think that organizations that are involved in such policy decisions and statements, such as the Orthodox Union, need to be involved in an ongoing consultative relationship with expert halakhists on all matters. The recent OU Task Force on Cloning and Stem Cell Research is an example of a process which involved foremost rabbinic authorities, geneticists, attorneys, and politically expert individuals who worked together over many, many hours and who informed each other in an exemplary collaborative manner. This type of collaboration should be ongoing and rabbinic authorities can be relied upon to identify which issues need specific halakhic analysis and often which issues need more expert input.

IV

I think that it is essential that we revisit past positions on the question of operating coalitions with other communities and organizations on all matters, especially with organizations of other Jewish denominations or non-Jewish religious groups. While it would seem that there are numerous issues which men of all faiths would agree upon simply because of a religious orientation, we are discovering that common general religious principles do not necessarily lead to similar conclusions in the policy sphere. The best example of this is the so-called Judeo-Christian ethic which implies that there are certain commonalities that Judaism and Christianity, and perhaps Islam, have with each other. While there are striking similarities both theologically and even experientially, the specifics of halakha often lead to specific conclusions, which are very inconsistent with those of other faiths and with the denominations, which do not accept the halakhic process as binding. A tripartite analysis of religion has been proffered in a recent essay by David Hazony on the works of Eliezer Berkovits. Hazony speaks of law, values, and vision. Using these three levels of discourse one finds that there are similarities certainly at the level of vision between Orthodox Judaism and the other denominations and other faiths. We all believe in a monotheistic God who in some manner has expectations of mankind. We all believe in certain cardinal values such as peace, respect for other human beings, respect for parents, commitment to morality and ethics, etc. But at the

TRADITION

level of specifics, or laws, there are remarkable differences and these differences have become especially apparent of late. Some easy examples include the differing views of these various groups on such matters as abortion. At the level of vision and values we can agree very much as to the sanctity of life and the importance of maximizing the health of living individuals, etc. But in actual practice the Orthodox Jewish view of abortion is very different from the conservative views of the Catholic Church and from the liberal views of the Jewish groups. It is nuanced, complex, and depends upon such a variety of factors that categorizing Orthodox Judaism as either pro-life or pro-choice is almost a caricature of our position. More recently, since September 11 and the war on terrorism and the war with Iraq, we have discovered that there are profound differences between Orthodox Judaism and the expressed views of representatives of Christian Churches as well as representatives of the more liberal Jewish movements—we disagree profoundly about both the nature of evil and the means necessary to combat it, about the nature of patriotism, about what constitutes a just war, etc.

Thus we are made painfully aware that it is not only issues of legitimization and recognition of other movements and other belief systems that is problematic. Rather, it seems apparent that there are some very fundamental differences between our approach to life, our belief in what is right and what is wrong, and that we don't only differ about the means but we also differ about the fundamental ends that we are striving for.

This having been said, it is nevertheless incumbent upon us to reach out to others and to work along with them cooperatively to the extent possible. Certainly those organizations which are not committed to any particular religious agenda but whose agenda is more clearly social or political or scientific represent groups with whom we must enter into a coalition, and not simply to advance our own agenda. Rather, part of our ultimate vision is all of mankind working together to achieve the goals that we believe have been laid out for us as early as the days of our Patriarchs, continuing through Sinai, culminating in the visions of our Prophets, and being addressed at least episodically throughout our history by the more visionary of our rabbinic leaders.

Dov S. Zakheim

Dov S. Zakheim, a partner in the firm of Booz, Allen & Hamilton, served from 2001-2004 as Under Secretary of Defense (Comptroller). He received *semikha* from HaRav Shmuel Walkin, *zt"l* and a doctorate from the University of Oxford.

DOV S. ZAKHEIM

When Rabbi Moshe Feinstein responded to a 1981 request from a senior government official for the Torah view of the death penalty,¹ he was following in a long tradition of providing a Torah-based perspective to the policy debates of his time. So, too, was the late Chief Rabbi of Britain, Lord Immanuel Jakobovits, when he wrote about solutions to the plight of Britain's inner cities,² or about Judaism's perspective on AIDS.³ Indeed, these and other efforts won him the admiration of Margaret Thatcher, who elevated him to the House of Lords, thereby making him the first Chief Rabbi to serve in that august body. His successor, Rabbi Jonathan Sacks, likewise has immersed himself in the wider world of policy. One of his more recent contributions was his Templeton Lecture to the Philadelphia based Foreign Policy Research Institute entitled "The Dignity of Difference: Avoiding the Clash of Civilizations."⁴

Jews have not always been able to participate in the national policy debates of the countries in which they have resided. In those circumstances, it may have sufficed merely to pray for the welfare of the host country or to treat the notion of "*or la-goyim*" as passive. Nevertheless, the foregoing examples demonstrate that there indeed is an imperative not to shirk from offering a Torah-based perspective when the opportunity to do so presents itself. This may manifest itself either in the form of a response to a formal invitation, as in the cases of Rav Moshe, R. Sacks, and the Chief Rabbi's essay on British inner cities, or, in the case of R. Jakobovits' statement on AIDS, may emerge because the spirit of national debate affords a vehicle for disseminating such a perspective.

NATIONAL SECURITY DEBATES AND THE ORTHODOX LAITY

All of the foregoing examples have been drawn from the activities of leading rabbis. Rabbis have also opined on matters of national security,

TRADITION

although in general, since 1948, their focus has been overwhelmingly on security issues confronting the State of Israel. There is, however, a strong case to be made for Orthodox laymen to be active participants in discussions of current policy, including, for those in the Diaspora, matters relating to the national security of the countries in which they live.

