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Dear Friends,

Today, we embark on a new chapter in response to the urgent need to bring more Torah to more Jews in more places. *Hard Choices* is a series of resources that look at public policy issues through the lense of Conservative Judaism. We offer this in response to your request that we help rabbis clearly articulate the relevance of Conservative Judaism's approach in grappling with the challenges of the day.

*Hard Choices* is the framework for a resource guide on matters of public policy. Conservative Judaism has a unique contribution to make in the public square. It has often been pointed out and is certainly true that our congregants and students represent a more heterogeneous polity than the other major Jewish movements. This diversity ought to bring us more deeply into exploration of social issues, not less so.

Jewish tradition demands the voice of the minority be heard. As a Tradition that defines itself in terms of a holy community, such practice also ensures that the minority view to temper the legislative power of the majority. Thus the decision making of the majority is refined and the interests of the minority better represented. Hence, Judaism can inform the conduct of a civil society, as the attached texts and resources richly attest.

Conservative/Masorti Jews live all over the world, we are enfranchised citizens of societies facing hard choices. In the midst of this global recession, we are facing political and social instability and environmental challenges as well as many others. Every day we watch as people with the power to choose leave the table when a hard choice needs to be made. We feel the weight of society's widespread failure to make rational decisions based on principles. Conservative Judaism is built upon a rabbinic framework that confronts hard choices.

RA Public Policy Fellow [Josh Ratner](#) is a JTS senior rabbinical student whose religious vision of bringing Jewish wisdom through a Conservative lens to public policy brought him from a successful law practice to rabbinical school. We are delighted that the RA can benefit from Josh's ability to synthesize complex legislative and judicial issues and illustrate the applications of Jewish learning to these problems.

At our annual conventions, the RA passes resolutions on matters of public policy. These resolutions guide the activities of the elected officers and the office in the letters and statements we are asked to evaluate every day. The Hard Choices series is not an advocacy program. We will strive to provide a diversity of resources and to flesh out multiple perspectives on issues. Hard Choices is a resource to help Conservative rabbis articulate the relevance of Conservative Judaism's approach in evaluating the issues that affect people's lives and futures.

We all struggle with getting our message out in a world of 24 hour news cycles. We hope these resources will ease that burden a bit and allow you to seize the moment, sharing your ideas with Jews within and beyond your community.

You have a powerful message. Deliver it. The world will be a better place if more people hear it.

Let us know how it goes. Help us do this better. [Be in touch.](#)

Julie Schonfeld  
Executive Vice President, Rabbinical Assembly

## מחלוקת לשם שמים: HARD CHOICES

### The Conservative Movement's Approach to Public Policy

By Joshua Ratner, RA Public Policy Fellow

Public policy discourse in the United States has grown increasingly polarized in recent years. Liberals and conservatives talk past one another, focusing more on espousing their own orthodoxies than on working to resolve this country's mounting socio-economic problems. Judaism offers a compelling alternative. For centuries, Jews have grappled with hard choices based on important yet competing interests. Our halakhic process mediates the needs of the individual with that of the community and the particular with the universal. Moreover, unlike the ideological fervor which leads to stagnation in Washington, D.C., our tradition's focus on reaching the *nafkah minah* enables Judaism to offer pragmatic, nuanced rules for living a holy life. This approach to tackling difficult decisions, we believe, offers a blueprint for confronting the significant public policy questions currently paralyzing Washington. Both the rabbinic methodology for making these tough choices and the substantive values inherent in these choices bring 2000 years of wisdom to bear in addressing contemporary public policy issues (many of which are not so new). At the same time, reflecting on this ancient wisdom offers us, Conservative Jews living in 21<sup>st</sup> century America, another means of realizing how our tradition continues to offer relevance and meaning in our contemporary lives.

There are, to be sure, many religious organizations (Jewish and non-Jewish alike) seeking to have their voices heard on matters of public policy. Whereas these organizations typically align with the views of a particular political party, Conservative Judaism has something to offer both sides of the aisle, an approach to making principled decisions and offering direction in the heat of shifting, partisan arguments. Conservative Judaism, like the halakhic process generally, does not begin with a political orientation and then shape its position to fit this orientation. Instead, Conservative Judaism begins by analyzing the issue itself, both as it has been interpreted throughout Jewish history as well as the principles behind this legal interpretation. At the same time, Conservative Judaism believes that modern social ethics (as well as social and natural science) should impact our approach to halakhah. We are an halakhic movement that embraces the complexity of halakhic change. Neither our politics nor the holdings of medieval poskim hold a veto over our views on public policy; what we seek is a synthesis of the dialectic between tradition and contemporary morality when making difficult decisions. Just as Hazal were sophisticated thinkers who found ways to mediate between a Roman legal system and a biblical/rabbinical legal system, Conservative Judaism has, time and again, provided a means for American Jews to live both within a religious tradition and an American society. This moderate approach, prioritizing judgment over ideology, is in keeping with Judaism's legacy of making hard choices and is a voice sorely lacking in current American policy debates. Further, we find a positive model in our Movement's ability to recognize the merit of competing ideas and to remain not only connected but also interdependent with those with whom we disagree. This powerful perspective of Conservative Judaism has much to offer in providing a constructive framework that will educate and inspire people to look towards rather than to distance themselves from necessary confrontation with tough issues that only worsen when left unresolved. But it is up

