

Open Orthodoxy! ***A Modern Orthodox Rabbi's Creed***

A V R A H A M W E I S S

Halakhic Principles

AS A MODERN ORTHODOX RABBI, I PROFESS AN UNEQUIVOCAL commitment to the truth, validity and eternal applicability of the Halakhic system.¹ No less than my brethren of the Orthodox Right, I believe in *Torah mi-Sinai*, the law given by God at Sinai, to which the Jewish people committed itself.² *Torah mi-Sinai* is a form of heteronomous law, a structure of law that operates independent of any individual, imposing its standards and guidelines.

Torah mi-Sinai reflects a system of God-ethics, that is, a system of ethics that comes from God. Halakha (from the root *halokh*, "to go,") is not blind; it rather guides us and is the mechanism through which individuals and society can reach an ideal ethical plateau—"Its ways are ways of pleasantness, and all its paths are peace" (Proverbs 3:17).³ One of the challenges of halakha is to understand its ethical message, i.e., how does the law contribute to the repairing of the world (*tikkun olam*).

The system of God-ethics differs from ethical humanism, which is solely based on what human beings consider to be proper conduct. Human thinking tends to be relative. What is unethical to one person is ethical to another. If, however, the law at its foundation comes from God, it becomes inviolate. No human being can declare it null and void. Heteronomous law assures that one does not succumb to one's subjective notions.⁴ Therefore, the law must be kept even when its ethical underpinnings are not understood.

Aside from Sinaitic law, there are laws that are non-Sinaitic. Halakha is a partnership between God-given law and laws based on the biblical mandate: "And you shall rise and go to the judge of your day" (Deuteronomy 17:10).

This verse in part refers to laws that are logically deduced by the rabbis from the Torah or from the thirteen hermeneutic principles given at Sinai. These laws are interpretive in nature (*ha-dinin she-hoziu al darkhei ha-sevara*). While they were set down by the rabbis, they have biblical status (*de-Oraita*), since they emerge from the Torah.⁵

The fundamental difference between Sinaitic law and non-Sinaitic law, according to Maimonides, is that laws from Sinai, coming as they do directly

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from God, are free from controversy. There is only one view on every issue. Non-Sinaitic law, on the other hand, which is the result of rabbinic interpretation, is subject to controversy.⁶ After all, two rabbis of equal piety, intellectual ability, or stature may disagree—and both may be correct.

Thus, Halakha has a degree of flexibility. While bordered by a system that is external to humankind—the God-given law, *Torah mi-Sinai*, to which Jews are subservient—it also includes laws derived by the rabbis, concerning which there may be more than one view. It follows, therefore, that Halakha is a living structure that operates within absolute guidelines, yet one which is broad enough to allow significant latitude for the *posek* (decisor) to take into account the individual and his or her circumstances. Simply put, within air-tight parameters, Halakha is flexible.

In the same framework, all those who hold to Orthodoxy contend that “new Halakha,” which emerges constantly from the wellspring of the halakhic process, must always be based on the highest caliber of religio-legal authority. There must be an exceptional halakhic personality who affirms the new ruling on the grounds of sound halakhic reasoning.

Rabbinic laws legislated by the Rabbis form a third area of Halakha. They include: decrees (*gezeirot*), ordinances (*takanot*), and customs (*minhagim*), which are “made” by the rabbis and are deemed rabbinic in nature. It must be clear, however, that decrees and ordinances, and for that matter “permissive customs,” even if they have the imprimatur of leading *poskim*, can only be viewed as binding if they are accepted by the religiously observant community; they cannot be viewed as binding if they are only accepted by those who are, in any case, not committed to observing the law.⁷

To be sure, I readily acknowledge that there exist differences in approach within the Halakhic system among the Modern Orthodox rabbis like myself and my Orthodox Right counterparts. For example, Modern Orthodoxy more readily sees Halakha as flexible within rigid parameters than the Orthodox Right. Additionally, in halakhic observance the Modern Orthodox community is more open to halakhically-grounded innovation—like the institution of Yom Hashoah as a day commemorating the Holocaust—while the Orthodox Right is wary of virtually all innovation, fearful that it will lead to a breakdown of halakhic norms. Moreover, Modern Orthodoxy distinguishes between *humra*—stringency—and Halakha, recognizing that when *humra* becomes Halakha, it blurs the Halakha by redefining the line of the permissible and the prohibited. Still, despite variations in style and approach, the system that we hold as holy sets us fundamentally apart from our Conservative co-religionists whose vision of the Jewish legal process is so very different in each of these three fundamental areas of Halakha: *Torah mi-Sinai*, rabbinic interpretation, and rabbinic legislation.

