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The Orthodox Professional in Non-Orthodox Communal Agencies

Marc D. Stern

At least until Bernard Madoff single-handedly forced a major contraction of Jewish philanthropy, there was something of a golden age for Orthodox Jews working in professional capacities in secular communal agencies. Almost wherever one looked, one found Orthodox Jews in professional capacities. Some examples:

- At the American Jewish Committee, founded by German Reform (if that) Jews, several important positions, including the editor of the American Jewish Yearbook, the head of the legal department, and, perhaps most important, the director of the Jewish communal affairs department, were Orthodox Jews. High-placed officials at the ADL are also Orthodox.

- The head of the Boston Federation (who spoke at the Forum last year) is an Orthodox Jew who has done much to introduce Torah study into every corner of Jewish life in Boston. That program has been emulated by Federations elsewhere.
- Malcolm Hoenlein heads the President's Conference, and before that was head of the Soviet Jewry movement.
- For many years, I have been legal director at the American Jewish Congress and am now also its acting co-Executive Director.
- Several key figures in the Anglo-Jewish press are Orthodox.
- Until the controversy of a year or two ago, Rabbi Israel Singer headed the World Jewish Congress. Betty Ehrenberg is now indispensable at the World Jewish Congress, American Section.
- Perhaps most astoundingly—for education is a place where ideological differences are sharp and unavoidable—the Forum's own Erica Brown is in charge of adult education for the Washington Jewish Federation.

All this was largely unimaginable more than 30 years ago when I first took a job in the field. In the 1940s and 1950s the array of positions held by Orthodox Jews listed at the beginning of this essay would have been wholly unimaginable.¹

The absence of Orthodox Jewish professionals in those earlier years was likely not the product of self-imposed Orthodox isolation. The *hareidi* community was not then as important in the Orthodox community as it is today. The famous *p'sak* of the *Rashi ha-Yeshiva* against participation in mixed organizations (even if it applied to secular Jewish organizations as opposed to religious ones like the Synagogue Council of America) was not then accepted by much of the Orthodox community that possessed the training and skills necessary to work in communal agencies.

Similarly, R' Moshe Feinstein's *p'sak*² against participation in Federations did not immediately influence much of the Orthodox com-

munity. The Telzer Rashei Yeshiva earlier solicited the Cleveland Federation's support for the Hebrew Academy of Cleveland, and the Academy continues to do so to this day. The Rav affirmatively encouraged me to take my position.³

The problem was, rather, that these agencies were bastions of a secular, Americanized Judaism that was not hospitable to Orthodox Jews and Judaism. Orthodoxy was then, and earlier, widely regarded by the Jewish establishment as a vestigial form of Judaism whose demise was imminent and that was not integrated, nor desirous of being integrated, into the American scene.

Marshall Sklare, the eminent sociologist of American Jewry, pronounced himself certain that Orthodox Judaism had little future in America. (One of his grandsons, a member of the Ner Israel Kollel, recently published *hiddushim* on *Baba Metzia*.) Others were even more certain than Sklare.⁴

I cannot prove the existence of systematic employment discrimination against Orthodox Jews. In any event, it seems doubtful that many Orthodox Jews would have sought employment in those agencies, and even more doubtful that they would have been hired for policy-related positions. As late as the mid 1980s I encountered some doubts by laypeople about a promotion because I was Orthodox.

Rabbi Nochum Dessler, principal of the Hebrew Academy of Cleveland, founded in the early 1940s under the patronage of the Rashei Ha-yeshiva of Telz (Cleveland) described at the *shiva* for my mother-in-law how in the early 1940s the founders of that school approached the Federation for support.

The Federation, then firmly and exclusively in the grip of an Americanized leadership, wanted to hold the meeting in a non-kosher restaurant because, Rabbi Dessler hastened to explain, they did not know better and had little—that is to say, no—experience with day school education, then regarded as an alien and un-American institution.

Such questions and attitudes would be all but unthinkable today. In part that mindset is due to the fact that Orthodox Jewish professionals are now commonplace in Jewish communal institutions. In part, too, it is a reflection of the unexpected vitality of Orthodox Juda-

ism, and, again at least until recently, its commitment to the common Jewish enterprise.

The presence and labor of these Orthodox Jewish professionals have helped to dispel the idea that Orthodoxy is not a vibrant and important part of the Jewish community, and that it and its adherents have nothing useful to contribute to American Jewish life. Whether that commitment will withstand the isolationism so dominant in much of the Orthodox community, including much of the supposedly modern Orthodox community, and the loss of ethnic and religious commitment for much of the non-Orthodox community, remains much in doubt.

Changes in Communal Organizations Threaten the Role of Professionals

In considering the effects of an Orthodox presence in “secular” organizations, it is necessary to acknowledge that the influence of professionals on the Jewish communal agenda is (again, at least until the recession and Madoff’s one-man wrecking enterprise) decreasing. As I noted in an earlier contribution to the Forum,⁵ at least in community relations agencies, that balance of power has shifted decisively from either professionally dominated agencies, or real lay/professional partnerships, in favor of leadership by a small group of wealthy individuals, many of whom are dismissive of professional Jews and who, convinced of their own wisdom, show little regard for the knowledge, views, and experience of professionals.⁶

My impressions of a change in power are shared by many in the communal world, including some of the most able communal professionals. Thus the rise of the Orthodox professional comes at a time when the influence of professionals is diminishing. Any inquiry into the current influence of Orthodox Jewish professionals may therefore be misleading as a predictor of the future.

Equally important as the increase in lay control of communal agencies, which at least purport to have some sort of obligation to represent the larger Jewish community, is the growth of privately controlled philanthropic foundations of wealthy families or individuals. Those foundations diminish the role of Jewish communal profession-

als, and indeed the community as a whole, in setting communal priorities and policies. These foundations generally have a narrow focus and operate on the certainty that the founder's (or board's) vision is *the* best way forward. Here, too, the role of professionals is diminished, although some of these foundations employ very able Orthodox and non-Orthodox professionals of their own. They simply function in different ways.

These trends are unhealthy not because career communal professionals are omniscient or prescient. I have no illusions that Jewish professionals are always right in their judgments. Institutions can easily get trapped in old, familiar and unproductive ways. We all make mistakes like anyone else. It is particularly easy for us to fall into the trap of simply doing what is familiar and comfortable. Too many of us are careerists.

Who among us, whether employed in the for-profit or not-for-profit sector, can be expected to say the skills I have nurtured for 20-30 years are no longer relevant, or less important than other, newer skill and knowledge sets? Many of us took communal jobs because, in part, we are risk averse. That tendency to an abundance of caution at times does not serve the community well.

But the opposite is not true either. There is, and should be, no question that most Jewish professionals took their jobs out of a sense of deep Jewish commitment and bring considerable skills to their work. It is assuredly not true that the ability to succeed in finance, medicine, law, real estate, or (in earlier times) the garment district is a guarantee of perspicuity when it comes to communal interests.

It also is not true that communal needs require no special expertise or that experience is irrelevant to deciding Jewish communal policy. Everywhere else one looks—from business to medicine to *halakhah*—specialization is the order of the day. Somehow, this trend is assumed not to be true for secular Jewish communal life, where a small cadre of non-specialist laypeople are increasingly powerful.

Identifying the Orthodox Jewish Professional

In one important sense, I am uncomfortable speaking of Orthodox professionals, since this notion entails making judgments about a per-

son's level of *shmirat ha-mitzvot* (religious observance) and some definition of what ideological criteria includes one in the Orthodox camp. These are the very judgments that one must without fail set aside to be an Orthodox professional in non-Orthodox communal settings. Truth be told, even professionals working for Orthodox organizations must suspend religious judgments, since they work with colleagues from other Jewish groups. Whatever groups in the Orthodox community may say about not working with the non-Orthodox, they work with non-Orthodox groups on a non-judgmental basis all of the time.

Who, exactly, is Orthodox? Many may think this question is easy to answer on the "right" of the community; it is supposedly less easy on the "left," where, by and large, secular Jewish communal professionals reside. Is membership in, or regular attendance at, an Orthodox synagogue sufficient? Is it wearing a yarmulke or only skirts? Keeping kosher? Rejecting all theologically questionable modern biblical scholarship? Rejecting the theory of evolution?