to us to inform the public square with our unique perspective, to bring our wisdom and our tradition into the context of contemporary policy debate.

This overview will illustrate why we have something significant to contribute to public policy discourse. It will focus on the Rabbinic methodology for arriving at tough choices by engaging in robust debate taken *l'shem Shamayim* (rather than for personal or political gain) and then having all parties to the debate adhere to the decision of the majority while simultaneously respecting minority views. This overview will then demonstrate how our tradition also contributes a substantive, value-laden lens through which we can analyze the issues of our day, a lens which is often different from Western secular thought. As a consequence of laying this foundational groundwork, this piece will be more abstract than will subsequent works. We hope that both this material and subsequent analyses will provide you with *chomer lidrush*, whether for adult education programs, bulletin material, sermons, or other programs. We also invite you to suggest other topics of interest for future analyses.

## I. RABBINIC METHODOLOGY

As mentioned above, Judaism has long articulated a methodological approach to making difficult decisions that American public policy discourse would be well-served to follow. This approach can be broken down into three elements. First, robust and vigorous debate provides the foundation for resolving complex challenges. Second, this debate must be undertaken with pious, rather than parochial, motivations. Third, no matter how contentious the debate, the views of the majority become the law and are to be upheld and respected by all parties.

### 1. Debate

Our tradition has long encouraged robust debate when confronted with making a difficult choice. In fact, Rabbinic literature contains numerous examples affirming the dialectical process as the means for bringing about new understandings of Torah and refining pre-existing positions.<sup>1</sup> The following two sources illustrate the need to be confronted with multiple views in order to ascertain truth:

Talmud Bavli Avodah Zarah 19a

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| One who studies Torah from [only] one teacher will never achieve a sign of blessing. |
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| כל הלומד תורה מרוב אחד –<br>אינו רואה סימן ברכה לעולם. |
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Talmud Bavli Bava Metzia 84:

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| The son of Lakisha, when I would state something, used to |
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| בר לקישא, כי הוה אמינא |
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<sup>1</sup> See, e.g., R. Menahem ben Solomon Meiri, Commentary to Pirkei Avot, on M. Avot 5:17 (noting that disagreement is needed to establish truth).

present me with twenty-four objections, to which I gave twenty-four answers, which consequently led to a fuller comprehension of the law.

מילתא - הוה מקשי לי עשרין  
וארבע קושייתא, ומפרקינא ליה  
עשרין וארבעה פרוקי, וממילא  
רווחא שמעתא.

This emphasis on encouraging a clash of ideas as a precursor to resolving conflicts is not only based on utilitarian respect for the dialectical process. Instead, Judaism sees a theological underpinning to such debate (as well as to pluralism generally). In a number of sources,<sup>2</sup> Hazal affirms that God actually intended that human beings think and act differently from one another, so that, when we encounter others different from ourselves, we will be reminded of God’s creative virtuosity. As the following sources<sup>3</sup> suggest, Hazal embraced the value of pluralism by asserting that both sides of a debate reflected the word of God.

Numbers Rabba 14:4

And God spoke all these words. Therefore make your ear like a grain hopper and acquire a heart that can understand the words of the scholars who declare a thing unclean as well as those who declare it clean; the words of those who declare a thing forbidden and those who declare it permitted; the words of those who disqualify an object as well as those who uphold its fitness.

וידבר אלהים את כל הדברים  
האלה אף אתה עשה אזנך  
כאפרכסת וקנה לך לב שומע את  
דברי המטמאין ואת דברי  
המטהרין את דברי האוסרין ואת  
דברי המתירין את דברי הפוסלין  
ואת דברי המכשירין

Tosefta Sotah 7:12

One may say to oneself, “Since the House of Shammai says ‘impure’ and the House of Hillel says ‘pure,’ one prohibits and one permits, why should I continue to learn Torah?” Therefore the Torah says, “And God spoke all these words.” All these words were given by a single Shepherd. One God created them, one Provider gave them, the Blessed Ruler of all creation spoke them. Therefore make your heart into a many-chambered room, and bring into it both the words of the House of Shammai and the words of the House of Hillel, both the words of those who forbid and the words of those who permit.

