

Meir Soloveichik

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*And you shall be for me a segula from among the nations:
In this you will be an elite, because you will be a nation
of priests to understand and teach to the entire human
race, so that they may all call in the name of God, to
serve Him together, as it is written: "And you, the Priests
of God will call out."*

-Seforno

In singling us out as a "nation of kingly priests," God selected the people of Israel to serve as ministers to humanity, working to create a more moral society. The moral blueprint that the Talmud provides for the world is referred to in the halakha as the *sheva mitsvot benei Noah*. As such, it is first and foremost upon the principles and prohibitions of the Noahide code that an authentically Jewish public policy must be founded. As Rabbi J. David Bleich put it:

It is the strong inclination of this writer that there should be a Jewish response to many of the social problems on the contemporary agenda. . . . Advocacy in the public and political arenas should be an expression of cogent and principled positions reflecting halakhic norms applicable to non-Jews as well as to Jews. There should emerge carefully articulated policy statements regarding such topical issues as abortion, health-care plans and sexual mores as well as capital punishment and legislation addressing rights of homosexuals.

At times, however, looking to the Noahide laws, or to other halakhot, is insufficient for the formulation of public policy on a particular issue, and it is with this point in mind that I would like to focus upon the symposium's second question: what sources ought to be used in Orthodoxy's political deliberations. In answering this question, we must begin with a striking *sugya* in *Sanhedrin* (75a):

A man once conceived a passion for a certain woman, and his heart was

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consumed by his burning desire [his life being endangered thereby]. When the doctors were consulted, they said, “His only cure is that she shall submit.” Thereupon the Sages said: “Let him die rather than that she should yield.” Then [said the doctors]: “let her stand nude before him”; [They answered] “sooner let him die.” “Then,” said the doctors, “let her converse with him from behind a fence.” “Let him die,” the Sages replied, “rather than she should converse with him from behind a fence.” Now R. Ya’akov b. Idi and R. Shmuel b. Nahmani dispute therein. One said that she was a married woman; the other that she was unmarried. Now, this is intelligible on the view that she was a married woman, but on the latter, that she was unmarried, why such severity [with regard to her even speaking with him from behind a fence]? . . . R. Aha the son of R. Ika said: “So that the daughters of Israel not become morally dissolute.”

A Jew lies in the throes of death; the doctors are in agreement that a particular procedure (allowing him to speak with the object of his lust) will save his life. Furthermore, according to the Talmud, the suggested cure is not forbidden by the Torah. The halakhic question seems simple; the overriding value of *pikuah nefesh* demands that we act on the patient’s behalf. And yet the Rabbis prohibit such a course of action, out of *public policy* concerns. What, they ask, will come of a society in which women are treated as objects of man’s every perverse will and whim? And as the patient breathed his last, the Rabbis were certain that they had acted rightly; for while every human life is precious beyond measure, even *pikuah nefesh* could not override a larger value, socio-religious in nature—“so that the daughters of Israel not become morally dissolute.”

This *sugya* in *Sanhedrin* has, I believe, enormous implications for an Orthodox community attempting to formulate a distinctly Jewish public policy. In deciding whether to support a particular policy, the legalization or prohibition of a practice or procedure, we must consider not only what specific activities are *asur* and *mutar*, what actions are prohibited by the Noahide law or the *Shulhan Arukh*, but what sort of society we are creating, and on what sort of slippery moral slope we might be setting foot.

Allow me to illustrate my meaning with the following example. The donation of organs can be a very great *mitsva* (assuming the donor is not killed in the process); thousands die because there are not enough organs available. Imagine if America allowed its citizens to *sell* their organs; extra kidneys while they were alive, hearts and lungs after they died. Millions more would donate; millions more would live. If we are

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only considering the narrow issues of *issur ve-heter*, one would think that we should institute such a practice; we should do everything that we can in order to save lives. Furthermore, the Noahide code is in no way violated by organ sales; nor, for that matter, does such a practice contravene any law in the *Shulhan Arukh*. Yet consider what sort of society we would be creating: human life as a whole could be disastrously devalued; we would cease to see people as people, and instead as organ banks. Imagine, as bioethicist Wesley Smith suggests, turning on the television and seeing the following financial report being broadcast:

April 10, 2010: The Investor's Network reported today that the price of human kidney futures dropped two points in heavy trading. Insiders attributed the downturn to the loosening of expected supplies caused by the recent drop in the price of stocks and the ripple effect it is having on the economy. With more people out of work and/or deeply in debt, it is expected that more people will be willing to sell a kidney, thereby lowering prices overall.