The belief in *Torah mi-Sinai* is, for all Orthodox Jews, the foundation of faith and at the core of the Halakhic process. Conservative Judaism does not subscribe to this teaching. Moreover, in the area of rabbinic law, we Orthodox—Modern and Right alike—contend that legal authority is cumulative, and

that a contemporary *posek* can only issue judgments based on a full history of Jewish legal precedent. In contrast, the implicit argument of the Conservative movement is that precedent provides illustrations of possible positions rather than binding law. Conservatism, therefore, remains free to select whichever position within the prior legal history appeals to it.⁸ Likewise, we adhere and turn to the wisdom of the most distinguished religio-legal authorities in making Halakhic determinations. Not so the Conservatives. Truth be told, when the Conservative movement faced some of its most controversial “new *halakhot*,” such as the ordination of women, it turned away from its own Talmudic scholars and experts in Halakha, who had almost universally rejected the reasoning upon which this new practice was to be based, and who have since virtually all left the faculty of the Jewish Theological Seminary.

Finally, in understanding the value of rabbinic law legislated by today’s rabbis, it must be appreciated that at this juncture in our people’s history in America, the Orthodox community is blessed with large numbers of ritually observant Jews. Across the spectrum of Orthodoxy, myriads of people meticulously keep Shabbat (the Sabbath), Kashrut (the Dietary Laws), *Taharat ha-mishapahah* (the Laws of Family Purity) and pray three times a day. Thus, if a “permissive custom” is accepted, it can become binding. This is not true of Conservatism’s constituency, which is generally not composed of ritually-observant Jews. Thus, only in our community if a “permissive custom” is accepted, can it be meaningful.

Ideological Issues

But if we Modern Orthodox share with the Orthodox Right the same fundamental Halakhic principles, we do part company on some very basic ideological issues.

1. Torat Yisrael

There are two areas in which we differ from the Orthodox Right vis-à-vis *Torat Yisrael* (the Torah of Israel). The first relates to the issue of *kodesh ve-hol* (commonly translated as the holy and the profane or the secular).

For the Orthodox Right, disciplines that are not pure Torah, are *hol* (profane). *Hol* is studied the better to understand *kodesh* (the holy)—through chemistry, for example, one can better evaluate the kashrut of food products. Or *hol*—like language—is studied so one will be a cultured member of Western civilization, and Torah will be more respected. Or *hol*—such as medicine—is studied to be able to provide for one’s family or one’s charity. But *hol* is intrinsically not *kodesh* and can never become *kodesh*.

We Modern Orthodox disagree. Chemistry, language, medicine, and all disciplines are potentially aspects of Torah. In the words of Rav Kook, “There is nothing unholy, there is only the holy and the not yet holy.” Study Torah and it will give new meaning, new direction, new purpose, and in the end, sanctify *hol*.

Hol is not intrinsically *hol*; it can become *kodesh*.⁹ In a word, there is nothing in the world devoid of God's imprint. The way one loves, the way one conducts oneself in business, the way one eats—all are no less holy than praying and fasting.¹⁰

In the area of *Torat Yisrael*, we Modern Orthodox also disagree on the meaning of *da'at Torah* (literally, Torah knowledge). The Orthodox Right maintains that the views of their rabbinic leaders must be followed without question even in non-halakhic areas. We in the Modern Orthodox camp also revere the wisdom of our great rabbinic authorities. But in non-halakhic areas their rulings are to be weighed carefully, and not to be treated as binding *psak* (decisions). For our community, *da'at Torah* means leaving medical decisions to the doctors and military strategy to the generals. Our different approach to *da'at Torah* especially surfaced in the Soviet Jewry struggle. Following the *da'at Torah* of their rabbis, the Orthodox Right opposed public protest, insisting that the only way to help oppressed Jewry was through quiet diplomacy. Despite the decrees of these authorities, the Modern Orthodox community ignored their decision and were in the vanguard of public protests. Sovietologists acknowledge the crucial role that public protest played in gaining the freedom of Soviet Jewry.

Even in purely halakhic areas, we part company in our understanding of *da'at Torah*. For the Orthodox Right, *da'at Torah* means that decisions made by the rabbis close off all discussion; in Modern Orthodoxy on the other hand, it sets the foundation from which discussion ensues. Dr. Lawrence Kaplan writes: "While *pesak* always leaves room for more discussion, for further analysis, and for responsible criticism, the whole purpose of *da'at Torah* is to close off and suppress discussion. It enables one person or one group to impose, *ex cathedra*, a personal, particular viewpoint on all persons or all groups—and no questions asked!"¹¹

In sum: for we Modern Orthodox, if *da'at Torah* means to revere the wisdom of our great rabbinic authorities, like Rav Yosef Dov Soloveitchik, of blessed memory, we believe in it. If, however, it means to follow blindly the great rabbinic authorities in non-halakhic areas or to close off discussion in purely halakhic areas, we disagree.¹² We respect Rav Soloveitchik's *da'at Torah* precisely because he was a person of enormous human wisdom and insight. He understood that *da'at Torah* was not to be imposed; that it was to be persuasive rather than authoritarian.