שמה יאמר אדם בדעתו הואיל  
ובית שמיי מטמין ובית הלל  
מטהרין איש פל' אוסר ואיש פל'  
מתיר למה אני למד תורה מעתה  
ת"ל דברים הדברים אלה  
הדברים כל הדברים נתנו מרועה  
אחד אל אחד בראן פרנס אחד  
נתנן רבון כל המעשים ברוך הוא  
אמרו אף אתה עשה לבך חדרי  
חדרים והכניס בה דברי בית  
שמיי ודברי בית הלל דברי  
המטמאין ודברי המטהרין

<sup>2</sup> See, e.g., M. Sanhedrin 4:5, BT Berakhot 58a; Numbers Rabba 21:2.

<sup>3</sup> See also Avot d'Rabbi Natan 18:3; R. Maharal of Prague, *D'rush Al Hatorah* 42a.

Debate reinforces the principle that revelation itself was not complete at Sinai but that we can continue the ongoing process of revelation through study and debate.<sup>4</sup> Debate also “force[s] human beings to realize their epistemological creatureliness, the limits of human knowledge in comparison to that of God.”<sup>5</sup> We humans lack the capacity for perfect knowledge. Though we can increase our learning through careful study and discussion, any knowledge we attain can never equate with absolute knowledge.<sup>6</sup> As a result, no single person can claim to have a monopoly on truth or wisdom. Debate experientially reflects this theological claim.

This attitude towards debate specifically, and claims of truth generally, should be brought to bear in contemporary public policy discourse. The style of discussion that fills talk radio and cable news networks poisons our waters, making it nearly impossible to cultivate sound public policy. Each side of the political aisle has something to learn from the other; neither side should assume that they alone possess truth. Moreover, even positions we ultimately reject should not be vilified but respected.

## 2. Proper Intentions in Debate

While Hazal did embrace robust debate, they were clear to distinguish between debate conducted *l'shem Shamayim* and debate which existed only to further a parochial, pedantic, or political agenda. Moreover, debate *l'shem Shamayim* itself could be broken down into two integral components—both the conduct of and the motivations underlying the debating parties. The prioritization of decorum and humility in one’s debate conduct is expressed clearly in BT Eruvin 13b.

Talmud Bavli Eruvin 13b

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| <p>Rabbi Abba stated in the name of Samuel: For three years there was a dispute between the School of Shammai and the School of Hillel, the former asserting, “The law agrees with us,” and the latter contending, “The law agrees with us.” Then a Heavenly Voice announced, “These and those [i.e., the utterances of both] are the words of the living God, but the law agrees with the School of Hillel.” Since “these and those are the words of the living God,” what was it that entitled the School of Hillel to have the law fixed according</p> | <p>אמר רבי אבא אמר שמואל:<br/> שלש שנים נחלקו בית שמאי<br/> ובית הלל, הללו אומרים הלכה<br/> כמותנו והללו אומרים הלכה<br/> כמותנו. יצאה בת קול ואמרה:<br/> אלו ואלו דברי אלהים חיים הן,<br/> והלכה כבית הלל. וכי מאחר<br/> שאלו ואלו דברי אלהים חיים<br/> מפני מה זכו בית הלל לקבוע<br/> הלכה כמותן - מפני שנוחין</p> |
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<sup>4</sup> See, e.g., PT Sanhedrin 22a, BT Bava Batra 12a; Num. Rabba 19:6; Ex. Rabbah 29:1; *Mekbilta*, “Yitro,” chap. 9; *Pesikta d’Rav Kahana*, “Bahodesh Hashlishi,” end of chap. 12, on Exodus 20:2 (Mandelbaum ed., Vol. 1, p. 224); *Tanbuma*, “Shemot,” #22 (Buber ed., p. 7b); “Yitro,” #17 (Buber ed., p. 40b). Indeed, changes in both halakhah and theology throughout Jewish history should teach us that no single statement of faith is absolute and that people of intelligence and morality likely exist within other faiths too. See Elliot Dorff, “‘These and Those Are the Words of the Living God:’ Talmudic Sound and Fury in Shaping National Policy,” in *Handbook of Bioethics and Religion*, David E. Guinn, ed. (New York: Oxford, 2007) [hereinafter “These and These Are the Words”], at p. 229.

<sup>5</sup> Dorff, *These and These Are the Words*, at p. 235.

<sup>6</sup> See Joseph Albo, *Sefer ha-Ikkarim*, Vol. 2, tr., Isaac Husik, Part II, ch. 30, p. 206.

to them? Because they were kindly and modest, they taught both their own statements and those of the School of Shammai. Further, they [were even so humble as to] offer the words of the School of Shammai before their own words.

