



KOL HAMEVASER

The Jewish Thought Magazine
of the Yeshiva University Student Body



Politics and Leadership



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THE UPCOMING ISSUE OF *KOL HAMEVASER* WILL FOCUS ON JEWISH EDUCATION. THE TOPIC BURGEONS WITH POTENTIAL AND OVERFLOWS WITH EXCITEMENT, SO GET READY TO READ, EXPLORE, AND WRITE ALL ABOUT JEWISH EDUCATION. THINK: SARAH SCHENIRER, THE *MUSAR* MOVEMENT, YEHOSHUA BEN GAMLA, RAVINA AND RAV ASHI, *DEREKH HA-LIMMUD*, STORYTELLING, *HAKHMEI* ASHKENAZ, NECHAMA LEIBOWITZ, JEWISH DAY SCHOOL MOVEMENT, *MASORAH*, TANAKH CURRICULA, AND MUCH MORE ... !
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THIS MAGAZINE CONTAINS WORDS OF TORAH.
PLEASE TREAT IT WITH PROPER RESPECT.

IS THERE A JEWISH POLITICAL TRADITION?

BY: Professor Ruth A. Bevan

Is there a Jewish political tradition? Since Jews, prior to the rebirth of Israel in 1948, enjoyed no political sovereignty for close to 2,000 years, what could constitute a viable political tradition? Or, is Israel improvising a Jewish perspective on politics as it moves along?

Traditions can be slippery slopes. The word “tradition” comes from the Latin *tradere*, meaning to “deliver” or to “carry over.” Clearly, not everything of the past is worthy of being carried over. Some experiences we fervently desire to forget. We select what we want to remember and to carry over. Sometimes the selection process is deliberate and articulate. Edmund Burke sought to establish the “first principles” of the English constitutional tradition in his argumentation against the revolutionary principles of 1789 France. He also “manipulated” that very same English tradition in his justification, as a Rockingham Whig, of the new monarchical line established with William and Mary of Orange after the 1688 Glorious Revolution. In the United States we have an ongoing debate among constitutional lawyers and specialists about the “meaning” of our own Constitution. Following those who advocate adhering to the “original intent” of the Framers as opposed to those who favor interpreting the Constitution in terms of present-day values, U.S. Supreme Court Justice Clarence Thomas stipulated that “no matter how ingenious, imaginative or artfully put, unless interpretive methodologies are tied to the original intent of the framers, they have no more basis in the Constitution than the latest football scores.”ⁱ But how do we know the “original intent?” Isn’t what we claim as the “original intent” itself an interpretation?

Sometimes traditions result from spontaneous mass behavior. One *Simhat Torah* after Israel’s victory in the 1967 war, Soviet Jews took to the streets in Moscow and began to dance. The next year, at the same time, Jews gathered together again to dance. And the year after that again. And so it became a tradition, a way for isolated Soviet Jews to express their connection with their cultural heritage. Numerous examples of such “spontaneous traditions” abound. What do we mean then by tradition? Who defines it? How is it shaped into a collective memory? And, more particularly for our purposes at hand, how does it function politically?

To speak about any “tradition” invariably creates dissension. Traditions are open to interpretation. They may be accepted or rejected as worthy of being “carried over.” Jews have been dispersed all over the world, developing new streams of traditions and different interpretations of old traditions. Despite this diversity, we shall assert that contemporary Jews, inside and outside of Israel, draw upon a com-

mon *dialectical political tradition*. This tradition, like all dialectics, possesses a *thesis*, or a positive, foundational variable, and an *antithesis*, or a negative, oppositional variable. The tension between these two forces can be and has been profound; it creates destructive and constructive social energy.

In terms of methodology, let us begin upside down by looking first at the *antithesis* or negative Jewish tradition.ⁱⁱ This negative tradition stems from the Jewish *galut*, or exile, of some 2,000 years in which Jews functioned as political objects, not political subjects. Jewish *powerlessness* characterized Jewish existence. Jews lacked the autonomy (sovereignty) and leverage to make decisions affecting the conditions and direction of their own individual lives and that of the *kehillah* (community). They worked *around* the “supervisory” authorities of their so-called *host* countries. As a side note, scholars have noted that, in taking care of their own internal community affairs within these host countries, Jews importantly preserved the skills of social organizational life that would become so vital in the founding and settling of Israel. Nevertheless, their ultimate reality and thus their self-image always entailed reckoning with that supervisory external authority.



This need to reckon with an outside authority bred a tradition among Jews no matter where they lived. This tradition became, in fact, an *anti-political* tradition. Associated with this tradition were a host of attitudes about political authority – “keep the Tsar far away from us” as the inhabitants of Tevye’s little village proclaimed, as well as survival skills designed to cope with that authority. Even as Jews became citizens in democratic states like the United States, for example, Jews feared having fellow Jews elected to public office lest “something go wrong” and anti-Semitism manifest itself. As a minority living under precarious conditions, Jews understood politics as the majority’s power to coerce and to destroy, if it so chose, the minority in its midst. Politics represented danger.

One must understand, viscerally even, the potency of this anti-political tradition in order to grasp the truly revolutionary nature of modern Zionism. Zionists sought the “normalization” of Jewish life. By normalization they

meant that Jews should have the political power (state sovereignty) to determine their own collective destiny. How should mainly urban Jews living for centuries under “abnormal” conditions now possess the knowledge and skills, for example, to “make the desert” of Palestine bloom? How could they turn Israel into an altogether viable state with its own currency, its own economic infrastructure, its own military, its own government? How were Jews who feared and disdained politics now, themselves, to become political agents?

Ben Gurion worried about the ability of Jews to make such a monumental transformation. A secularist, Ben Gurion nevertheless believed that Jewish power did not simply mean power exercised by Jews. The word *power*, from the Latin *potere*, means “to be able.” Power enables the *will*. Jewish power thus enables Jewish will. What is that Jewish will? Ben Gurion answered this question by asserting the primacy of Jewish ethics in Jewish action. Jewish political power enables the social operation of Jewish ethics. Ben Gurion coined a term to define this combination of Jewish ethics and power: *mamlakhtiyut*. Jewish sovereignty takes meaning and legitimacy from the application and institutionalization of Jewish ethics.

Mamlakhtiyut entails a reversal of terms in the dialectic of the Jewish political tradition. The tradition has to be turned “right side up.” The anti-political tradition had functioned for almost 2,000 years as the *thesis* or foundation for Jewish thinking about politics. *Mamlakhtiyut* had to assume this role. Jewish ethics could now function as the foundational value system enforced by Jewish power.

From the standpoint of political thought, social justice defines the core of the Jewish political tradition. One cannot visit Israel without sensing the collective consciousness that guides the society. Despite the ideological and social divisions within the country, a sense of the collectivity pervades. Jewish thought and values emphasize the community: its obligation to the individual and the individual’s obligation to the community. Jews generally, and Israel in particular, can make real contributions to political thought and action in this regard.

The financial crisis prompted by Wall Street evidences the disastrous social effects of greedy individualism. Moreover, modern day industrial society isolates individuals, thereby working against community-building. Various scholars in the social sciences have sounded the alarm about the “bowling alone” syndrome.ⁱⁱⁱ Western social contract theory, as well as free market theory, has been vital to the development of liberal democracy. Yet, both strands of thought emphasize competitive individualism with only secondary concern, at best, for the community “good.” The residue remaining from the collapse of the Marxist and

non-Marxist left is a skepticism, if not outright rejection, of government’s ability to engender that community “good” through policies, for example, of the redistribution of wealth. Modern democratic theory and practice stand in need of ideas about community-building and communal justice.

The dialectical nature of the Jewish political tradition stands forth as unique. In the Hegelian or Marxist notions of dialectics the antithesis becomes a new thesis. This new thesis, in turn, creates its own antithesis. And so the cycle develops or matures. In the Jewish dialectic, the terms are fixed. No Jew wants the return of the anti-political tradition to the thesis position. It must remain in an oppositional or adversarial role. Its function there remains essential to the vitality of *mamlakhtiyut*. Jews inside and outside of Israel can never forget the *galut*. As we try to put ourselves into the mindset of our ancestors in Egypt when we celebrate Passover, so Jews must remember their own powerlessness during the *galut*. In this way we shall increase our appreciation for the opportunity that Israel affords us to empower Jewish values. Moreover, we shall be made more sensitive to the needs of the powerless, whoever and wherever they are.

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ⁱ *Wall Street Journal*. October 20, 2008. p. A19.

ⁱⁱ It is important to underscore here that not all politically functional traditions are positive. Rodin’s sculpture, *The Burghers of Calais*, commissioned by the city of Calais, remembers a humiliating, traumatic event in the city’s history. On a more profound level, Germany has recently completed construction of its own Holocaust Memorial (*Mahnmal*), situated, interestingly enough, near the Brandenburg Gate in Berlin, designed to remind Germans of the moral catastrophe they initiated and perpetrated.

ⁱⁱⁱ Putnam, Robert. *Bowling Alone: The Collapse and Revival of American Community*. New York: Simon and Shuster, 2000.

The Changing Role of Shimon and Levi

BY: Ben Kandel

One of the most interesting parts of the stories of the Patriarchs is the description of how Yaakov's sons gradually developed into the twelve tribes of Israel. By the end of Yaakov's life, most of the tribes had assumed the roles that they would eventually take when they entered the Land of Israel as a unified people. However, the roles of Shimon and Levi seem to have undergone significant changes between the lifetimes of Yaakov and Moshe. Both Yaakov and Moshe blessed the tribes at the end of their lives, but the way they treated Shimon and Levi differed markedly. Yaakov proclaimed:

"Shimon and Levi are brothers; their weaponsⁱ are instruments of treacherous violence. In their counsel, may my soul not enter; in their gathering, may my presenceⁱⁱ not join, for in their anger they killed a man and in their caprice they hamstringⁱⁱⁱ an ox. Cursed is their anger, for it is powerful, and their wrath, for it is harsh; I will divide them in Yaakov and will disperse them among Israel."^{iv}

Here, Yaakov harshly criticized his sons. Although the exact sin that led to the rebuke is left unnamed, most commentators assume that it is the destruction of Shekhem in *Bereshit* 34. Following the rape^v of Dinah, it was Shimon and Levi who killed everyone in the city of Shekhem in order to extricate her from her unfortunate union. Because of this unacceptable act, Yaakov felt that he had to divide Shimon and Levi from each other.

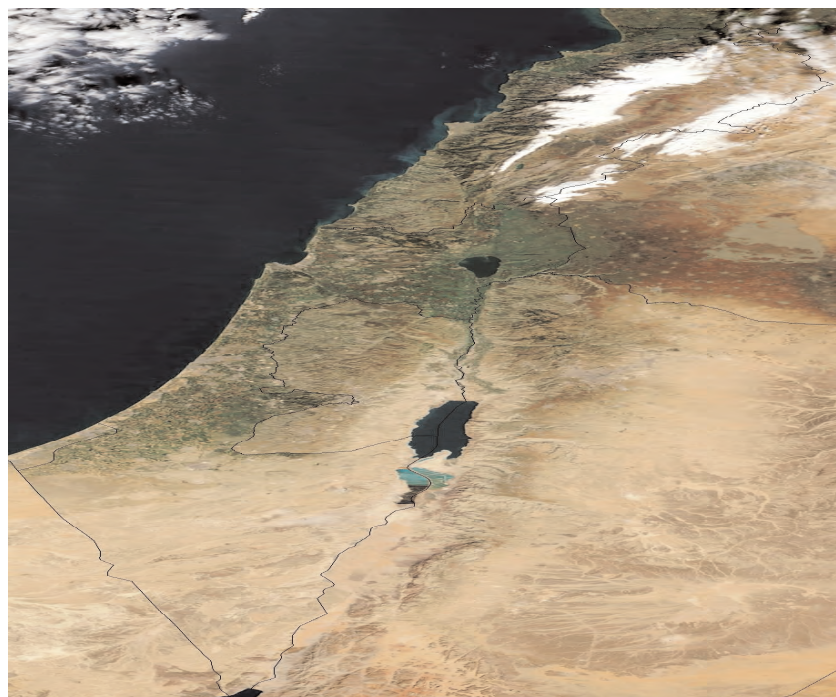
However, Moshe's blessing to the two sons was completely different:

"And to Levi he said, "Your Urim ve-Tumim belong to your righteous man whom you tried at Masah and strove with at Mei Merivah, who said regarding his father and his mother, 'I have not seen them,' and his brothers he did not recognize, and his sons he did not know, for they guarded Your word and protected Your covenant. They will teach Your laws to Yaakov and Your instruction to Israel; they will place incense before You and offerings on your altar. Bless, God, his property, and be appeased with his actions; crush the loins of^{vi} his enemies and foes so that they will not rise."^{vii}

We immediately notice two major differences between the blessings of the tribes by Moshe, on the one hand, and their treatment by Yaakov, on the other. First, Shimon is missing from Moshe's blessings.^{viii} Second, Levi seems to have undergone a drastic change – before, he was shunned; here, he was even given the role of a priest! What changed?

The Midrash^{ix} explains that both Shimon and Levi had sinned in Shekhem, but their be-

havior after sinning differentiated them from each other. Whereas Shimon had continued in his path of sinning, resulting in his descendants' illicit relationships with the daughters of Moab, Levi had reformed his ways. The Tribe of Levi, when called upon, was zealous for God both in the aftermath of the Sin of the Golden Calf and during the very time in which the Tribe of Shimon showed the incorrigibility of its moral flaws: it was none other than Pinhas, from the tribe of Levi, who killed the leader of Shimon when he committed adultery with the daughters of Moab. In this way, Levi showed that he had performed *teshuvah*, repentance, and that he was fitting to be the priestly tribe. Therefore, the Midrash concludes, Moshe blessed only Levi and not Shi-



mon.^x

However, closer examination of the consequences of Yaakov's statements reveals a more nuanced picture. First, as a consequence of Shimon's treatment in Yaakov's blessings, Yehoshua never allotted a separate portion of the Land of Israel for Shimon; he inherited with the Tribe of Yehudah. In fact, it appears that by the time of David, Shimon had assimilated into the Tribe of Yehudah to a certain extent, and even the cities granted to Shimon were considered Judean cities.^{xi} Although Levi was indeed given the role of a priestly tribe, he also never got an independent inheritance.^{xii} In contrast to the Midrash's implication that Levi was reinstated into his original role, he never fully regained the status of a regular tribe. Since the pronouncement of Yaakov, Levi would always be dependent on the other tribes for his sustenance.^{xiii} Perhaps more impor-

tantly, Shimon and Levi would never rule over other people. What, in particular, did Shimon and Levi do that merited this punishment?

