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שאלה • Question

A congregant asked: "Heading into this year's general election, no candidate running for Congress in my New York City district advocates a position on Israel, the Mideast or Jewish affairs that appeals to me. I typically don't vote for local offices, so I see no reason to vote if I don't cast a ballot for Congress. Does Jewish law require that I vote, or may I sit out this election?"

פתח דבר • Foreword

The question of whether a citizen has a duty to vote in governmental elections appears regularly in academic literature of political science, philosophy and ethics.¹ As applied to Jews, however, this question has received meager *halachic* focus relative to its importance to individual and collective Jewish identity. *Halachically* speaking, to what political entity (if any) do Jews living outside Israel owe allegiance? How should Jews express allegiance in civic contexts? Are Jewish citizens living outside Israel truly in "exile"? How ought "Jewish issues" shape the "Jewish vote"? What are these "Jewish issues"? Do answers depend on whether Jews are numerous enough in a particular electorate to affect balloting outcomes?

That this inquiry comes to me is both unsurprising and troublesome. I am one of the few – and by some accounts, the only – Jewish clergy in North America to serve at the same

¹ See e.g. Jankowski, R., "Altruism, Civic Duty and Self-Interest in the Decision to Vote," *J. of Rationality and Society* 14:55 (2002); Blais, A. *et al.*, "The Calculus of Voting: An Empirical Test," *European J. of Political Research* 37:2, 181-201 (2000); Lomasky, L., "Is There a Duty to Vote?" *Social Philosophy and Policy* 17:62 (2000); Blais, A. & Young, R., "Why Do People Vote: An Experiment in Rationality," *Public Choice* 99:39-55 (1999); Aldrich, J., "Rational Choice and Turnout," *Amer. J. of Political Science* 37:246–276 (1993); Riker, W. & Ordeshook, P., "A Theory of the Calculus of Voting," *Amer. Political Science Rev.* 62: 25–43 (1968); Downs, A., *An Economic Theory of Democracy*: Harper and Row (New York 1957).

time in both a pulpit and public office.² As such, it is natural that congregants should bring me questions straddling religion and politics – or, in constitutional jargon, the "separation of church and state."³ At the same time, because I'm a New York judicial officer, judicial ethics rules bar me from making public political statements unless they concern the "administration of justice."⁴ As such, I cannot discuss most political issues from the pulpit, however much congregants may ask. Likewise, judicial ethics rules bar me from conflating my judicial and sectarian roles, or otherwise appearing publicly to preference co-religionists⁵ – rules that, in an abundance of caution, I read to ban me from discussing most clergy matters in public.

Despite these restraints, it is permissible for me to discuss and even encourage civic participation – as one of many ways to promote the "administration of justice" – so long as I do so in a manner that is general and nonpartisan. Accordingly, nothing in this writing should be read to express a preference for or against any political party, candidate or cause. It also is permissible for me to opine about Jewish law so long as I do not appear to use my judicial

² As of this writing, I serve as associate spiritual leader for a New York City congregation formerly with Conservative Movement leanings but now independent with Renewal leanings. By day, I serve as judicial referee presiding in New York Supreme Court, Ninth Judicial District.

³ This popular term hails from U.S. President Thomas Jefferson's 1802 letter to members of the Connecticut Baptist Church, and adopted into legal lexicon by Justice Hugo Black in *Everson v. Board of Education*, 330 U.S. 1 (1947) ("the [First Amendment] clause against establishment of religion by law was intended to erect 'a wall of separation between church and [s]tate'"). Later case law made clear, however, that the Constitution erects no impermeable wall between religion and the state. Rather, the U.S. Supreme Court held that government may not "excessively entangle" with religion, *Lemon v. Kurtzman*, 403 U.S. 602 (1971) – a standard that over 40 years of cases struggled to apply with consistency. For instance, the motto "In God We Trust" adorning U.S. currency and many courtrooms was specifically upheld as *secular* against constitutional challenge. See *O'Hair v. Blumenthal*, 588 F.2d 1144 (5th Cir. 1979); *Aronow v. U.S.*, 432 F.2d 242 (9th Cir. 1970). Similarly, the Supreme Court recently upheld the use of sectarian prayer to open government meetings, holding that such prayer is a traditional facet of *civil* society that is non-coercive and thus permissible under the First Amendment. See *Town of Greece, N.Y. v. Galloway*, 572 U.S. ___, 134 S.Ct. 1811 (2014).