If the question is "can I accept an invitation to eat at that person's home," a religious judgment is inevitable. Such judgments are generally unhelpful and often irrelevant at the professional level. If it is hard at the inter-professional level, where one works with people daily over long periods of time such that one's religious beliefs inevitably become known, it is even harder to make such judgments with regard to laypeople, with whom relations are on an entirely different and more fraught basis.

The unhappy fact is that many of our colleagues—professional and lay—do not keep kosher homes (increasingly, they know little of how to keep kosher) and are either intermarried themselves or have siblings or children who are. They not only are not *shomer Shabbat*, or regular synagogue attendees, but have little idea of what it means to be *shomer Shabbat*, fast on *Tisha B'Av*, rest on *Shavout*, not wear *shatnez*, or avoid violations of *lifnei iver*. They believe—sincerely—that choice in abortion is *the* Jewish position, not as a matter of tolerance, but of substance. They are also deeply committed to the survival of Israel and Judaism.

It is easy to be too concerned with labeling people, both those within and outside the Orthodox community, as Rabbi Robert Hirt

pointed out at the Forum. That habit is a peril to be avoided, but so is a repudiation of all line-drawing.

In terms of *tochacha*, rebuking or warning the sinner, there are real limitations on what one can say to one's colleagues or lay leaders about religious matters. One can talk about intermarriage in the abstract, but then only with caution, under the rubric of continuity. Certainly, one cannot refuse to deal with intermarried colleagues or laypeople. More targeted campaigns must be the responsibility of others. (In fact, the idea that an Orthodox professional might be able to engage in this *mitzvah* systematically while carrying out his or her duties is so foreign, so beyond the realm of the possible, that I did not even discuss it in the first draft of the paper.)

This suspension of religious judgment with regard to communal work is essential and is indispensable to functioning in the communal context. One after all works for the entire Jewish community, not just the Orthodox community. A division of labor is essential. Purposeful religious outreach cannot and should not be the responsibility of professionals in secular Jewish organizations.

The suspension or muting of religious judgment is certainly not cost free. On the personal level it requires a dulling of religious sensibilities and acceptance of the religiously unacceptable, a damping of religious outrage. On a more practical plane, non-judgmentalism means a host of practical problems—from how to deal with wedding invitations to interfaith marriages to how to speak of contentious religious issues.

These problems are as ubiquitous as intermarriage itself. Employees of for-profit businesses also have to grapple with the problem of relations with the intermarried, or refusing dinner invitations from co-workers, surely not easy when one is dealing with professional colleagues.

As difficult as these problems are generally, they are more difficult in the communal context, where they take on additional significance not merely as an expression of personal religious belief, but (whether intentionally or not) as expressions of an idealized Jewish life. Decisions based on one's personal desire to avoid departure from religious

norms are inevitably burdened with great tension precisely because they imply something about communal norms.

An example: I had a conversation with a lay leader during a meeting in a hotel restaurant. He ordered ham (or bacon) and eggs and later asked the waitress for a glass of milk, jokingly telling me that he was compounding the felony. I didn't think it appropriate to respond with a discussion of *ein issur chal al issur* (one prohibition cannot be superimposed on another prohibition) or even a warning about the prohibition on pork. There was no question that my interlocutor knew the latter and would have been bewildered by the first. My silence no doubt contributed to a lasting working relationship, but did it signal that I did not regard his eating pork products as wrong? I don't think so, but I cannot be absolutely certain.

A *rebbe* of mine at *Kerem B'Yavne*—R' Binyamin Beiri—told us that someone once praised R' Kook for his tolerance of Sabbath desecrators. R' Kook is said to have responded that “the easy part is being tolerant of those who come to build Israel but who don't observe the Sabbath; the hard part is not becoming tolerant of Sabbath desecration.” That is a difficult balance that communal professionals need to struggle to maintain.

Chabad's great success in *kiruv* is precisely in the fact that all Jews are welcome with open arms—even those whose actions are wholly at odds with *halakhah*. The approach works, and works marvelously; but at what spiritual cost to *Chabad shlichim* (representatives), and, it might be added, Orthodoxy in general?

Sometimes accommodation of religious needs can make matters even more complicated, as when one is taken to a “kosher facility” whose *hechsher* is doubtful, or, when asking about a *minyan* to say *kaddish*, ends up in a traditional synagogue without a *mechitza*. I never did persuade a Federation director in upstate New York that the reason I didn't eat the kosher tuna she provided when she found out I kept kosher was that I didn't like tuna. That possibility ran contrary to one of the most firmly held beliefs about Orthodox dietary habits. I am sure she believed that I did not trust her assurances that the tuna was in fact kosher.

Communal professionals are committed to serving the entire community as it is. Much as we do not like it, full acceptance of intermarriage, or gays, or consumption of non-kosher food is simply a given for many of the people we represent. In fact, in many circles acceptance has gone far beyond the level of bare tolerance, such that it is the Orthodox position on these matters that is a distinct and unpopular minority point of view. A refusal to welcome intermarriage (or most other departures from *halakhah*) is widely perceived as a repudiation of the obligation to serve all *k'lal yisroel*.

If I were to refuse to advise a party to intermarriage about the role religion plays in a child custody case, but did respond to a *ba'al t'shuva* seeking the same information, I would be serving not the community but some vision of Orthodoxy. I would be asked to do that working for the O.U., but it is inconceivable working for AJCongress.

A compensatory benefit of being even-handed is that when I am asked by non-Orthodox groups about such matters, my judgments are respected even when they are not what the questioners want to hear. Perhaps it counts for something that as a result of keeping my religious opinions to myself, I have represented or advised literally every group in American Jewish life—from the wholly secular, to the Reform movement, to Satmar.

The average Orthodox Jewish communal professional draws—and could draw—no distinction between other secular organizations (ADL) and religious groups (Union of Reform Judaism and its Religious Action Center, the various organs of Conservative Judaism, and the Reconstructionists). I have never thought it in the least problematic to lecture on the few subjects within my competence in a Reform or Conservative synagogue. I refuse to do so on Shabbat, always explaining with somewhat less than the full story, that I don't accept speaking engagements on Shabbat. Not cooperating with what some in the Orthodox community unhelpfully call deviationist movements is just not conceivable.

And not only because it would not be tolerated. Those movements are the spiritual home of millions of Jews. If they did not exist, some few Jews would find their way to Orthodox synagogues. Most would

drift away entirely, as almost half of American Jewry already has. Some may think this is a good thing. I do not; neither as a matter of faith in the Jewish people,⁷ or simply as a matter of pragmatic utility—absent a critical mass, no one in power pays you any mind.

No one should be deluded. Without organized non-Orthodox Jewry, Israel's standing in Congress would be all but non-existent. Moreover, working with these groups, and other groups outside the Orthodox community, often leads to contacts which are beneficial to the entire Jewish community, as well as the Orthodox community. These are contacts not shared by my Orthodox colleagues.

The work of employees of secular Jewish organizations often requires them to work with non-Jewish religious groups of various kinds. In general, except for those directly engaged in interfaith work, this activity involves public policy issues which can and are usually discussed and debated without any theological discussions. Differences may be rooted in theology, but routinely these can and are discussed without it. Occasionally, there will be a need to explain a theological point undergirding a position, but this is rare, and usually calls only for a superficial and factual explanation.

But there are areas where theological debate is inevitable and unavoidable. For example, discussions, important discussions, about the place of Israel in the lives of Jews, as part of efforts to counter the harsh positions on Israel of mainline churches, often involve unavoidable discussions of theology that are not merely superficially descriptive, but probing, often raw. Without the ability to address the theological component, Jewish participation in these debates is greatly handicapped.