2. *Am Yisrael*

Treatment of the "other" is yet another way the Orthodox Right diverges from the Modern Orthodox. By "other," I refer to non-Jews, and for that matter, to Jews who are not observant—all of *Am Yisrael* (the people of Israel).¹³

For the Orthodox Right, non-Jews are by and large accepted, but not embraced. Historically, this attitude may be an outgrowth of millennia of Jewish persecution by non-Jewish governments. Or, perhaps, it emerges from the school of thought that insists that chosenness means that the soul of the Jew is on a higher level than that of the non-Jew; hence the non-Jew is of lesser value.¹⁴ The

Orthodox Right's interaction with non-Jews is primarily based on a minimalist understanding of *darkhei shalom* (the concept of "the paths of peace"):¹⁵ be kind to the "other" so they will be kind to you. As a consequence, the universal agenda of the Orthodox Right is limited. Rarely does one find efforts in that community on behalf of non-Jews who are suffering from hunger, homelessness, and AIDS.

The philosophy of Modern Orthodoxy by contrast is that chosenness is not a statement of Jewish soul-superiority; *rather it defines the mission of the Jew as being of a higher purpose*. As a consequence, our relationship to non-Jews is predicated on the principle that every human being is created in the image of God, and, thus, our responsibility is to reach out to non-Jews. This is the meaning of *darkhei shalom*. *Shalom* is one of God's names. As God is merciful to all, so must we follow the ways of God (*darkhei Shalom*) and be merciful to all. *Darkhei shalom* is not a pragmatic concern based on self-interest; rather, it evinces the highest of ethical standards—the challenge to be caring to all.¹⁶ While being concerned for all, there is recognition of our primary responsibility to our larger family—the community of Israel. And the Modern Orthodox community insists that an enlightened sense of national identity, rather than contradicting universal consciousness, is in fact a prerequisite for it.

Similar patterns emerge when comparing the Orthodox Right and the Modern Orthodox on the subject of non-observant Jews. The Orthodox Right should be commended for sponsoring some programs of outreach. Still, with the exception of such groups as Lubavitch and Aish HaTorah, the Orthodox Right has minimal contact with non-observant Jews. Few non-observant Jews pray, or otherwise interact Jewishly, with the Orthodox Right.

By contrast, Modern Orthodox teaching is based on the writings of Rav Kook. He writes that the key covenantal relationship between God and His people is the *brit bein habetarim*, the "covenant between the pieces" (Genesis, chapter 15). Here at God's behest, Abraham is *chosen* as the father of the Jewish people. The *brit* is based on the family model. If you're born into the family, you become for all eternity part of the Jewish nation. This is *brit avot*, the covenant of the fathers. To be sure, there is a second covenant in the Torah: *brit Sinai*, the covenant at Sinai, in which we become a Jewish nation. It is expressed through a commitment to the 613 commandments. You have a *choice* of accepting or rejecting. It's not built in; it's not part and parcel of one's being.

Rav Kook writes: "The sanctity of chosenness is eternal. It is greater and holier than the portion which is dependent upon choice." Rav Kook was a deeply religious and observant Jew; commitment to *mitzvot*, the sanctity of choice (*kedushat ha-behirah*)—that is, the Sinaitic covenant—was central to his religious being. But for Rav Kook, what defines the Jew is the sanctity of chosenness (*kedushat ha-segulah*)—that is, being part of the family.¹⁷ For as important as is ideology, family supersedes. *Yisrael af al pi she-hatah, Yisrael hu*; a Jew, even one who sins, is a Jew, and should be embraced.

The distinction between the Modern Orthodox and the Orthodox Right's approach to non-observant Jews manifests itself in the area of outreach.

For the Orthodox Right, the goal of outreach is to convince those being reached to become fully observant members of the Orthodox Right. For Modern Orthodoxy the goal is not only the observance of ritual, but the stirring of Jewish consciousness, the lighting of a spiritual fire, allowing those touched to chart their own direction. Inherent in this approach is the fundamental element of process. Even if one chooses to remain less observant, he or she is fully embraced and accepted in the Modern Orthodox community.

