

ROY SIMON

Should Orthodox Jews Become Lawyers?

Should Orthodox Jews become lawyers? Law is a highly respected career in most quarters in America, but many Orthodox Jews wonder whether they will be able to maintain their own halakhic standards while practicing law in the secular world.

The problem in a nutshell is this: The mandatory codes of ethics that govern American lawyers sometimes require lawyers to engage in conduct that Jewish law forbids, or forbid conduct that Jewish law requires. A common example of this tension concerns the duty of confidentiality to a client versus the duty to warn others of danger posed by a client. In most states, the strict secular rules of confidentiality prohibit lawyers from disclosing a client's intention to commit a financial fraud. Violating these confidentiality rules can lead to suspension or disbarment. Which authority should an Orthodox Jewish lawyer follow—secular law, or Jewish law? And if a lawyer must follow the secular law, is it possible to reconcile the secular obligation with Halakhah?

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Rabbi Michael J. Broyde, an ordained Orthodox rabbi and a professor in both the School of Law and the Department of Religion at Emory University, has eloquently addressed the confidentiality dilemma.¹ Rabbi Broyde describes a Jew's "obligation to rescue" as follows:

Jewish law requires one to inform a Jew of harm that might befall him and which could be avoided; this is based on the verse: "Do not stand by while your brother's blood is being shed." . . . [T]his obligation applies not only to saving lives, but also to preventing monetary losses. . . .

The secular codes of professional responsibility governing lawyers, however, are generally not broad enough to permit the warnings required by Jewish law. Each state chooses its own rules to govern lawyers (including the duty of confidentiality), and these rules vary from state to state, but all American jurisdictions prohibit a lawyer from disclosing protected client information unless the client consents or a specific exception to the confidentiality rule applies (such as a client's intention to commit a violent crime).² If an Orthodox Jewish lawyer learned that a client intended to engage in conduct that would harm a fellow Jew financially but not physically, the secular rules mandating confidentiality would clash with Jewish law.³

This creates a serious dilemma, because a lawyer who complies with halakhic disclosure obligations by violating the secular confidentiality rule would risk suspension or disbarment.⁴ Rabbi Broyde therefore finds an escape hatch in Jewish law: "When a lawyer knows that he will be disciplined by his fellow lawyers and thus lose his ability to earn a living, most agree that the obligation to rescue is suspended."⁵ Thus, the conflict between the Jewish duty of disclosure and the secular duty of secrecy can be resolved by using a form of halakhic loophole or "trump card": Jewish law does not ordinarily require a Jew to risk his or her own livelihood to rescue another Jew from financial harm.

That halakhic loophole, however, troubles many Orthodox young men and women. "Why should I get myself into this dilemma in the first place?" an Orthodox man or woman may ask. "Why go into a profession in which I may have to violate Jewish law? Even if I am halakhically allowed to do so within the professional context of the legal system, why embark on a career fraught with so many halakhic minefields? Why not pursue a career that is less likely to bring me into confrontation with Jewish law?" In this essay I attempt to answer those questions. I do not dispute that halakhic difficulties exist, but I argue that the Jewish community should encourage Orthodox Jews to become lawyers despite those difficulties.

In *Parashat Shofetim*, we read the beautiful injunction: “*zedek, zedek tirdof*”—“Justice, justice, thou shall pursue.” (Deut. 16:20.) This verse tells us that the concept of justice is integral to living a Jewish life. But why is “justice” said twice? Many commentators have offered explanations, and I will humbly offer my own. As Jews, we must strive to act justly in our relations with our fellow man. This is conveyed in the first iteration of the word “justice.” Because we treat our fellow human beings with justice, we are worthy to live in the world that God has created. This first meaning of justice is thus crucial to the survival of the Jewish people. But we must also strive to ensure that the outside world—the vast world that surrounds our tiny Jewish population— treats Jews with justice. This is the meaning of the second iteration of the word “justice”— and this second meaning of justice is equally crucial to the survival of the Jewish people. We live in a time when nearly every day brings reports that more Jews have been killed or wounded in senseless acts of terrorism, or that more synagogues have been defaced or destroyed. We also live in the towering shadow of September 11th, a day that has become a symbol of anti-law and anti-justice. Each fresh report of violence is a reminder that if the rule of law were to break down, then extremists, terrorists, and tyrants would be free to wreak havoc on law-abiding citizens, especially Jews.