My own work has only infrequently taken me into those waters. When I have entered those lists, some of those engaged in interfaith efforts seem to me too ready to compromise or obscure important theological points for maintaining (illusory) good will. But I have also seen skilled colleagues—I'm thinking of an Orthodox colleague in particular—succeed in explaining to believing, mainline Christians the importance of Israel to the Jewish people precisely because they have a command of relevant theological materials, and they could and did enter the lists on these subjects with non-Jewish peers. These

discussions do not square precisely with the guidelines established in *Confrontation*, but they seem nonetheless essential and, in the hands of informed and committed professionals, not dangerous.

Jewish Communal Professionals Are Not Religious Missionaries

All the Orthodox Jews I know in secular communal life take it for granted that it is not their task to proselytize. We are not, and cannot be, a fifth column for *Aish ha-Torah* or even the Center for the Jewish Future to urge upon our colleagues or laypeople higher levels of religious observance. It should go without saying that one must be prepared to answer *halakhic* or other questions when asked—whether about the relatively trivial to the profound—*yahrzeits* to abortion, and to explain those and other matters coherently and authoritatively, as well as to be a model of religious observance. These are entirely different matters than urging religious practice on others.

Only once in my career did any staff member try proselytizing at AJCongress, a member of the support staff. It was a disaster. Having received several complaints, I quickly told this person to stop. He was doing far more harm than good.

Inviting colleagues to a Purim meal, a *bar mitzvah* or wedding *simchah* or having them pay a *shiva* call, can be illuminating and demystifying, especially since fewer non-Orthodox Jews have ever encountered such events. All this is far different than deliberate efforts at *kiruv*.

So much for the personal. What about at the communal level? Here the calculus is quite different. An alert and informed Orthodox communal worker can and should see to it that Orthodox sensitivities are accommodated—whether that means the availability of kosher food, a separate swim hour at the Y, or ensuring that meetings begin at times that allow Sabbath observers to fully participate. Most of these are by now relatively easy matters. Whatever the outcome, people understand when pressed that the institutional Jewish community cannot compel some of its members to participate in its functions if doing so requires them to act in violation of their religious principles.

Matters are more complicated in regard to public policy issues. In general, beyond the most junior levels, Jewish professionals have considerable discretion in shaping programs, picking issues, and bring-

ing competing policy concerns to bear on their work. Nothing forbids them from considering *halakhah* or Orthodox sensibilities in formulating a position or in introducing those perspectives to the intra-communal debate.

Here, Orthodox professionals have made an important contribution, putting issues on the table that would otherwise not be. Discretion can be abused, however, especially in light of one's obligation to one's employing agency. Silently burying an issue that would have organizational value to avoid a clash either with Orthodox values or with *halakhah* would apparently be a form of *gezel*.⁸

What of communal policy? That is, what burdens, if any, fall on the Orthodox communal professional who has some ability to influence policy? Sometimes there is little that can be done because the agency or communal position is firmly settled. In other circumstances, the best that can be achieved is an injection of an Orthodox point of view into the debate and an insistence that it be taken seriously and accommodated if possible. Sometimes, more can be accomplished. The hard part is knowing which is which.

If possible, one needs to remind one's organization that, to the greatest extent possible, it represents all of the Jewish people and that Orthodoxy is (still) part of that obligation. I think it fair to say that Orthodox professionals have increased the secular community's activism in support of religious liberty, a development that would not have occurred without their presence.

The question about policy in fact divides into two parts: those matters on which formal *halakhah* is silent but the Orthodox community overwhelmingly favors one position (i.e., aid to parochial schools, support for settlements; opposition to the Gaza withdrawal);⁹ and those on which *halakhah* has more direct relevance (i.e., abortion). Then there are mixed cases, such as who is a Jew; the underlying dispute has *halakhic* parameters, but when and how to raise the issue is a question of judgment.

Group-think in the Orthodox community (as in other faith or political communities) may represent unexamined and ill-conceived conventional wisdom, collective wisdom born of experience or mob mentality. It may reflect self-interest, in the good sense; it may reflect

ani v'afsi od—myself and nothing else; it may and often does represent a smug feeling that Orthodox Jews always know better. General Orthodox attitudes are entitled to a respectful evaluation, but they hold, and should hold, no unreflexive veto on the professional judgments of Orthodox professionals.

Matters controlled by *halakhah*, such as abortion or gay marriage, are obviously different. What follows, though, is not so simple. It is one thing—and unacceptable—for an Orthodox communal professional in a secular organization to insist on his or her own that Jewish law forbids abortion and therefore, in the name of the organization, unilaterally oppose legislation protecting abortion given overwhelming support among Jews for legalized abortion.

It is quite another—and even more objectionable—for that professional to passively accept organizational statements about abortion which distort Jewish tradition so that they read the relevant *halakhah* as if it were a National Abortion Rights Action League (NARAL) manifesto. It is not asking too much of an Orthodox professional to at least make the latter point. Having made the point, and as long as the resulting statement does not bear the Orthodox professional's name, I think no more can be required—except resignation if even this much is intolerable. To insist on resignation whenever an agency asserts a position in opposition to *halakhah* is to insist that Orthodox Jews cannot work for any secular Jewish organization with a broad public policy agenda.

Sometimes the Orthodox professional in a secular agency, alert to other points of view and perspectives, can inject considerations into the *halakhic* decision-making process. I can't speak of details, but in several matters in which I have been involved, my perspective from a perch at a secular organization injected issues into the debate which (properly or not) did not figure in the calculus of Orthodox organizations, given their overriding commitment to narrowly focusing on defending immediate Orthodox interests.

Almost yearly I get a call from a Jewish parent (frequently in an intermarriage) reporting from some out-of-the-way place that they are the only (first) Jew in the school district and that the Christmas program is so religious that their children being raised as Jews are un-

comfortable. Can I help them tamp down the Christian aspects of the Christmas pageant so that their children would better fit in?

There are all sorts of things that can be done to achieve that end, some legal, some political or educational. As a civil servant of a community dedicated in overwhelming numbers to the proposition that Jewish children should not be made to be uncomfortable by religious observance in the public schools, the required course of action appears easy.

But as an Orthodox Jew, indeed as a Jew interested in Jewish continuity, it is not so easy. Is it really in anyone's Jewish interest (certainly as understood from an Orthodox perspective) that children feel comfortable as the only Jew in a school? Should the community—that is, I as an Orthodox Jew—facilitate Jews in moving to communities where they are statistically bound to lose their children to assimilation and intermarriage simply because there is no critical mass of other Jewish children with whom to socialize? Should we tolerate policies relegating Jews to a second-class status to enhance their Judaism?¹⁰

How does one begin to answer such a question? And what to do if one's personal answer differs from the answer the majority of the community prescribes but there is no clear *halakhah* governing the matter, and one, in any event, cannot “prove” the correctness of one's own judgments?

The Orthodox Community's Declining Commitment to the *K'lal*

If, in dealing with the Orthodox, the problem for the Orthodox professional is how to express adherence to *halakhic* norms in the context of communal service, on the Orthodox right the problem is how to insist on a commitment to a larger, heterodox, Jewish community.

There is unquestionably a growing tendency in the Orthodox community to view the *k'lal* as mostly including *anshei shlomeinu* (people in our camp), people who share fundamental religious commitments. Others simply count for far less, except as targets for outreach. This view is manifest in the refusal to participate formally in joint efforts, whether protesting the intifada or in legal and other “political” endeavors.

An example: When the United States Congress was considering extending daylight savings time, Agudath Israel objected that the change would interfere with morning *minyan* during several weeks of the year. I pointed out that, on Friday afternoon, the change would during those same weeks also minimize *chillul Shabbat* (Sabbath desecration) by the non-Orthodox. The response was that for “our people” morning *minyan* was the marker of commitment. Shabbat observance could be taken for granted.¹¹

The tendency to separation is growing by leaps and bounds. *Magen David Adom* or other civil defense agencies in Israel are not worthy of support—we need our own *Hatzola*. In local communities, there is no impetus to improve municipal ambulance service. Instead *Hatzola* branches are created. *Hatzola* volunteers do marvelous work, but there is something perverse about investing large sums in *Hatzola* but not supporting modestly increased taxes to pay for better care for all.¹² The preference for “our own only” is indicative of a larger attitudinal problem.