Abarbanel^{xiv} suggests that the reason that Shimon and Levi were not permitted to have an independent inheritance is that after killing the residents of Shekhem, they plundered their booty.^{xv} Had Shimon and Levi merely killed Shekhem, the prince of the city, they would have been justified, since they would only have been acting in defense of their sister Dinah. However, they also killed everyone else in the city and stole all of their possessions. This further step was an indication that their intentions were not solely righteous; they were propelled by greed. This greed made them unfitting to be kings, for a king must rule justly and fairly;

other nation. However, the reason that we never harmed any other nation is that we were never given the opportunity – we were always under the control of someone else. Once we established control of an autonomous state, the real test began – would we continue to follow in the footsteps of our fathers and become a benign and constructive force in the region, or would we mimic the nations who persecuted us? By always performing our actions only with the purest of intentions, we can ensure that we continue to deserve the tremendous gift – and challenge – of an autonomous existence in the Land of Israel.

Ben Kandel is a senior at YC majoring in Physics and is a Managing Editor for Kol Hamevaser.

ⁱ So rendered by Rashi, Hertz, and NJPS. Others: "roots" (Ibn Ezra), "dwelling places" (Onkelos, Ramban, and Radak).

ⁱⁱ *Kavod* often means "presence"; cf. Shemot 24:17.

ⁱⁱⁱ To "hamstring" is to sever the tendons of the leg, rendering an animal immobile.

^{iv} *Bereshit* 49:5-7.

^v See Ramban to *Devarim* 22:23; Yael Shemesh, "Rape is Rape is Rape: The Story of Dinah and Shechem," *Zeitschrift für die Alttestamentliche Wissenschaft*, 119/1, 2-21; and Meir Sternberg, *The Poetics of Biblical Narrative*, Bloomington: Indiana University Press, 1985, 445-481. Contrast to Ellen van Wolde, "Does *Inna* Denote Rape?" *Vetus Testamentum*, 52/4, 528-544; Danna Fewell and David Gunn, "Tipping the Balance: Sternberg's Reader and the Rape of Dinah," *Journal of Biblical Literature*, 110/2, 193-211. According to Pace Wolde's excellent analysis of the broader uses of *innah* in *Bereshit* 34, *innah* most certainly does denote rape.

^{vi} *Motnayim* here poses a syntactical problem. From the context in the verse, it appears to be a construct form, but the word itself does not take the form of a construct. Several possibilities have been suggested. Ibn Ezra reads *motnayim* as a direct object that modifies "crush" (this would be translated very roughly as "loincrush his enemies"). In a conversation I had with an itinerant linguist over *Simhat Torah*, two additional possibilities were pointed out to me. Some have read the *mem* of *motnayim* as an enclitic *mem* (see Horace Hummel, "Enclitic Mem in Early Northwest Semitic, Especially Hebrew," *Journal of Biblical Literature*, 1957 (76/2), 85-107). Although the import of

someone susceptible to bribes or corruption can never be appointed king.

Taking Abarbanel's basic understanding of the story of Shekhem, I would like to develop it one step further. Not only were Shimon and Levi prevented from being kings, they were also prevented from ever conquering and establishing a government in an area totally under their control. As noted above, Shimon was subject to the rule of Yehudah, Levi was subject to the rule of all the other tribes. It is possible that this is the lesson we are to take from the story of Shimon and Levi: When one becomes responsible for ruling over a territory that includes others, one must constantly make sure that one's actions are always done only with the best intentions. Yeshayahu Liebowitz notes^{xvi} that throughout the Jews' stay in Exile, we developed a sort of pride in the fact that we never oppressed or harmed any

an enclitic *mem* is not always clear, it probably simply signifies a minor emphasis on the preceding word. The word “*motnayim*” would be translated “the loins of,” as if there were no *mem*. In addition, an *n*-sound is used to indicate possessive in Classical Egyptian, and it is possible that the *mem* here is some variant of that form. See Antonio Loprieno, *Ancient Egyptian: A Linguistic Introduction*, Cambridge University Press, 1995, p. 118. If this is the case, the word would also be translated “the loins of.”

^{vii} *Devarim* 33:8-11

^{viii} Rashi, Ramban, and Abarbanel (ad. loc.) all make the case that Shimon is included in Yehudah’s blessing, but, as Nechama Liebowitz notes in her *Lyyunim*, this is not the intuitive way to read the *pesukim*.

^{ix} *Sifrei Devarim*, 389. An alternative explanation is offered by *Midrash Tehillim* 90:3.

^x A weakness of using events that happened after the Exodus to explain why Shimon and Levi were treated differently is that it fails to account for why Moshe, who was from the tribe of Levi, was chosen to lead the Jewish people before Levi distinguished itself during the incident of the Golden Calf. However, the midrash focuses on the relationship between the morality and treatment of Shimon and Levi as tribes; individual members of the tribe could presumably be granted positions of importance if they showed themselves fitting for it. Importantly, Moshe’s leadership was not a dynastic position passed on to members of his tribes; after his death, the leadership of the people went to Yehoshua, from the Tribe of Ephraim (*Bemidbar* 13:8).

^{xi} See *Shoftim* 1:2-4, 17-19; *Yehoshua* 19:1-9; *Shemuel I* 27:5-6; 30:13-14; *Shemuel II* 24:5-8; etc. Also, see John Skinner, *A Critical and Exegetical Commentary on Genesis*, Charles Scribner’s Sons: New York, 1910, p. 518.

^{xii} See, for example, *Devarim* 10:8-9.

^{xiii} *Devarim* 12:18; 14:27; 16:11.

^{xiv} *Bereshit* 49. In contrast, Targum “Yonatan” (*Bereshit* 49:7) posits that the reason that Shimon and Levi were not allowed to rule territories is that they were too strong, not that they had moral flaws.

^{xv} Sternberg points out (ibid., pp. 467-472) that it is not at all clear that only Shimon and Levi looted the city; it seems that all of the brothers joined together in the looting.

^{xvi} “After Kibiyeh,” first published in *Be-Terem* 1953; republished in *Yahadut, Am Yehudi u-Medinat Yisrael*, Tel Aviv: Shoken, 2005, pp. 240-245. See also his *Sihot al Parashat ha-Shavua*, Israel: Hemed, 2004, pp. 136-137.

Israel: Jewish *and* Democratic?

BY: Gilah Kletenik

Can Israel be at once a Jewish and democratic state? Any attempt to explore this thorny question must first define its knotty terms, “Jewish” and “democratic.” These two words, while familiar to all, are heavily loaded descriptions that require not only identification, but also an investigation into their practical relevance and application to the modern State of Israel.

“Democracy,” literally “rule by the people,” has come to connote far more than its simple meaning and has a handful of possible definitions. The popular definition of “democracy” focuses on direct civil participation in government, whereas the procedural definition is more interested in how leaders come to power. However, especially today, the term “democracy” connotes far more. It is used to describe a government that embraces liberal democratic values, such as equality under the law, respect for civil liberties, protection of human rights and the safeguarding of minority rights.

Defining “Jewish” is even more complex. The traditional definitions of “Jewish” focus on religion. Jews are a people who share a belief system and worship God through the dictates of the Torah and by following halakhah. By this definition, “Jewish” has an entirely religious connotation and suggests that for Israel to be “Jewish” its government ought to have religious elements. Hence, in exploring the conundrum of Israel’s Jewish and democratic characteristics, it is appropriate to first investigate the relationship between religion and state in general.

John Locke is often credited with pioneering the notion of the separation between religion and state. The Lockean social contract, which paved the intellectual road to liberal democracy, maintains that matters of individual conscience are too important to be ceded to the government, and are instead better left to the rational discretion of each individual. The United States Constitution, in this spirit, was the first document to call for the separation of religion and state. In the spirit of Locke, the Framers sought to protect religion by circumscribing the government from endorsing and favoring one religion over another because they were wary of the dangers of religious persecution. To the Framers, this separation between religion and state was very much a matter of freedom; a civil liberty, without which America could not be considered a liberal democracy.

Israel does not maintain a separation between synagogue and state. And, while the Declaration of the State of Israel pledges to “ensure complete equality of social and politi-

cal rights to all its inhabitants irrespective of religion,” the Israeli government endorses the Jewish religion with policies that largely put this pledge into question. These include laws prohibiting public transportation on Shabbat and the public sale of *hamets* on *Pesah*. Most problematic, though, is the Chief Rabbinate. Comprised of male Orthodox rabbis, it is a government agency granted ultimate authority in matters of divorce, marriage and burial. Practically, this means that in order for a marriage to be recognized by the State of Israel it must be between a man and a woman wed in a religious ceremony. This policy deprives same-sex and inter-religious couples of marrying and benefiting from the laws applicable to married couples. Beyond this, for a woman to remarry she must first be granted a divorce contract or *get* from her husband – and if he refuses to



grant her one, it is illegal for her to remarry. Laws such as these apply to all citizens of the state - whether they are *haredi* or *hiloni* - and essentially amount to the deprivation of civil liberties.¹

If “Jewish” is to be defined as a religion, then the government of Israel can safely be labeled as such. Despite the fact that most of the state’s leaders are not scrupulous in following halakhah, many policies of the state are deeply religious in scope and are informed by halakhah. This amounts to a union of synagogue and state which is highly problematic from a democratic perspective. As such, by this religious definition of “Jewish,” it is clear that Israel cannot be at once a Jewish and democratic state.

A different and often popular definition of “Jewish” focuses less on the halakhah of the previous definition and more on the Torah’s values. This approach maintains that “Jewish” connotes what has come to be called “Jewish values.” These values refer specifically to the Jewish values of morality and social justice, among others. However, there are a number of issues in suggesting that the state of Israel follow “Jewish values” as opposed to, though not per se in conflict with, liberal democratic values. The first is the problem with separating

“Jewish values” from the rest of Judaism – are there even values beyond the realm of halakhah? Many, among them Yeshayahu Leibowitz, claim that there is no such notion as morality or values independent of halakhah.¹¹

Nevertheless, even if there are “Jewish values” beyond the realm of halakhah, a government bound by these values is problematic from a democratic perspective. This is because there is no single consensus on what “Jewish values” means – unlike halakhah, there is no bottom-line conclusion on matters of value. And, however reconcilable these “Jewish values” may be with liberal democratic ones – that which the Declaration of the State of Israel calls: “justice and peace as envisaged by the prophets of Israel” – deciding where to draw the line is precarious. Why is the seeming second-class-citizenship of women in Judaism any less a “Jewish value” than feeding the poor? Herein lays the danger in suggesting that Israel express its “Jewishness” by following these “Jewish values” – there are no such clearly defined “Jewish values” and following even one of these values because of its “Jewishness” paves the path for a slippery slope open to further abuse. Consistent calls against abortion, stem-cell research and same-sex marriage in the US based on religious beliefs, are a case in point demonstrating the dangers of having religious values inform, even on a personal level, state decisions. All of this imperils civil liberties, which in turn conflicts with democracy.

It is clear that the definitions of “Jewish” that focus on halakhah and values are dangerous from a democratic perspective because these understandings approach Judaism from a religious perspective and are consequently incompatible with democracy. However, at least traditionally, “Jewish” has been used to describe primarily people and not ideas or entities. In fact, even though a non-Jew may choose to convert to Judaism and is treated as if he or she was born into it, primarily, one is Jewish by virtue of birthright. From this perspective, “Jewish,” has a national, even ethnic connotation. In the Declaration of the State of Israel, the two justifications for the establishment of the State are of national character. The first focuses on persecution, suggesting that the Holocaust “was another clear demonstration of the urgency of solving the problem of its homelessness by re-establishing in Erets-Israel the Jewish State.” During the Holocaust, Jews were persecuted because of their ancestry and not due to their religious or other beliefs – the attack was on an ethnicity, a nation. The second justification for the establishment of Israel is national in scope, maintaining that it is “the natural right of the Jewish people to be masters of their own fate, like all other nations, in

THE JEWISH NATIONAL ORGANISM

By: Simcha Gross

One of the most salient themes in Judaism is nationalism. Our holidays commemorate national episodes. Our prayers are worded in the plural, as we pray on behalf of our national brethren. The bible is filled with God's words to the nation of Israel. We are commanded to be "a kingdom of priests and a holy nation."ⁱ

What does it mean to be part of a nation? Are we simply reliving the experiences of our forefathers? Are we mere inheritors of a vast tradition which we are bound to rehash endlessly? Do we have input in the process? Or, to take Rabbi Soloveitchik's dichotomy of Fate and Destiny, do we actively shape our national future, take destiny into our own hands, or drift languidly without say in the seas of fate awaiting our arrival at some predetermined end? The answer to these questions depends on how we understand the concept of nationalism in Judaism.

Johann Gottfried von Herder, an 18th century German philosopher, suggested a seemingly counterintuitive theory, that viewed nationalism as an individual organism. Herder believed that a nation is composed of a conglomeration of many individuals; but, once united, they produce a single body called a nation, with its own personality and identity; its own past and future. This body, said Herder, follows the life-cycle of a human; it begins with childhood, advances to adulthood and concludes with elderliness.

Asher Zvi Hirsch Ginsberg, more famously known as Ahad ha-Am, one of the most celebrated early Zionist thinkers, as well as a famous essayist, applied Herder's national concept to Judaism. In his essay "Past and Future," he begins by stating "as in the individual, so in the nation,"ⁱⁱ borrowing the image directly from Herder, he goes on to list the three stages of the life cycle enumerated by Herder; childhood, adulthood and elderliness.