ועלובין היו, ושונין דבריהן  
ודברי בית שמאי. ולא עוד אלא  
שמקדימין דברי בית שמאי  
לדבריהן.

In addition, specific rules were developed to ensure propriety amidst debate. For example, a student was prohibited from calling his teacher by first name (BT Sanhedrin 100a). Additionally, despite the reverential status generally afforded teachers, the Talmud instructed that a teacher must stand before his students to show them honor (BT Megilla 21a). But reverence was not limited to the teacher-student relationship; Hazal also demanded respect and admiration for one’s colleague. “Let the honor ... of your associate be like your reverence for your teacher, and the reverence for your teacher like your fear of Heaven.” (M. Avot 6:3).

In terms of one’s underlying motivations while engaged in debate, the rabbis viewed the Biblical figure Korah as an example of improper intent. Korah’s argument with Moses, according to M. Avot 5:19, was not “for the sake of Heaven” but rather for his own power and love of victory, whereas the disputes of Hillel and Shammai were “for the sake of heaven”—to seek the truth.

The lack of civility in public discourse today is alarming. In fact, the RA passed a [resolution on civil discourse](#) in 2010 and has partnered with other organizations by signing the JCPA’s [Civility Campaign](#) in an effort to respond to the absence of civility in the public expression and exchange of ideas.

The absence of debate conducted *l’shem Shamayim* is perhaps even more disturbing than the erosion of civility in the conduct of our public discourse. People around the world are finding their core shared interests—on matters as fundamental as indebtedness of world democracies, health care, and the environment—are being held hostage to partisan political agendas. Recent threats to shut down the government over the budget or brinksmanship regarding raising the federal debt ceiling again demonstrate the prioritization of political success over the best interests of a country. If we are going to tackle the challenging issues facing contemporary societies, we must advocate for discourse that is undertaken *l’shem Shamayim*.

### 3. Adherence to the Views of the Majority

The final aspect of Rabbinic methodology which bears directly on modern day public policy discourse is the willingness of all parties to accept the decisions of the majority.

Talmud Yerushalmi Sanhedrin 4:2, 22a

Rav Yannai said: If the Torah had been given in a fixed form, the situation would have been intolerable [literally “there

א”ר ינאי אילו ניתנה  
התורה חתוכה לא היתה

wouldn't be a footstand"]. What is the meaning of [the recurring phrase] "The Lord spoke to Moses?" Moses said before Him, "Sovereign of the Universe! Cause me to know what the final decision is on each matter of law." He replied (quoting Exodus 23:2), "the majority [of the judges] must be followed"; when the majority declares a thing permitted, it is permissible, and when the majority declares it forbidden, it is forbidden; so that the Torah may be capable of being interpreted 49 different ways [to hold that an object is] impure and 49 different ways [to hold that an object is] pure.

לרגל עמידה. מה טעם  
וידבר ה' אל משה? אמר  
לפניו רבונו של עולם  
הודיעני היאך היא ההלכה.  
אמר לו שמות כג ב [אחרי  
רבים להטות רבו המזכין  
זכו רבו המחייבין חייבו  
כדי שתהא התורה נדרשת  
מ"ט פנים טמא ומ"ט פנים  
טהור.

According to the Rabbinic model, “[p]luralism ... stops with thought; uniformity is necessary in action, and that must be determined by the majority of the rabbis charged with making the decision.”<sup>7</sup> Even if rabbis thought a particular Beit Din was in error over such matters as the intercalation of holidays, in practice they had to conform to the court’s majority ruling (M. Rosh Hashanah, 2:8-9).<sup>8</sup> Indeed, even members of Beit Hillel and Beit Shammai, who argued vociferously with one another, were nevertheless able to serve on Batei Din together, and approved of their children’s intermarriages, because of their willingness to accept the court’s final decisions.<sup>9</sup> This rejection of factionalism had obvious practical benefits for Hazal: ensuring clarity and uniformity helped to stabilize the emerging laws they enunciated.

Hazal also understood there to be a theological dimension to avoiding factionalism. “When Israel is of one mind below, God’s great name is exalted above, as it says, ‘He became King in Jeshurun when the heads of the people assembled, the tribes of Israel together.’” (*Sifre Deuteronomy* 346 (citing Deut. 33:5)). At the same time, Hazal refused to denigrate minority views in the process of making tough decisions. To the contrary, the rabbis took the unprecedented step of recording minority positions in the Talmud.<sup>10</sup> This, again, affirmed that neither the majority nor the minority could claim sole access to Truth, but that the exigencies of daily life demanded that society move forward in accordance with the majority opinion.