⁴ 22 N.Y.C.R.R. §§ 100.4(C)(2)(a), 5(A)(1)(iii); 100.6(A).

⁵ See *id.*, § 100.3(B)(4).

role to elevate my views or unduly commingle expression of such opinions with my secular role. For these reasons, even more than other *halachic* responsa, this writing represents only my own conclusions לפי עניית דעתי / in the poverty of my understanding relative to *halachic* greats who preceded me – and thus should not be understood to convey the legal views of a secular judicial official acting in that capacity. With these כתבי ויתור / disclaimers, the *halachic* question presented now may be examined.

הקדמה • Introduction

This question arises at a time when Jewish civic participation is receiving prominent attention in New York rabbinical circles. Promoting the election of socially conservative candidates who oppose same-sex marriage and the "normalization of homosexuality," dozens of Orthodox rabbis in New York issued *halachic* mandates directing followers to cast ballots for specified candidates in New York's 2012 legislative election⁶ and 2013 mayoral election.⁷ In advance of a 2012 special election for New York Senate, a joint *kol korei* (proclamation) and public advertisement by 49 rabbis – including the heads of numerous New York City *yeshivot*, the Flatbush Rabbinical Court and *Agudos Yisroel* of Monsey – held as follows:

"The Torah speaks about certain sins, the commission of which was the cause for the obligation to destroy every last remnant of the Canaanite nations. In describing their immoral behavior, the Torah says of the acts they performed, [כִּי אֶת-כָּל-אֲלֵהָ עָשׂוּ וְאֶקְזָזָם] / 'they should be destroyed and eliminated from the world' (Lev. 20:23), so that no trace remains of a society predicated on such a disgusting "lifestyle" [as homosexuality] To our chagrin and shame, there has arisen among us a group of political office seekers [for an open Senate seat] who openly

⁶ See Hamilton, C., "Dozens of Rabbis Come Out Against Councilman Fidler in Special Senate Election," WNYC-TV (Feb. 27, 2012), available at <http://www.wnyc.org/story/196331-dozens-of-rabbis-come-out-against-councilman-fidler-in-senate-special-election>.

⁷ See e.g. Yeshiva World News, "Erick Salgado Wins Halachic Letter of Support" (Aug. 11, 2013), available at <http://www.theyeshivaworld.com/news/headlines-breaking-stories/181249/erick-salgado-wins-halachic-letter-of-support.html>.

espouse this Canaanite behavior, and who are leading proponents of [homosexuality and] teaching it to innocent children....

"A Jew who votes for a politician who supports [this] *toevah* is effectively saying that he does not place primary importance on defending Torah values, *chas v'shalom*. [This] appearance would constitute a *chilul Hashem*....

"It is therefore considered to be a great *chilul hashem* to vote for or provide funding, campaign assistance, public recognition or any time of campaign support to [this candidate]. To do so would amount to being *mesiy'ayah ovrei aveirah* (abetting transgression of the Torah's commandments). Conversely, [as] the opposing candidate is committed to safeguarding our moral values, including fighting the forced acceptance of *toevah*, it is incumbent on every Jew to do his/her best to assist that candidate's effort to win this [Senate] seat. Assistance would include voting for such a candidate and supporting him financially...."⁸

Similarly, before the 2013 Democratic primary for New York City mayor, a *kol korei* by 39 Orthodox rabbis directed followers to vote for a candidate campaigning against same-sex marriage. In their words, the favored candidate took positions:

"opposed to the forced acceptance of *toevah* (abomination), which we know normalizes lifestyles that are *issur* (forbidden). ... It is therefore *halachically* incumbent on every Jew to assist [this candidate's] campaign in its needs, in order for [him] to win the mayoral race. Every Jew who is not yet registered to vote must register by [the registration date] to vote in the Democratic primary. Every Jew, registered as a Democrat to vote at the time of the primary, is obligated to vote for [him]."⁹

While Orthodox rabbis steer followers to vote for specified candidates, policy impacts of the "Jewish vote" also are receiving substantial focus. For years, New York lawmakers tried to placate Orthodox interests by creating a special school district for developmentally disabled Satmar Hasidic children in Kiryas Joel,¹⁰ but courts struck it down as violating the

⁸ "49 Rabbis Against Voting for Fidler" (Feb. 27, 2012), available at <http://orthodoxpundit.blogspot.com/2012/02/49-rabbis-against-voting-for-fidler.html>; see also http://go.communitym.com/Kol_Koreh_NYS_27th_Senate_Dist_Special_Election_2012.pdf.