Ginsberg continues and inserts his own understanding of the different stages. Life is a balance between two dichotomous components; hope and memory. A child has no memories, no past to reflect upon, but is consumed by the hopes and promises of the future, of the many years looming enticingly in the near and distant future. In contrast, an adult strikes a balance between these two elements; he still has hopes for the future, but is firmly grounded in the memories and experiences of his past. Finally, an older person has no more hopes for the future, as his life is coming to an end. Instead, he is left to reflect upon the vast wealth of memory he has accumulated over the course of his life.

Ginsberg pleads that we adopt the model of adulthood. An old nation focused solely on

the past is worn out, tired, and dry of life. Restudying the past habitually without ever advancing to the future is simply a few steps away from national death. At the same time, Ginsberg condemns those who "seek salvation in a Future not connected with our Past."ⁱⁱⁱ It is the past memories that form the foundation of the nation; without them, the nation loses its identity. Instead, we must seek guidance from our Past, as we progress and advance to the Future.

All too often we handicap ourselves by our fear of stepping outside the protective confines of the past. We fear the unknown, just as we fear trampling upon the memories that form the wellspring of our national identity. But it is just such a fear that Ginsberg dissolves. Progressiveness and creativity are not deviations from the past; it is the past that grounds our progress and movement to the future.

The image underlying Herder's national model is not limited to the product created from the grouping of the individuals; it also helps us understand the role of each individual within the conglomerate. Ralph Waldo Emerson, in his famous lecture "The American Scholar," describes this dynamic in the form of a fable:

"The old fable covers a doctrine ever new and sublime; that there is One Man – present to all particular men only partially, or through one faculty; and that you must take the whole society to find the whole man. Man is not a farmer, or a professor, or an engineer, but he is all."^{iv}

Each individual has his own abilities and gifts with which to contribute to and enrich society. Though no one is gifted in every way, together the individual talents and singularities work as puzzle pieces and fit together to create the "One Man." This idea is stated succinctly in the famous Rabbinic dictum "it is not your job to finish the work, yet you are not free to disregard it either."^v Rather, one must contribute his part to the whole, fill his niche, and allow others to fill theirs'. Alone, a person may be productive; in Emerson's words, he may be "a good finger, a neck, a stomach, an elbow," but he will never be "a man."^{vi} The various efforts combine to create an enhanced and complete society.

Whereas Ginsberg deals with the result of the conglomeration of individuals, Emerson focuses on the role each individual plays in creating the whole. In Emerson's vision, the role of the individual is amplified; each person gives his unique contribution to the whole. Or in Rabbi Hirsch's words "You, in your limited circle, as an individual, can fulfill the very task that, on a larger scale, constitutes the mission of your entire nation."^{vii} The individual's mission is to contribute his specialties to the nation, and the nation's mission is to further its

their own sovereign State." This suggests that the Jewish people, like any nation, have a natural right to self-determination and, for this reason, the Jews deserve a state. These two reasons, national, even ethnic in scope, inform the Law of Return's declaration that "every Jew has the right to come to this country as an *oleh*" – that Israel is a country for all Jews by virtue of birthright alone – a place for Jews to both immigrate and emigrate to.

In fact, Israel's definition of who qualifies as a "Jew" is not halakhic, but is instead entirely ethnic. In halakhah, a Jew is either a convert or the child of a Jewish mother. However, the 1970 amendment to the Law of Return expands the definition of "Jew" to include: "a non-Jew who is either the child or grandchild of a Jew, the spouse of a Jew or the spouse of a child or grandchild of a Jew."^{viii}

The trouble with this ethnic definition of "Jewish" is the people it excludes – the significant non-Jewish populations who live within Israel's borders including, Arabs, Druze, even foreign workers. Despite the fact that in the Declaration of the State of Israel, the country pledges to "ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex; it will guarantee freedom of religion, conscience, language, education and culture," this has not been the case. De facto, the minorities in Israel are treated as second-class citizens; they suffer severe discrimination on all levels, tend to be among the country's most poor and least educated. This reality clearly conflicts with the democratic values of protecting minority rights and upholding civil liberties.

Beyond mutual ancestry, there are other components that contribute to making a group of people a nation. These include a common language, history and culture. In this context, Israel's "Jewishness" refers to the Hebrew language, thousands of years of history and a rich culture. However, defining "Jewish" along these lines need not ignore the fact that Hebrew, until the last century, was a dead language. Instead, Jews predominantly spoke, in addition to the languages of the areas they lived, Yiddish and Ladino. After two thousand years of exile, with Jews spread throughout the globe, it is difficult to claim a common history, let alone a mutual memory. And, further, there is no single "Jewish culture" – the culture of a Polish Jew is very different, even unharmonious with that of a Tunisian Jew. In fact, it's only the religious texts and traditions that truly unite all Jews.

Nevertheless, even if a common culture might be forged and a similar historical narrative that unites all Jews written, these would not speak to the non-Jews living in Israel. Instead, these attitudes, even the Hebrew language, tend to sideline non-Jewish Israelis in a way that not only causes discomfort, but even leads to discrimination, a blatant challenge to the state's democratic character.

Evidently, defining "Jewish" is no simple feat and determining its compatibility with democracy even more difficult. What emerges from this analysis is that according to the aforementioned definitions, "Jewish" and "democratic" can never be entirely compatible, ei-

ther conceptually or practically. Despite this inescapable reality, Israel will never cease to be either a Jewish or democratic state. Israel was founded on the pillar of Jewish nationhood in the Jewish homeland and its entire political system is democratic in the procedural sense and its institutions committed to democracy in all of its liberal connotations. Consequently, a more productive question is: how might Israel act to pacify the raging conflict between its "Jewish" and "democratic" souls? Undoubtedly, the most constructive course of action would be the separation between religion and state – the immediate privatization of the Rabbinate and abolition of all laws halakhic in scope. Beyond this, concerted efforts to protect Israel's minorities, is crucial in upholding Israel's democratic character. These advances are but a start, and will likely gradually reshape Israeli society's approaches to, at the very least, Judaism, different factions within Judaism and even non-Jews. However, the total de-Jewification of the state's government and institutions, while appealing from a democratic perspective, is an impossibility, itself the very antithesis of all the country stands for – the country's very name brings with it generations' worth of religious, historical, political, even spiritual baggage.

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ⁱ Further arguments against the union of religion and state often focus on what Supreme Court Justice Hugo Black meant that the "union of government and religion tends to destroy government and degrade religion" [*Engel v. Vitale*, (1962)]. The latter part of this quotation is especially relevant to Israel – that religion has turned into a political tool and has consequently been degraded. Another element relevant is what James Madison wrote in 1819 in speaking about America that: "the devotion of the people, have been manifestly increased by the total separation of church from the State." This might account for the increasing secularization of Israeli society.

ⁱⁱ Leibowitz, Yeshayahu, ed. Eliezer Goldman. *Judaism, Human Values and the Jewish State*. Cambridge: Harvard University Press, 1992.

ⁱⁱⁱ It would be remiss not to note that through the Chief Rabbinate, Israel officially only accepts strictly Orthodox conversions. Practically, this means that non-Orthodox converts and their descendents are unable to make Aliyah unless they submit to an Orthodox conversion.

own individual specialty and identity.

Yet, these two facets of nationalism, Ginsberg's focus on national identity and Emerson's focus on the individual therein, can conflict. What happens when the national identity is jeopardized by some of its constituents? Or alternatively, what happens when the nation suppresses the uniqueness of the individual? How do we deal with the conflict between individual and the nation?

In fact, the above facets create a paradox. A nation is a conglomeration of unique individuals; without the individuals contributing their own specialties, the nation would cease to exist. At the same time, a nation has to main-



tain its own identity; it has its past to draw upon, and its future to look forward to. What is the solution to this problem?

We can borrow a beautiful image used by Maimonides in a similar context to explain our puzzle. Maimonides states that sometimes it is necessary to sacrifice a part of the law to secure the rest of it. He then gives an analogy to demonstrate the logic of this decision: sometimes a limb must be amputated to save the rest of the organism.^{viii} This image works well with Herder's national model, coupled with Ginsberg's and Emerson's: each individual comprises a limb of the national body. A person does whatever he can to avoid amputating a limb; without it, he is incomplete. However, sometimes it is necessary to sacrifice a part for the whole. Thus, any individual who threatens the national goals must be sacrificed for the good of the nation. Though it is difficult to ascertain exactly when a person must be excluded from the nation, one thing is clear; just as an amputee is no longer whole without his festering limb, so too, after excluding one from the group, however necessary it may be, the nation is never whole again.

We live in a generation of divisionism and sectarianism, where hypochondriacs dominate the national terrain, seeing every difference as a cause for amputation. At the root of this sectarianism is a misunderstanding of the dynamic of nations, built on the erroneous belief that a nation is defined by a person's own niche of compatriots. But a nation is not a monotonous voice being echoed incessantly by others; it is a cacophony of sounds combining in symphony, various individual parts of the body combining to form a whole. We must learn to

appreciate each unique note in the greater national melody.

Thus, the vision of Ahad ha-Am and Emerson combine to create a beautifully cyclical relationship. A nation is an organism made by a conglomeration of organisms. A nation is singular, has its own identity, and works to actualize and fulfill its uniqueness, just as the individuals who comprise the nation do. But the two are inextricably tied to each other; a nation is unique only insofar as its constituents are unique, and an individual is unique only insofar as he contributes something singular to the nation. Our common ground therefore lies not in the suppression of self for the whole; rather,

it lies in how we collectively utilize and extol our differences in the context of our common past and future. We become one only insofar as we preserve our distinctiveness. And it is only as one that we can progress towards our common future.

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ⁱ Exodus 19:6

ⁱⁱ Simon, Leon. *Selected Essays of Ahad Ha-Am*. (Forge Village, MA: Atheneum, 1981). p. 82

ⁱⁱⁱ *Ibid.*, p. 89

^v Emerson, Ralph W. *Five Essays on Man and Nature*. Ed. Robert E. Spiller. (Danbury: Harlan Davidson Incorporated, 1954). p. 41

^v *Pirkei Avot* 2:16

^{vi} Emerson, p. 42

^{vii} *Nineteen Letters*, #12

^{viii} *Mishneh Torah, Hilkhos Mamrim* 2:4

Mrs. Prime-Minister

BY: Yossi Steinberger

Election season and fresh faces abound. In America and Israel, Sarah Palin and Tzippi Livni have sensationalized the elections by demonstrating that women can rise to the very highest level of politics. In Israel the appointment of Tzippi Livni raises halakhic interest too. Indeed, in the forty years since the election of Golda Meir, there has been vigorous halakhic discussion amongst *poskim* and academics concerning the election of a female prime-minister. This article presents a survey of the relevant issues, which include determining the extent of women's exclusion from leadership and comparing biblical *serarah* to contemporary communal leadership.

Rav Soloveitchik seemingly acquiesced to the selection of Golda Meir. In a conversation with students, Rabbi Brovender described the Rav's perspective on choosing a prime minister. Rabbi Brovender said, "It was once said that people were bothering Rav Soloveitchik about Golda Meir, the Prime Minister of the State of Israel...Now what did Rabbi Soloveitchik say, (I didn't hear him say this but he supposedly said), "and Ben-Gurion can be the Prime Minister of the State of Israel?"ⁱ The Rav, then, took a practical stance, understanding the imperfect nature of Israeli government.

Similarly, Rav Moshe Feinstein asserts that if confronted with a choice between a non-observant male and an observant female as a monarch, one should choose the female. He writes, "anyone lacking fear of heaven, though his wisdom be great, we do not appoint him for any position." Rather, "certainly it is required to aid in the appointment of the worthy woman."ⁱⁱ Like the Rav, Rav Moshe has a utilitarian stance.ⁱⁱⁱ

In the last few weeks, R. Ovadiah Yosef has declared that one must elect the candidate who most supports Torah values. R. Ovadiah buttressed his declaration with the aforementioned statement of R' Moshe. Thus, R. Ovadiah too sometimes allows for electing a woman prime-minister.^{iv}

In the current imperfect society, then, a woman may certainly be prime-minister. In an ideal world, though, the halakhah becomes more complex. There is found in halakhic literature a prescription against women holding a position of *serarah*, or authority. One must first ascertain precisely from which forms of *serarah* women are excluded, and then evaluate whether the office of prime minister qualifies for the prohibition.

Assuming that the office of prime-minister does involve *serarah*, Rambam's position, recorded in *Hilkhos Melakhim* 1:4-5, presents the principle halakhic consideration for preventing a woman from election as prime-minister. After listing positions from which a *ger* is excluded, Rambam writes that a woman, too, may not be appointed to those positions of authority. In Halakhah 4, the Rambam writes,

"We do not appoint a king from amongst *gerim*...and not monarchy alone, but also all *serarot* in Israel. Not as an officer of the army, be it [the appointment] over 50 or 10, or even appointed over the water channel from which is distributed water to the fields." Rambam continues in Halakhah 5, "A woman may not be established as monarch as it is said "[You shall set] over you a king,' but not a queen. Similarly with regard to all offices in Israel, only a man may be appointed to them." Rambam thus excludes women from all positions of leadership.