Those who work for non-Orthodox communal agencies have inevitably rejected the narrow focus on *anshei shlomeinu* that characterizes that *hareidi* (and, increasingly, modern Orthodox) approach. We necessarily believe in the importance of considering the needs of all Jews. That commitment to *b’asher hu sham*—each Jew as he or she is, and the community as it is—is in considerable tension with a firm belief in the importance of *mitzvah* observance, which is largely not an important part of the lives of upwards of three-quarters of American Jews.

Does This Street Run Two Ways?

So far I have spoken largely of the Orthodox professional and what he injects into the non-Orthodox community. The street runs two ways. Perhaps some of the greatest value of Orthodox professional service comes in the transmission of non-Orthodox viewpoints into the Orthodox community—a contribution of increasing value to, and decreasing impact on, the Orthodox community as it becomes even more insular, with its own hermitically sealed institutions. Orthodox Jews don’t even read the same Anglo-Jewish newspapers and websites as does the rest of the Jewish community.

What concerns motivate the bulk of the Jewish community? Why? How does one approach a particular matter? How does Orthodoxy appear to those who share neither a commitment to *Torah min-ha-shamayim* nor an unshakable commitment to *havdalah bein yisrael l'amim*, however we might define it (which need not be the most extreme position)?¹³ Is there something the Orthodox community believes without examination that, in light of the different perspectives of non-Orthodox Jewry, merits reconsideration?¹⁴ Does it impose unnecessary costs on that community?

Some of *k'lal yisroel's* most passionate, dedicated, and effective advocates are not Orthodox Jews. Many are unsung heroes of communal work, some of whose contributions to the well-being of Orthodoxy are greater than those of professionals in Orthodox agencies, but in whose homes one could not eat.

I may grimace when I get emails sent on Shabbat from those who follow closely the follies of international organizations hostile to Israel, but there is no gainsaying their commitment and contribution to Israel's well-being. It easily exceeds that of many in the *haredei* community who continue to treat the State of Israel with contempt, spend more effort on repudiating the *heter mechira* than combating Hamas, and are perfectly content to send other people's sons into battle in pursuit of their political/religious program while their own children are exempt from military service.

I hope I don't sound patronizing. I don't mean to be. Some of the people I am describing are dear friends; we attend each other's *smachot*, we rely on each other for professional (and sometimes personal) advice, and we enjoy each other's company. I would be more than pleased to have their achievements on my résumé.

Whether this reverse function of Orthodox Jewish professionals serving in the non-Orthodox community will continue into the future is an open question. The Orthodox community at large is increasingly sectarian (though there is, paradoxically, also an element less insistent on any denominational lines), more like a sect than a denomination; increasingly unshakably convinced of its own probity, rectitude, and wisdom; disdainful of those who don't share its religious or political commitments; and largely lacking in visionary leadership. It shows less

and less interest in the entirety of the Jewish people, except as targets for *kiruv*.

All these facts together make it less likely that the presence of Orthodox professionals in secular community agencies will in the future have much impact within the Orthodox community. What has been achieved until now may represent a high water mark, destined for irreversible decline.

Some *Halakhic* Musings

One of the most difficult issues the Orthodox professional faces is the question of what to do when an employing agency embarks on a course of action that either directly transgresses *halakhah* or that expresses a point of view contrary to *halakhah*? What, then, is an employee to do?¹⁵

The answer probably should depend on the level of the employee's position, the amount of responsibility he or she holds for implementing the policy, and whether he or she has any discretion in the way the policy is implemented. It also matters whether one is personally asked to lobby or vouch for a particular problematic position—advise a gay teenager directly about sexuality; or serve on an ethics committee in a hospital that may authorize removal of medical care from the terminally ill—or that are several steps removed from the questionable action. One needs also to at least examine whether the position has collateral effects which will be useful to the Orthodox community.

It should matter what percentage of one's work (or the organization's work) trenches on *halakhah*. I would advise someone differently about taking a legal position with the ADL, where most of one's work would involve combating significant or insignificant anti-Semitism, than, say, the National Council of Jewish Women, an organization a wholly secular colleague describes as a troop of holy warriors for abortion. I would feel differently about taking a legal policy position with Hadassah—whose views on abortion are not much different than NCJW's—than I would about an Israeli policy position with the same organization (the latter a position for a long time held by an Orthodox Jew).

The analysis would presumably be similar for educational positions. Should an Orthodox Jew take a position that requires eliding, for example, *Torah min-ha-shamayim* (but not denying it) or inviting non-Orthodox teachers and rabbis to teach? (These are variations on the question Rabbi Norman Lamm addressed several years ago when, in the wake of publishing a book on the subject, he spoke about *Shma* to an audience at HUC-JIR in New York.)

The issue, however, is not only what the speaker actually says. Professor Shalom Carmy properly noted in an e-mail to me that what he calls “peek-a-boo” tactics with regard to the Divine origin of all of Torah have “a pernicious effect precisely because (unlike *kashrut* or abortion) it legitimates those positions within Orthodoxy, and it makes it more difficult for forthright Orthodox Bible students ... and it too often corrodes the religious and intellectual integrity of the people who practice it.”¹⁶

These questions need to be answered well above my pay grade—and it is not clear how many rabbis have the knowledge to answer such questions well—but I think on balance the answer should be that such activities should be permitted, because they have the potential to do so much good, but only so long as doing so does not lead inevitably to confusion about what one believes.

Finally, since one owes one’s employer one’s best efforts to the success of the employer’s enterprise, how does an employee’s refusal to aid the employer’s policy square with that obligation? Is a protest sufficient? Does the presence of an Orthodox Jew in a non-Orthodox organization necessarily lend credibility to the organization and its positions, creating confusion about what Orthodox Judaism has to say not dispelled by private remonstrations? Is one’s employment in a professional role a form of *ha-chzakat y’dei ovrei aveira* (strengthening the hands of sinners)? Obviously I think not, but getting there *halakhically* is not so easy; it is a conclusion that depends on difficult judgments. I return to these below.

Another set of problems, though less common, involves direct responsibility for implementing a program which in and of itself violates *halakhah*. This year, when AJCongress was planning its convention, the

question arose whether to provide only fully kosher meals. The reality is that almost no one attending the convention kept kosher. (For those who did, kosher food would gladly have been provided at no extra cost.) Formal dinners were to be kosher, but what of breakfast and lunch? The alternative was kosher-style meals. The cost differentials are quite substantial. Not only is kosher food more expensive, it becomes still more so when hotel surcharges for outside catering are included. The convention planners kept pressing me to allow only kosher-style meals.

Even before Madoff, we were under tight financial constraints. The decision was for the first time mine alone to make this year—but the money was not mine. The decision is now moot—I owe this much to Madoff and the recession—but what should the answer have been? If it were my personal money, there would be no question—*halakhic* or otherwise. It was not my money. Does that change the result?

In community after community, Ys and JCCs have determined to open on Shabbat. The given reason, which cannot be discredited as a sham, is that given the large number of “un-churched” Jews, Shabbat programming is a way to reach out to these Jews and provide Jewish cultural programming in the spirit of Shabbat—by which of course is not meant activities consistent with the *halakhot* of Shabbat. Unstated, but also inevitably coming into the calculus, is that health and gym facilities are important—often the most important—draws for membership (Jewish and non-Jewish), and these compete with private gyms, which are open seven days a week.

Can an Orthodox Jew be an administrator of such a facility? Can she be in charge of programming including Shabbat programming? Would the Jewish context of such facilities be substantially impaired (or their openness to the Orthodox community diminished) if Orthodox Jews left the employ of such places in protest of Shabbat openings?

In Manhattan, two Ys are now open in one form or another on Shabbat. As far as I can tell, the major Orthodox synagogues in the relevant communities have not led any protests against the Shabbat opening policy. Neither are they calling for a boycott of those institutions. If *rabbonim* and *kehillot* don't see the necessity to even protest,

why should communal employees, who do not have many alternative career paths open to them, feel an obligation to commit career suicide?