Orthodox Jews have for some time played a major role in policy debates regarding the formulation of America's national security. Several among them are figures who are well known in the national security community. These include Daniel Kurtzer, who served as American Ambassador to Egypt before taking up his current post as Ambassador to Israel. He previously was Principal Deputy Assistant Secretary in the State Department's Bureau of Intelligence and Research. Harvey Sicherman was a senior aide to Secretaries of State Haig, Shultz, and Baker. He currently is President of the Foreign Policy Research Institute. Eliot A. Cohen, a leading Professor of Strategy, serves on the Defense Policy Board, which advises senior Department of Defense officials. And Senator Joseph Lieberman plays a prominent role as a member of the Senate Armed Services Committee.

When these and other individual Orthodox Jews contribute to national security policy formulation and implementation, they do not do so *qua* Orthodox Jews, however. Indeed, it is arguable that when rabbis of past generations involved themselves in the national security affairs of their countries, they likewise did not do so in their capacity as rabbis. For example, Don Isaac Abravanel, certainly the most famous of rabbi-statesmen in the past millennium, clearly compartmented his Jewish studies from his secular endeavors. He wrote most of his commentaries when he was not a government official.⁵

Yet there is a very strong case to be made that Jewish values and traditions should not only inform the judgments of individual Orthodox Jews on national security matters, but they should also mandate the intervention of the organized Orthodox Jewish community in national security debates affecting the population as a whole. Jewish tradition offers innumerable guidelines and many examples for everything from the articulation of security policies, through laws relating to the conduct of warfare, to specific *halakhot* that guide the everyday life of the modern soldier.⁶ There is no inherent reason why Orthodox interest groups, comprised primarily of laymen, should not draw from this wealth of tradition to offer special insights into national security debates.

Nor should laymen cede to the rabbinate all discussion of these matters. Indeed, there is every reason why they should not. Many

aspects of national security, particularly on the level of grand policy and strategy, reflect a combination of state interests, ongoing political processes, and, particularly in the case of the United States, moral imperatives. Different times and circumstances will result in different degrees to which of these three elements predominate, but rarely, if ever, is any one of them entirely absent from policy, or at least from the public articulation of policy.

The rabbinate clearly should have a leading role in guiding Orthodoxy's contribution to public debates over the moral imperatives of American security policy. Nevertheless, rabbis are not necessarily the leading experts on either the definition of state interests or the formulation of specific policy and strategic responses to given international or national circumstances. They may not be as aware as interested laymen of the details and concerns that govern American national interests. Nor are they likely to be as well versed in political and international cross-currents that frame policy debates as are the lay leaders of Orthodox organizations, and, most particularly, their Washington representatives. The latter interface with decision-makers on a daily basis, and have insight on—and can react to—the often unstated motives and assumptions that underlie the choice of particular policy positions.

THE DA'AT TORAH FACTOR

Some have argued that rabbinic views, expressed as *Da'at Torah*, should predominate in all circumstances. They assert that rabbinic views have the same authority in meta and/or non-halakhic matters as in purely halakhic ones; that, in effect, all matters are halakhic. Many of the proponents of this view have been, or are, associated with the Agudath Israel organization, which accords its *Moetzes Gedolei Hatorah* the final word on all matters it addresses.⁷

But both the provenance and scope of *Da'at Torah* have been the subject of considerable debate, with many rabbis and scholars lining up on all sides of the issue. Some, particularly but not solely in recent years, have taken a far more restrictive view of *Da'at Torah*, asserting that rabbis bring no special expertise to non-halakhic matters.⁸ Still others take a middling view that rabbinic perspectives deserve consideration when evaluating positions on such matters.

While all due respect must be accorded to the rabbinate, it is difficult to argue that however great they might be, rabbis must *ipso facto*

TRADITION

have the final word on matters relating to national security. Certainly, apologists, who have made the case that leading *rabbanim* have nothing less than *ruah ha-kodesh*, have found ways of dealing with what appear to be major flaws in rabbinic perspicacity, for example, their opposition to Jewish emigration to America or Palestine prior to the Holocaust. It is, indeed, virtually impossible to refute mystical notions that assign rabbis a spiritual plane so high that their behavior is simply incomprehensible to ordinary mortals.⁹

On the other hand, in the realm of national security, there is rarely uniformity of opinion among rabbis regarding the major strategic issues of the day. For example, the Orthodox rabbinate remains deeply divided over the issue of returning parts of territory captured by Israel in 1967 to a Palestinian state. Indeed, in the space of less than a week during the summer of 2002, the Lubavitch-dominated Beth Din of Crown Heights re-issued a statement decrying the loss of even an inch of Israeli territory,¹⁰ while Chief Rabbi Jonathan Sacks asserted that the occupation had corrupted Israel's Jewish character, and was "forcing Israel into postures that are incompatible in the long run with our deepest ideals."¹¹ Others, like R. Ovadia Yosef, have argued that circumstances should dictate whether retention of land overrules *pikuah nefesh*. Others still, notably the Satmar Rebbe, have argued that the entire issue is beside the point, because the State of Israel is not a legitimate entity.¹² And R. J. David Bleich would rely on "military and political expertise" to determine what Israel's policy should be.¹³

MILITARY OFFICERS, NATIONAL SECURITY DEBATES, AND DA'AT TORAH

It is ironic that in making his case, R. Bleich overlooks the fact that, in one crucial respect, even military professionals are no different from rabbis. Military officers rarely reflect unanimity on matters of strategy, policy, operations, or tactics.¹⁴ Moreover, military leaders have been known to change their views upon retirement from active service.¹⁵ Finally, as Eliot A. Cohen has cogently argued in a recent study that has become virtually required reading for ministers of defense around the world, senior military officers themselves require constant oversight, sharp questioning, and constant intervention by their civilian political masters. Officers are by no means the repositories of all military truth.¹⁶ Thus when R. Bleich argues that Israel should follow the advice of its

military leaders, he begs the question of which military leaders? At what point in their careers should their advice be followed? And why, in the face of considerable evidence to the contrary, should they be assumed to have a monopoly of wisdom on political-military matters?