Unfortunately, given the ideological extremism of our times, there has been a striking erosion of support for the democratic process and the notion of majority rule. In the U.S. Senate, minorities from both parties have used the filibuster—once reserved only for rare instances of supreme importance—to block majorities from casting votes on even routine matters or to confirm

<sup>7</sup> Dorff, *These and These Are the Words*, at p. 246

<sup>8</sup> This principle of avoiding factionalism, at the judicial level, was realized in two different ways. For Rabbi Yohanan and Abaye, there could only be one court, and thus one decision, per locale, though communities in different areas could adopt different practices. For Rava, a single court was prohibited from issuing multiple opinions, but it was possible to have multiple courts within different parts of a city. Dorff, *These and These Are the Words*, at p. 246 (citing PT Pesahim 4:1 (30d) and BT Yevamot 14a).

<sup>9</sup> See PT Yevamot 1:6 (3b); BT Yevamot 14a–b. See also T. Yevamot 1:12.

<sup>10</sup> See also M. Eduyot 1:4-5 and Numbers Rabba 13:15-16 on the need to record the opinion of a dissenting judge in case in subsequent generations the court may revise the law to agree with the dissenter.

Presidential appointees. Additionally, rather than accepting the legitimacy of past decisions and moving forward, Democrats and Republicans are spending much of their current time repeating battles that have already been fought. For example, the current Congress has spent much of its term trying to repeal measures passed by the prior Congress, most notably the health care law, rather than confronting the deficit, unemployment, and other pressing issues.

In sum, Hazal developed a methodology promoting vigorous debate over competing values, but conducted in such a way as to be carried out *l'shem Shamayim* and with a mutual commitment to following whatever the majority decided. The values inherent in this methodology, through which Hazal made important decisions on pressing issues of their time, commend themselves to making hard choices on public policy issues today. Our public square has grown toxic, filled with vitriol, motivated by greed, politics, and vendettas, and incapable of honoring any majority decisions that occur. We therefore ought to encourage the adoption of a healthier methodology that incorporates the values inherent in the Rabbinic approach to making hard choices.

## II. SUBSTANTIVE VALUES

In addition to the Rabbinic methodology discussed above, over the centuries our tradition has developed a treasure trove of wisdom on a wide array of specific substantive issues. Underlying this wisdom is a core set of beliefs pertaining to the nature of the individual and the nature of community. These fundamental values have guided our decision-making process when confronted with hard choices. This overview will provide a brief summary of these values, contrasting them with secular Western views.

### 1. Nature of the Individual

The Jewish understanding of the nature of the individual begins with creation. In Gen. 1:27, 5:1-2, and 9:6, the Torah repeats that humanity was created *b'tzelem Elohim*. The rabbis elevated this depiction of humanity into a conception of human dignity: the divine spark within us undergirds our notion of self-worth<sup>11</sup> and makes each person infinitely precious.

Mishnah Sanhedrin 4:5

For this reason was man created alone: to teach you that with regard to anyone who destroys a single soul, Scripture imputes guilt to him as though he had destroyed a complete world; and with regard to anyone who preserves a single soul, Scripture ascribes merit to him as though he had preserved a complete world. ... Therefore every single person is obligated to say: "The

לפיכך נברא אדם יחידי בעולם,  
ללמד שכל המאבד נפש אחת,  
מעלים עליו כאילו איבד עולם מלא;  
וכל המקיים נפש אחת, מעלים עליו  
כאילו קיים עולם מלא. ומפני שלום  
הברייות, שלא יאמר אדם לחברו,  
אבא גדול מאביך ... לפיכך לכל אחד

<sup>11</sup> M. Avot 3:18.



world was created for my sake.’

ואחד לומר, בשבילי נברא העולם.

The fact that we are created in the divine image is not only descriptive but also prescriptive, guiding the way we conduct our lives. One telling application is the principle *pikuah nefesh dokhe Shabbat*, that we can and indeed are obligated to desecrate Shabbat observance in order to save another’s life. “It is a religious precept to desecrate the Sabbath for any person afflicted with an illness that may prove dangerous; he who is zealous is praiseworthy while he who asks questions sheds blood.” (*Shulhan Arukh*, Orah Hayyim 328:2)

Moreover, the fact that each of us was created *b’tzelem Elohim* carries substantial theological significance. For example, Genesis Rabba 24:7 maintains that because we are all created in the divine image, when we insult another person, we also insult God. Moreover, we are instructed to offer the blessing “*m’shaneh habriyot*” upon seeing disabled individuals as a way of affirming the divine spark within each of us. “Precisely when we might recoil or when we might thank God for not making us deformed or incapacitated, the tradition instead bids us to embrace the divine image in such people—indeed, to bless God for creating some of us so.”<sup>12</sup>

At the same time, our tradition chafes at unbridled valorization of the individual’s worth. The following saying, by the Hasidic Master Rabbi Bunam, illustrates this tension: “A person should always carry two pieces of paper in his or her pockets. On one should be written, ‘The world was created for me,’ and on the other, ‘I am but dust and ashes.’”<sup>13</sup> Thus, while we are all created *b’tzelem Elohim* and therefore are inherently sacred, we must also inject sufficient humility into our interactions with God and with others to ensure that our uniqueness does not give way to hubris.