Moreover, outreach in Modern Orthodoxy is based on the principle that those reaching out have much to learn from those being reached. From this perspective, the very term "outreach" is inaccurate for it implies a unilateral relationship. A more appropriate term would be "encounter" which describes a mutual interaction in which all parties benefit and acquire deep respect for the other. And the term also evokes how each of us, souls ignited, become involved in a process of continuous religious striving and, in this sense, come to encounter our inner spiritual selves.¹⁸

3. *Medinat Yisrael*

We Modern Orthodox also part company from the Orthodox Right on the religious meaning of *Medinat Yisrael* (the modern state of Israel). For the Orthodox Right, the state of Israel has no religious significance because the Messiah has not yet come and will not come until God wills it.¹⁹ Modern Orthodoxy, on the other hand, insists that Israel, the state, has enormous religious meaning; indeed, for many Modern Orthodox Jews it marks the beginning of the period of redemption, *reshit tzemihat ge'ulatenu*.

There are variants to this position that still fall within the ambit of Modern Orthodoxy. Rabbi Ahron Soloveichik, for example, is of the opinion that the state of Israel marks the end of night, not necessarily the actual dawn of a new day. He suggests that the text of the prayer for Israel be amended to *she-tiheyeh reishit zemihat ge'ulateinu*, we pray that it [the state of Israel] become the dawn of our deliverance.²⁰ Whether one is of the opinion that redemption has started or is about ready to start, is not crucial. What is crucial to Modern Orthodoxy is the central role that Jews and the State of Israel play in bringing about the redemptive period.

The view that human beings ought to play an active role in bringing that era about, is based on the principle that redemption comes *kima*, in small steps.²¹ This does not mean that we are always moving forward. There are moments when the process stands still; there are moments when it is in reverse. In fact, there is no certainty that *reshit tzemihat ge'ulatenu* cannot stop. It can. And if it does, it may have to be started up again. As much as we yearn for redemption, this theory goes, redemption yearns for us. As much as we await the Messiah, the Messiah awaits us. As much as we search for God, God, says Rabbi Abraham Heschel, searches for us.

Here, Modern Orthodoxy merges with Religious Zionism. For us, the modern state of Israel is important not only as the place of guaranteed political

refuge; it is not only the place where more *mitzvot* can be performed; and it is not only the place where, given the high rate of assimilation and intermarriage in the Diaspora, our continuity as a Jewish nation is assured. It is rather the place, the only place, where we have the potential to carry out the "chosen people" mandate. In exile, we are not in control of our destiny; we cannot create the society Torah envisions. Only in a Jewish state do we have the political sovereignty and judicial autonomy that we need to be *or la-goyim*, a "light unto the nations," to establish the society from which other nations can learn the basic ethical ideals of Torah.

There is one other important distinction between Modern Orthodoxy and the Orthodox Right relative to the State of Israel. Modern Orthodoxy views the government of Israel as having religious significance notwithstanding the fact that its leaders are not halakhically observant. This view emerges from the writings of Rav Kook. He maintains that in the absence of the halakhic *melekh* (the Jewish King) the powers of the government revert to the people, who in turn have the authority to invest these powers in whomever they choose. The leaders of their choice then have the status of *malkhut Yisrael* (the kingdom of Israel).²² From this perspective, the government of Israel has religious value and religious meaning. It follows therefore, that if the government has the status of *malkhut*, an individual has the right to disagree with government policy, but can never regard those policies as being null and void. Dissent is acceptable, delegitimation is not.

4. Women's Roles²³

Modern Orthodoxy sustains a subtle position divergent from both those who believe that women are innately unequal, and from others who maintain that women must be equal in all ways. While women are equal in value to men, they have different preferred roles. Jewish law, writes Rabbi Saul Berman, "does not mandate for women marriage, procreation or household duties." On the other hand, "since . . . our continuation as a people depended upon the voluntary selection by women of the role of wife-mother-homemaker, the law encourage[d] the exercise of that choice."²⁴

Hence, although the primary role of women is to see to it that the private function of Jewish ritual and societal concerns are carried out,²⁵ Modern Orthodoxy not only supports women's equality in the work place, it encourages women to assume a central role in the synagogue, school, and communal setting. This is manifested through women's prayer groups, women learning on the same quantitative and qualitative level as men, and the full participation of women on the highest levels of institutional leadership. Additionally, women's rights must be protected in cases where they are the victims of recalcitrant spouses. This protection is manifested through social and religious sanctions against spouses who refuse to grant a *get* (religious divorce) as well as the insistence on the signing of prenuptial agreements guaranteeing a *get* to women in cases of civil divorce.²⁶

5. *Pluralism: Contact with the Conservative and Reform Movements*

The Orthodox Right avoids all contact with the non-Orthodox, so as not to give them legitimacy. While not accepting the positions of the Conservative and Reform Movements on the Halakha, Modern Orthodoxy has adopted the position of Rabbi Samuel Belkin, the late president of Yeshiva University, who insisted that there are many areas—e.g., defense of Israel, Soviet Jewry—where our agendas overlap.