When lawlessness and tyranny thrive, Jews suffer. Never in the history of the world has a government with contempt for the rule of law been good for the Jews. One cannot hate law and love Jews, for Jews place the rule of law on the highest pedestal. Our Torah is not just the history and folk lore of our people; it is a book of law. We revere law. We love law. We spend hours upon hours in shuls and *yeshivot* and *shiurim* learning the intricacies of Jewish law. We survive as a people because we abide by Torah law, including the command that we pursue justice.

Yet abiding by Jewish law alone is not enough to assure our survival as a people. We also need an atmosphere that allows us to study and to survive. If the rule of law ever broke down in America—if mobs roamed the street as they did in Russia and Poland in the early 1900’s or if dictators replaced democratic forms of law with tyrannical law as the Nazis did in the 1930’s—we could no more survive as observant Jews in America than we could survive on Mars. American society, though flawed in many ways, has enabled shuls, day schools, and *yeshivot* to flourish, and has enabled tens of thousands of Orthodox Jews (as well as other Jews) to earn enough to send themselves, their children, and millions of their dollars to Israel. All of this depends on maintaining the rule of law in

America. Is there not a holy purpose in a secular career that preserves, protects, and improves our system of justice and the rule of law?

I am not suggesting that young Orthodox Jews should choose a career in law over a career in Jewish education, or in the rabbinate, or in Jewish philanthropic and service organizations. We should encourage every young person to consider a career that directly advances Jewish life. But most Orthodox Jews—certainly most Modern Orthodox Jews—choose careers in the secular world. As religious and ethnic discrimination decreases in the United States, increasing numbers of Orthodox Jews are entering careers in accounting, academia, engineering, computers, politics, psychology, social work, business, medicine, sales, marketing, and other secular fields. Is a career in law less worthy?

Apart from the historical and ideological arguments that I have just developed, I believe that Orthodox Jews should consider a career in law because Orthodox lawyers are good for the Orthodox Jewish community. I say this for several reasons.

First, because Orthodox Jews live in a particular cultural environment and have particular concerns and constraints, Orthodox Jews may often prefer lawyers who understand the Orthodox world and can relate to Orthodox lives. Many decisions implicate or turn on Halakhah. If Orthodox clients want their lawyers to follow halakhic standards, they presumably want lawyers who know Halakhah, or who are at least willing to listen carefully to a client's concerns about Halakhah. Of course, a non-Orthodox lawyer (or even non-Jewish lawyer) may be willing to follow a client's instructions regarding Halakhah, but in general an Orthodox lawyer is more likely to be receptive to a client's halakhic concerns, and may even be able to bring up halakhic problems that the client may want to consider.

In particular, an Orthodox lawyer may be sensitive to the possible role of a *beit din* in situations where a Jewish client has become embroiled in a dispute. An Orthodox lawyer will at least understand the concept of a *beit din* and may even be able to advise on the procedures likely to be followed in a *beit din*. I am not suggesting that every Orthodox lawyer fully understands how a *beit din* works. Nor am I suggesting that every Orthodox lawyer knows the halakhot pertaining to a *beit din*. But I doubt that many non-Jewish lawyers know much at all about a *beit din*, and I suspect that even fewer non-Orthodox lawyers have ever studied the halakhot pertaining to a *beit din*.