While questions of “civilian control” and behavior after retirement are not germane to discussions of rabbinic authority, the issue of choosing among competing views is as relevant to the viability of *Da’at Torah* as a guide to national security policy formulation as it is to the utility of military advice. For if one indeed is to follow *Da’at Torah* on strategic and politico-military matters, whose *Da’at Torah* should one follow?¹⁷ And on what basis should it be followed?

These last questions can by no means be resolved merely on the basis of the “greatness” of a given rabbi, or group of rabbis, in halakhic matters. For example, few dispute the contention that R. Akiva was one of the greatest scholars of his generation. Yet he was grievously in error when he supported Bar Kokhba’s messianic claims, with their concomitant call for revolt against Rome. As Maimonides puts it,

R. Akiva was a great scholar among the wise men of the Mishna. And he was *aide de camp* of Ben Kuziba the king. And he said of him that he was the King Messiah. And he thought, together with all the wise men of his generation, that he (Ben Kuziba) was the King Messiah, until he was killed because of his sins. And when he was killed it was clear to them that he was not (the Messiah).¹⁸

R. Akiva’s view predominated among his colleagues, but it was by no means unanimous, as Maimonides seemingly asserts it was. As R. David Ibn Zimra (Radbaz) notes “there is no doubt that there was a dispute between the rabbis. Some believed that he (Ben Kuziba) was the messiah and some did not, and R. Akiva was among those who did.”¹⁹

The fact that R. Akiva erred on this matter of major national security importance for the Jewish people in no way diminishes his greatness in halakhic matters. Nor should it.²⁰ It simply demonstrates that great rabbis are not necessarily great statesmen or strategists. Indeed, Don Isaac Abravanel, one of the most strident proponents of the power of what later came to be called *Da’at Torah*,²¹ and who was certainly a great statesman, nevertheless seriously erred when he failed to foresee the danger to Portuguese Jewry after the expulsion from Spain in 1492. In fact, some argue he should have foreseen the Spanish expulsion as well, given his personal connections to Isabella and Ferdinand and his familiarity with the intrigues surrounding the royal couple.²²

TRADITION

Da'at Torah thus offers no easy recipe for formulating positions on national security matters. There is a very strong case to be made that a breadth of rabbinic views should be taken into account as those positions are developed. If such views are unanimous, the case for following them is overwhelming. If they are not, as inevitably will be the case, then those views should be seen as major inputs, no less important than the views of senior officers, which likewise, and equally inevitably, will rarely be uniform. For as Eli Turkel notes, "While a rabbi's opinion on non-halakhic matters may be less binding, it should nevertheless be valued."²³

COOPERATION WITH OTHER DENOMINATIONS ON MATTERS OF NATIONAL SECURITY

The issue of working with non-Orthodox Jews on policy issues has roiled the Orthodox community for the better part of the past century. For example, the Orthodox community was deeply divided over the ban on participation in multi-denominational boards of rabbis and synagogue organizations that was issued by prominent *rashei yeshiva* led by R. Aharon Kotler.²⁴ Indeed, the American Agudah movement, which R. Kotler once effectively led, has adopted a policy of not co-sponsoring activities with non-Orthodox groups even when, as in the case of the massive 2002 pro-Israel demonstration in Washington, it has no substantive dispute with their activities. Ironically, in Israel even *haredim* cooperate with secularists on a daily basis. The Agudah Party of Israel, for example, maintains the fiction of not having its members hold government positions even as it works with the government in power.

Despite Agudath Israel's position regarding a demonstration that was motivated by concerns of *pikuah nefesh*, it is arguable that matters of national security should constitute an exception for those who would not otherwise reach out beyond the confines of their own grouping. The laws relating to *pikuah nefesh* are very clear: every effort must be made to save life, however infinitesimal the risk that life might be lost. Yet if Orthodox Jews were to shun cooperation with others on national security issues, they would effectively obviate their ability to influence policy outcomes. Such outcomes invariably are the product of coalitions, alliances, and even political horse-trading, which require, indeed demand, a willingness for any one group to work with other like-minded advocates. *Pikuah nefesh* therefore mandates cooperation with bed-fellows who might often be strange in any other context.