Speaking at the 40th anniversary of the Synagogue Council of America (November 6, 1966), Rabbi Belkin said: "Some say that the main goal of the Synagogue Council is to help in creating a spirit of unity in the American Jewish community. Here . . . I disagree. In the things in which we differ we can have no unity, nor should it be expected of us . . . particularly of Jews of Orthodox orientation. In the things which we fully agree upon and in which all of us are deeply concerned, we are the most united people in the world. If Russian Jewry is denied the religious liberty to bake matzos for Pesach . . . if the borders of the state of Israel are threatened . . . if an anti-Semitic movement generates in any part of the world, all Jews are united as one."²⁷

In past years, I've come to see that there are more opportunities than those pointed out by Dr. Belkin, for the movements to interact. Consciously or not, we have all learned from each other. The Orthodox movement has in some measure emulated the Conservative movement's model of the synagogue as a community center. The Reform and the Conservative movements' greater sensitivity to day-school education and increased emphasis on ritual and learning Torah in Jewish life has much to do with Orthodox influence. And there is much more to be learned. Orthodox Jewry should adopt elements of the Reform and Reconstructionist universalistic agenda of *tikkun olam*, "repair of the world." At the turn of the twentieth century, one prominent Orthodox rabbi declared that Orthodox Jews would do well to learn from Conservative Jews how to give *tzedaka* (charity) and how to show respect for rabbis.²⁸ Reform would be strengthened if it experimented with the Orthodox position of mitzvah as the state of being "commanded."

Yet, I agree with Dr. Belkin in that we cannot unite on every issue. I do not view Reform and Conservative Judaism as being correct on a whole variety of issues, from *Torah mi-Sinai* to patrilineal descent²⁹ to acceptance of homosexuality to their approach to Halakha. Similarly, Conservative and Reform Judaism do not view Orthodox Judaism as correct. The Reform movement sees *gittin* (Jewish divorce), for example, as being outdated. And most in the Conservative movement insist on egalitarian prayer. The Orthodox practice of counting only men for a minyan is, for them, sexist.

For myself, pluralism does not mean that the respective movements agree on every issue, rather pluralism means that each movement ought to present its beliefs with conviction, while recognizing that it is not the only one caring passionately about the Torah, land, and people of Israel. Additionally, each

movement must find a way to profess its principles without compromise, while giving dignity, respect, and love to those with whom they disagree. Finally, each movement should be open to learn from each other. For me, this understanding extends not only to the Conservative and Reform on the left, but to those on the Orthodox Right as well. While the Modern Orthodox community has emphasized creative dialogue with the left, we have been remiss in strengthening our relationship with, and giving respect to, the Orthodox Right.

Still, I believe that those on the Orthodox Right who contend that we're better off without the Conservative and Reform movements ought to heed the words of Rabbi Aharon Lichtenstein, one of the great Torah giants of our generation. In a *Tradition* magazine symposium that dealt with the non-Orthodox movements, he wrote: "Nor do I share the glee that some feel over the prospective demise of the competition. Surely, we have many sharp differences with the Conservative and Reform movements and these should not be sloughed over or blurred. However, we also share many values with them and this, too, should not be obscured. Their disappearance might strengthen us in some respects, but would, unquestionably, weaken us in others. Can anyone responsibly state that it is better for a marginal Jew in Dallas or in Dubuque to lose his religious identity altogether rather than drive to his temple?"³⁰

Not only should Orthodox leaders recognize that the other side is not the enemy, Reform and Conservative leaders should do so as well. Our energies should not be expended on castigating other movements, but rather on impacting the majority of American Jews who are unaffiliated and whose greater involvement in Judaism must be our central focus.

6. *Public Protest*

During the most recent decades, the Orthodox Right has opposed public protest as a means of helping oppressed Jewry. This approach is predicated either on the belief that God will intervene when God wills or the belief that public demonstration will lead to severe backlash. By contrast Modern Orthodoxy is open to public protest, maintaining that it is a halakhic mandate to work in partnership with God.³¹ What we have learned from fifty years ago is that public protest does not render our community more vulnerable, rather, it protects our community.

For the Modern Orthodox, quiet diplomacy is crucial; but public protest is the engine that makes quiet diplomacy work. Advocacy on behalf of beleaguered Jewish communities, is crucial; and public protest, as long as it remains peaceful, comprises a significant instrument in social change. The miraculous exodus of Soviet Jewry is an example of the necessity of both public protest and quiet diplomacy.³²

Open Orthodoxy

In each of these ideological realms, the common denominator that distinguishes Modern Orthodoxy from the Orthodox Right is openness. Modern

Orthodoxy is open to secular studies and views other than those of their rabbis; open to non-Jews and less observant Jews; open to the state of Israel as having religious meaning; open to increased women's participation; open to contact with the Conservative, Reform, and Reconstructionist movements; and open to public protest as a means of helping our people.