I don't know of any Orthodox employee penalized for objecting to Shabbat programs at any Y, or for refusing to assist in planning them. It is an interesting legal question of what would happen if an employee refused to comply. Could he claim a right to religious accommodation, or could the institution claim that the employee could not challenge its religious policy? The ability of JCCs to claim a religious exemption from the civil rights laws in their hiring proved crucial recently when the Lancaster, Pennsylvania JCC fired an employee for being a member of Jews for Jesus. Should Orthodox Jews attempt to undermine that principle?

The more common, and more difficult, problem involves policy. I, frankly, am not sure how to apply *halakhic* principle to these issues. When I took my job at AJCongress (albeit in a position that carried far less responsibility—and that was far more useful—than my present one), the Rav told me that I would have to leave my job if—twice—I was asked to violate *halakhah*, apparently contemplating that a single violation might be tolerable. What I don't know is exactly what the Rav meant by a *halakhic* violation.

I am confident that he did not mean any position contrary to that asserted by most of the Orthodox community, since the Rav knew perfectly well that the American Jewish Congress opposed aid to parochial schools endorsed by that community. Moreover, he once remarked to me that, in the struggle for the *shechita* exemption to the humane slaughter law my colleague Leo Pfeffer had been correct to oppose the hoisting and shackling ardently defended by (at least much of) the Orthodox community.

Three related but not necessarily identical principles appear to be relevant.¹⁷ A professional or *posek* confronting such a question must grapple with issues of *lifnei iver* (placing a stumbling block before the blind), a rabbinic prohibition of *mesaya yedei ovrei aveirah* (assisting sinners), and, in many cases most relevantly, *machzik y'dei ovrei aveirah* (supporting or endorsing sin or sinners).

In this group, I need not review in detail the fundamental principles of *lifnei iver*, of *lifnei*, and not *lifnei d'lefnei*¹⁸ (one step removed,

not two); *tre ivrei d'nahara* (that the sinner must be unable to commit the sin without assistance); and, at least according to some, where the object is likely or exclusively to be used for forbidden purposes.¹⁹ The *Mishneh la'Melech*²⁰ adds the further caveat that one must not take a direct and active role in the sin itself.

Presumably, too, one should consider the important principle established by R' Shlomo Zalman Auerbach,²¹ that in considering whether an action constitutes *lifnei iver*, one must look not only to immediate baleful consequences, but also to those of a longer time frame.

There, R' Shlomo Zalman considered the problem of the applicability in present circumstances of the *halakhic* prohibition on offering food to one who will not recite a blessing. He concludes that today one may do so, because the sin of not saying a blessing is less significant than the disdain for religious Jews generated by refusing to offer them food:

Since all persons must direct their steps and arrange their affairs for the sake of heaven, I think, with regard to someone who has a distinguished visitor who is not observant but who still loves (respects?) *b'nei Torah*, and supports *Torah* institutions, if the host will not deal with him in a mannered way with regard to food and drink and because in [technical] law it is forbidden to offer him food and drink because he won't wash his hands and recite a blessing, and to ask him to do so would appear to be an insult and diminution to his honor ... and as a result it is possible that he will be driven further from *Torah* and will ... hate ... all those who go in the *Torah's* way
....

I believe that it is appropriate to feed him ... and not to worry about the stumbling block prohibition. ... Since the entire prohibition is placing a stumbling block ... and if [the host] won't give him [food] to eat, the guest will stumble over a [more serious] stumbling block, there is no [stumbling block] at all. On the contrary, there is a saving from a greater sin
....

This is similar to one who amputates a finger to save his entire hand. He is not called a tort-feasor, but a savior.²²

An appended note—apparently written by R' Auerbach himself—observes that the *Hazon Ish*²³ appeared to disagree, at least in cases involving certain violations. Nevertheless, this *p'sak* was later attacked by others, and again defended by R' Auerbach.²⁴

If one accepts this *p'sak*, then there is room to ask whether at a time when half the Jews in America belong to no synagogue, and fewer still attend even weekly, the value of some tie to Jewish life no matter how attenuated, may outweigh the immediate problem of facilitating *chillul Shabbat* at a Y.

R' Moshe Feinstein reached the opposite conclusion with regard to a youth *minyán* where it was likely that people would drive to *shul* on Shabbat to allow their children to participate.²⁵ R' Moshe wrote, though, shortly after the Conservative rabbinate had purported to permit driving to synagogue on Shabbat, so perhaps he was concerned that a lenient ruling would be understood as ratifying that ruling, when adherence of worshippers at Orthodox synagogues to Sabbath observance was far weaker than it is today.

Another view to consider is that of Rabbi Yechiel Yaakov Weinberg, discussing the question of whether a *shochet* (ritual slaughterer) could sell meat to butcher stores in which the meat would not be checked for wounds or defects which would render the animal *treifa*. There, he wrote, “except for fear of the later authorities, I would say that in a case in which the *machshil* [the person creating the stumbling block] intends to perform a *mitzvah*, there is no violation of the stumbling block prohibition.”²⁶ That is, where, as in the case of the ritual slaughterer, his actions are taken in pursuit of the performance of a *mitzvah*, he need not worry that someone else will use the performance as a springboard for a later, distinct, sinful act.

Rabbi Weinberg confronted a person performing a formal *mitzvah*. What of “public policies” that may benefit the Jewish community (how measured or defined?) in a tangible and measurable way, but which can also be utilized for *halakhically* illicit purposes? Are these

mitzvot, too? Do they fit within Rabbi Weinberg's rubric? It is possible to define *mitzvah* so broadly that Rabbi Weinberg's suggested principle becomes an antinomian one, presumably not what he intended?

Resolving the JCC/Shabbat question—which, of course, is largely about silence, not affirmative endorsement—then, would appear to require a *posek* to make judgments (guesses?) about the long-term efficacy of these programs on adherence to things Jewish, and what the long-term benefit of that association might be to both the individual and the community.

Our hypothetical *posek* might also want to consider whether the sheer number of Jews identifying themselves as such is important even to the fully observant community here and in Israel. Presumably, a *posek* who thought the entire State of Israel an act of Satan likely would have a different evaluation of the importance of maintaining a critical mass of American Jews (6,000,000, not 600,000 Orthodox Jews) than would someone who valued it highly. A *posek* who denigrated Jewish peoplehood or political power would presumably evaluate these questions differently than one who accorded them some weight. It should be said again, plainly, the Orthodox community alone will lack clout in the halls of Congress, state legislatures, or governmental bureaucracy. Like it or not, we need the political clout of the larger Jewish community.

These questions are largely sociological and require a firsthand familiarity with the masses of American Jewry across the country, not just those in Borough Park or Bergen County. Unfortunately, many contemporary *poskim* appear simply to lack the firsthand knowledge to make such judgments. My impression is that, unlike Rabbis Weinberg and Auerbach, most contemporary *poskim* are less inclined to use a wide-angle lens in making these judgments, preferring to focus narrowly on the immediate ritual issue before them.

As was already noted, when a professional (social worker or psychologist) is approached for advice in a situation rife with *halakhic* overtones (involving, say, guiding a sexually active teen who comes from an Orthodox home), she is within the heartland of *lifnei iver*. Whatever may be the rules in such situations, they are removed from

the case of policy analysis and advocacy, where typically one is several steps removed from the sin itself. One may be arguing to legalize a sinful activity in the name of personal autonomy, but that approach leaves several steps between actually urging sinful activity on anyone. In this regard, it must be emphasized, only *lifnei iver*, but not *lifnei d'lifnei* (one step removed, not two) is forbidden.

No one in the Jewish or larger community has an abortion or enters into a same-sex relationship solely because an Orthodox (or non-Orthodox) employee of a Jewish organization signs a brief, testifies before Congress, or generally presses a policy statement on the subject. Nor, realistically, does the outcome much depend on what Jewish organizations do.

Are these effective principles or are they simply a way of easing the conscience of an Orthodox employee desperate to avoid quitting and having to find another job, perhaps an impossible task given the narrow set of skills Jewish communal workers hone in their career? Again, others can judge better and more dispassionately than I.