There is no shortage of examples of Orthodox rabbis and *rashei*

yeshiva working in tandem with non-religious and non-Jewish organizations to save lives. This was certainly the case in 1939-40. When yeshiva students and their rabbis were attempting to escape Lithuania subsequent to the Soviet occupation of that country and with the threat of a Nazi invasion looming in the west, the Vaad Hatzolah did not hesitate to work with both the Joint Distribution Committee and the International Red Cross in order to save them. Similarly, there were cases of Hasidic Rebbes who worked with the otherwise reviled Zionists to escape to Palestine as the Nazi tide swept over Hungary.²⁵ Indeed, leading rabbis have worked with non-Jewish organizations even where *pikuah nefesh* was not the issue. R. Hayyim Ozer Grodzienski sought the assistance of the International Red Cross to resolve the status of *agunot* after Jewish draftees fell into Nazi hands when Germany conquered Poland.²⁶ He also enlisted other rabbis to seek an audience with the Pope in order to forestall a ban on *shehita* in Poland.²⁷

THE PIKUAH NEFESH IMPERATIVE

One need not await an actual Holocaust in order to swing into action to save lives. Weapons of mass destruction, and the weapons to transport them, have reduced the timelines for inflicting mass death and destruction from months and years to hours and minutes. The events of September 11, 2001 demonstrated that terrorists can in fact bring about the loss of thousands of lives without even having to resort to sophisticated weaponry. Both missile defenses, and efforts to combat terror on a global scale, are central to *pikuah nefesh*.

So too was the need to take pre-emptive military action against Iraq, in order to forestall Saddam Hussein's potential use of weapons of mass destruction. Preemption reflects, on a national level, the principle of *ha-ba le-hargekha hashkem ve-horgo* (preempt to kill he who seeks to kill you).²⁸ The timing and nature of that action may be a function of whether such a war is considered merely permissible, *milhemet reshut*, or, in Saddam's case, given the magnitude of the threat that he posed to the civilized world, *milhemet mitsva*, a mandatory war.²⁹ Orthodox Jews, and their rabbinical leaders, can contribute in a significant way to a discussion of this question, as they can to debates over the importance of missile defenses and the nature of the war on terrorism. Indeed, the organized Orthodox community has an obligation not only to address these critical policy concerns, but also to work with like-minded citizens in order to bring them to successful fruition.

TRADITION

In some cases, Orthodox organizations may find themselves alongside other religious groups, both within and outside the Jewish community, in support of, or in opposition to, a given national security issue. This will not always be the case, however. There are likely to be circumstances where Orthodox Judaism will find itself ranged against many other denominations.

One such area of debate is that of funding for strategic nuclear programs, and, more generally, the viability of particular types of deterrence. During the 1980s, Catholic bishops in the United States played a leading role in advocating a freeze on the production and development of nuclear weapons. The nuclear freeze movement also won the support of America's mainline Protestant churches.³⁰ It also had, and continues to have, strong adherents among Judaism's non-Orthodox denominations, particularly the Reform and Reconstructionist movements.

Orthodox Judaism, on the other hand, strongly advocates taking all necessary measures to enhance deterrence. This stance, based on the ruling in the *Shulhan Arukh* that the Sabbath can be violated in order to deter a potential attack, was not widely publicized during the freeze debate. The activity of the churches, and most particularly the Catholic bishops who authored the pastoral letter, "The Challenge of Peace: God's Promise and Our Response," created the widespread impression that morality and religion were all arrayed on the side of those who accorded highest priority to arms control rather than to a robust deterrent. Had Orthodox Jewry played a more active role in the debate, it might have helped to rectify what was manifestly a false impression.³¹

In the event, the Reagan Administration outlasted the freeze, and the United States outlasted the Soviet Union. But issues of national security not only arise continually, but also recur. The current debates over the wisdom of deploying ballistic missile defense derive from the arms control debates of twenty years ago. Debates about whether or not to attack Iraq likewise reflected those of a decade ago. Orthodox Jews have an obligation to participate in those and other debates as they emerge.

INJECTING A TORAH VIEW INTO THE NATIONAL SECURITY DISCOURSE

It has long been the Jewish tradition to pray for the welfare of the government during the weekly *Shabbat* services. In addition, however,

Symposium: Dov S. Zakheim

Jewish Americans have the daily opportunity to participate actively in the debate and formulation of the policies that promote the very welfare they seek. This development is not unprecedented in Jewish history, but it has been far from commonplace.

Orthodox Jews already for some time have made a major contribution to the discussion, formulation, and implementation of national security policy, but they have done so in their individual capacities as American citizens, rather than as Orthodox Jews. Yet the American public policy forum offers denominational groups the opportunity likewise to influence national security policy. In the recent past, both non-Orthodox and non-Jewish denominations, particularly the latter, have been leading proponents of one or another policy stance. Orthodox Jewish groups have generally been silent on these matters, with the notable exceptions of issues pertaining to America's security relationship with the state of Israel.

Yet the American-Israeli relationship surely does not exhaust the potential contribution that Orthodox Judaism offers to the American discourse on its security priorities. Orthodox laymen, speaking through their national, regional, and local organizations, and in consultation with (though not entirely dependent upon) their rabbis, should have much to say about matters that, at bottom, are governed by the principles of *pikuah nefesh*. By providing a halakhic perspective to debates over national security issues of the day, Orthodox Jews not only will elevate the nature of those debates, but also will demonstrate to their fellow Americans that their concerns about America's welfare are not limited to *tefilot* in shul, but are a year-round activity outside the synagogue as well.

NOTES

1. R. Moshe Feinstein, "*be-Inyan Onesh Mita*," *Iggerot Moshe, Hoshen Mishpot* II, pp. 293-294. The unnamed official appears to have been of cabinet rank in either the state or federal government; he is termed "*sar ha-medina*."
2. Immanuel Jakobovits, *From Doom to Hope* (London: Office of the Chief Rabbi, 1986).
3. Immanuel Jakobovits, *AIDS—A Jewish Perspective* (London: Office of the Chief Rabbi, 1987).
4. Jonathan Sacks, "The Dignity of Difference: Avoiding the Clash of Civilizations: The Templeton Lecture on Religion and World Affairs," *Foreign Policy Research Institute Wire* (Volume 10, July 2002).