Finally, because of the communitarian ethos of Judaism (described below), despite the inherent value of each human life, individual concerns are frequently subordinated to the needs of the community. For example, the mitzvah of *pidyon shvuyim*, redeeming captives, is deemed within the halakhah to be one of the most important mitzvahs we can perform. At the same time, as the following source points out, we draw limits on redeeming a captive if doing so endangers the welfare of other captives or the Jewish community at large.

Mishnah Gittin 4:6

Captives should not be redeemed for more than their value for the sake of repairing the world (“*tikkun olam*”), and captives should not be helped to escape for the sake of repairing the world. Rabban Shimon ben Gamaliel says [that the reason captives are not redeemed is] for the sake of

אין פודין את השבויים יותר  
על כדי דמיהן מפני תקון  
העולם ואין מבריחין את  
השבויין מפני תקון העולם  
רבן שמעון בן גמליאל אומר

<sup>12</sup> Elliot Dorff, *To Do the Right and the Good: A Jewish Approach to Modern Social Ethics*. (Philadelphia: Jewish Publication Society, 2002) [hereinafter *To Do the Right and the Good*], at p. 9.

<sup>13</sup> Rabbi Bunam, cited by M. Buber (1948) 2:249-50.

Contemporary Western secular thought about the nature of the individual derives from Enlightenment philosophy about natural rights. According to John Locke, one of the towering philosophers of the Enlightenment, within the state of nature each individual exists in “a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.”<sup>14</sup> There is no individual obligation towards the community (or any other individual); our natural rights as individuals are supreme. This preeminence of individual natural rights receives further articulation in the Declaration of Independence, which affirms that all individuals are “created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” We may then collectively choose to abridge some of these rights in order to form a community, if we deem doing so advantageous, but our rights as individuals always come first. Additionally, American pragmatism offers a view of the individual that differs greatly from Judaism’s view that every individual is created *b’tzelem Elohim*. “A person’s value is a function of what that person can do for himself or herself and others. Self-sufficiency thus becomes a major goal, and power is prized. It is this view, so deeply ingrained in American culture, that prompts Americans to value individuals who have unusual abilities, who succeed—and, conversely, to devalue those who are disabled in some way.”<sup>15</sup>

As a result of this utilitarian perspective, an individual within society lacks any sacredness or inherent dignity. Every other individual’s worth comes only from the effect that other has on my own rights. Thus, as but one example, if I encountered an individual whose life was in danger, based on Jewish conceptions of the nature of the individual, I would be compelled to save that person because that person is holy. The following text makes this explicit:

#### Talmud Bavli Shabbat 54b

Whoever is able to protest against the wrongdoings of his family and fails to do so is punished for the family’s wrongdoings.  
Whoever is able to protest against the wrongdoings of his fellow citizens and does not do so is punished for the wrongdoings of the people of his city. Whoever is able to protest against the wrongdoings of the world and does not do so is punished for the wrongdoings of the world.

כל מי שאפשר למחות  
לאנשי ביתו ולא מיחה -  
נתפס על אנשי ביתו,  
באנשי עירו - נתפס על  
אנשי עירו, בכל העולם  
כולו - נתפס על כל  
העולם כולו.

However, according to Western secular thought, I have no obligation to act as a Good Samaritan because I am indifferent to the plight of any other. Further, if saving another risked my own life or property, logic dictates that I should refrain from helping the other.

<sup>14</sup> John Locke, *The Second Treatise on Government*, Ch. 2, Section 4.

<sup>15</sup> Dorff, *To Do the Right and the Good*, at p. 15.

The struggle between Jewish and secular conceptions of the individual is being played out vividly within the public square today. The question of how much we ought to value and protect individual accumulation of wealth and power lie at the heart of much of today's political stalemate. The Jewish validation of the dignity and sanctity of each individual life offers a narrative that runs counter to the "everyone for himself/herself" approach often advocated by conservatives and libertarians. Indeed, the very premise of the first perek of Mishnah Pe'ah is that, while Judaism does not oppose accumulating wealth, Judaism simultaneously demands that we redistribute some of our wealth to the poor as a means of affirming the dignity and worth of every member of society.<sup>16</sup> As a result, the RA has passed a number of resolutions (in [2003](#), [2002](#), and [2000](#)) supporting taxation as a method of providing for the needy.