It is for this reason that I believe that the term that best describes this vision of Orthodoxy, is "Open Orthodox." It is open, in that our ideology acknowledges, considers, and takes into account in varying ways a wide spectrum of voices. It is Orthodox, in that our commitment to Halakha is fervent and demanding.³³

The key to strengthening Open Orthodoxy is the reconciling of more rigid halakhic practices, which I believe are positive, with our open ideological agenda. It is this tension that is difficult to live with. But it is the dialectic between different ideas that ultimately sets Open Orthodoxy apart from the Orthodox Right. The Orthodox Right deals in absolutes—their closed ideological agenda is a natural offshoot of their halakhic fervor. Open Orthodoxy does not see this offshoot as necessary. For the Open Orthodox Jew, true and profound religio-legal creativity and spiritual striving emerges from the tension between the poles of strict halakhic adherence and open ideological pursuits. They appear to be opposites when in fact they are one.³⁴

It is the failure to live this dialectic that has led to the rightward defection of many within our camp.³⁵ This is because people are searching for genuine religious expression in prayer, Torah study, and halakhic observance. Too often, what they see, however, is an Open Orthodoxy that is open ideologically, but compromising in its halakhic standards. Their immediate reaction, therefore, is to search elsewhere. The majority of places where this genuine expression is found is at institutions and in communities that are halakhically rigid and ideologically closed. Hence, the challenge today is for Open Orthodox parents and institutions to be ideologically open, while intensely committed to halakha. It is in these settings where, I believe, spiritual striving can best thrive.

Some Final Thoughts

The world is changing, and so is the Jewish community. Orthodoxy is moving to the right for a variety of reasons: The larger world has moved both religiously and politically to the right; with assimilation spiraling, the knee-jerk reaction is to move inward, to circle the wagons and cut the losses; *da'at Torah* makes the right more attractive, it's absolutist and comfortable; and there is a sense—which I believe erroneous—that Open Orthodoxy is a compromise, and thus a non-authentic movement.

At the same time, Conservative Judaism is moving leftward, closer to Reform, which is in the area of ritual moving right. In time, I believe, the Conservative and Reform movements will merge and, Conservative Judaism,

despite its efforts heretofore to resist, will yet subscribe to Reform's adoption of patrilineal descent as a definition of Jewishness. Thus, for countless numbers, a new definition of Jewish nationhood will emerge.³⁶

Standing between the Orthodox Right and Conservative Judaism is our Open Orthodoxy, a distinctive movement, with its own ideology, although sharing fundamental halakhic commitments with the Orthodox Right. Recently, the Union of Traditional Judaism (UTJ) has emerged out of, and away from, the Conservative movement. Those who have moved to the right of the Conservative movement will need over the coming time to define precisely where they stand in the configuration of ideology and halakha, and should be encouraged to identify with the teachings of Open Orthodoxy.

It was Rabbi Eliezer Berkovits who once quipped: "Who is a Jew? One whose grandchildren are Jewish." For far too many American Jews, their grandchildren are not, nor will they be Jewish. Today, world Jewry is struggling for its very soul. In the United States, for example, the 1990 survey of the U.S. Jewish population conducted by the Council of Jewish Federations, concluded that the majority of American Jews see Judaism as irrelevant to their lives.

What is happening in the United States is representative of what is taking place among all Diaspora Jewry. If the tide will be turned, even in small measure, it will be through the prodigious efforts of all segments of the community whose commitments include sound halakhic and ideological integrity. Open Orthodoxy with its unique message must play a critical role in this struggle.

NOTES

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1. See Maimonides in his Introduction to his Commentary on the Mishnah who posits that Halakha can be divided into three categories: God-given law; laws derived by the rabbis based on logic and the 13 hermeneutic principles which had been received at Sinai; rabbinic decrees, ordinances and customs. What follows is a presentation of how Modern Orthodoxy and the Orthodox Right agree in their understanding of each of these types of law. Later on we shall see how in each of these areas, we Orthodox, Modern and Right alike, fundamentally disagree with our Conservative co-religionists.

2. Maimonides, *ibid.*, notes that Sinaitic law consists of interpretations received at Sinai of the Scriptures (*perushim me-kubolim mi-pi Moshe*) and laws which have no intrinsic connection with the Scripture but are of Sinaitic origin (*halakha le-Moshe mi Sinai*).

3. See, for example, Maharsha, end of Yevamot.

4. For an analysis of the distinction between ethical humanism and ethical monotheism, see Dennis Prager and Rabbi Joseph Telushkin, *Nine Questions People Ask About Judaism* (New York: Simon and Schuster, 1986), pp. 17-39.