TRADITION

5. B. Netanyahu, *Don Isaac Abravanel: Statesman and Philosopher*, 5th ed. (Ithaca, NY and London: Cornell University Press, 1998), pp. 38, 72-73.
6. There is a wealth of post-1948 literature on the subject, which reflects a variety of halakhic perspectives. In addition to many published responsa, several full-length volumes have also appeared in print. See, for example, R. Nahum Eliezer Rabinovitch, *Melumedei Milhama: Shut be-Inyanei Tsava u-Bitahon*, second edition (Ma'aleh Adumim: Yeshivat Hesder Birkat Moshe, 1994); R. Zekharia Ben Shelomo, *Hilkhos Tsava* (Sha'alvim: Yeshivat Sha'alvim, 1988); R. Avraham Avidan, *Shabbat u-Mo'ed be-Tsahal: Berurim Hilkhatiyim be-Nose'ei Shabbat u-Mo'ed be-Tsahal*, second edition (Jerusalem: Vagshal, 1990). On the other hand, there are fewer halakhic guideposts for responding to issues governing non-Jewish societies, since the laws of conduct for Jews do not necessarily apply to those societies.
7. In the view of one author, "Just as in the past in Israel, they would inquire of the High Priest . . . whether or not to go to war . . . so the Agudas Yisroel *innovated* [my emphasis] that every political and practical step in its party life should be directed on the basis of *Daas Torah*." Aharon Sorosky, ed. *Achiezer: Rabbi Chaim Ozer Gordzeinski, ZT"l* (Bnai Berak: Netzach, 1970), p. 636. For a discussion, see Lawrence Kaplan, "Daas Torah: A Modern Conception of Rabbinic Authority," in Moshe Z. Sokol, ed., *Rabbinic Authority and Personal Autonomy* (Northvale, NJ and London: Jason Aronson, 1992), pp. 4, 7-12 *passim*.
8. Among earlier rabbis who held this view was the first Lubavitcher Rebbe, R. Shneur Zalman of Lyadi. See Aaron Cohen, "The Parameters of Rabbinic Authority: A Study of Three Sources," in these pages (*Tradition* 27:4, Summer 1993, p. 113.) The entire issue is devoted to the question of rabbinic authority.
9. This is the argument put forward by R. Eliyahu Dessler, cited in Kaplan, "Daas Torah," pp. 16-17.
10. Beth Din of Crown Heights, "*In Shaiches Mit Die Lage in Yisroel . . .*," *Algemeiner Journal*, August 23, 2002, p. 3. The statement, issued on 8 Tammuz, reads in part, "*Lakhen kol masa u-mattan imahem al devar viturim me-ha-arets afilu al sha'al ehad asura al pi din Toratenu ha-kedosha*."
11. Jonathan Freedland, "Israel Set on Tragic Path, Says Chief Rabbi," *The Guardian*, August 27, 2002.
12. R. Yoel Teitelbaum, *Kuntres Al ha-Ge'ula ve-Al ha-Temura* (Brooklyn, NY: Jerusalem/Deutsch, 1967), especially pp. 18-24, *passim*, 184. The Satmar Rebbe argues that the State of Israel is a product of workings by evil elements, notably the S"m (*sitra metoavuta*), that are trying to undermine the Jewish people.
13. J. David Bleich, *Contemporary Halakhic Problems*, Vol. 2 (New York: Ktav/Yeshiva University Press, 1983), p. 211.
14. The Vietnam War was a notable example of the deleterious effect of differences among the generals. "The differences over war policy, especially between the air force and army, were as pervasive within the military as they were between the Chiefs [of Staff] and the civilians," according to Jeffrey Record, *Making War, Thinking History* (Annapolis, MD: Naval Institute Press, 2002), p. 21. Colin Powell, with an army pedigree, also