⁹ Yeshiva World News, "Erick Salgado Wins Halachic Letter of Support" (Aug. 11, 2013), available at <http://www.theyeshivaworld.com/news/headlines-breaking-stories/181249/erick-salgado-wins-halachic-letter-of-support.html>.

¹⁰ See e.g. 1997 N.Y. Session Laws, ch. 30; 1989 N.Y. Session Laws, ch. 748.

separation of church and state.¹¹ Since 2004, New York has regulated the certification of kosher foods to protect the kosher food industry,¹² and in 2012 an appeals court upheld the law against constitutional challenge.¹³ In 2014, after New York banned *metzitzah b'peh*, the use of blood-drawing oral suction after ritual circumcision, the Judiciary suspended the ban on First Amendment grounds.¹⁴ These and other policies testify to Jewish political influence in New York:¹⁵ indeed, so fast has New York's Orthodox political influence grown that a recent *New York Times* article tracking the surge asked pointedly, "Are Liberal Jewish Voters a Thing of the Past?"¹⁶

Against this backdrop, the *halachic* inquiry about a Jewish duty to vote may have substantial practical implications. Voting rates among U.S. Jews have trended high for decades – often over 60% and in some elections nearly double the U.S. average.¹⁷ Where Jews represent a substantial proportion of the electorate – such as in New York, where Jews

¹¹. See *Grumet v. Pataki*, 93 N.Y.2d, 720 N.E.2d 66 (N.Y. 1999); *Board of Educ. of Kiryas Joel Village School Dist. v. Grumet*, 512 U.S. 687 (1994).

¹². See N.Y. Agric. & Mkts. Law §§ 201-a – 201-d.

¹³. See *Commack Self-Service Kosher Meats, Inc. v. Hooker*, 680 F.3d 194 (2d Cir. 2012).

¹⁴. See *Central Rabbinical Congress of the U.S. & Canada v. New York City Dept. of Health*, ___ F.3d ___, 2014 WL 393156 (2d Cir. 2014), *suspending* R.C.N.Y. (N.Y. City Health Code) § 181.21.

¹⁵. For instance, both Democratic candidates for New York governor expressly advertised to Jewish voters. Incumbent Gov. Andrew Cuomo issued an ad on Jewish online publications picturing him at the Western Wall and urging viewers to vote. See Kaplan, T., "Cuomo Backs Liberal Causes and Attacks Opponent," *N.Y. Times* (Sept. 8, 2014), available at <http://www.nytimes.com/2014/09/09/nyregion/andrew-cuomo-and-zephyr-teachout-in-final-campaigning-for-new-york-governor.html>. For her part, challenger Zephyr Teachout took out Yiddish campaign ads in Brooklyn Jewish newspapers. See <https://twitter.com/jacobkornbluh/status/507260672624037888/photo/1> (Sept. 3, 2014).

¹⁶. Berger, J., "Are Liberal Jewish Voters a Thing of the Past?" *N.Y. Times* (Sept. 14, 2014), at SR3, available at <http://www.nytimes.com/2014/09/14/sunday-review/are-liberal-jewish-voters-a-thing-of-the-past.html>.

¹⁷. See e.g. Medoff, R., *Jewish Americans and Political Participation: A Reference Handbook* (2002), at 182-193. It is not clear whether Jewish voting participation rates trend high due to religion or ethnicity, or based on socioeconomic characteristics such as educational attainment.

may comprise as much as 9% of state voting rolls and 17% of city voting rolls¹⁸ – a Jewish voting mandate may further expand Jewish political influence. Indeed, such is the express purpose of those rabbis cited above who mandate voting for particular candidates: to increase Orthodox influence in support of particular rabbi-backed social policies. *Kol vachomer*; articulating a *halachic* duty to vote may have correspondingly significant political impacts, especially in voting districts with large potential Jewish voting populations.¹⁹