I am well aware that many Jewish clients do not raise halakhic concerns with their lawyers and do not ask their lawyers for halakhic advice;

but for clients that want a lawyer who is sensitive to Jewish law, there may be no substitute for an Orthodox lawyer. Ideally, an Orthodox client will want to do whatever is necessary to abide by Halakhah. A desire to abide by Halakhah may require a client to be more forthcoming in discovery than the secular rules demand, or to be less aggressive in negotiations or on cross-examination than the secular law and customs permit, to choose a few common examples. An Orthodox lawyer might readily agree to these deviations from secular laws and customs, especially if the Orthodox lawyer believes that these conditions are mandated by Halakhah. Thus, Orthodox lawyers may actually help clients adhere to Halakhah far more often than the same lawyers encounter dilemmas requiring them to violate Jewish law to preserve their license and livelihood.

Orthodox clients may also want Orthodox lawyers for cultural reasons. For example, an Orthodox lawyer will never telephone an Orthodox client on Shabbat, or set up a deposition for a major Jewish holiday, or set a trial date for a major fast day, or ask embarrassing questions about an Orthodox client's side curls. Of course, Orthodox clients do not want Orthodox lawyers exclusively, any more than female clients want only female lawyers or Hispanic clients want only Hispanic lawyers. But no doubt some Orthodox clients strongly prefer Orthodox lawyers. Orthodox lawyers should be available to serve these clients.

Unfortunately, I cannot say that it is always good for the Jews to have Orthodox lawyers representing Orthodox clients. When criminal charges or civil fraud suits are brought against Orthodox nursing home owners, or Orthodox rabbis, or Orthodox businessmen, the public may react negatively to Orthodox defense lawyers. It may seem that Orthodox Jews just seek to "protect their own" rather than to protect society or to pursue justice. This perception is partly a cost of our system of justice. Many defense lawyers are vilified for representing "guilty" clients. But Orthodox lawyers are not required to lend their talents to Orthodox clients who represent the worst rather than the best of Jewish tradition. Any Orthodox lawyer who does not want to risk the negative image of representing a repugnant Orthodox client can simply decline the case. No lawyer is required to represent a client that he or she cannot stand.

Another strong practical reason to encourage Orthodox Jews to become lawyers is money. On the average, lawyers are financially successful. They earn more money than people in most other professions, and some lawyers earn significantly more than the average income in most other professions. When Orthodox lawyers earn sizeable sums, they are likely to contribute sizeable sums to charity. This is vital for the

Jewish community, especially for Orthodox Jewish charities and for Orthodox religious and educational institutions. Orthodox lawyers are far more likely to give to *yeshivot*, to shuls, and to other Orthodox institutions than Jewish lawyers who are not Orthodox, and Orthodox lawyers are exponentially more likely to give to Jewish charities and institutions than lawyers who are not Jewish. If significant numbers of Orthodox Jews decide that they should not become lawyers, then a major source of financial support for the Orthodox Jewish community will be correspondingly diminished.

Still another practical reason to encourage Orthodox Jews to pursue careers in law is that lawyers have historically served as political and community leaders in America. Many of America's founding fathers and presidents have been lawyers, including Thomas Jefferson, James Madison, Patrick Henry, and Alexander Hamilton. Abraham Lincoln was among the most skilled and famous lawyers of his time. Franklin D. Roosevelt practiced law in New York City for several years before abandoning law for politics.

The tradition of lawyers as leaders has continued into our era. In New York, for example, high-ranking lawyers include Governor George Pataki and former Governor Mario Cuomo; former New York City Mayors Rudy Giuliani and Ed Koch; and Senators Charles Schumer and Hillary Clinton. Orthodox Jewish lawyers are not excluded from these high leadership positions. Senator Joseph Lieberman of Connecticut and New York State Assembly Leader Sheldon Silver are two prominent examples of high-ranking Orthodox Jewish lawyers. Of course, few people of any religion reach those heights. But lawyers are prominent in every community on school boards, in city government, in shul administration, in charitable organizations, and in other civic organizations.

Lawyers rise to these leadership positions for several reasons. Lawyers are trained to analyze and solve problems. Lawyers are also trained to draft and dissect legislation, which gives them a strong foundation to serve as lawmakers. Lawyers also learn investigative and organizational skills that are useful when conducting inquiries and marshaling evidence on public policy questions. Finally, lawyers study public speaking and persuasive writing so that they can get their ideas across to large audiences.