- had some significant differences with the Air Force generals during the Gulf War, though its outcome was markedly different from the War in Vietnam. See Michael R. Gordon and General Bernard E. Trainor, *The Generals' War* (Boston and New York: Little, Brown, 1995), pp. 326-27.
15. The list of senior officers whose views "did a 180" upon retirement includes Admirals Noel Gaylor and Stansfield Turner, both of whom served as Commanders-in-Chief of U.S. forces in the Pacific. Upon retirement, each became a major critic of defense spending, notably that for strategic nuclear weapons, which they had previously had in their command.
 16. Eliot A. Cohen, *Supreme Command: Soldiers, Statesmen and Leadership in Wartime* (New York: Free Press, 2002), especially pp. 7-14, 211-15. See also Cohen's essay, "Hunting 'Chicken Hawks,'" (*Washington Post*, September 5, 2002, p. A31), which addressed these themes in the context of the debate over whether to go to war with Iraq.
 17. See also Kaplan, "Daas Torah," pp. 52-53.
 18. Rambam, *Mishneh Torah, Hilkhhot Melakhim* 11:3.
 19. Radbaz (R. David Ibn Zimra) on *ibid.* See also R. Yohanan Ben Turta's remark to R. Akiva in *Yerushalmi Ta'anit* 4: 5.
 20. R. Yehuda Herzl Henkin, *Benei Banim*, vol. 2 (Jerusalem: 1992), pp. 93-94. R. Henkin argues that "if you think that *gedolim* cannot err, then if you see that *gedolim* do err, you must conclude that they are not, in fact, *gedolim*. There is no greater *bizayon talmidei hakhamim* than that." (Private communication to the author, August 16, 2002.)
 21. Rabbi Don Isaac Abravanel, *Nahalat Avot Al Pirkei Avot* (New York: Hubert, 1953), p. 379. For a discussion, see Cohen, "Parameters," pp. 112-113.
 22. B. Netanyahu, *Abravanel*, pp. 48, 50, 58, 89-90.
 23. Eli Turkel, "The Nature and Limitations of Rabbinic Authority," *Tradition* 27:4, p. 95.
 24. See R. Kotler's letter to R. Levi Faivushevits in R. Aharon Kotler, *Mishnat Rabbi Aharon* vol. 2 (Jerusalem: Lakewood-Beis Medrash Govoha/Machon Yerushalayim, 1985), p. 165.
 25. Kaplan, "Daas Torah," p. 56n.
 26. For an eyewitness account of a meeting between R. Hayim Ozer and Dr. Arnold Rorholt, the International Red Cross representative in Lithuania, see R. Zvi H. Zakheim, *Tsvi ha-Sanhedrin ve-Kuntres Vilna Lifnei ha-Shoah* (New York: Simcha-Graphic, 1988), p. 21.
 27. This abortive effort took place in 1936, see Sorosky, *Achiezer*, vol. 2, pp. 542-47 *passim*, 718.
 28. There are several variants to the phrase. See *Sanhedrin* 72a and *Berakhot* 58a, 62a. Pre-emption and *pikuah nefesh* are also addressed in *Yerushalmi Sanhedrin* 8:8, and *Mekhilta de-Rabbi Yishmael* (Jerusalem: *Va'ad le-Hotsa'at Kitvei ha-Netsiv mi-Volozhin*, 1980), p. 240.
 29. Preemptive war generally appears to fall into the category of *milhemet reshut* (see Maurice Lamm, "After the War—Another Look at Pacifism and SCO," *Judaism* 20, Fall 1971, p. 428). The preemptive war against Saddam Hussein, especially given his history of employing weapons of

TRADITION

mass destruction, might nevertheless be viewed as constituting a special case of mandatory war. The case of *ha-ba le-horgekha* appears to be one in which there is no difference between halakhic imperatives for Jewish and non-Jewish societies (see above, note 6). As J. David Bleich writes: “[*ha-ba le-horgekha*] is a principle which applies to Noachides as well as to Jews. Accordingly, a defensive war requires no further justification.” See Bleich, *op. cit.*, p. 159n.

30. For a discussion of the role of the churches in the nuclear freeze movement see Judith A. Dwyer, “The Role of American Churches in the Nuclear Weapons Debate,” in Paul M. Cole and William J. Taylor, Jr., *The Nuclear Freeze Debate: Arms Control Issues for the 1980s* (Boulder, CO: Westview Press, 1983), pp. 77-89.
31. Not all churchmen supported the freeze either. See for example, James V. Schall, “Risk Dissuasion and Political Prudence” in James V. Schall, S.J. ed., *Out of Justice, Peace; Winning the Peace* (San Francisco: Ignatius Press, 1983), pp. 9-31.

Chaim David Zwiebel

Rabbi Zwiebel, an attorney, serves as executive vice president for governmental and public affairs for Agudath Israel of America.

CHAIM DOVID ZWIEBEL

In January 1989, the U.S. Supreme Court agreed to review *Webster v. Reproductive Health Services*, a decision by the Eighth Circuit Court of Appeals striking down a Missouri law that imposed a series of restrictions and regulations on the performance of certain abortions. One of the questions before the High Court was whether its 1973 ruling in *Roe v. Wade* upholding a woman's constitutional right to an abortion should be "reconsidered and discarded."

The Moetzes Gedolei HaTorah of America, the highest ranking rabbinic policy board of Agudath Israel of America, convened shortly thereafter to decide whether Agudath Israel should submit an *amicus curiae* (friend of the court) brief in the *Webster* case. A number of the organization's lay leaders were not too keen on the idea. While Agudath Israel had long been on record as opposing abortion on demand, it had never before adopted a high profile on the issue. After all, the pro-choice position on abortion, though plainly inconsistent with Torah values, in no way inhibits Jews from acting in full accord with halakha; if anything, it ensures that abortion will be accessible in those rare cases where it is halakhically authorized. Moreover, the likelihood is slim that anything an organization like Agudath Israel would say on a major public issue like abortion would have much of a tangible impact on American public policy in any event; with so many different sectors of society already weighing in on both sides of the ledger, what more could an Orthodox Jewish organization contribute to the debate? And, with so many other pressing matters making demands on limited Orthodox Jewish communal resources, why expend precious organizational time, energy and money on adding to the already voluminous filings in the Supreme Court?

The Moetzes Gedolei HaTorah nonetheless directed Agudath Israel to submit an *amicus curiae* brief in the case. Further, they rejected the suggestion that Agudath Israel simply lend its name to one of the many "pro-life" briefs that were being submitted by other groups, insisting instead that Agudath Israel make its own independent submission.