A passage in *Sifrei* (Deuteronomy 17:15) according to many commentaries serves as Rambam's source. Rav Moshe demonstrates that it is a weak proof, however. The *Sifrei* derives from the phrase "a king," that not a queen; and also relates the law that *gerim* are excluded not only from kingship but from all positions of authority as well. The Talmud (*Yevamot* 45b) derives the law regarding *gerim* from the phrase "...from among your brethren shall you set a king over you; you cannot put over you a foreign man who is not your brother." Because both phrases, concerning women and *gerim*, come from the same *pasuk*, therefore, explains Rav Moshe, Rambam must have equated the laws of a *ger* with those of a woman and therefore, like *gerim*, excluded woman from all forms of authority. However, Rav Moshe points out, the exclusion of a *ger* from all positions of authority comes from the repetition of "*som tasim*" or "place, you shall place," and a pleonasm regarding *gerim* does not logically extend to women. Moreover, Rav Moshe cites the many halakhos of authority that *gerim* and women do not share, and ones that they do share but only due to a special derivation.^v

With the exception of Ritva, it cannot be said with certainty that other major Rishonim agree with Rambam. That Ramban and Rashba^{vi} both question the permissibility of Devorah's tenure as *shofet* from the *Sifrei*'s "'a king' and not a queen," may indicate that they were concerned with Devorah's holding any position. However, Rav Moshe asserts that *shofetim* had the status of kings.^{vii} Thus, the position of Ramban and Rashba regarding other forms of leadership cannot be inferred from that discussion.^{viii}

Moreover, Rav Moshe states that Tosafot^{ix} and Rosh^x certainly disagree with Rambam's ruling that women are excluded from all positions of authority. Tosafot and Rosh ask how Devorah could have been a judge. They both answer that "they accepted her upon themselves because of the *Shekhinah* (*nevu'ah* in Rosh)."^{xi} As understood by Rav Moshe, Tosafot and Rosh are referring to the Mishnah, *Sanhedrin* 24a, which allows litigants to choose a judge that would otherwise be invalid (e.g. a close relative) if they both agree. At any rate, the answer of Tosafot and Rosh indicates that Devorah had an official post as a judge. It then

seems that Tosafot and Rosh are not bothered by a woman assuming non-monarchic leadership.^{xii}

Until now we have dealt with the question of women's exclusion from *serarah*, on the assumption that the position of prime minister qualifies as *serarah*. However, many contend that this assumption is incorrect. They argue that since the Rambam's exclusion of women emerged from the verses concerning the monarchy, monarchy is the paradigm for *serarah*. Therefore, Rambam's general exclusion extends only to offices that enjoy, to some extent, the qualities of monarchy, and, they point out, the office of prime-minister lacks such qualities. The qualities cited include life-time terms, hereditary succession, powers of coercion, appointment by fiat (in the case of king, by the *Sanhedrin* and a *navi*), and being a servant of the national body – *Keneset Yisrael*.

Prominent scholars and *poskim* demonstrate that the office of prime-minister does not constitute *serarah*, as it lacks one or more of these qualities. R. Isaac ha-Levi Herzog, for instance, asserts that *serarah* refers to life-long, non-elective power.^{xiii} R. Herzog additionally suggested that since the State of Israel was a joint venture between the U.N. and Jewish people, the Jew's halakhic responsibility for the State is limited. R. Shaul Yisraeli, a respected member of the Mizrahi rabbinate who wrote many influential responsa on matters pertaining to the State, held that that prime-minister was not the head of a true national government – *Keneset Yisrael* – and thus assimilated the identity of the prime-minister to that of a *shaliah*. R. Yisraeli writes, "It is thus obvious that just as in a business partnership between Jews and gentiles, one can divide the tasks among them, so that the gentile administers the business, and, this is not considered *serarah*, for he only represents the partners and issues directives in their name; so to in the greater partnership of the city and state, the basic content of the power of elected officials is no different. They have no *serarah*, but are only representatives of the community who function for its wellbeing, and as such have received their special powers...and it is not forbidden to appoint gentiles as representatives (*shelihim*)."^{xiv} Another prominent Israeli, R. Uziel,^{xv} distinguishes contemporary communal leadership from *serarah* on the basis of elections constituting communal consent (*kabbalah*).^{xvi} R. Ya'akov Levinson,^{xvii} rabbi of Chovevei Torah in Brooklyn, says that the phrase "...that he may prolong his days in his kingship, he and his children" (Deuteronomy 17:20) indicates that monarchy, and *serarah* generally, entails lifetime incumbency and hereditary succession. The position of prime-minister lacks these qualities and therefore cannot be considered *serarah*.^{xviii}

While it has been shown that a formidable group of *poskim* and scholars adopt permissive positions regarding appointing a woman prime-minister even over an observant male, there are still strong grounds to forbid. Generally speaking, this paper has presented permissive opinions because they represent a departure from mainstream *pesak* and thus

may not receive as much attention. In terms of *pesak*, Rav Moshe states firmly that one should be *mahmir* for Rambam's position that women cannot assume any form of *serarah*, and it is clear from Rav Moshe's mention of the "president of the state" in his responsa that he does not distinguish between the office of prime-minister and *serarah*.^{xix} R. Bleich in concluding his article suggests that the reason for excluding a woman from the monarchy appears to be the principle of '*kol kevudah bat melekh penimah*,' and that ideal is justifiably relevant in many forms of public office.

In summary, in Israel's current imperfect state one may elect a woman for prime-minister. In an ideal situation, the Rishonim disagree whether a woman is excluded from all forms of *serarah*. Rambam and Ritva say yes; Tosfos and Rosh say no; and it is unclear what Ran, Rashba, and Ramban hold. Moreover, even with Rambam and Ritva, many prominent *poskim* and scholars differentiate a prime-minister from *serarah*. Yet, despite the formidable voices for leniency, Rav Moshe Feinstein is *mahmir*.^{xx} Be that as it may, it is certain that behind every great leader there stands a *Yiddishe mama*.

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ⁱ "Conversation with R' Brovender" (August 29, 1999) http://www.yhol.org.il/features/con_rcb3.html.

ⁱⁱ *Iggerot Moshe, Yoreh De'ah*, II, nos. 44-45. Rav Moshe's *teshuvah* does not address directly the typical situation in Israeli politics where voters must choose amongst several irreligious candidates.

ⁱⁱⁱ Additionally R. Judah Gershuni in *Ha-Torah ve-ha-Medinah*, II (Iyar 5710), 74, quotes an early authority who questions the appointment of Shema'ya and Abtalion, whom Rambam writes were the sons of converts, as head of the Bet Din. Riva is quoted as saying that if no equally qualified person of Jewish descent can be found, then one may even appoint the sons of converts. Riva's ruling indicates that if a woman were the most qualified candidate, one may appoint her.

^{iv} YNET 10/28/08 <http://www.ynet.co.il/articles/0.7340.L-3614341.00.html>

^v Another possible source for the exclusion of women from public office, but not one attributed to Rambam, is Rema's ruling in *Hoshen Mishpat* 37:22 that the officials of the *kahal* also become *dayyanim*. Because women, according to accepted *pesak*, cannot be *dayyanim*, they cannot be community officers. However, R. Bleich notes that Rema lists only positions that involved judicial function - such as tax collectors, who, as part of their jobs, assessed the rate each household paid. To this author's knowledge, the prime-minister does not have a judicial role.

For discussion concerning other potential sources of Rambam's position, see R. Bleich's very informative article: "Women on Synagogue Boards" in *Contemporary Halakhic*

Problems: Volume II (New York: KTAV Publishing House, inc., 1983), chapter XII.

^{vi} *Shevuot* 30.

^{vii} Rav Moshe quotes the scripturally-based fact that Yehoshua had the status of a king insofar as the laws of *mored be-malkhut* applied to him and that he had the ability to establish the *Mishkan* in Shiloh. The question arises: If so, what does the Torah mean when it states that one day Jews will demand a king - what qualities of kingship did the *shoftim* lack? A close reading of the passages in Samuel I, chapter 8 concerning the Jews' demand for a king indicates that the powers of a king relate specifically to property rights and matters of personal service (See R. Bleich's presentation of *Teshuvah Hatam Sofer, Likkutim*, no. 14 in his article "Jewish Law and the State's Authority to Punish Crime" in *Contemporary Halakhic Problems: Vol. IV*, (1995), Chapter IV). Perhaps, such capabilities prompted the request for a king.

^{viii} Indeed, Rav Moshe's understanding reads wells into the answer found in Ramban and Rashba that they acted (*nohagin*) one with the other according to her words and advice *ke-din malkah* - as if she were a queen.

^{ix} *Shevuot* 29, *Gittin* 88, *Bava Kamma* 15

^x *Shevuot* 30

^{xi} Chana Luntz (Avodah Mailing List, Volume 02 : Number 001, Tuesday, September 22 1998; <http://www.aishdas.org/avodah/vol02/v02n001.shtml>) writes that, alternatively, Tosafot and Rosh were answering that Devorah was allowed to be a judge based on a *hora'at sha'ah* similar to the answer given in Tosafot in *Niddah* 49b of "*al pi ha-dibbur*," regarding which she writes, "This answer assumes that what she did was Halachically Assur, and given the Klal that a Navi is forbidden to do something that is Halachically Assur unless it is a Horaas Sha'a (see e.g. Megila 2b, Sanhedrin 90a, Yevamos 90b, Rambam Yesodei Hatorah perek 9) we would have to assume that it was Horaas Sha'a (similar to the view expressed by Rav Moshe regarding Shmaya and Avitalyon)." To buttress the possibility that the two answers are indeed the same, she analyzes the phrase "*mi-penei ha-Shekhinah*," and writes, "maybe the fact of the Shechina's presence meant that the usual Halacha was waived."

^{xii} Rashba as a second answer writes, "or possibly she was a judge and judged and they accepted her in the way that a person can accept one of his relatives;" a formulation also found in Ran. Ramban writes a seemingly identical statement that, "*mekabbelin hayu devareha biretsonam*." For reasons unclear to the author, R. Moshe says that perhaps Ran and Rashba (he doesn't mention Ramban) had in mind that the Jews accepted Devorah as judge on an ad hoc basis. Therefore, she did not have an official position as judge and one cannot derive that these Rishonim are unconcerned with general female leadership.

^{xiii} *Tehukah le-Yisrael al pi ha-Torah* 1 (Jerusalem, 1989), pp. 2-12, 22-31, 39-49, 95-113.

^{xiv} *Ha-Torah ve-ha-Medinah* 7-8 (1955-1956).

^{xv} *Mishpetei Uzi'el, Hoshen Mishpat*, no. 6.

^{xvi} The concept of communal consent serves a purpose in addition to distinguishing elective office from *serarah*; it creates a unique office within the halakhic system. The concept has received much discussion. In medieval time it was used to create legislature and to grant the ability to punish to an unspecified person. Additionally, See R. Bleich's article, "Jewish Law and the State's Authority to Punish Crime," where he discusses the opinion of Rashbam and Rambam who apparently hold that non-Jewish kings have power because the people accept a person to bestow upon the normative qualities of kingship. R. Kook discusses how, after the Jewish monarchy dissolved, the power returned to the people. R. Yisraeli (*Amud ha-Yemini* (Tel Aviv: Moresheet, 1966), 1:7, pp. 52-63 and 1:9, pp. 70-81) expands on R. Kook's idea to posit that the Jewish community therefore has the ability to create a position with the powers it deems apt.

^{xvii} *Shivyon ha-Nashim mi-Nekudat ha-Halakhah*, New York, 1920.

^{xviii} Such a position leads to the interesting issue of preferred characteristics of contemporary leaders; and the related question of when their constituents may disobey them. With regards to *serarah*, the *Yerushalmi* states that one looks for the most "*beirurin she-be-ahekha*." Furthermore, Rambam in *Hilkhot Sanhedrin* writes that when a person in a position of *serarah*, even a king, fails to exhibit positive characteristics the people should depose their failed leader. However, with regards to contemporary leadership, because the law found in *Yerushalmi* emerges from the *pesukim* regarding *serarah*, and even a non-Jew may serve as a contemporary leader, perhaps personal characteristics are of little interest. Indeed, R. Yisraeli's assimilation of contemporary leadership to nothing more than a business arrangement indicates such a sentiment. Therefore, indicating that one need not relieve a leader of loose morals.

^{xix} The list of distinguished authorities opposed to women holding public office include Hafets Hayim, R. Hayim Ozer Grodzinski, R. David Zvi Hoffman, R. Yehoshua Leib Diskin, R. Yosef Hayim Zonnenfeld, R. Yehiel Michl Tucacinski, and R. Yisrael Ze'ev Minzberg.

Actually, Rav Moshe has a definition of *serarah* that deserves investigation. Rav Moshe expresses the *issur* as: one cannot hire a woman for a position which involves her rendering decisions to his displeasure. Within that understanding, Rav Moshe allows a community to pay a rabbi who has a woman working as a *mashgihah* for him. He explains that while her stringent rulings may not please the community, the rabbi does not mind. This idea seemingly leads to the improbable, and contradictory, conclusion that according to Rav Moshe one may elect a female prime-minister as long as she receives her salary from someone whom her authority does not effect negatively.

^{xx} A rabbi informed the author that he had asked R. David Feinstein whether Rav Moshe ever retracted his stringent ruling; and R. David told him that Rav Moshe had not.

Women in Positions of Leadership: *Melekh ve-Lo Malkah* Reexamined

BY: Elisheva Schlanger

Between Senator Hillary Clinton running for the democratic nominee, Governor Sarah Palin on the Republican ticket and Israeli Foreign Minister Tzipi Livni working to become Israel's second female Prime Minister – “women in public office” is a topic on people's minds. Some Modern Orthodox *shuls* have begun to have women presidents, and allow women to hold other *shul* offices, although in many communities even that kind of public display of women in power within the synagogue is avoided. Certainly, many Orthodox women, fully observant of Jewish Law, already hold public positions in secular settings. Why the discrepancy? Why the hesitation? This article will examine biblical and rabbinic sources that discuss the issue of women's leadership, and hopefully gain insight into what those sources are conveying to us, and how, if at all, that impacts our situation today.

The Torah tells us in *parashat Shoftim*: “If, after you have entered the land that the Lord your God has assigned to you, and taken possession of it and settled in it, you decide, ‘I will set a king over me, as do the nations about me,’ you shall be free to set a king over yourself, one chosen by the Lord your God.”^{vii} The Torah tells us among the many *mitsvot* we are given in preparation for our entry into the Land of Israel that we will require leadership. The *Humash* writes that while the initiative at first will come from the people, the selection will ultimately be up to God, and the appointment will come from the nation.

The *Sifrei*, a Tanaitic compilation of *Midrash Halakhah* on the book of *Devarim*, in its comments on our verseⁱⁱⁱ, includes the clarification: “*melekh ve-lo malkah*.” Meaning, you shall be free to set a king, and not a queen as the monarch. The text, in using the word king, has excluded the possibility for a queen to be part of this commandment. Where do the Rabbis learn this rule? Examining the following lines will guide us to an answer by highlighting the methodology with which the Rabbis of the *Sifrei* operated. The midrash continues on to the next clause in our verse, “one chosen by the Lord your God, according to a prophet.” The Malbim (19th c. Russia) asked the question: where did the Midrash learn this second rule? Why does the Midrash need to mention to us that God will speak through a prophet? He answers: because this is what the people did in *Sefer Shemuel*.