The scenario is chilling and eerie; and, upon hearing it, we realize that there would be something very wrong if organs were used en masse in this fashion. Organ sales would no doubt save many lives; and yet, countless countries, America and Israel included, continue to ban them, not because lives would be lost but because they *would be worth less in the eyes of society*. Smith's point is that bioethical public policy questions relate not merely to how many lives can be prolonged but also *how our society should be structured, and what should be the weave of its moral fabric*. In the words of University of Pennsylvania's Arthur Caplan, "calls for markets, compensation, bounties, or rewards should be rejected because they convert human beings into products, a metaphysical transformation that cheapens the respect for life and corrodes our ability to maintain the stance that human beings are special, unique, and valuable for their own sake, not for what others can mine, extract, or manufacture from them." In other words, while increasing organ availability is a reasonable goal, even a commendable goal, it does not justify creating a society in which transplant transactions, the marketing of human beings, are the norm. The prolonging of lives is important, but not if *life itself* will be cheapened in the process. While the laws found in the *Shulhan Arukh* regarding *sakkana* and *pikuah nefesh* appear to indicate that we ought to allow organ sales, no Orthodox rabbi has urged our society to do so, no doubt because of concerns about what sort of society we would become when people may barter their bodies as merchandise.

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Thus far, I have merely given a hypothetical example of how the *Sanhedrin* passage's ruling could be applied today. Yet the passage is particularly pertinent to a live domestic policy dispute. Though this symposium addresses Jewish public policy in general, I will discuss at length a specific area of policy because it will so drastically affect the world in which we live, and because I believe that Orthodoxy has ignored the importance of approaching this issue with the "slippery slope" in mind: bioengineering, and more specifically human cloning. At present, a large majority of the United States Congress supports a ban on what is called "reproductive cloning"—the creation of a baby that is the genetic clone of another human being. The political parties are split, however, on whether to ban "therapeutic cloning," the creation of cloned embryos for research. This procedure has attracted the opprobrium of conservative Christians, who consider these embryos human beings, and therefore an improper subject of experimentation. By contrast, the Orthodox Union came out in support of therapeutic cloning, explaining in its press statement that

[the] Torah commands us to treat and cure the ill and to defeat disease wherever possible. . . . Moreover, our tradition states that an embryo *in vitro* does not enjoy the full status of human-hood and its attendant protections. Thus, if cloning research advances our ability to heal with greater success, it ought to be pursued since it does not require or encourage the destruction of life in the process.

In other words, because the halakha does not grant human status to embryos outside the womb, the possible gains of cloning research, and the obligations incurred by *pikuah nefesh*, indicate that we ought to support such experimentation. It would seem, however, that this bioethical quandary is similar to that in *Sanhedrin*; just as the classic rules of *pikuah nefesh* would obligate us to support therapeutic cloning, a "public policy" approach would lead us to oppose it. For in a world in which cloning is permitted and possible, it is not only ethical individuals who will harness this power; and in developing a moral perspective about any new procedure, we must realize that the scientific and technological advancements made by man, while potentially quite valuable to human existence, can all too often lead humanity perilously astray.