## 2. Nature of Community

Ever since exodus from Egypt and revelation at Sinai, Jewish identity has been viewed largely in communitarian, rather than individualistic, terms. For example, the covenant between God and Israel was enacted communally, with Israel collectively assenting in one voice, "all the things that the Lord has commanded we will do." (Ex. 24:3). Likewise, M. Avot 2:5 enjoins that an individual is prohibited from separating oneself from the community. Further, the Talmud expresses that the preferred mode of prayer is *b'tzibbur*, with a minyan, rather than praying individually.<sup>17</sup>

Reflecting this primacy of the group over the individual, Judaism expresses over and over that individuals, as organic parts of Israel, have irrevocable responsibilities to the rest of the community. Thus, Rambam, in his Mishneh Torah, sets forth time requirements after which a new member of a community is obligated to contribute to the *kuppah*, *tambui*, and other community funds.<sup>18</sup> Moreover, Hazal went so far as to develop tools for the community to exert power over the individual. A vivid example is the rabbinic notion of *hefker bet din hefker*—that the court, on behalf of the community, can expropriate an individual's property.<sup>19</sup> According to this principle, the court has the power in certain contexts to confiscate an individual's possessions and even to transfer ownership of such possessions to other individuals.<sup>20</sup>

Yet one's role within *klal Yisrael* does not repudiate individual identity. Instead, individualism and communitarianism work in a symbiotic relationship. The traditional Jew "is an individual but one whose essence is determined by the fact that he is a brother, a fellow Jew. ... This consciousness does not reduce but rather enhances and accentuates the dignity and power of the individual."<sup>21</sup>

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<sup>16</sup> See especially M. Pe'ah 1:2, setting a minimum amount of 1/60 of one's crop that must be left for pe'ah even though Lev. 19:9-10 gave no minimum measure.

<sup>17</sup> BT Brakhot 6a, 8a.

<sup>18</sup> Rambam, Mishneh Torah, Laws of Gifts to the Poor 9:12.

<sup>19</sup> See T. Shekalim 1:3; M. Shekalim 1:2; PT Shekalim 1:2, 3a/b (1:2, 46a); see generally M. Elon, *Jewish Law: History, Sources, Principles*. Vol. II. (Bernard Auerbach and Melvin J. Sykes, trs.). (Philadelphia: Jewish Publication Society. 1994), at pp. 507-514.

<sup>20</sup> *Id.* at pp. 507-09 (citations omitted).

<sup>21</sup> Dorff, *To Do the Right and the Good*, at p. 21 (citation omitted).

Finally, it bears noting that part of the communitarian ethos of Judaism includes strong protection for minorities, both halakhically<sup>22</sup> and with regard to freedom of expression.<sup>23</sup>

The result of this mentality is an approach to the community that differs markedly from Western secularism. For secularists, the state is viewed with suspicion because it threatens to encroach upon an individual's liberty and property. Any community that gets established within this rubric is therefore voluntary, based on a pragmatic choice by a group of individuals to limit some individual rights for specific, collective purposes. Moreover, the source of authority for any laws promulgated by the community is the community itself, not God or the monarchy.<sup>24</sup>

Secularists therefore argue passionately to keep government from taking actions that diminish one's liberty or property, even when doing so is in the best interests of society. Within the realm of public policy, this approach gets expressed in areas as varied as gun control, the health care individual mandate, and tax increases. Moreover, because secularists maintain that natural rights are inalienable, should the government diminish one's liberty or property, due process demands that the individual be compensated. Rather than a *hefker bet din hefker* approach in which the state can take one's property when necessary, in Western secular democracies, eminent domain law requires the state to compensate an individual for any taking of property.

### III. HARD CHOICES CASE STUDY: ABORTION

Abortion serves as a useful case study of the Jewish approach to making hard choices because it shows how our tradition and values can inform life and death decision-making. As the following selection of sources will show, Judaism adopted an approach that is neither "pro-choice" nor "pro-life" (in the political sense of these terms), focusing instead on an approach that looks at the facts of a particular case and makes a moral determination based on these facts. As a result, even when we are most vulnerable and paralyzed by our conflicting emotions, we can get strong guidance from our tradition as to how to make hard choices.