5. See Harry C. Schimmel, *The Oral Law* (Jerusalem/New York: Feldheim Publishers, 1971), pp. 62, 63.

6. See Maimonides in his Introduction to his Commentary on the Mishnah. Other *rishonim* (early commentaries) disagree with this distinction.

7. See Tosafot to Pesahim 51a, s.v. *'ata* and Maimonides in his Introduction to his Commentary on the Mishnah. See also Maimonides, *Code*, Laws of Rebels 2:5.

8. I first heard this distinction from my dear friend Rabbi Saul Berman.

9. See Rabbi Norman Lamm, "Two Versions of Synthesis," in *Faith and Doubt* (New York: KTAV, 1986), pp. 69–81.
10. See Rav Joseph B. Soloveitchik, *Halakhic Man*, translated by Dr. Lawrence Kaplan (Philadelphia: The Jewish Publication Society of America, 1983), pp. 30–39.
11. Dr. Lawrence Kaplan, "Rabbi Isaac Hutner's 'Daat Torah Perspective' on the Holocaust: A Critical Analysis," *Tradition* Vol. 18, No. 3 (Fall 1980): 235–248.
12. We would of course disagree with those in the Orthodox Right who understand *da'at Torah* as a quasi form of *ruah hakodesh*. Rabbi Bernard Weinberger seems to support this opinion. He defined *da'at Torah* as a "special endowment or capacity to penetrate objective reality, recognize the facts as they really are and apply the pertinent halakhic principles. It is a form of *ruah hakodesh*, as it were, which borders, if only remotely, on the periphery of prophecy." See Rabbi Bernard Weinberger, "The Role of the Gedolim," *The Jewish Observer* (October 1963).
13. I use the term "non-observant" in this essay because of its popular understanding. The term, however, is inaccurate as even if one does nothing, one is observing the 365 prohibitive commandments. It would be more appropriate to refer to Jews as "less observant" or "more observant."
14. See Rabbi Judah HaLevi's *Kuzari* 1:27–43, 95, 101–103, and Rabbi Schneur Zalman of Liadi's *Tanya*, chapters 1, 2.
15. Gittin 61a.
16. Rambam, *Code*, Laws of Kings 10:12, Laws of *Avadim* 9:8. See also Rabbi Walter Wurzburger, "Darkhei Shalom," *Gesher* 6 (1977–78): 80–86.
17. See Rav Avraham Yitzhak ha-Kohen Kook *Igrot Ha-Raiah* (2:565).
18. For more on the approach to outreach within Modern Orthodoxy see Avraham Weiss, "Creating A Kiruv Center," *Jewish Action* Vol. 55, No. 1 (Fall 1994): 71–75.
19. See the "three oaths" quoted in Ketubot 111a. One is that Israel will not return to its land by force. There are a variety of responses to this position. They include: the oaths are Midrashic (homiletical) not halakhic (religio-legal in nature); and the establishment of the modern state of Israel was approved by the United Nations and hence does not violate the oath. There is another important response. Amongst the "three oaths" is an oath that non-Jews will not oppress Jews. Once this oath was violated, the Jewish community has the right to defend itself even if it means liberating the land of Israel by force. Rabbi Ahron Soloveichik offers this last response in "Israel's Day of Independence," in *Logic of the Heart, Logic of the Mind* (Brooklyn: Genesis Jerusalem Press, 1991), p. 186. See Rabbi Norman Lamm, "The Ideology of the Neturei Karta According to the Satmarer Version," *Tradition* Vol. 13, No. 1 (Fall 1971): 38–53.
20. See Rabbi Ahron Soloveichik, "Israel's Day of Independence," in *Logic of the Heart, Logic of the Mind* (Brooklyn: Genesis Jerusalem Press, 1991), pp. 184–188. See also Rav Yosef Dov Soloveitchik's *Kol Dodi Dofek*. The phrase *reishit zemihat geulateinu* is found in the prayer for the welfare of the state of Israel.
21. See *Midrash Rabbah on the Song of Songs* 6:10. "Rabbi Hiyya and Rabbi Simeon ben Halaftha were once walking in the valley of Arbel in the early morning, and they saw the dawn coming up. Rabbi Hiyya said . . . 'even so, shall the deliverance of Israel break forth . . . little by little, then it begins to sparkle, then it gathers strength, and then it spreads over the sky.'"
22. Rav Kook, *Mishpat Kohen* 144:14–17.
23. I believe that the role of women is perhaps the most pivotal issue that makes Modern Orthodoxy unique. While I have treated the subject briefly here, I have written a book devoted to this topic which discusses in depth the status of women in religious life entitled *Women at Prayer* (New Jersey: KTAV, 1990).
24. Rabbi Saul Berman, "The Status of Women in Halakhic Judaism," *Tradition* Vol. 14, No. 2 (Fall 1973): 16.
25. See Avraham Weiss, *Women at Prayer* (New Jersey: KTAV, 1990), pp. 1–11.
25. Recently the Rabbinical Council of America approved a pre-nuptial agreement as formulated by Rabbi Mordechai Willig. It stipulates that for every day that husband and wife are separated even prior to divorce, the wife is entitled to demand of her husband a specified per diem sum for her support. Both husband and wife agree pre-nuptially to come before a previously designated