This, Rabbi Norman Lamm explained in his investiture address at Yeshiva University, is the significance of the story of Adam in paradise. He was presented by God with two botanical specimens: the *ets ha-hayyim*, the tree of life; the *ets ha-da'at*, the tree of knowledge; and told

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not to eat of the latter. R. Lamm noted that Torah, in spite of the fact that it is intellectually demanding, is referred to as the *ets ha-hayyim*, and not the *ets ha-da'at*. For true Torah is more than learning, it is life; education is only valuable if it makes us into better human beings. In R. Lamm's words:

That learning must be more than knowledge, that it must enhance life, was expressed in a startlingly poignant way by the Zohar. . . . The biblical Tree of Knowledge, it taught, possessed within it yet another tree . . . the *ilana de-mata*, the Tree of Death. When man combines knowledge and life, he is capable of suppressing the Tree of Death. But if he pursues knowledge alone, unconcerned . . . with human compassion and love and gentleness—he releases the noxious Tree of Death in all its many and ugly manifestations. Our generation . . . has repeated the mistake of Adam and Eve. We have learned nothing from our primordial forbears. We have blithely ignored the Tree of life and passionately bitten into the fruit of the Tree of Knowledge. But the fruit is poisoned with the taste of Death. Within the contours of the Tree of Knowledge—science and technology and even philosophy and art and literature—there has taken shape the dreaded Tree of Death, with its variety of deadly fruit: nuclear disaster, ecological cataclysm, genetic manipulation for sinister purposes. . . . The Zohar's insight is the anticipation of Huxley's Brave New World—a paradise turned into a hell.

R. Lamm, at his investiture twenty years ago, saw the small seedling of the *ilana de-mata* already starting to sprout; that tree has now begun to flourish. Articles in established journals of bioethics have argued that terminally ill and unconscious patients ought to be seen as organ banks open for the taking. Assisted suicide has already been legalized in Oregon. Meanwhile, those who refuse to wait for a family member to grow up before killing him now have the option of traveling to The Netherlands; that country allows the euthanasia of children. Recent advances in the field of reproductive biotechnology are chilling as well. Scientists in France have, of late, successfully combined the genetic material of a pig and a human being, allowing this “pig-man” to develop several embryonic stages before destroying it. A recent issue of *Policy Review*, published by the Hoover Institution, reported that Japanese researchers are working on creating artificial wombs, so that people eventually need no longer bother themselves with a traditional family structure in order to have children.

It is my opinion that rabbis must consider the “slippery slope” when it comes to contemporary questions of public policy, especially

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those pertaining to medical ethics; for if, like *Hazal*, we consider not merely a particular medical procedure in itself but the social context in which it would take place, there is much reason for concern. Consider an issue such as therapeutic cloning. An Orthodox *posek* or public policy specialist may conclude that as pre-implanted embryos do not have human status in halakha, there should be no reason to prohibit such research. But once we are cognizant of the already well-greased slippery slope, then we must conclude that if therapeutic cloning is allowed, *reproductive* cloning must soon follow. As Leon Kass and Daniel Callahan wrote in *The New Republic*:

Once cloned embryos exist, it will be virtually impossible to control what is done with them. Created in commercial laboratories, hidden from public view, stockpiles of cloned human embryos could be produced, bought, and sold without anyone knowing it. As we have seen with in vitro embryos created to treat infertility, embryos produced for one reason can be used for another: Today, “spare embryos” created to begin a pregnancy are used—by someone else—in research; and tomorrow, clones created for research will be used—by someone else—to begin a pregnancy. Efforts at clonal baby-making (like all assisted reproduction) would take place within the privacy of a doctor-patient relationship, making outside scrutiny extremely difficult. Worst of all, a ban only on reproductive cloning will be unenforceable. . . . Should an “illicit clonal pregnancy” be discovered, no government agency is going to compel a woman to abort the clone, and there would be understandable outrage were she fined or jailed before or after she gave birth. For all these reasons, the only practically effective and legally sound approach is to block human cloning at the start—at producing the embryonic clone.