The Jewish perspective on abortion originates in Exodus 21:22-23. There, we are instructed that if two men fight "and one of them pushes a pregnant woman and a miscarriage results but no other misfortune ensues, the one responsible shall be fined according as the woman's husband may exact from him. But if other misfortune ensues [ie, the mother dies] the penalty shall be life for life." This text both recognizes that a fetus has intrinsic significance yet also reveals that our tradition differentiates qualitatively between the potential life of the fetus and the life of the mother. The Mishnah expands upon the biblical perspective on abortion, shifting from the language of damages to mandating proactive measures on behalf of the pregnant woman's health. In Mishnah Ohalot 7:6, we learn that if a woman's life is in jeopardy, "the child must be cut up while it is in the womb and

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<sup>22</sup> See, e.g., Ex. 22:20; Lev. 19:33-34; BT Bava Metzia 59b; BT Gittin 61a; Rambam, MT, Laws of Gifts To The Poor 7:7, and S.A. Yoreh De'ah 335:9 and 367:1.

<sup>23</sup> See Part I, *supra*.

<sup>24</sup> Dorff, *To Do the Right and the Good*, at p. 19.

brought out member by member, since the life of the mother has priority over the life of the child.” Our tradition increases its concern for the welfare of the mother, requiring prophylactic measures when her life is in peril. Once more, our tradition prioritizes the welfare of the mother over that of the fetus. Indeed, Rashi, in his commentary on BT Sanhedrin 72b, affirms this judgment when he writes that a fetus is not a person (“lav nefesh hu”). This notion of a threat to the mother’s well-being is further developed by Rambam in his Mishneh Torah, Laws of Homicide and Preservation of Life 1:9, when he remarks that the fetus in such a case “is regarded as one pursuing her (“rodef”) and trying to kill her,” thereby permitting the destruction of the fetus-rodef. In modern times, our conception of the welfare of the mother has grown to include potentially severe mental anguish as well.<sup>25</sup> Thus, in a November 21, 1983 CJLS teshuvah on abortion, the CJLS wrote that “an abortion is justifiable if a continuation of pregnancy might cause the mother severe physical or psychological harm, or when the fetus is judged by competent medical opinion as severely defective.”

But an extra element is added in both Ohalot and the Mishneh Torah: once the “greater part of” the fetus “was already born,” it cannot be harmed because it is deemed a human life under Jewish law. The moral calculus that enabled the destruction of the fetus above no longer applies.

Perhaps the best way to appreciate the Jewish approach to abortion, embodying the substantive core principles discussed above, is to contrast Judaism with Western secular ideology. According to Enlightenment-oriented approach, the individual is free to do whatever he or she chooses so long as it doesn’t infringe upon the natural rights of other citizens. Since a fetus is not considered a legal person (at least, according to *Roe v. Wade*, during the first trimester of a woman’s pregnancy), the state has no right to infringe upon the individual’s liberty to do whatever she chooses with her body. Liberty over one’s reproductive wishes remains solely within the purview of the prospective parent(s), a right not delegated in the process of forming the American body politic. As a result, a woman can have an abortion simply because she elects to do so, even absent any threat of harm to herself or the fetus.

The Jewish approach, however, is far more nuanced. As set forth above, Judaism sees each individual as inherently holy. At the same time, however, Jewish individualism is not sacrosanct; in certain contexts, Judaism is willing to prioritize some individuals over others in order to promote other compelling community values. Within the context of abortion, the sources above show that Judaism is able to make the hard, emotionally fraught choice of holding that the mother’s life is valued more than the potential life of the fetus. Once the fetus becomes actualized as a person, however, the calculus shifts dramatically. Thus, a mother neither is free to have an elective abortion nor is permitted to risk her own life for the sake of her fetus; situation and context matter greatly. Judaism therefore integrates principles and facts into a complex matrix of law governing the hard choices to be made when addressing the question of abortion.

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<sup>25</sup> See Tzitz Eliezer, Volume 13:102 (holding that if tests reveal that a fetus has Tay-Sachs and that such knowledge will cause the mother severe mental or emotional harm, abortion is permitted even past 40 days). See also R. Yaacov Emden, She’elat Yavetz 43.

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Part of Judaism's great wisdom for public discourse is that it envisions and articulates deep human values both in method and in substance for the formation and perpetuation of our society and government. This paper has attempted to demonstrate some of these methodologies and principles. The Conservative Movement's thoughtful, nuanced approach to addressing the weighty issues of our day according to these methodologies and principles, we believe, could represent a welcome contribution to contemporary public policy discourse. As we aspire to create a better world for ourselves and our future generations, we should recall Rabbi Tarfon's prescient advice in M. Avot 2:21: "You are not obliged to finish the task, (but) neither are you free to neglect it." We hope that this article, and the more specific articles to follow, will help equip each of you with resources and inspiration for engaging in the kind of discussion and debate necessary to transform our society into the society we want it to become.