It was critically important, the sages felt, that an Orthodox Jewish voice articulate an authentic Jewish perspective on an issue that had elicited numerous representations by non-Orthodox groups that totally distorted the Torah position—for example, the statement by the president of the

TRADITION

National Council of Jewish Women that “Our passion for choice is rooted in Jewish law and ethics. . . . In Judaism, the mother’s rights always come first”; or the full page pro-choice ad placed in *The New York Times* by the American Jewish Congress, which, as explained by the president of the organization, reflected the fact that “Jewish tradition” accords “great value” to “the life of the mother, the life of the family, the quality of existing life.” As read by the Moetzes Gedolei HaTorah, these and other similar public statements that various Jewish groups were making in their own submissions to the Supreme Court and in the media misleadingly converted the narrow halakhic exception that authorizes abortions under certain exceptional circumstances into a general rule endorsing unlimited reproductive choice as an affirmative Jewish value—a classic case of *ziyyuf ha-Torah* and *hillul Hashem* that demanded a clear public refutation.

This incident is illustrative of two broad principles that tend to govern Agudath Israel’s approach to involvement in the American public square—each of which, I respectfully submit, is worthy of serious consideration in the broader Orthodox community as well.

II. THE PURPOSE OF INVOLVEMENT

First, many issues arise in which the community’s interest is tangible and direct—e.g., issues affecting the security of Erets Yisrael or the well-being of Jewish communities around the world; or, on the domestic front, issues like the rights of *shomerei Shabbat* in the workplace, the ability of yeshiva students and their families to benefit from various forms of governmental assistance, or the impact of restrictive land use laws on the building of shuls. Such issues affect the lives of *ahenu kol bet Yisrael ha-netunim be-tsara u-ve-shivya*, or our ability to practice our religion and nourish the institutions essential to our community’s way of life. Clearly, while there may be some debate over the correct approach to these issues, most Orthodox Jews would concur that we should devote substantial communal energies and resources toward advocating these causes in legislative, administrative and judicial forums, and in some cases through the media as well.

But there are also many issues in which our community’s tangible interests are at best negligible or indirect, and where the importance of our active involvement may be less readily apparent. These include several controversial social and moral issues where, as in the case of abortion, the liberal or libertarian position may not coincide with Torah values but in no way inhibits our ability to lead Torah-true lifestyles; and where, again as in the case of abortion, any contribution we may make

to the broad national debate is unlikely to turn the tide in any event. To what extent, if at all, should we inject ourselves into the national dialogue over such issues?

From Agudath Israel's perspective, at least, the answer may well depend on the extent to which our co-religionists enter the public fray, purporting to speak under the banner of Judaism while in fact misrepresenting our religious faith. When they do, then our responsibility to speak out extends beyond whatever role we may have to serve as an *or la-goyyim*, a light unto the nations, and requires us affirmatively to dispel the darkness unfortunately created by our own wayward Jewish brethren. Hence the need to speak out on abortion. Or, to take another prominent example, when non-Orthodox groups file *amicus curiae* briefs urging civil recognition of same-sex "marriages," and when Reform Jewish leaders adduce support for such unions in explicitly religious terms by sophistic citation of biblical sources showing that all human beings are created in the Divine image, it becomes incumbent on the Orthodox community to point out that *Leviticus* is part of the Jewish Bible too. The joint *amicus curiae* brief recently filed by Agudath Israel and the Orthodox Union defending the traditional definition of marriage in the Supreme Court of Massachusetts is one way of discharging that responsibility.

In getting involved in these issues, our goal is not so much to influence the outcome of the debate as it is simply to speak the truth. Our target audience is not so much the policy decision-makers themselves, as it is the broad public whose understanding of Judaism would otherwise be shaped by the falsifiers of our faith. What needs to be protected is not so much the rights of the unborn or the traditional definition of marriage, as it is the integrity of Torah and the honor of Heaven. From this perspective, it is more important that our *amicus curiae* presentation in a case like *Webster* be cited by *The New York Times* than by the Supreme Court itself, that our congressional testimony in support of the Defense of Marriage Act be televised on C-Span than capture the attention of the bored-looking Senators conducting the hearing.

Why, then, bother with Congress and the Supreme Court altogether? Why not articulate the classical Jewish position on major issues of the day by publishing press releases, writing letters to the editor, submitting op-ed articles, appearing on talk shows, and leave the litigating and legislating to others? In truth, under ideal circumstances, perhaps our main focus in dispelling the distortions of Judaism fostered by our co-religionists would indeed be on the Fourth Estate rather than on the First Amendment. The reality is, however, that these issues tend to be fought out in legislative and judicial arenas, and that media attention

TRADITION

typically follows those battlegrounds. To leave the court battles and legislative hearings entirely to our co-religionists would thus be to cede the playing field and be excluded from the pre- and post-game interviews. We cannot afford to do so if our goal is to set the record straight.

For this reason, too, it may often be necessary to speak with our own independent voice, rather than as part of a larger coalition of other faith communities or interest groups that more or less share our perspective. If the objective is to get legislation enacted or otherwise influence public policy, it is usually helpful to find allies from other communities—though we must be careful, of course, in choosing our coalition partners even in such situations. If, however, we are less interested in winning or losing than on publicly clarifying the Torah’s perspective on an issue, we are best off speaking for ourselves.

III. THE DEFERENCE TO DA’AT TORAH

The second principle I would like to touch on concerns the concept of *da’at Torah*, which has in recent years been the subject of considerable discussion in Orthodox Jewish circles. For Agudath Israel, it is the indispensable *sine qua non* of legitimate policy making authority. Lay committees and executive staff work together to study issues and formulate recommendations, but the ultimate power to decide resides within the organization’s rabbinic leadership bodies. Thus, questions as to whether Agudath Israel should submit an *amicus curiae* brief in an abortion case—or, more generally, whether Agudath Israel should get involved in any public issue, the nature and extent of such involvement, the coalition partners with whom to affiliate—are routinely submitted to the Moetzes Gedolei HaTorah for deliberation and direction.