Were science morally self-regulating, then we would have, perhaps, nothing to fear from the cloning of non-implanted embryos. But in an age in which, as R. Lamm notes, the Tree of Death has begun to bloom, we must tread with extreme caution, and fear that reproductive cloning will follow soon after therapeutic cloning. In fact, New Jersey allows the cloning of embryos, as well as their implantation in a woman’s womb for research purposes, *as long as the clone is aborted before it is born*. A member of the OU’s bioethics panel supported the organization’s decision by telling the *Jewish Week* that “it is really the opinion of anybody who is working in the field and is up to date, that there is no *meshugenah* who wants to clone a human being.” Of course,

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the news was then inundated with stories about “*meshugenahs*” who aimed to do precisely that. We are only a few small steps away from the stories of science fiction novels.

A Nobel Prize-winning experimental physicist, when testifying before a congressional committee about the building of an atomic superconductor for research, was asked by a congressman if his conductor would help defend America. He responded, “No, but it will help make America worth defending.” On an issue such as therapeutic cloning, advocates such as the Orthodox Union are right in asserting that it could save many lives in America. But will it make America worth saving? Cloning has, medically, positive potential. But do we want to live in a society in which, as Professor Kass put it, we will be able to bring conception and gestation “into the bright light of the laboratory, beneath which the child-to-be can be fertilized, nourished, pruned, weeded, watched, inspected, prodded, pinched, cajoled, injected, tested, rated, graded, approved, stamped, wrapped, sealed and delivered”?

When asked why the organized Orthodox community opposed *reproductive* cloning—the creation of an actual human clone—another member of the OU’s committee responded, in the words of the *Washington Post*, “‘it is not something we would recommend’ for a variety of reasons, including the high chance of deformities and question of parentage. ‘If a woman clones herself, who is the legal father?’ he asked. ‘We would be creating people of ambiguous lineage.’ ” And perhaps these are the only reasons to pronounce reproductive cloning an action discouraged by the halakha *in and of itself*. But are there not other, public policy reasons for banning such a procedure, reasons that derive from our most basic Orthodox values? When the world will be given the ability to muck around with the human genome, then for some, everything—intelligence, emotions, every bit about us that makes us who we are—will become fair game. And in an age when it is already fashionable to devalue lives based on ability, and when scientists show no hesitation in violating our most basic biological and ethical norms, this eugenic scenario is all too possible an outcome: children chosen and designed at people’s will and whim, and the best products then cloned. In a time when much of the respect for the weakest of human life has died, there is, I think, much to fear from this vision. Perhaps the *rabbanim* and scientists to whom our community turns for advice considered this possibility; yet the public statements by Orthodox bioethicists seem to focus on whether any specific halakhic violations occur in the act of therapeutic or reproductive cloning. I believe, however, that Leon Kass and others

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make a persuasive case that the cloning of embryos must be banned, and that we Orthodox Jews, based on these arguments, should support such a ban *even if* preimplanted embryos are not considered human beings by the halakha.

And so this symposium's second question is particularly important for public policy issues that we will face in the twenty-first century. Regarding many of the issues debated today—issues such as abortion and homosexual marriage—there are, I believe, clear-cut halakhic laws that can guide us. Yet over the next century, it is particularly the moral dilemmas raised by biotechnology that Orthodox bioethicists, *rabbanim*, and public-policy specialist will be forced to confront, and regarding which scant halakhic literature exists. Should America allow the cloning of human beings in order to create biological kin for those in need of an organ match? Should society sanction the usage of artificial wombs so that infertile families could experience the joy of raising a child? Should America and Israel allow their citizens to sell their organs? I am convinced that the specter of a “Brave New World” obligates us to respond to each of these questions with a firm “no.” It is all too likely, however, that Orthodoxy's political advocacy organizations will respond more positively than I; but I would hope that in making this decision they do more than scour the *Shas* in search of a specific *lav* violated by any of the above activities. It is not enough, in confronting these moral dilemmas, to ask a rabbi whether actions such as bioengineering are *asur* or *mutar*. Our community must seek the advice of scholars who may not be Orthodox Jews, but who have much to say of the possible impact biotechnological advances may have on our society. At the moment, however, it is largely members of other communities—conservative Christians, as well as Jews such as Leon Kass and William Kristol—who publicly raise concerns about the possible advent of a “Brave New World,” and who are doing everything in their power to stop it. Let us work together with them to make this world a garden of life once again.