For myself, at least for as long as I had colleagues in the legal department, I referred almost all abortion matters to one of them (I kept my hand in with regard to “conscience” amendments allowing doctors and nurses to refuse to participate in abortions). While no statement on abortion has ever gone out in my name, when my colleagues were unavailable, I have on occasion allowed a brief to go out in the organization’s name on the subject after determining that it was consistent with organizational policy.

This is by no means nothing; but neither is it the same as handing a *Nazirite* a cup of wine across a river or signing as a witness on an interest-bearing note.²⁷ It should also matter—and I have acted on this distinction—whether the claim is made that abortion is a matter of a woman’s choice under Jewish law, a falsification, though a common one; or that given the differing religious views on abortion and the “intrusion” on personal liberty, the state should not regulate abortion. The latter is at least a debatable political proposition and one that in the end can be invoked to defend the right of those with religious objections to refuse to participate in abortions; the former is beyond the pale for an Orthodox Jew.

Other lines of demarcation suggest themselves. In the case of lawyers, a possible distinction is between representing a party or simply filing a friend-of-the-court brief supporting a party's position because of implications a decision will have for the Jewish community.

In *Church of the Lukumi Babalu Aye v. City of Hialeah*,²⁸ a Santeria church challenged a city ordinance banning ritual animal sacrifices that are not for the purpose of food consumption. Santeria is a syncretic faith, combining elements of Christianity and pagan animism, including animal sacrifice. The case had dual significance for the Jewish community. Most immediately it had the potential to adversely affect kosher slaughter; and, more urgently, it was the first case to arise after a disastrous Supreme Court decision greatly limiting the scope of the Constitution's Free Exercise Clause.²⁹

I was asked to represent the church. I was told by a distinguished *posek* that I could not, because this church was without doubt idolatrous. However, I was told, an *amicus* brief in support of the church would be acceptable. (Query: For AJCongress it would have been advantageous for me to actually represent the party. How does that situation enter into the *halakhic* calculus?) Apparently, Orthodox institutions received similar advice, since they filed or joined briefs in support of the church's challenge to the ordinance. Some challenged this decision, arguing that any support for idolatry was impermissible, whether in the form of direct representation or a friend-of-the-court brief.

Others can decide who had the better of the argument on its *halakhic* merits; I want to focus on the public costs of the stricter position. In the pluralistic society in which we function, ideological litmus tests are a barrier to functioning in a political and judicial world where much does not meet even the most relaxed of *halakhic* standards. Because our judicial system relies on the principles of *stare decisis* (precedent) and equality between faiths, a decision adverse to ritual slaughter in the case of pagans cannot be ignored or distinguished on the ground that Jews are monotheistic and ought to be treated differently.

This does not mean that context is irrelevant, or that one should never pass up an opportunity to express a point of view because of whom one must perforce support. Nor should one overstate the im-

portance of friend-of-the-court briefs (although in several cases Jewish groups were alone in raising relevant issues). It is, rather, a call for rejecting the opposite position—that one must never associate with people or positions with whom one has fundamental disagreements. In the universe we inhabit, this is a prescription for political and legal impotence.

The *Religious Land Use and Institutionalized Persons Act* has enabled many synagogues to be built over local land-use objection. It has also, predictably, enabled Hindu temples to be built. I co-chaired the committee that drafted that legislation. Reaching agreement required accommodating the needs and concerns of all manner of religious and civil liberties groups. It cannot be that the Orthodox community would have been better off not having someone familiar with its needs present as point after point was negotiated. Yet it is also the case that the desire to be at the table can blind one to the harm one is doing. It can be enticing and seductive to be in a position of power, and near to those exercising political power, regardless of the sacrifice of principle involved.

These are also not decisions easily delegated to a rabbi, even if there were many with the political or legal savvy to make such decisions. The correct answer often needs a degree of professional expertise (often in arcane areas) as well as delicate and not easily explained “political” judgments. I’m certain that on occasion I’ve been seduced into wrong decisions or gone further than I needed to as a representative of an agency. It is equally clear that a rule of ideological purity would come at significant costs.

Much turns on the character and probity of the individual professionals and on their religious sensitivities and knowledge. There will often be no single, mathematically calculable, answer, nor anyone else to ask.

M’saye y’dai ovrei aveira

The rabbinic form of *lifnei iver*—*m’saye y’dai ovrei aveira*—aiding the commission of sin—might be relevant, though here, too, it is hard to provide exact guidelines of how much the act must facilitate the sin

to be forbidden. This rabbinic prohibition is designed, at least in part, as *Tosafot* observes, to separate another Jew from sin (*l'hafrisho me-isur*). *Rashi* in *Gittin* 61a (*s.v. al ha-Sh'viit*) explains that the prohibition is limited to cases when the aid comes while the sin is being committed,³⁰ a limitation fitting the case discussed in *Tosafot* in *Shabbat* 3a, involving moving an object from one domain to another on the Sabbath. R. Weinberg, in his previously mentioned *responsa* cites *Rashi*, (*Avoda Zava* 85b) “*v'asur l'sayea ovrei aveira, ela porshim me'hem k'dei she'lo yargilu b'kach*”—“it is forbidden to aid sinners, but we separate from them that *they* should not be accustomed to sinning.” Participation is, on this view, a form of indirect endorsement. How direct is direct, though, is not terribly clear.

This difficulty in defining impermissible assistance will come as no surprise to anyone familiar with the secular law's struggle with delimiting aiding and abetting or criminal facilitation. How far back does one trace liability? How much should be required of citizens to ensure that they are not assisting the primary actor to do wrong? Must we police others? Each of these questions is as troubling in *halakhic* analysis as it is in secular law. Nevertheless, it does seem that *misayeh* is applicable only by joint participation in sin, rarely a problem for a Jewish professional in community relations agencies.

Machzik Y'dei Ovrei Aveira

More relevant to the Jewish professional is the third prohibition of *machzik y'dei ovrei aveira*—strengthening the hand of sinners, or perhaps better yet, encouraging or endorsing the actions of sinners. The *Mishna* states (*Sh'viit* 4:3): One can lease a field from a non-Jew in the Sabbatical year, but not from a Jew; and one may strengthen (or encourage) the hand of non-Jews in the Sabbatical year, but not the hand of Jews; and one inquires after their welfare because of the ways of peace.

In his commentary, *Maimonides* (*ad loc.*) explains, on the basis of *Gittin* 62b, that one may strengthen the hand of non-Jews only with words of encouragement, not actions—that is, one may wish the non-Jew success but may not actually aid him in his agricultural endeavors.

The *Yerushalmi* (*ad loc.*), however, records the view that one may suggest an interest in doing business with the non-Jewish farmer after the Sabbatical year by purchasing that which was planted and nurtured during the Sabbatical year.

Another *Mishna* in *Sh'viit* (5:6) states: There are implements that an artisan may sell during the Sabbatical year, for example the plow and all its accessories. This is the general rule: any [implement] that is designed for the purpose of sin is forbidden; that which can be used for forbidden and permissible purposes [may be sold].

Similarly, in *Mishneh Gittin* 5:9 we read: A woman may lend to her friend whose observance of the Sabbatical year is questionable, a sieve ... and or hand mill, or oven, but she may not sift with her, or grind with her; the wife of a *chaver* (one who observes laws of purity with regard to food) may lend to the wife of an *am-ha-aretz* (i.e., one not scrupulous in such matters) a sifter and may sift and grind ... with her, but once water is added to the flour and it [and the tithes in it] becomes susceptible to ritual impurity, she may not touch the dough, for we do not strengthen the hand of sinners. And in all these cases [the Rabbis] did not permit it, but for the ways of peace. One strengthens the hand of non-Jews in the Sabbatical year, but not the hand of Jews.

The category of *machzik y'dei ovrei aveirah*, strengthening the hands of sinners, appears to be different than the category of placing a stumbling block before the blind, in either biblical or rabbinic form.

First, and most telling, the terminology is different. If the *Mishneh* meant to categorize “encouraging sin” as a form of a “stumbling block” or “aiding,” there is no need for a separate category.