In *Sefer Shemuel*, the people approach the elderly prophet Shemuel, and they tell him, “You have grown old, and your sons have not followed in your ways. Therefore, appoint a king for us to govern us like all other nations.”^{iv} The purpose of getting a king from the nation's perspective is to replace the Judges. Later in the chapter, after Shemuel warns the people about the kinds of sacrifices getting a king will involve, they reinforce their interest, and they

expound upon the reason: “That we may be like other nations: Let our king rule over us and go out at our head and fight our battles.”^v

From these words it is apparent that the function of the king for these people was primarily that he be their “commander in chief.” We know from *Sefer Shoftim* that the Judges fought wars for the people. We also know that that form of leadership ended in disaster and civil war. Once that period ended, the people come to Shemuel and demand new leadership. They want change! All the other nations have a functioning monarch who leads their nation in battle - that's what the people her want.

Furthermore, the Mishnah in *Sanhedrin*^{vi} cites among the King's powers that a king may lead the nation into a *milhemet reshut*, with the consent of the *Sanhedrin*. Rambam deduces from here that, in the case of a *milhemet mitsvah*, the king may take initiative even without first getting the *Sanhedrin*'s approval.^{vii} Certainly, one of the king's primary roles was to lead the nation in battle.

Considering the king's military function, a problem with a female king arises. The Talmud takes for granted in several places that it is a man's nature to fight in battles, and it is not a woman's nature.^{viii} Perhaps it was for this reason that the rabbis precluded the possibility of a queen in a position of king.

However, this analysis is insightful only as far as a king of the nation of Israel is concerned. But how does this inform our question of *shul* presidents and the like? While *shul* presidents do face many difficulties, going to battle is not usually on the job description. Rambam makes the transition: “We may not appoint a woman to kingship, as it says, ‘a king upon you and not a queen.’ So too with all appointments in Israel, we only appoint a man to them.”^{ix}

Rambam takes an injunction that limited the role of commander in chief to men, where the Torah wrote the word “king,” and the Rabbis explained it was limited to men, and not applicable to women—and he amplifies it to such an extent that it applies without limits, to every single appointment in the Jewish people! Based on our earlier analysis, this jump is puzzling. Perhaps the Rambam's understanding of the Midrash differs from the one I have presented.

The *Or Sameah* (Lithuania 19-20 c.) offers a commentary to Rambam's law: “This that the Talmud says in the chapter Three Who Ate (*Berakhot* 49a) that women and slaves are not included in Torah and kingship¹ is not a proof, since the explanation for that statement is comparable to the *mitsvah* of Torah study—just as women are not obligated to **study** Torah, so women are not obligated in the positive commandment to **establish** a king upon Israel. This is as the *Sefer ha-Hinnukh* wrote, since [women] are not conquerors, and this matter is simple.”

The *Or Sameah* remarks here that the Tal-

mud's limitation for women from “kingship” in *Berakhot* as a potential reason to exempt women from grace after meals is unrelated to our Midrash of *melekh ve-lo malkah*. He references, instead, to the *Sefer ha-Hinnukh* (Spain, 13 c.).

The *Sefer ha-Hinnukh* that the *Or Sameah* cites^x explains that the requirement for the kingship to be an inherited position is not exclusive to the king, but is generally set in place so that the children will have a fear in their hearts for the shoes that they are coming to fill. He does not mention this principle with regards to the limitation of *melekh ve-lo malkah*. Furthermore, even within this expansion, the author of *Sefer ha-Hinnukh* adds that where the inheritance of a position does not lead to greater awe for the job, we should appoint someone new, who is more appropriately suited for the position.

The *Or Sameah* makes two comments. The first introduces the principle that women need not appoint a king upon the nation of Israel, since that job is reserved for the nation's men. *Or Sameah*'s second comment, wherein he cites the *Sefer ha-Hinnukh*, is elusive: is he expounding on the first point, saying that the appointment of kings is reserved for men because they are the warriors? Or is he addressing the *Sifrei*'s rule that Rambam brings down here? If he is doing the latter, I understand why women ought not hold the kingship, as women are not meant to be warriors. However, the explanation does not satisfy Rambam's expansion to all positions of appointment with Israel. The merit-based credentials that are essential for all other appointments ought to pertain to women as they do for men. The *Or Sameah* does not address Rambam's reasoning in this respect.^{xi}

Another difficulty with this entire issue is presented by the case of Devorah. In the *Sefer Shoftim*, chapter four, we learn: Devorah, wife of Lapidot, was a prophetess. She led (*shafiah*-judged, lit.) Israel at that time. She used to sit under the Palm of Devorah, between Ramah and Bethel in the hill country of Ephraim, and the Israelites would come to her for decisions. She summoned Barak, son of Avinoam, of Kedesh in Naftali, and said to him, “The Lord, the God of Israel, has commanded: ‘Go march up to Mount Tabor, and take with you ten thousand men of Naftali and Zevulun, and I will draw Sisra, Yavin's army commander, with his chariots and his troops, toward you up to the Wadi Kishon; and I will deliver him into your hand.’ But Barak said to her, ‘If you will go with me, I will go; if not, I will not go.’ ‘Very well, I will go with you,’ she answered. ‘However, there will be not glory for you in the course you are taking, for then the Lord will deliver Sisera into the hands of a woman.’ So Devorah went up with Barak to Kedesh.”^{xii}

We see in these verses that Devorah led the people. She acted as a judge, and she is trusted and relied upon both as the nation's

prophetess and as a military leader as well. Devorah tried to uphold the military limitation that we saw in the *Sifra*. She tells Barak that it will make him look bad if he *schlepps* her out to the battlefield with him, but he insists. He doesn't look brave from this story, but Devorah does go out to war with him.

Many have pondered how it could be that a woman was leading the people of Israel. The *Ba'alei ha-Tosafot* in several places come up with two basic suggestions as to how it could be that Devorah “judged” the people:^{xiii} either, she wasn't really judging, but merely teaching. An alternative suggestion *Tosafot* bring is that Devorah was thrust upon the nation as a prophetess, and once God gave his approval, then she has the approval she needs to be leader, and the people embrace her.^{xiv} The Ran makes a similar point where he distinguishes between a Torah-leader and a Torah-teacher, where in the case of a teacher, people are not bound by his or her rulings, but might choose to follow them, whereas a leader's ruling are binding.^{xv}

The *Minhat Hinnukh* (19th C. Poland) limits the rules in the midrash about who can be a king to the original appointment. He remarks that just as the *Noda bi-Yehudah* (18th C. Prague) ruled that a son of a female convert could inherit the kingship, so could a woman. The prohibitions merely restrict who we are allowed to appoint in the first place. This is based on the language of the verse, “*som tasim*” - that you shall appoint. This approach emphasizes the centrality of the appointment, and deemphasizes the limitations that the Torah sets upon who can be appointed.^{xvi}

Perhaps with this understanding, we can reflect on one of the *Ba'alei ha-Tosafot*'s comments about Devorah. She was brought upon the nation as a prophetess. God chose her for this position. The formal appointment of kings had not yet begun, and her entire realm of leadership stemmed from the fact that she was a prophetess. The leadership she took on thereafter appears to have a grassroots-like nature: rather than receiving a formal appointment, she gets the nation's approval, and she's in. People would come to her tree and ask for advice and seek her guidance and decision making. In this way, I would argue that it would not violate the Midrash's restriction, based on the sources we have seen.

R. Moshe Feinstein (20th c. New York) distinguishes between what is considered a person's profession and an appointment.^{xvii} He says that the “appointments” involve an aspect of “*serarah*”- or authority position. He brings this up in considering the permissibility of a modest widow acting as a *mashgiah kashrut* in a kitchen to make a living, and he rules that there is no concern of *serarah* in such a case because she has a supervisor and does not hold ultimate authority. A disagreement exists in the Talmud^{xviii} between the Palestinian and Babylonian practice with regards to defining the pa-

An Interview with Rabbi Menachem Genack

BY: Ari Lamm

Is it important for Jews to become involved in the world of public service and politics? Is there a difference in this regard between international, national and local politics?

Getting involved in politics is certainly a worthy endeavor per se, provided that it doesn't consume one's whole life, because political philosophy determines the direction that this country takes. Indeed, we as Jews are very lucky to live in the greatest country in the world. The United States is the greatest force for good in the world, and given that we, as Jews, want to do good, getting involved in American politics can be a positive thing.

Political involvement is also important at the Jewish communal level. As a community, we need to have access to leaders in power in terms of, for example, support for Israel. We should remember that in 1939 Senator Wagner introduced a bill in committee to permit ten thousand Jewish children to enter the US above the immigration quota. That bill died in committee and tragically those children died in Europe. We as a community had limited access to the lever of power then. As a community we learned an important lesson. That is part of the reason that as Jews we have become so politically galvanized, so as to protect the interests of Jews and most specifically Israel. Currently, there is a strong sense of support for Israel in the United States. The primary reason for this is because it is in the American national interest; America identifies with Israel and its democratic values. But there is no question that Jewish political involvement from AIPAC and others do an excellent job in helping to maintain this relationship. This is one of the reasons why it is important for us to be important in national politics.

As far as local politics are concerned: one should always remember that those at the national level had to start somewhere. Barack Obama is now a presidential candidate, but a short time ago he was a state senator. Very often, that is how the political system works. To reiterate, America is a wonderful country and, as Jews, we want to contribute to society, whether through involvement in academia, research or business. Political involvement is another way in which we can participate in American society.

How important is it to be involved with organizations like AIPAC? On a related note: most national politicians, on either side of the aisle, claim to be doing what is good for Israel. But very often, the policies espoused by some of these public figures will be completely at odds with those advocated by others. How,

then, should we define the term "good for Israel"?

AIPAC is an important organization that has been extremely effective in Washington. Obviously, the political left and right wings – both in America and in Israel – disagree on many issues. But I don't think that the American Jewish community's lobbying efforts need extend that far. Rather, advocacy should be concerned with seeking general support for Israel. This may manifest itself in terms of securing military deals for Israel, the issue of the resettlement of Soviet Jews, the danger of a nuclear Iran, and so on. One of the characteristics of the democratic system is open disagreement, but general support for Israel is something that can extend to both sides of the aisle. Take Iran, for example: if Iran manages to produce nuclear weapons it would be catastrophic – even if they didn't use them. An Iranian nuclear weapon would be an existential threat to the existence of Israel. It would create a chain reaction of Sunni countries that would immediately seek nuclear capabilities for themselves, thereby destabilizing the state of the world. These are the sort of issues that are important, and involve general support for Israel – and AIPAC is very effective, indeed indispensable, at garnering this sort of support.



Where if ever do Jewish values intersect with American political values and where if ever do they diverge? Aside from support for Israel, are there any issues that Orthodox Jews are especially well equipped to address?

That's a difficult question. Obviously, as Orthodox Jews we should express an opinion about certain social issues like gay marriage and abortion. And there are many issues regarding which Jews are perceived as believing one thing, while actual Jewish values in fact dictate the opposite. An example might be the idea that being pro-choice is a Jewish value, when in fact the pro-choice agenda flies in the face of halakhah and Jewish tradition. But these are obviously very complicated issues about which different people can disagree.

There are issues that are important to the Jewish community on a more utilitarian level.

For instance, the average Orthodox Jew carries an enormous burden in terms of the cost of yeshiva tuition. Whatever we can do to ameliorate that burden – whether in the form of school vouchers or anything else – can be very important. This might be an area in which it would be profitable to work with other communities with the same problems; for example, in the form of a program with the Archdiocese of New York such as the TeachNY Program in which the OU participates, or something along those lines.

Does personal faith have a place in the political world and the world of public policy? How might this issue relate to church and state issues?

This is an issue that must be handled very delicately. We would not want to force our beliefs on others just like we don't want others to force their beliefs on us. We live in a pluralistic society and have to respect other points of view. But we should recognize that the United States is a religious country that believes fundamentally in God. If you look at its charter documents – the Declaration of Independence and the Constitution – it is clear that they are, in a sense, religious documents. The concepts discussed therein – like the inalienable rights of man – are Jewish concepts related to the doctrine of *tselem Elokim*.

Another example of a democratic political value is employee rights. Liberal views like this stem from the Torah. In a letter, one of the prominent Founding Fathers, John Adams, even quotes the Talmud. These figures were deeply steeped in religious tradition and it infused the founding documents and American political philosophy. So I think that in that sense Jews and the Jewish faith have an important place in the American political system. But I think that we begin to enter dangerous territory when we start to speak about particular doctrines. America is a country with a diverse population and it is not appropriate to impose one or another doctrine on others. In other words, America is, in a sense, a religious country. It believes in God and its destiny – the shining City on a Hill. But imposing specific doctrines particular to one religion on the entire population is inappropriate.

Rav Genack mentioned the American political tradition; who are the grats of American history who can serve as models for us?

Well, obviously American history has had giants as well as midgits. But there is no doubt that there were those among the founders with absolutely extraordinary minds. There was John Adams, Alexander Hamilton, George Washington – and I suppose I must mention Thomas Jefferson *be-al korhi*. And these men were aware that they were shaping the course

parameters of the word "serarah," but they all seem to involve supervisory positions involving civil matters in the community.

Another consideration for today's congregations is a question that cannot be fully discussed in this article, that of democracy and the how it compares to the appointment by a prophet. Certainly, the king needed to be chosen and anointed by a prophet, as we see in *Sefer Shemuel*. That alone, however, was insufficient. National acceptance was also required.^{xix} What does acceptance in isolation mean? Would the Torah consider that an "appointment?" In our congregations, we might have appointments that we vote on – how would our system compare to the appointments of old?