The importance of doing so should be obvious when dealing with public policy issues that have a clear halakhic component. Should the Orthodox community enlist secular law to assist in dealing with the thorny problem of the modern-day *aguna*? The issue cannot responsibly be discussed without expert rabbinic guidance on the sensitive halakhic question of what constitutes *get me’useh*, lest the best-intentioned legislative or judicial intervention lead to *gittin* of questionable halakhic validity. Should we press for a legislative exemption from secular laws that measure death by the irreversible cessation of all brain activity? Without guidance on the complex halakhic issues surrounding “brain death,” it is impossible to formulate a proper advocacy position. And what if, as in the case of the two aforementioned issues, there are differences of opinion

among halakhic authorities themselves? Well, then too, we must turn to our rabbinic leaders to help us formulate an appropriate policy that best accommodates the various halakhic views. The folly and irresponsibility of leaving communal decisions regarding matters that are inextricably bound with sensitive halakhic considerations in the hands of laypersons should be self-evident, even to the most diehard skeptic of “*da’at Torah*.”

Less self-evident, though, is the role of rabbinic authority in formulating communal positions on public policy issues where the halakhic considerations are well known or where there is no direct halakhic impact on our community—for example, the abortion and same-sex marriage issues discussed above. But even in such cases, considerations of whether, how, and with whom to get involved raise sensitive questions about the proper role of *Yisrael ben ha-amim*, the Jewish people within the larger non-Jewish society in which we find ourselves. Logic—to say nothing of numerous sources and precedents in our tradition—would seem to dictate that people steeped in Torah learning are the ones best equipped to apply a Torah perspective to such questions; that people who study Jewish history through the lens of Jewish values and Jewish philosophy are best equipped to evaluate current events from an authentically Jewish perspective; that people who have a finely-honed sensitivity to matters of *kevod shamayim* are best equipped to recognize the need publicly to counteract *ziyyuf ha-Torah* and *hillul Hashem*; that people who are constantly approached by their followers, disciples, congregants and students with every manner of personal or communal problem and whose hearts overflow with love and concern for their fellow Jew are best equipped to establish communal priorities in the broad public arena.

None of this means that *gedolei yisrael* are infallible, or that there is always one correct “*da’at Torah*” approach to any given issue. As Rabbi Berel Wein has written (*The Jewish Observer*, October 1994):

Daas Torah is the distilled thoughtful opinion of a great Torah scholar on a particular issue. The fact that another great Torah scholar does not see the issue the same way does not compromise the integrity of the concept of Daas Torah. That is the obvious implication of ‘these and those are the words of the living G-d.’ I would suggest that the reason this admittedly sophisticated concept is so difficult for ‘modern’ circles to accept is because many scholars (and others) looking at Daas Torah from the outside, and not experiencing it from within, confuse Daas Torah with infallibility. That is an error of monumental magnitude. We have no perfect people, no infallible leaders. Daas Torah is the best reasoned opinion of this sage on a particular issue. Since, for his followers,

TRADITION

or for those who consult him, or for the general Jewish public who defer to him, this is the best opinion available, it should be followed. Whether the opinion was ‘right’ is beyond human judgment. For knowing what is ‘right’ is to read G-d’s mind—a talent that none of us has.

Nor does ultimate deference to rabbinic leadership mean that there is no room for lay people to have an opinion on issues of the day; the *da’at ha-kahal* is often an important factor in the overall equation. And, obviously, *rabbanim* cannot make informed decisions without information; lay people who are able to explain the facts and clarify the issues are integral parts of the “*da’at Torah*” process. I can testify from personal observation that the views of Rabbi Moshe Sherer, *zikhrono livrakha*, the late president of Agudath Israel, were accorded great weight by the members of the Moetzes Gedolei HaTorah, who respected him as an effective *shtadlan* with great wisdom and expertise.

And I can also testify from personal observation to the enthusiasm with which Rabbi Sherer would carry out the directives of his rabbinical superiors, even when they decided on a different course than the one he had recommended. I recall, in particular, one meeting of the Moetzes Gedolei HaTorah at which Rabbi Sherer presented the various pros and cons of several possible approaches to a sensitive *shtadlonus* undertaking, and approvingly relayed the consensus recommendation of Agudath Israel’s lay leaders and executive staff. The rabbinic sages listened respectfully, asked questions, probed for further details, discussed the matter at some length, and then decided on a course of action almost diametrically opposed to the recommendation. When the meeting concluded, I noticed that Rabbi Sherer was on the proverbial “Cloud Nine,” brimming with enthusiasm about the decision of the Moetzes Gedolei HaTorah and already formulating implementation strategies.

“Why are you so happy?” I asked Rabbi Sherer. “They totally rejected our recommendation, and now we’re going to have to follow a course that you yourself thought unwise. *U-le-Simha ma zo osa?*”

“Don’t you understand, Chaim Dovid?” he told me. “The reason I’m in this organization is because I believe that Gedolei Yisroel are the ones who are supposed to make the decisions on these kinds of issues. I may not agree with the bottom line they reached at today’s meeting, but that’s precisely what gives this process legitimacy and authenticity. What would you prefer—that people like you and me should call the shots? That road leads to anarchy and *hefkerus*. Think about it for a moment, and you’ll be happy too.”

Wise words, well worth pondering.