As more Orthodox Jews become lawyers, we can anticipate that more Orthodox Jews will assume leadership positions at every level of American life, inside and outside the Jewish community. This increase in leadership roles outside the Jewish community should produce

greater sensitivity to issues that concern the Orthodox community, maintain protection for freedom of religion, and perhaps produce more government benefits for the Orthodox Jewish community, such as vouchers that can be used toward tuition at Jewish day schools, bus transportation to Jewish day schools, and related financial benefits.

On a larger scale, lawyers are essential to help strengthen and reinforce the secular laws, institutions, and values that have protected Jews in America for more than two hundred years—the Constitution, freedom of speech, freedom of religion, freedom of the press, America’s elaborate and open system of justice, and America’s bedrock belief in the rule of law. These laws, institutions, and values not only prohibit oppression of Jews but protect against chaos in society at large. As Jews, we have an obligation to help build and maintain a system of justice for ourselves and for all of society. Lawyers have always been instrumental in building and maintaining systems of justice, and they remain so today. Our long term interests as Jews demand that we continue to play a role in preserving, protecting, and improving the legal infrastructure that makes Jewish life in America possible.

Up to this point, I have explained why Orthodox Jewish lawyers are good for the Orthodox Jewish community. Now I will briefly suggest why legal careers are good for Orthodox Jews.

Orthodox Jews are well suited to legal careers because they have typically spent an enormous amount of time studying Jewish law before they even reach law school. Anyone who has spent even a small amount of time studying Jewish law realizes that secular law is built on the foundations of Jewish law. The dialectical reasoning process, the principles of statutory construction, the development of exceptions, the nuances of language, the respect for rabbinic law, the necessity of finding a “proof text”—all of these Jewish concepts are present in closely analogous forms in secular law. For example, in American law, the Constitution forms the nearly immutable foundation of our law. Statutes must comply with the Constitution, and statutes that are constitutional cannot be altered by courts—but statutes are interpreted by the courts, just as the *Humash* is interpreted by rabbis in the oral law, because language is fraught with ambiguities and informed by intent and context. Every Orthodox lawyer understands these analogies. Moreover, Orthodox lawyers in general are well trained from an early age in the concepts and methods of reasoning employed by secular courts.⁶ Conversely, Orthodox lawyers who continue to learn Jewish law can contribute to *shiurim* by adding insights gleaned from their study of secular law.

Orthodox Jews are also well suited to law because law is a helping profession. Lawyers are in a service business. The lives of lawyers are dedicated to helping others, and lawyers make a living solving the problems of their clients, obtaining redress for victims, defending the rights of individuals and corporations, and generally ensuring that clients obtain their legal rights.

Lawyers also perform extensive pro bono services. For example, the rules that govern the legal profession typically urge lawyers to render at least fifty hours of pro bono (free) service each year to those who are unable to pay.⁷ This is in the best Jewish tradition of service to the poor.

Finally—and you are likely to find this surprising—legal careers are well suited to Orthodox Jews because legal jobs increasingly permit flexible hours. Of course, many lawyers put in punishing hours. Burning the midnight oil is common for lawyers who work at large law firms and for sole practitioners struggling to serve their old clients and attract new ones—and for many lawyers in between. Clients, courts, and law firms put great pressure on lawyers to work hard, to produce high quality work, and to meet tight deadlines, even if meeting those deadlines requires lawyers to spend inordinate amounts of time away from their families, friends, and communities.

But the legal profession is increasingly turning to part-time lawyers and “per diem” lawyers.⁸ Both part-time and per diem positions make law a viable career option for people who do not want to spend full time on a professional career. Part-time jobs are especially attractive to young parents, or to men or women who want to spend substantial time learning.⁹ In addition, lawyers who work in government jobs or in corporate legal departments tend to have relatively reasonable and predictable hours. Unlike jobs in private practice, jobs in the government or “in-house” at corporations are more likely to be “nine to five” jobs, with little or no work in the evenings or on weekends and little or no travel. Those legal jobs should also be attractive to Orthodox Jews.