bet din to arbitrate the *get*. Should the wife refuse to appear before the court, or fail to abide by the court's decision, the husband's financial obligation is terminated. See Avraham Weiss, "The Modern Day Agunah: In Retrospect and Prospect," in *The Pre-Nuptial Agreement, Halakhic and Pastoral Consideration* (New York: Aronson, 1996).

27. To my knowledge the speech was never published in a journal. I found it in a Yeshiva University two-page reproduction of the talk made available to students after it was given.

28. This statement was made by Rabbi Zvi Hirsch Masliansky, the first Yiddish preacher of the Educational Alliance. The statement is found in the *American Hebrew* (January 4, 1901). I am indebted to Dr. Jeffrey S. Gurock for bringing this to my attention. See Dr. Jeffrey S. Gurock in *American Jewish Orthodoxy in Historical Perspective* (Hoboken, NJ: KTAV, 1996), p. 24.

29. Avraham Weiss, "Patrilineal Descent Revisited," *Palm Beach North Jewish Journal* (April 16, 1996).

30. Rabbi Aharon Lichtenstein, "The State of Orthodoxy: A Symposium," *Tradition* 20:1 (Spring 1982): 47–50.

31. See Dr. Aron Barth, *The Modern Jew Faces Eternal Problems* (Jerusalem: The Religious Section of the Youth and Hechalutz Department of the Zionist Organization, 1956), pp. 66–74, "The Partnership."

32. For an analysis of the efficacy of public protest on behalf of Soviet Jewry, see Avraham Weiss, "Public Protest and Soviet Jewry," *Midstream* (February 1987): 25–28.

Whether public protest is effective, is a dispute that has engulfed the Jewish people. It goes back to the Biblical altercation between Jacob and Esau. Some suggest that Jacob's bowing to Esau illustrates how Jews should interact with non-Jews. Others insist that Jacob's behavior was wrong, indicating how Jews should not act. See *Genesis Rabbah* 75:6, 75:11. See also Ramban on Genesis 32:4 and Seforno on Genesis 33:4.

The controversy reached its crescendo with the dispute between Rabbi Akiva and Rabbi Yohanan ben Zakkai during the era of the destruction of the second temple. Asked his heart's desire, Rabbi Yohanan ben Zakkai requested that the Romans allow the Jews to set up a Torah center in Yavneh. Rabbi Akiva retorted that Rabbi Yohanan ben Zakkai should have demanded much more, he should have asked for Jerusalem. Rabbi Yohanan maintained, had he asked for everything, he may have been given nothing. (Gittin 56b) Basing himself on Berakhot 28b, Rav Soloveitchik argues that to his last moments, R. Yohanan ben Zakkai was unsure whether he had made the right decision.

See Rav Joseph B. Soloveitchik's interpretation of Berakhot 28b which deals with Rabbi Yohanan ben Zakkai's death in *Hamesh Derashot* (Jerusalem: Makhon Orot, 5734), pp. 33–35.

33. I prefer the term Open Orthodox to Modern Orthodox or Centrist Orthodox.

The use of the term Modern Orthodox by our community implies that followers of the Orthodox Right are not part of the modern world. In fact, the Orthodox Right participate fully in the American political system. Indeed, they appreciate the best of modern America, while maintaining rigid Orthodox observance.

Centrist Orthodox is also not preferable, as Orthodoxy is then defined by those on both "sides." As the right or left shifts, the "centrist" must also shift in order to stay in the middle—we then lose our autonomy.

34. In Israel today, there are some on the fringe right and left who are also engaged in absolutist thinking.

For the extreme political right, every inch of the land is the *sole* and *only* concern. In fact, love of the land is in dialectic with the whole variety of other factors such as the paramount importance of human life, the welfare of the state, and the legitimacy of the government even if it decides to give away land.

For the extreme left, peace, whatever the price, must be attained. Too little attention is paid to other critical factors like security, the historical and religious importance of the land, and the welfare of those living in Judea and Samaria.

35. It is not only toward the right where Modern Orthodox Jews drift. The more liberal movements, who offer what is perceived to be a more open agenda, have also managed to attract people from Modern Orthodoxy.

36. It is my sense that the Conservative movement will soon adopt the Reform's position on homosexuality. This watershed decision will lead to other reversals within the Conservative Rabbinical Assembly, among them being patrilineal descent.