In conclusion, we have explored several approaches throughout biblical and rabbinic literature with regards to women in leadership positions. We uncovered a solid reasoning behind the *Midrash Halakhah's* exclusion of women from the monarchy. Some limit that exclusion to the original appointment. Exceptions to this rule act as a case study to uncover what exactly the parameters of our Midrash are, and they highlight and isolate the different components of an appointment, and what it might include. This article should lead readers to continue to think about these matters, and to explore further what might guide us in forming our own positions in our communities about women in leadership positions

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ⁱ Certainly, women's ordination is a related issue, but not one I wish to address in this article.

ⁱⁱ Deut. 17, JPS trans.

ⁱⁱⁱ Ibid.

^{iv} *Shemuel I*, 8:5

^v Ibid., 8:20

^{vi} *Sanhedrin* 20b

^{vii} *Hilkhot Melakhim* 5:1, *Kesef Mishneh*

^{viii} *Yevamot* 65b; *Kiddushin* 2b

^{ix} *Hilkhot Melakhim* 1:5

^x *Sefer ha-Hinukh*, mitsvah 497

^{xi} Interestingly, some synagogues today have policies banning both women and converts from becoming the *shul* president, and that rejects this entire merit-focused mode of operating.

^{xii} *Shoftim* 4:5-9

^{xiii} Granted, Tosafot are troubled by a legal difficulty of women judging if they cannot testify. Nonetheless, their arguments defend her judging and behaving as a leader to the people.

^{xiv} *Bava Kamma* 15a, *Gittin* 88b, *Yevamot* 45b, *Shevuot* 29b,

^{xv} *Rif*, *Shevuot* 13a

^{xvi} *Noda bi-Yehudah*, first edition *Hoshen Mishpat*, *siman* 1

^{xvii} *Yoreh Deah* 2:44

^{xviii} *Kiddushin* 76b

^{xix} *Shemuel I* 10:24; Abarbanel to Deut. ch. 33.

of history. Washington wrote of his awareness that every step he took set a precedent.

Of course the greatest of the all, in my opinion, was Abraham Lincoln. One of the primary reasons for my fascination with Lincoln is that within him he wedded practical political genius, a tremendous empathy for people, expressed with tremendous eloquence. He represents American civilization at its greatest. The values he expressed were Jewish values – human dignity and the freedom of man – and that, perhaps, is why he had such a comfortable relationship with the Jews. When General Grant issued General Order No. 11 in 1862, expelling all Jews from the western territories, Lincoln consoled the Jews and told them to come to him as Father Abraham, and he overrode the order. He understood the Jewish experience, and that is why he also understood the experience of the black slaves. Indeed, there is a lot to be learned from studying Lincoln – his life, his thought, his prose, his exemplary moral character, and so on. I once spoke to President Joel and suggested that studying and learning about Lincoln should be a requirement, in understand the best of American civilization.

Are there any contemporary political figures that Rav Genack believes are important from the Orthodox Jewish perspective?

I am a great admirer of former President Clinton. Perhaps not in the sense of Jewish values, but Clinton certainly has an incredible mind. When you listen to Clinton speak, he makes observations that make you understand the situation. And I don't know any political figure who could do what he did. When most political figures speak, it sounds rather hackneyed. But not Clinton – he is just so fascinating.

I had a correspondence with the former President of about 100 letters about different Jewish themes in the Bible and so forth. I would write to him about subjects like R. Akiva, and he would write back interesting he'arot. In fact, the Jewish experience really interested him, and people would be surprised how well versed he is in the Bible. In one letter, I discussed how leaders aren't perfect and how even the best of them are flawed – that is why Yehudah was chosen for *malkhut* rather than, say, Yosef. Yehudah was chosen because Yosef was unable to admit a mistake. My daughter was the one who actually typed up the letter, and she referred to Genesis 28. In his response, he had corrected it to Genesis 38.

As far as Israel is concerned: I traveled with him to Israel three times. I saw the enormous connection between him and the people of Israel and I think that he really cares about the people of Israel. Once, at a dinner, someone mentioned Yitshak Rabin. I overheard him remark that Rabin was a great man; that he was, in a sense, like a father figure to him.

How should an Orthodox Jew relate to

Clinton's conspicuous flaws? Does one have to compartmentalize his positive qualities and negative qualities in such a stark fashion?

I was actually at the White House when he confessed to his misdeed. It was around the time of Rosh ha-Shanah. I told Mrs. Clinton that we are told that when God judges us on Rosh ha-Shanah, he judges us in context, our mitsvot are compared to our *aveirot* and a broad spectrum of issues is taken into account. My own opinion is that in Clinton's case, I am not embarrassed to say that he is very caring and empathetic. With his foundation's work in Africa he has literally saved tens of millions of lives. It's amazing how one person can galvanize such support. That is the Bill Clinton that I admire very much.

How should a Jew who wants to get involved in the world of politics and public policy deal with halakhic issues like shemirat Shabbat, kashrut, and hillul Hashem versus kiddush Hashem, etc.?



Someone whom I admire very much in this regard is Senator Joe Lieberman. Take *shemirat Shabbat*, for example. He always walks to the Senate to vote on Shabbat, and he hasn't compromised on his standards. I don't mean to make him into a Rosh Yeshivah – he is not – but he is certainly a role model for our community, and somebody of whom we can be proud. Indeed, it is amazing to see how far an Orthodox Jew can reach, and to see how that was not an impediment for him to be the Vice Presidential nominee in 2000. And if you read the New York Times, you know that if it were up to Senator McCain, he'd be a nominee in 2008 as well. And this is someone who keeps Shabbat and *kashrut*! I used to learn a little with Senator Lieberman on the phone, and I know that these issues are important to him. He is very proud of his daughter Chani who is studying in Stern College now and ultimately

wants to live in Israel. Senator Lieberman demonstrates that an Orthodox Jew can accomplish anything in this country.

Would Rav Genack like to share with Kol Hamevaser his perspective on the upcoming election?

I was a very strong supporter of Senator Hillary Clinton and I was disappointed when she did not get the nomination. I thought she would have made a very good president. I think that we can be proud that the American political system produced two good candidates for president, Senators McCain and Obama. As far as the two nominees are concerned: this campaign has pivoted around two lies. One is that Senator McCain is George W. Bush. Clearly he is not. His career in public life has been marked by his independence and willingness to even take on his own party. The other is that Senator Obama is a Muslim who once studied in a *madrassa* as a child and that his friends are terrorists. That is not true either. It is amazing that these sorts of things have currency in our political system.

good president as far as Jews are concerned as well.

Either way, next president is going to have to face enormous challenges – both domestic and international. Perhaps most importantly, he will have to confront Iran. We will need to improve the American image in order for us to work with other nations to withstand the ominous threat of a nuclear Iran. Remember, it wasn't so long ago that Clinton was president, and America was admired around the world. I hope that either of the current candidates if elected president will do everything that is necessary to thwart Iran's dangerous nuclear ambition.

After the damage done to America's standing in the world in the past eight years, we need a president who is more cerebral and less intuitive; who responds with his head and not his gut; who is more empirical and less ideological. Obama has demonstrated these qualities. But of course, he remains untested and doesn't have the years of experience he can rely on as a template for action, but I think we have good reason to be hopeful.

In some Orthodox Jewish communities da'at Torah plays a role in determining how to vote. Does da'at Torah have a role to play in this regard?

I am not even sure what *da'at Torah* really is. I remember the Rav telling me that he hadn't even heard the phrase until he came to America, so I don't know exactly what *da'at Torah* means. Though the Rav in his hesped for Rav Hayim Ozer develops the notion, I assume it applies only to someone of his dimensions. But whatever it means, it certainly shouldn't play a role in compelling someone to vote for a specific candidate. Obviously, the Torah has specific values and mitsvot and those should motivate everything that we do, but I don't think that you can create a specific political agenda – whether to be a Democrat or a Republican – out of this system.

This question relates to the issue of candidates who espouse values that are explicitly against the Torah. As I mentioned before, this is an important and complex issue, but I don't think it is the only issue. I think that Rav Moshe Feinstein was once asked whether one may vote for such a candidate. He responded that these are not the only issues that should be considered.

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The Students Versus the First Dean of Yeshiva College: The Beginning of *Commentator* Politics

BY: Zev Eleff

This essay is dedicated to Dr. David Srolovitz, Dean of Yeshiva College, whose commitment to scholarship and excellence is only surpassed by his devotion to his students.

Founded during the spring semester of 1935, *The Commentator*, the student newspaper of Yeshiva College, spent its first months publishing non-confrontational news items and polite editorials. The Governing Board, led by Editor-in-Chief Moses I. Feuerstein, took some issue with Yeshiva College policies, but it appears that its overwhelmingly benevolent attitude toward the institution kept the newspaper in the good graces of Yeshiva President Bernard Revel's administration. One reader wrote to the paper during that first semester complaining that the sum total of all the Governing Board's editorials "has been some mild and evasive opinions on general questions." Despite this, the student journalists' generally complimentary pieces on the school's administration did not cease that year under Feuerstein, whose family maintained a close relationship with President Revel. The following excerpt of a letter – one of the few of its kind in what remains of Dr. Bernard Revel's personal files – sent to Samuel Feuerstein, a wealthy donor to Yeshiva, does well to illustrate this point:

"I want to let you know that in the recent written examination in the Talmudic department, your son surprised me pleasantly, by making a good showing. His attitude toward his Hebrew studies has greatly improved; and I sincerely trust that the true spirit, which abides in you and your family, will continue to grow in him and strengthen him for his life ahead."ⁱ

Another explanation for the newspaper's timidity is that Feuerstein and his fellow editors could not be sure how the Yeshiva community would react to a saber-rattling newspaper. Although the previous generations of Yeshiva students published newsheets, they were sporadic and functioned as bulletins to inform students of prayer times and special lectures. Certainly, in an institution modeled after the yeshivot of Eastern Europe, many rabbis and teachers spoke up in opposition when Feuerstein petitioned the administration to start a college newspaper in 1934. Mindful of how hard a task it was to call in favors and ultimately convince Dr. Revel to permit publication of the unprecedented student organ, Feuerstein was careful in his first months to straddle the thin line between editing a liberal college newspaper and behaving as a reverent

yeshivah student.

Yet, it would not be long before *The Commentator* developed its biting—and oftentimes scathing—pen, just over a year after printing its first edition. In its first major attack on the administration, *The Commentator* aimed its crosshairs on Dr. Shelley R. Safir, the first dean of Yeshiva College. Safir was a "close associate" of President Revel and served for many years as high school principal of the Talmudical Academy. When, in the late 1920s, Dr. Revel set about assembling a collegiate faculty, Safir was one of the few men the former trusted for giving counsel. As a result, it is not surprising that Safir was appointed Yeshiva College's first dean in 1931.ⁱⁱ

However, while he had the backing of the school's higher administration, Safir's relationship with the student body was fraught with animosities from the time he assumed the deanship. As time progressed, Safir removed himself from taking part in student activities; the newspaper was not an exception. In Feuerstein's three semesters running the paper, we do not find a single quote attributed to Safir or inclusion of his name in any news story dealing with Yeshiva College. Instead, reporters retrieved YC news from Jacob I. Hartstein, the College's registrar at that time. Yet, in the publication's first year, despite student-organized opposition to Safir, *The Commentator* omitted any mention of it. The exclusion of student resentment for the Dean is especially noteworthy after considering that, on several occasions that year, editors were called into Safir's office under threat of censorship and disbandment.

Nevertheless, after two semesters of placating administrators, *The Commentator* devoted significant space to sharp criticism of Safir. Perhaps Feuerstein was aware of the faculty's growing displeasure for Safir's handling of the College's finances in the thick of the country's Great Depression. Also, with his father's strong ties to Dr. Revel, and informed of the President's preoccupation with fundraising and his deteriorating health, Feuerstein knew that resistance to any attack deployed in the paper would not be forthcoming from Safir's superiors.ⁱⁱⁱ

Teaming up with student government, the newspaper's large headline on the front page of the March 19, 1936 issue read:

**DEAN SAFIR CHARGED AS UNFIT
FOR OFFICE; STUDENT COUNCIL
ORDERS IMMEDIATE PROBE OF IN-
DICTMENTS**

Reportedly, three days prior to the publication, Student Council members accused the Dean of "total disregard" for Yeshiva's religious ideals, incompetence in fulfilling his role

as dean, alienation of students, and behaving immorally, in a way unbecoming of the Dean of Yeshiva College. After hearing the charges in a session that took well over half an hour, the Student Council deployed a committee to investigate the matter and report back to the Council. In an accompanying editorial, Feuerstein's Board supported the Student Council's decision to probe the students' case against Dean Safir, but cautioned student representatives that they engage only in "fair play". Despite their strategically reserved tenor, the editors could not resist emphasizing that "the charges against Dr. Safir are of such a serious nature that, if substantiated, they would definitely disqualify a man from the deanship of any college, much less Yeshiva."

Yet, to understand the newspapermen's motives fully, we must consider the available details purposely omitted in both the front-page news story and the inside editorial—namely, the specific accusations levied against Dean Safir. In a three-page resolution, the Student Council outlined much more grievous indictments than the ones alluded to by the paper. The Student Council claimed to have in its possession copies of letters from Dr. Revel to Safir that proved that the Dean mishandled funds for both the College and the Talmudical Academy. In listing Safir's "acts against Jewish law," the Council reported the following:

"1. Students were sent by the Dean to a non Kosher restaurant for the purchase of meat sandwiches.

2. Dr. Safir was seen on several occasions driving to and from the Yeshiva in his car on the Sabbath. On one occasion in tennis clothes and with tennis equipment."^{iv}

In addition, the Student Council cited the Dean's use of "loud and intemperate language." However, most astounding of all was the Council's claim that "Dr. Safir has appeared to be unduly intimate with his former secretary." As a result of Safir's affair and the newspaper's very public report of the charges made by the Student Council, Dr. Revel appointed a committee consisting of five Yeshiva College professors to do whatever you may deem necessary in order to ascertain all the facts in this connection. This includes the calling of witnesses and the examination of all pertinent evidence. Upon completion of your investigation you will kindly present to me your findings together with your recommendations.^v

In a letter from the appointed members of the committee to Safir dated May 11, 1936, they informed the dean that they were "happy to state that a great many of these [charges] could be rejected as irrelevant without further

investigation. There remain, however, certain others which require examination." While we cannot know which accusations were the ones that resulted in Safir's eventual removal from the deanship, we can be sure that the students were the ones primarily responsible for the dismissal. Further, that Feuerstein and his fellow editors were aware of the details of the Student Council's charges is indubitable. Nevertheless, despite enough ammunition to involve the school's Board members, *The Commentator's* self-censored news and balanced editorial treatment of the affair reflect a level of respect for the graveness of the situation. Whether the Governing Board's decision was based on respect for Safir's personal privacy or for the integrity of the College is also unknowable. What may be discerned, however, is that in the earliest days the editors of *The Commentator* viewed themselves not as a fourth estate, but as a part of student leadership meant to work toward bettering Yeshiva College. Indeed, these newsmen were both wary of projecting flippancy unbecoming rabbinical students and were, at the same time, energized college students rearing to get involved in the politics of their beloved school.