Conclusion

The Orthodox community should not discourage young men and women from entering a career in the law. Orthodox lawyers are good for the Orthodox Jewish community because they contribute financial support, community leadership, and assistance to Orthodox clients that others may not be able to provide. Moreover, law is an attractive career for Orthodox young men and women because secular law is closely

related to Jewish law, because lawyers are dedicated to helping others, and because the legal profession increasingly permits lawyers to work flexible hours, part-time hours, and predictable hours.

As in all endeavors in life, a career in law poses halakhic challenges to an observant Jew. But as Rabbi Broyde showed several years ago, nearly all of these halakhic challenges can be overcome. I therefore hope that readers will encourage young men and women in the observant community to pursue careers in law.

Notes

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1. *The Pursuit of Justice and Jewish Law: Halakhic Perspectives on the Legal Profession* (Ktav, 1996). Rabbi Broyde holds an unusual dual position at Emory—he is both an Associate Professor of Law at Emory University School of Law and the Academic Director of the Law and Religion Program. He was ordained (*yoreh yoreh ve-yadin yadin*) as a rabbi by Yeshiva University.
2. Definitions of protected client information also vary from state to state. See Stephen Gillers & Roy Simon, *Regulation of Lawyers: Statutes and Standards* 83-87 (New York; Aspen Law & Business 2003), 83-87. The most common formula is that lawyers must protect all “information relating to the representation of a client. . . .” See Rule 1.6(a) of the American Bar Association’s Model Rules of Professional Conduct. However, New York and various other states instead protect “confidences” (defined in New York as “information protected by the attorney-client privilege”) and “secrets” (defined as “information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client”). See New York’s Disciplinary Rule 4-101(A).
3. In the famous OPM scandal, for example, a New York law firm learned that two clients from Brooklyn had been engaged in a massive fraud (eventually totaling more than \$210 million) against various banks and corporations. When the lawyers confronted the clients, the clients promised not to continue the fraud. The lawyers then consulted two experts on the Code of Professional Responsibility, who said the lawyers were bound to keep the information about their clients’ past fraud secret, and that the lawyers could not blow the whistle on future frauds unless they *knew* (rather than merely suspected) that the clients were planning to commit fraud again in the future. The clients went on to defraud banks and others of many million dollars more. Eventually, the lawyers withdrew from the representation to avoid assisting in the fraud any further, but they did not inform the clients’ new law firm of the reason for their withdrawal. The clients then went on to

commit an additional \$15 million in fraud using the new law firm before the fraud was finally detected. See Roy Simon and Murray Schwartz, *Lawyers and the Legal Profession* (Charlottesville; Michie 3d ed. 1994), 93-96.

4. See American Bar Association Standards for Imposing Lawyer Discipline, §4.21. “Disbarment is generally appropriate when a lawyer, with intent to benefit the lawyer or another, knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.” Reprinted in Gillers & Simon, 88.
5. Broyde 28 (citing several sources).
6. Of course, in many *yeshivot* and day schools girls do not formally learn *gemara*. However, even these girls are likely to hear *gemara* at home and are steeped in respect for law as one of society’s highest values.
7. See ABA Model Rule of Professional Conduct 6.1, which provides, in part: “A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.” The rule goes on to list ways in which a lawyer may fulfill this requirement. Many states have adopted rules similar to ABA Model Rule 6.1.
8. Part-time lawyers work for a single employer but work less than the “full-time” number of hours each week. Per diem lawyers get paid by the day rather than earning a salary, and they typically work for many different employers—sometimes simultaneously, sometimes one after the other—rather than working for only one employer for a prolonged period.
9. To pick just one example, a new shul in my community recently hired a rabbi who is a part-time lawyer at a major New York City law firm.