Second, since it is no sin for a non-Jew to work fields in the Sabbatical year, what possible stumbling block could there be in offering her words of encouragement? Third, at least according to the commonly accepted non-Maimonidean view that a stumbling block exists only when one assists a person in committing a sin that could not otherwise be performed by the person, how does saying “good luck” to a Jewish farmer planting a field in the Sabbatical year meet this condition? The farmer is already engaged in the sin; he is not undecided, asking advice. The words do not add anything physical or otherwise to what the farmer is already doing.

Nevertheless, Maimonides in his commentary to *Sh'viit* 5:3 insists that the *machzik* prohibition is one of placing a stumbling block before the blind. Apparently, equanimity in the face of sin can be taken as its endorsement, and hence as a biblically prohibited form of stumbling block. While Maimonides generally does not require “two sides of the river” for a violation of the stumbling block ban, the other questions listed above remain about this position.

Maimonides in his *Commentary on the Mishneh* to the parallel *Mishneh* in *Gittin* points out that all the leniencies in that *Mishneh* are a concession to “the ways of peace.”³¹ It would be odd to imagine permitting that which is biblically forbidden merely for the ways of peace. Indeed, Rashi in *Gittin*³² identifies the prohibition as one of the rabbinic form of *m'sayeh*, although he does not explain the use of disparate terms.

One principle that emerges from the *Mishneh* in *Sh'viit* 5:8, regarding the sale of an ox to a farmer not observing the Sabbatical year, is that what is permitted is only that whose purpose is ambiguous. Since an ox can be used for forbidden purposes (e.g., plowing) or permitted ones (e.g., eating), we are entitled to assume (*talinan*) that the permitted use is the intended one unless the purchaser explicitly insisted the forbidden purpose is intended. If he does, the sale is forbidden.

If so, asks *Tosafot*,³³ why invoke the principle of *darkei shalom*, in the *Mishneh* in *Gittin*? Since each of the vessels mentioned in the *Mishneh* has a permissible use, the principle of *talinan* (we assume a permissible use is intended) should be sufficient. What does the *darkei shalom* principle (ways of peace) mentioned in the *Mishneh* in *Gittin* as the basis of the leniency add to the analysis?

There are three answers to this question. The *Hazon Ish* suggests that the *talinan* presumption will vary in strength from case to case. In some cases, the presumption of permissible use is itself sufficient to overcome the “strengthening” concern, but not in others. Nachmonides³⁴ suggests that *talinan* principle works only where, as in the *Mishnayot* in *Sh'viit*, the person gains benefit from the transaction. The *Mishneh* in *Gittin*, however, deals with a loan of an object where there is no benefit to the owner.

By contrast, *Rabbeinu Tam* suggests that the *Mishneh* in *Gittin*, relying on the ways of peace, deals with a case where there is no permissible use. In such cases only *darkei shalom* is available as a permissive factor. A refusal to sell household goods does not generate animosity; hence in such a case it would be forbidden to sell to someone who certainly intends to use it for illicit purposes. A failure to loan a household item would generate animosity, therefore such loans are permissible.

From Nachmonides' and R' Tam's answers, it is likely that they do not see *machzek y'dei ovrei aveirah* as a biblical prohibition, *contra* Maimonides. Financial loss or communal upset would not set aside a biblical prohibition.

Rabbi Weinberg writes in the *responsa* cited above concerning the *shochet* that *Rabbeinu Tam*'s assumption that a sale does not generate ill will applies only to a sale of household goods, but not to a commercial sale, where, on the heels of a refusal to sell, ill will would be generated. Surely, this is true today where public accommodation laws ban religious discrimination.

Similarly, building on Nachmonides, and a series of other authorities, including the *Meshiv Davar*, R' Weinberg concludes that "what is permissible for *darkei shalom* is also permitted for one's livelihood," a rationale apparently applicable to the case of a communal employee.

One must ask whether maintaining communal unity through employment of Orthodox professionals would come under the rubric of *darkei shalom*. R' Weinberg's closing peroration is noteworthy:

And [in support of the lenient approach] it is the fact that by [selling them slaughtered meat] he brings them "under the wings of the presence of Judaism, as they see that God-fearing Jews excel in the characteristic of kindness and mercy. And exemplary conduct in the area of ... social ethics is a greater attraction than words of rebuke of people who only preach nicely. And our people—merciful ones the children of merciful ones—do acts of kindness and charity with whomever is a descendant of our father Abraham, even if they have drifted far from observance of our Holy Torah."³⁵

One last source. The *Gemara Nedarim*³⁶ reports that U'la was traveling to Israel in the company of two people. One slashed the throat of the other. The killer asked U'la if he had in fact killed his companion. U'la, afraid for his life,³⁷ told him to make sure the person's throat was fully slit. When he reached Israel, he asked R' Yochanan "Perhaps, God forbid, I strengthened the hands of a sinner." R' Yochanan answered that he was merely acting to protect his own life.

It is hard to imagine suggesting that it is permissible to encourage murder merely to save one's life, although such a reading cannot conclusively be eliminated. The easiest-to-defend reading assumes that the victim was already dead and that U'la was simply urging the murderer to vent his anger completely. U'la was concerned lest he be seen as having endorsed the murder, *ex post*; R' Yochanan reassured him that since his motive was solely self-preservation, not endorsing a vile act, he need not worry himself.

U'la's case and that of the *Mishnayot* in *Sh'viit* and *Gittin* regarding encouraging a non-Jew in the Sabbatical year involve different kinds of "criminal facilitation" than the sale of objects with an impermissible end use. In the latter case, one offers tangible assistance to the sinner; in the former, one leads someone to confuse sin with a desirable or endorsed activity. Such endorsement confuses the sinner as to his moral status and might lead others to sin themselves. The latter is the rubric most relevant in our context. The question is whether the "ways of peace" are sufficient to overcome this concern, and whether *darkei shalom* can be extended to cover the value of having an Orthodox presence in non-Orthodox circles.

At a JCPA meeting many years ago, the interfaith affairs specialist at the AJCommittee was speaking about evangelicals and their adherence to the literal truth of the Bible. He mocked that belief and then added, disparagingly, "but then we Jews have those theological primitives [my phrasing, his thought] who believe the entire Torah was given at Sinai."

I was the next speaker, assigned to address some by now forgotten constitutional issue. I began by doubting that anyone wanted to pay attention to what I had to say since I held the primitive religious views

that had just been dismissed. Did everyone in the room become a *ba'al t'shuva*? Certainly not. This is not a Shlomo Carlbach story. Did I make the point that that prior speaker's personal religious positions (biases?) needed to be discounted and not taken as gospel, because a familiar figure to them held those very views? Perhaps.

This review suggests that there are a range of factors to consider in evaluating the problem of *ha-chzakat y'dei ovrei aveira*. They suggest a need for an examination of contextual features, including benefits to participants, and possible financial loss. But we are left with a difficult question about the value of an Orthodox presence in non-Orthodox surroundings.

The Future

Whatever achievements Orthodox Jews have in the secular field are, as matters stand now, not likely to be replicated in the next generation.

First, the entire communal relations field is shrinking rapidly, and was doing so even before the current financial crisis. As was noted above, whatever funding is available is increasingly shifted to private foundations. The success of the Orthodox community masks the depressing erosion of secular Jewish identity and Jewish organizational life.

Second, communal salaries lag well behind those in the private sector and are inadequate to sustain the burden of providing one's children a yeshiva education, a fact noted in several reports issued by the AJCommittee under Steven Bayme's thoughtful leadership.³⁸ Orthodox Jews may have the commitment lacking elsewhere in the community, but they simply can't afford any longer to take communal jobs, especially in entry-level positions.

Third, it is harder to find common ground between Orthodox Jews and the rest of American Jewry—whether the subject is Israel and the peace process or domestic policy on a wide variety of issues. I suppose we agree on opposing anti-Semitism, but not on much more. The common peoplehood I grew up with appears to be dissipating.

Fourth, there is a real shortage of people to whom one can turn for advice on these matters. It is a cliché (and, I think, in large part an ill-founded one) to decry the absence of *poskim* of *halakhic* stature. Command of the material is not what is missing; it is breadth of vision, courage to depart from that which is regarded as acceptable and to defy a regnant *halakhic* consensus. Missing most of all is an organic connection with the whole American Jewish community.