After the March issue, *The Commentator* chose to refrain altogether from further direct discussion of the Safir affair for the remainder of the semester. However, with an irreverent punch, the surly college newsmen did opt to reprint a letter to the editor from Dean Safir originally published in the paper's inaugural issue on March 1, 1935 that described the newspaper as a "source of gratification" and expressed the Dean's hope that the student organ "will serve as a link to the students and the faculty." The only other reference to Safir in the publication came in *The Commentator's* final issue of the year. On the front page of the edition, an article released the results of a poll taken of the Yeshiva College senior class. The typical graduating senior of 1936, the poll reported, would resign if he were the Dean of

Judaism: Ends and Meansⁱ

BY: Shlomo Zuckier

I.

The famous axiom “the ends justify the means” connotes that one is ethically justified in committing whatever actions of questionable morality that he desires, as long as the end goal is acceptable. This moral stance, known as consequentialism, is associated with Machiavelli’s work “The Prince.” Examples of such conduct in the political realm could include a leader withholding information from the public in order to limit a detrimental panic-driven reaction. Alternatively, on an individual level, it includes someone lying to a murderer who asks where his intended victim is hiding. The opposite approach to consequentialism is deontology, the belief system that certain acts are morally disallowed, regardless of the circumstance or the good that could be yielded as a result of the act.

A similar dilemma appears in the Mishnah *Terumot* 8:11-12. The Mishnayot discuss the following policy question: Suppose an army threatens to rape all the women in a city unless the city delivers one sacrifice girl to be raped. Here, if we look at the consequences of the two possible responses, it is clearly better let the one girl be raped than to let the army rape all the women of the town. However, the Mishnah says that our unwillingness to commit an act of giving away a Jewish soul overrides that factor, and the proper procedure is to sit passively – no matter the consequences. However, the parallel Tosefta (7:20) adds an important caveat: If the army specifies someone ‘like Sheva ben Bikhri,’ the city is obligated to deliver him in order to save the rest of the inhabitants.ⁱⁱ

Another situation where this question may appear is in the famous agadita about the destruction of the *Mikdash* on *Gittin* 56a. The Roman government sent an offering to be sacrificed in the *Mikdash*. On the way, the messenger who brought the animal, Bar Kamtsa, put a minor blemish into the animal. Due to the barely perceptible blemish, R. Yohanan ben Avkulus refused to offer the government-provided *korban* in the *Mikdash*. Realizing the amount of anger this would cause in the Roman government, the Jews proposed killing Bar Kamtsa so that he would not report the event to the Roman government. Once again, R. Yohanan ben Avkulus objected, because he didn’t want people to think incorrectly that one who creates a mum deserves death. When the Roman government found out what had happened, they destroyed the *Mikdash*. The Gemara concludes that ‘the *anvatanut* (passivity?) of R. Yohanan ben Avkulus destroyed the *Mikdash*.’ Here, the Gemara seems to be promoting consequentialism - a problematic action is appropriate for the greater good. However, it is not clear in which cases this type of reasoning should be applied. In fact, the Gemara’s acceptance of consequentialism might be limited to cases of destruction of the Jewish people.

II.

Besides particular instances where there is tension between the ends of Judaism and the means utilized to achieve them, there are more abstract arguments about the nature of Judaism’s approach to ends and means in general, a related but separate issue. There are several distinct Jewish views on the matter. A first opinion is that of R. Aharon Soloveichik, who has stated that: ‘in Judaism, there are no ends, only means.’ⁱⁱⁱ In other words, one should not decide how to act based on some sort of end goal, but rather should do the technically correct halakhic thing in every situation. This is representative of the Brisker position that places halakhah in a central position in Judaism, to the exclusion of all else.^{iv}

At the extreme other end of the spectrum are the Jewish Humanists, who reject halakhic principles and see the main point of Judaism as some sort of grand process of improving the world. They see only ends, and no means in their vision of Judaism.^v G.E.M. Anscombe, in her seminal article “Modern Moral Philosophy” in 1958^{vi} where she coined the phrase ‘consequentialism,’ claims that Judeo-Christian divine law is compatible with deontology. Still, it is possible that even for those who believe in the halakhic process a consequentialist explanation is sustainable, as will be explained below.

One place where this broad question may emerge is by the topic of *ta’amei hamitsvot*. The Torah forbids the Jewish people to take the egg of a bird along with the bird; we must first send away the mother bird. This injunction is presumably intended to prevent the mother bird from undue distress at seeing her children taken. However, the Mishnayot in *Berakhot* 33b and *Megillah* 25a say that it is problematic to say “*al kan tsippor yaggi’u rahamekha*” (You have mercy [even] on the nest of a bird), and the Gemara in each place gives two possible reasons: either because it causes jealousy between God’s creatures or because it attributes a reason to God’s laws when they are really ‘*gezeirot*,’ fiats, without explanation. Presumably, the second answer sees a problem in attributing reasons to God’s laws, while the first one does not. Rambam (*Moreh* III:48) says that he follows the opinion that believes in giving reasons for mitsvot, and he applies this to many such mitsvot in *helek gimel* of *Moreh Nevukhim*.^{vii} For those who believe that there are no reasons for mitsvot, it is clear that doing mitsvot is considered the right thing to do in itself, a deontological view. Within the camp of those who believe that there are reasons for mitsvot,^{viii} this is a more complicated issue. It could be that there are reasons to do a mitzvah, but the value of the mitzvah act is in the fact that it is commanded, or it is possible that the real value of the mitzvah is in the reason given for it, which is usually an outcome such as improving mankind. If this is so, then the belief would be that Judaism constitutes a form of ‘rule consequentialism,’ that following halakhah leads to the best society, and this is why

those laws are legislated, though the rules, once mandated, are inherently important as well. In this way we can reconcile halakhic Judaism and consequentialism.

Both ends and means play an important role in the observance of Torah and mitsvot. Someone who seems to have the correct goals but isn’t going about implementing them in the right way will often find his goals lacking, and someone who follows all the details of Judaism correctly but has no broader vision has but an empty observance of the law. In other words, a Judaism with no halakhah is no Judaism, and a Judaism without a goal of improving God’s world is a severely impoverished Judaism. Both the “what” and the “why” of Judaism are significant.

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This article is the product of some thoughts I have had about the topic and owes much of its content to several *rabbeim* I have had. I would not say I fully researched the issue, and therefore the article should be viewed as musings *be-alma*.

ⁱⁱ There is a discussion among *Rishonim* regarding the exact nature of this case, but analysis of that issue is beyond the scope of this essay.

ⁱⁱⁱ *Shiur* from R. Aharon Lichtenstein, 2007, and corroborated by R. Carmy.

^{iv} There is an alternate way of explaining the Brisker approach: It is possible that the following of halakhah itself is an end and is not considered a means. Additionally, R. Aharon Soloveichik’s position may not be that consequences are irrelevant, only that their importance is relatively minor compared to the issue of doing the halakhically correct thing in the particular situation.

^v While they may believe in the unacceptability of certain methods (such as immoral ones) to accomplishing their goals, this is not a distinctly Jewish objection, but a general one.

^{vi} Published in *Philosophy* 33, No. 124, January 1958.

^{vii} What is interesting about Rambam, though, is that many of the reasons that he gives for mitsvot are historically bounded (including, famously, the law of *korbanot*), such that it is not clear how seriously he takes the reasons and how much it affects his overall philosophy.

^{viii} This will include the opinion of those who believe that there are reasons but we cannot find them out (though they usually fall out closer to those who believe there is no reason). Within the reading of the Gemara itself, fundamentally based on the case it could be that there are hidden reasons, but the Gemara’s language of ‘*midotav shel ha-Kadosh Barukh Hu...einam ela gezeirot*’ implies that there are no reasons.

Yeshiva College. The same article also acknowledged Feuerstein, who was voted the most popular student, the most likely to succeed, and as having done the most for Yeshiva, as well as being the school’s “biggest politician”. In the end, it was the young politician, very mindful of the boundaries of his political sphere, who had his way.

In the aftermath of the episode, Dr. Safir remained an instructor of Biology in the College and Principal of the Talmudical Academy until his retirement in 1963, but resigned from his post as dean in June 1936. As one of the principle players in Safir’s undoing, Moses I. Feuerstein’s edition of *The Commentator* came out of its first contentious bout of politics victorious. In the ensuing years, Mordecai Gabriel and A. Leo Levin, editors who viewed Feuerstein as their mentor, guided their respective Governing Boards through more Yeshiva politics. Accordingly, the newspaper continued tiptoeing the thin line between serving the College and behaving like proper yeshivah students. As such, Feuerstein’s victory did not merely raise the bar for future editors – it effectively set a precedent.

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ⁱ Letter from Bernard Revel to Mr. Samuel Feuerstein, *Revel Papers – Correspondence*. Dr. Revel’s prediction proved correct. After graduating from Yeshiva College in 1936, “Moe” Feuerstein attended Harvard Business School, but never really utilized the degree. Instead, Feuerstein helped establish Torah Umesorah, served as president of the Orthodox Union for several years, and functioned in other key roles in aiding the quest to build up American Orthodoxy during the last fifty years.

ⁱⁱⁱ Aaron Rothkoff, *Bernard Revel: Builder of American Jewish Orthodoxy* (Philadelphia: Jewish Publication Society, 1972), p. 82. For a valuable discussion of Safir’s tenure and accomplishments at MTA, see Seth D. Taylor, *Between Tradition and Modernity: A History of the Marsha Stern Talmudical Academy* (New York: Yeshiva University, 1991), pp. 40-45.

ⁱⁱⁱⁱ Rothkoff, p. 196.

^{iv} “List of Charges,” *Shelley R. Safir Papers* 30:1-17.

^v Letter from Moses L. Isaacs to Dr. S.R. Safir, *Shelley R. Safir Papers* 30:1-17, May 11, 1936.

Democracy Through Jewish History

BY: Ruthie Just Braffman

Thomas Paine (1737-1809), British-born American writer and Revolutionary leader, in his pamphlet *Common Sense* (1776) attributes the British monarchical tyranny on the precedent set by the Jews: “Government by kings was first introduced into the world by the Heathens, from whom the children of Israel copied the custom... And here we cannot but observe that their motives were bad, viz., that they might be like unto other nations, i.e., the Heathen, whereas their true glory laid in being as much unlike them as possible... the Jews under a national delusion requested a king.” Paine is referring to the event in Samuel I in which the people turn to the prophet and say, “Behold! You are old, and your sons did not follow your ways, so now appoint for us a king to judge us, like all the nations”ⁱⁱ

In accordance with Paine’s accusation, the Jewish people used a seemingly undemocratic system in accordance with Jewish law and verified through history, wherein a monarch led the Jewish people. Moshe, upon instruction from God, tells the people while they are in the desert, “When you come into the Land... you shall surely set over yourself a king whom Hashem your God shall choose.”ⁱⁱⁱ

It is conceivable that the Jewish people introduced monarchy as a mainstream practice as Thomas Paine so passionately declares, however, monarchy may not be the only form of governance commanded by the Torah, nor seen in Jewish history. Rav Aharon Lichtenstein explains that the monarchical command found in Deuteronomy does not allude specifically to a king as ruler, but in fact to any, “civil sovereign... conceivably an oligarchic or democratic entity as well.”^{iv} In fact, certain legal structures found in the Tanakh, as well as examples in Jewish history, exhibit what have come to be known as liberal democratic characteristics, similar to those espoused by the US Constitution.

In addition to Rav Lichtenstein’s insight that halakhah condones a democratic leadership, there is also within the halakhic structure, a separation of powers, which is often linked to democratic governments, particularly that of the US government. Halakhah dictates that the monarchical authority figure coexist with a *Sanhedrin*, the high court of justice and supreme council of ancient Jerusalem: “Assemble for me seventy men of the elders of Israel, whom you know to be the people’s elders and officers, and you shall take them to the Tent of Meeting, and they shall stand there with you.”^v Whether the Jewish nation is led by a monarch, or a “civil-sovereign”, there is instituted in the halakhic system, “governance which is by definition not in the hands of religious leadership.”^{vi} Not only does the *San-*

hedrin exemplify the separation of powers, but within the framework of the *Sanhedrin* exists the overriding factor of democracy: rule by majority. Rambam points out in his introduction to *Mishneh Torah* that a *navi*, prophet, carries no more weight in the *Sanhedrin* than his fellow members:

Regarding deductive logic, intellectual perception and comprehension of the mitsvot, the Prophet is exactly like the other Sages who are equal to him but who have not attained prophecy. For when a prophet maintains a point of logic, and another Sage who is not a Prophet likewise maintains a (conflicting) logical argument, even if the Prophet shall say, “The Almighty revealed to me that my logic is correct,” you may not take heed of what he says.”^{vii}



Thus, the Jewish model implements a separation of powers wherein the civil authority is held in the hands of a could-be elected official (not specifically a religious or rabbinic figure), who governs in partnership with a *Sanhedrin*, in charge of the religious affairs. A separation of powers – a potentially elected official – a court system ruled by the majority – does this not sound like the formulations of democracies that exist today?