Fifth, Jewish civil service jobs are less attractive because increasingly these jobs consist of figuratively carrying the briefcases of wealthy lay leaders. Discretion and initiative are no longer encouraged. In my side of the communal world—very broadly defined—I am hard-pressed to think of any rising star under age 50. But be the cause whatever it is, the fact is as I have described it. Harvard and Yale would be less attractive places for young scholars if there were no academic “stars” younger than 50.

Jewish communal life is no different—and a generation from now there will be a shortage of talent unless steps are taken now to correct current trends. I’m not holding my breath. I have had an interesting career, but those who come after me will likely have far less interesting ones.

CONCLUSION

Some readers may remember a set of dueling speeches offered at the University of Notre Dame by Governor Mario Cuomo and Representative Henry Hyde. Governor Cuomo labored to explain why a Catholic should be allowed as a matter of Catholic doctrine to hold public office, even if, as a result, he or she had to sanction abortion. Representative Hyde argued to the contrary.

At the time I thought that Representative Hyde had the better of the argument, that Governor Cuomo’s arguments were little more than an effort to avoid grappling with the question of whether his obligation to his conscience compelled his resignation. Rereading my essay, I wonder if I am not guilty of the same lack of candor—or is life simply more complicated than I thought?

NOTES

1. My own path to AJCongress was purely accidental. A lawyer working on a project at Columbia Law School asked me on the way to our law school *mincha minyan* whether I wanted part-time summer work at AJCongress summarizing cases. A full-time job offer followed. Today (until Madoff) an Orthodox law student could easily seek out a career in Jewish public service that I could not have imagined.
2. *Iggerot Moshe*, Y.D. (1) # 149.
3. Indeed, Orthodox participation in AJCongress was originally not limited to staff positions, but included organizational representation. When AJCongress was truly a congress, with “representatives” from other organizations participating in its deliberations, the National Council of Young Israel and the late Rabbi Emanuel Rackman participated actively.
4. See K. Caplan, “The Ever Dying Denomination: American Jewish Orthodoxy,” in M. Raphael, *The Columbia History of Jews and Judaism in America* (2007), 167-188.
5. M. Stern, “On Constructively Harnessing Tension Between Laity and Clergy” in S. L. Stone, *Rabbinic and Lay Communal Authority*, 129, 154-157 (2006).
6. It may be more accurate to say that there is a return to power of lay people. The founders of the AJCommittee, Jacob Schiff and Louis Marshall, for example, were independent forces, not dependent on a large cadre of professionals. Some at the Forum indicated to me privately that better relations exist in local Federation agencies. I don’t doubt that there are some healthy relationships. But the trend described in the text seems accurate across the community and parallels trends in philanthropy generally.
There are, of course, other factors at work, including a possible gravitational shift from national agencies to local ones.
7. See Rabbi J. B. Soloveitchik’s *Al-ha-Teshuva* and *Kol Dodi Dofek*.
8. Query: What are the *lifnei iver* implications where temporal goods point one way, spiritual goods another? A *ba’al tshuva* once approached several *kiruv* workers and myself for advice. He had finished law school but did not have a job. Should he nevertheless take a year off to learn? I told the *kiruv* workers that they needed to tell him that he would be harming his career if he did so. They felt that if they did so, he would not take time away from a legal career to study and therefore not grow spiritually. We each thought the others’ advice a violation of *lifnei iver*.
9. More precisely, following the Rav’s position that *halakhah* requires the matter to be decided with regard to national security, and on which professional judgments are relevant.
10. At an earlier forum, Rabbi Aharon Lichtenstein posited that the answer might be yes. Others did not agree.
11. Contrast this with a recent *p’sak* of the Karliner/Stoliner rabbi. He asked the municipality of *Pisgat Ze’ev*, where his *kehilla* (community) is located, not to close the street in his community’s neighborhood. Doing so, he said, would cause

- people to drive longer distances on *Shabbat* (and generate resentment). I recently heard of this *p'sak* from R' Yaacov Bleich, the chief rabbi of the Ukraine.
12. Rabbi Saul Berman relates that he once asked the Rav whether he could collect funds for *pidyon shivuyim* (redeeming captives) to help a congregant make bail. The Rav said no. Rabbi Berman objected that jails were dangerous places and inmates subject to assault. The Rav said: in that case you are obligated to seek to improve the jails for all, not plead specifically for Jews.
 13. See D. Berger, "Jews, Gentiles and the Modern Egalitarian Ethos: Some Tentative Thoughts," in M. Stern (ed.) *Formulating Responses in an Egalitarian Age* (2005) at 83 ff.
 14. With regard to Israel, much of the American Orthodox community has descended into extreme religious/nationalist chauvinism, promoting policies that are politically untenable—whether in Israel or in the larger world—and which offer no foreseeable path to peace.
 15. For purposes of discussion, I focus only on "line employees" with some responsibility for either devising or implementing policy. I have not thought about support staff, such as accountants or clerical staff.
 16. Similar problems will confront a Hillel director or an army chaplain asked to arrange a Reform or Conservative prayer service.
 17. For a comprehensive treatment of the issues, including a discussion of the *mitzvah* of rebuke (*tochacha*), see N. E. Rabinovitch, "Kol Yisrael Areivim Zeh Ba'zeh, 11 *Techumim* 31 (1990).
 18. *T. B. Avoda Zara* 14; see, for a quick summary, *Ritva; Avoda Zara* 6b s.v. *Minayan*.
 19. See *Minchat Shlomo, Shi'vit* 5: s.v. *lifnei iver; Ritva; Avoda Zara* 63a.
 20. *Malveh v'loveh*, 4:2.
 21. *Minchat Shlomo (Kama)* 35.
 22. R' Nathaniel Helfgot called my attention to a similar idea expressed by R' Akiva Eiger to Y.D. 181:6. R' Eiger there suggests that there is no *issur* of *lifnei iver* in a situation in which one's assistance ends up minimizing the level of *issur* that the fellow would have done if one did not offer help. So, for example, R' Eiger suggests there is no *lifnei iver* for a woman to shave the head of a man who was planning to shave himself, for if he had done it himself he would have violated two *issurim*, while she has no *issur* of being *makif*. In this case, since she ended up lessening the sin, there is no *lifnei iver*. This might have some relevance to some of the Orthodox involvement in minimizing some *aveirot*. This may be an application of the general principle of minimizing *issurim* when possible. See *Yoma* 83a.
 23. *Chazon Ish Shiviit* 12.
 24. II *Minchat Shlomo (Tinyana)* 100 (3). The editor of the second edition added a note to the initial responsa that, R' Auerbach, when challenged, limited this *p'sak* to private matters, not departures from established communal customs. It is noteworthy that this *responsa* generated so many challenges.

25. *Iggerot Moshe, Orach Chaim* (I) # 98-99
26. *S'reidei Eish*, Y.D. 9:20.
27. See *Mishneh la'Melech, Malveh v'loveh*, 4:2 (barring direct participation in a usurious transaction as a lender, even where other lenders will make the same loan). The distinctions there offered to distinguish the case of the *Nazir* are not necessarily persuasive, but the *Mishneh la'Melech's* rule is accepted by contemporary *poskim*.
28. 508 U.S. 520 (1993).
29. *Oregon v. Smith*, 494 U.S. 872 (1980).
30. See *Shabbat* 3a, *Tosafot s.v. Baba; Rosh ad loc* 1:1.
31. As is indicated below, not all agree with this view.
32. 62b.
33. *T.B. Gittin* 61a, *s.v. Ma-shelet*.
34. *Gittin* 61a.
35. *S'reidi Eish*, *supra*, Y.D. 9; 26
36. *Nedarim* 22a. For a full discussion, including variant readings, see R. S. Z. Auerbach, *Minchat Shlomo ad loc*.
37. *Rashi, ad loc, s.v. amar lei*.
38. To make my larger point, Bayme's work has been crucially important in identifying problems from intermarriage to the cost of living Jewishly. It is inconceivable that he could have refused to study Reform or Conservative Judaism sympathetically.