The separation of powers, a term credited to the French Enlightenment political philosopher Baron De Montesquieu, was also exercised in Jewish autonomous rule during the second commonwealth era. From the very beginning of the Babylonian exile, the Jewish community was led by the *reish galuta*, or the Exilarch, who handled the secular affairs while the *rashei yeshivah* of the great Babylonian academies administered to the spiritual needs of the community.^{viii} The distribution of powers was also carried out within the system of the Exilarch, for the *reish galuta* appointed judges and then as the head, was himself the final court of appeal.^{ix} The symbiotic (although not always) leadership by the Exilarch and heads of the Babylonian yeshivot proved to be a success because during a great part of the second commonwealth era, “the Jews enjoyed a good deal of autonomous rule, with almost all internal civic administrative functions coming under the jurisdiction of the Exilarch.”^x

Truthfully, the first hints of democratic

characteristics did not start with the Davidic reign or second commonwealth era but can be found in the Tanakh. In the *Midbar*, Moshe sits by himself from “morning until the evening”^{xi} judging the people of Israel. His father-in-law Yitro looks at this impractical system and points out its impracticality saying to Moshe, “You will surely weary – you, as well as the people that are with you.”^{xii} Yitro acknowledges the intensive labor on Moshe’s part, as well as his lack of availability to the people. Therefore, Yitro suggests to Moshe that he set up a court system by appointing “leaders of thousands, leaders of hundreds leaders, of fifties, and leaders of tens. They shall judge the people at all times, and they shall bring every major matter to you, and every minor matter they shall judge.”^{xiii} Following Yitro’s advice, Moshe sets up a system that ensures accessibility and response to the people on individual and national levels. In remarkable similarity, the U.S Department of State affirms amongst its characteristics of democracy that “all levels of government must be (as) accessible and responsive to the people as possible”. Unbeknownst to Yitro, his suggestion to Moshe to make judges available to the people would be a major factor in democratic policy.

Jumping ahead over 1500 years past the Davidic dynasty and second commonwealth era, the opportunity for self election and communal autonomy arose for the Jews in 16th century Eastern Europe, specifically in the areas of Great Poland, Little Poland, Red Russia, and Volhynia in the form of the *Va’ad Arba ha-Aratsot*, the “Council of the Four Lands”.^{xiv} The *Va’ad Arba ha-Aratsot*, “the supreme legislative and juridical as well as executive body of Polish Jewry”^{xv} was a governing system divided up by region and geographical locations. The U.S Department of State publication lists the decentralization of the government to “regional and local levels” as a characteristic of democracy, which is in essence the foundation and structure of the *Va’ad*. Governing on a city level was the *kehillah*, which regulated the synagogue, cemetery, rabbis, *dayyanim* (religious judges) and all the other services required by an organized community. There were also sub-*kehillot*, small outlying settlements of larger cities that would be absorbed and maintained by the neighboring *kehillah*. Each *kehillah* had three officers within its structure; “the elders,” who rotated office each month, functioned in a manner similar to a town mayor; the “*tovim*” (aldermen) who provided advice and practical assistance to the heads of the *kehillah* and the council. The *kehillah* led to greater systems called *galilot*, which had representatives from several *kehillot*. They would meet frequently to discuss the issues of their respective larger geographical areas. Ultimately, the leaders of the sub-*kehillot*, *kehillot*, and *galilot* would

convene four times a year in what became known as the *Va’ad*. At these meetings, representatives from all the *galilot* and would make decisions that affected the four lands that comprised the *Va’ad*.^{xvi} In addition to the distribution and allocation of hierarchical governing roles, the rabbinic leadership of these positions was elected by the Jewish community, a core agent of democracy.

Noam Chomsky, American linguist, philosopher, political activist, author, and lecturer, once said “democracy and freedom are more than just ideals to be valued, they may be essential to survival.” Is it possible that democracy has contributed to the illogical survival of the Jewish people that Mark Twain so famously illustrates in his essay “Concerning the Jews”? Maybe, maybe not. Either way, as one combs through Jewish history, and more importantly through the Tanakh, the traces of democracy are difficult to escape.

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ⁱ Samuel I 8:5

ⁱⁱ God was displeased with the Jewish people’s request for a king despite his command in Deuteronomy 17:5. However the depth of this topic warrants another article completely.

ⁱⁱⁱ Deuteronomy 17:14-15

^{iv} “Religion and State” *Contemporary Jewish Thought*, NY pp.774-775).

^v Numbers 11:16

^{vi} *Halacha and Democracy*, Gerald J. Blidstein.

^{vii} The only exceptions to this rule were cases calling for *hora’at sha’ah*, a temporary emergency injunction. Fendel, Zechariah. *Legacy of Sinai*. (New York: Hashkafah Publications, 1997).

^{viii} Fendel, 188

^{ix} Grayzel, Solomon. *A History of the Jews; From the Babylonian Exile to the Establishment of Israel*. (Philadelphia: The Jewish Publication Society of America, 1964), 225.

^x Fendel, 236

^{xi} Exodus 18:14

^{xii} Exodus 18:18

^{xiii} Exodus 18: 13-22

^{xiv} Halpern, Israel. *The Jews: Their History, Culture, and Religion*. Third Edition. (New York: The Jewish Publication Society of America, 1966).

^{xv} Halpern, 309.

^{xvi} For a time Lithuania was a part of it but ultimately they have their own *Va’ad*.

A Review of Marc B. Shapiro's Recent Book, *Studies in Maimonides and His Interpreters*

BY: Alex Ozar

For readers of Marc Shapiro's previous works, his recently published *Studies in Maimonides and His Interpreters* will offer few surprises. Shapiro's research and scholarship are distinguished by their remarkable thoroughness, breadth, clarity, and uncompromised critical analysis, and his work here provides no exception. More directly, the principle essays in *Studies* may seem familiar to some because they've read them already, as both were published previously in *Maimonidean Studies*, albeit in a considerably condensed and/or less developed form. Though I was somewhat dismayed upon learning this only after I had purchased the book, in the final judgment I certainly received sufficient value in exchange for the thrifty \$9.99 I spent on the paperback.

The book includes two essays. The first, entitled "Principles of Interpretation in Maimonidean Halakha: Traditional and Academic Perspectives," explores the academic legitimacy of positing simple human weaknesses like forgetfulness and carelessness as explanations for difficulties in Rambam's writings. My thoughts on this essay will comprise much of the sequel. The second essay, "Maimonidean Halakha and Superstition," discusses instances where Rambam's philosophical rejection of superstition affected his presentation of halakhot. I found this essay particularly fascinating, as will anyone interested in philosophy of halakhah and the relationship between Rambam of the *Mishneh Torah* and the Maimonides of the *Guide*. Now, had Shapiro only given us these essays, *dayeimu*, but as a bonus he also included a letter from Nahman Isaac Fischmann to Samuel David Luzzato, several letters from Rabbi Joseph Kafih, and selections from the writings of Rabbi Yehiel Yaakov Wienberg, all on the topic of Rambam interpretation.

Shapiro is at home in the traditional world of the yeshivah, but he is a modern academic scholar through and through, and one hallmark of his scholarship is his perpetual mission to expose what are in his eyes the manifold intellectual infelicities of traditional scholars. In this book's first essay, his target is the traditional *talmid hakham* who insists, often passionately and forcefully, that Rambam's writings (especially the *Mishneh Torah*) are totally free of error. Any difficulty, inconsistency, or apparent mistake cannot be the result of carelessness or forgetfulness, and certainly not scholarly deficiency. We are obligated to exercise our intellects to the fullest, and employ even the most farfetched casuistry to rescue Rambam from error, and if we fail, it is we who are at fault. "...There is an answer for every perplexity. The possibility that Maimonides made a simple error, or that he overlooked a rabbinic passage—which entails bringing Maimonides down to the level of a mere mortal—is not an operating principle."

Shapiro's challenge is twofold. First, Rambam did make mistakes. For instance, Shapiro demonstrates, with around 200 examples, that Rambam often misquoted Biblical verses, almost certainly a result of quoting from memory. (This is, by the way, an excellent example of Shapiro's scholarly rigor. I liked would have been satisfied with five or ten representative examples. Shapiro is willing to put in an awful lot of work to prove a point soundly.) Shapiro claims that this also shows that Rambam often quoted halakhot from memory without referencing the source text, as if he had, he would not have misquoted the verses found in those texts. Shapiro also provides an impressive number of examples of Rambam's "slips of the pen," such as mistakenly switching Asa for Jehoshapat, saying a man's *erekh* is sixty *shekalim* when it is actually fifty, and claiming something is found in *Keritut* when it is actually found in *Me'ilah*. All of this, says Shapiro, shows that in confronting a difficult Rambam, we must consider the possibility that Rambam simply erred.

Shapiro's second challenge to the traditional scholar is that in fact, acknowledging

Let's look at one of Shapiro's examples for his principle. Rambam writes in *Ma'aseh ha-Korbanot* 4:2: "...The sages decreed that sacrificial portions and the limbs of a burnt offering were to be burned only until midnight." But in *Korban Pesah* 1:8 he says: "The fat pieces of the Passover offerings may be burnt any time of the night until daybreak." How are we to explain such a blunt contradiction? It is possible that Rambam's statement in *Korban Pesah* refers only to Torah law, without regard to rabbinic enactments, as was indeed suggested by the *Or Sameah*. But is this really plausible? Why would Rambam, in his law code, explicitly intended to be "accessible to the young and old," write anything other than the practical ruling? Is it conceivable that he would have written the Torah law without qualifying it with the Rabbinic enactment, as he in fact does in *Ma'aseh ha-Korbanot*? Shapiro concludes: "The contradiction between *Ma'aseh ha-Korbanot* and *Korban Pesah* is, I think, a good example of where the academic scholar might feel comfortable in assuming that the divergence is due to Maimonides changing his mind and neglecting to

eral lines of defense for the traditional scholar.

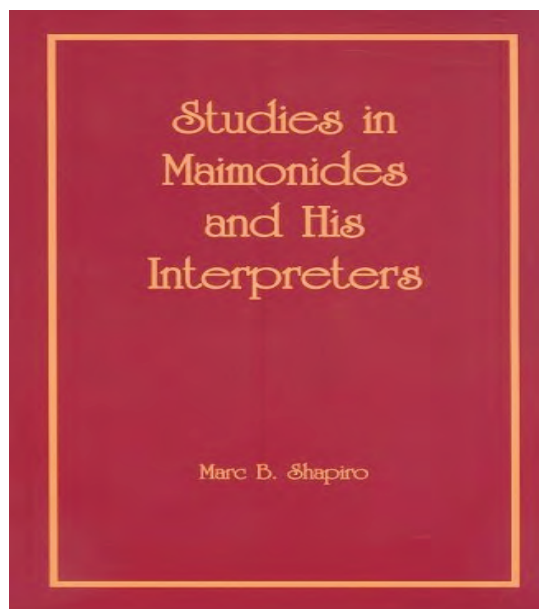
One could claim that it is preferable to treat Rambam as infallible for pedagogical reasons. For one, there are a great many difficulties in Rambam that do have real solutions, and they can require serious sustained effort. If every time one encounters a difficulty it can be casually dismissed as an error, one will lose out on much valuable study and knowledge, and will often get things wrong. The value to be gained by treating Rambam as infallible may outweigh the risk of proposing incorrect solutions. Also, even when it seems undeniable that Rambam actually erred, one could nonetheless propose a solution, so long as he appropriately indexes the proposal. As long as he is candid about what he is doing, there seems no reason to object to it, given that he has legitimate pedagogical motivation.

Another option is the somewhat post-modern notion that Rambam's work stands independent of Rambam himself, and the historical circumstances of its writing. The claim then is that as a canonical text of halakhah, everything in the *Mishneh Torah* must be true, at least in the sense of *elu ve-elu*. While recognizing that from a historical standpoint there are in fact errors, within the context of halakhic analysis all difficulties must be understood as expressing halakhic truth. It should be obvious that in learning the *Mishneh Torah* we are not just learning a work the Rambam wrote; we don't give nearly the same respect to Rambam's *teshuvot*. Rather we are learning the *Mishneh Torah*, the canonical work of halakhah, and it seems reasonable to treat it accordingly.

Shapiro in fact includes several letters by R. Yehiel Yaakov Weinberg which say something along these lines. R. Weinberg reports remarking to R. Moshe Soloveitchik that while R. Hayim's explanations of Rambam were not actually held by the historical Rambam, they were true in their own right. While using a system of conceptual halakhic analysis foreign to Rambam, R. Hayim arrived at conclusions identical to those Rambam wrote. Again, it's not obviously illegitimate to analyze and expound upon Rambam's writings independent of the historical Rambam.

To conclude, Shapiro has once again given us a fine academic resource. His thorough and punctilious research and collation of relevant material make for a great reference, and his careful analysis is certainly worth a read. And, as always, Shapiro gives us something to think about.

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Rambam's errors is every bit as traditional as the scholar claims to be. Certainly a reliable authority on these matters, Rambam himself acknowledged his memory's fallibility, and regularly made corrections to his *Mishneh Torah*. Further, traditional scholars from Rambam's time until now can be found ascribing errors to Rambam. That contemporaries such as Rabad thought Rambam could err is no surprise; Rambam's works had yet to be enshrined in the canon of halakhic literature. But Shapiro references Rivash, R. Simon ben Tsemah Duran, R. Joseph Karo, Radbaz, the Vilna Gaon, R. Jacob Emden, Netsiv, and many others, all claiming that Rambam had indeed simply erred. Shapiro's challenge, then, is essentially to ask, "Are you more *frum* and reverent toward Rambam than R. Joseph Karo, the Vilna Gaon, and Rambam himself?"

correct the opposing text(s), or that *Korban Pesah* is a careless formulation or even a copyist's error. None of these answers satisfy, but they are more faithful to Maimonides' description of the purpose of his Code than positing that he would knowingly include an incorrect halakha."

What might the traditional scholar respond to Shapiro's challenge? How does he defend his continued refusal, even when pushed against the wall, to explain difficulties in Rambam's writings as errors? To deny Shapiro's evidence and claim that Rambam is actually infallible would be folly. As we saw, there are simply too many undeniable errors, as well as Rambam's repeated admissions in this regard. And traditional scholars, from Rashba to Netsiv, didn't shrink from ascribing error to Rambam. Nonetheless, there are sev-

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