To date, however, *halachic* discourse hasn't suggested that Jews must vote generally, but that Jews must vote for candidates that their rabbis authorities deem best to represent "Jewish values." As the above precedents show, Orthodox rabbis opposed to same-sex marriage and "normalization of homosexuality" – positions typically described as socially conservative – direct votes for candidates aligned with these social perspectives. A similar dynamic attended the modern State of Israel's first election, before which the Lubavitcher Rebbe, R. Yosef Yitzchak Schneerson, received a letter asking about the *halacha* of voting for an Israeli civil government. Writing from Brooklyn, New York, the Lubavitcher Rebbe

¹⁸. See *id.*; Jewish Community Relations Council, "Brief Profiles of the Jewish Population" (2014); Cohen, S., *et al.*, "Jewish Community Study of New York" (UJA Federation of N.Y., 2011).

¹⁹. To be sure, the "Jewish vote" is by no means monolithic in orientation. See Ben-Ami, J., "America's Jewish Vote," *N.Y. Times* (Nov. 12, 2012), available at <http://www.nytimes.com/2012/11/13/opinion/americas-jewish-vote.html>; Barone, M., "The Jewish Vote 2012," Amer. Enterprise Inst. (Oct. 15, 2012), available at <http://www.aei.org/article/politics-and-public-opinion/elections/demographics/the-jewish-vote-2012>. While the practical effect of higher Jewish voting rates cannot be predicted, one might hypothesize that only Jews for whom *halachic* discourse is meaningful would be moved by a *halachic* duty to vote. On the other hand, to the extent that ultra-Orthodox Jews of New York already tend to vote in elections because their rabbinic leadership directs them to vote, the recognition of a *halachic* duty to vote might affect less the voting participation rates or behaviors of those communities – because their voting rates already are high if not saturated – than the voting rates of Modern Orthodox and Conservative Jews who may not yet vote universally but for whom *halacha* might motivate behavior. To be sure, this untestable hypothesis is relevant not to shape the *halachic* analysis but to put it in a practical context: the sheer size of New York's population of Jews eligible to vote, and the political and policy context in which the question presented arises, renders this analysis potentially important to both Jewish community and the broader polity of the Empire State. More than any political or policy result real or imagined, it is the mere potential for practical impact that counsels deliberate caution in undertaking this analysis.

replied on 5 Kislev 5709 (December 7, 1948) that voting is *halachically* mandatory to ensure the election of the most religious candidates running for office:

[פב"פ] שואל על אודות ההשתתפות בענין הבחירות לממשלה בארץ ישראל. בודאי חובה על כל אחד ואחד שראוי לבחור לא יותר על זכותו זה. ועם מי להשתתף צריכים להשתדל להשתתף עם חבורת היראים יותר אבל לא עם אלו אשר כל ענינם הוא לעשות מחלוקת ופירוד לבבות דוגלים בשם התורה. והיראת השי"ת ירים קרן אחינו בני ישראל ד' עליהם יחיו באה"ק ת"ו ובכל מדינות הגולה ונזכה לביאת הגואל צדק משיח צדקנו אשר יקבצנו מכל ארצות פזורנו לאה"ק ת"ו.

"[Someone] asks about the issue of participating in elections for the government in the Land of Israel. Certainly it is obligatory for all eligible to vote not to give up this [voting] right. All who participate must try to [elect] the most religious party, but not for one whose interest is to create controversy and sow disunity through advocacy in the [mere] name of Torah. May awe in God stoke the pride of our brothers in Israel living in the Holy Land, may it be built and completed, and in all the lands of exile. May they merit the coming of the Redeemer... who will gather us to the Holy Land, may it be built and completed, from all nations in which we were scattered."²⁰

A similar position attributed to R. Avrohom Yeshaya Karelitz (1878-1953, the "*Chazon Ish*") at the time of the first Israeli election held voting to be so important that if a Jewish male cannot pay voting costs, he must sell his *tefillin* to raise the necessary funds.²¹

According to a witness, the *Chazon Ish* explained the imperative to vote as follows:

"A *Kiddush Hashem* is if *Klal Yisroel* says: We want that *Klal Yisroel*, that the entire Eretz Yisroel, will act according to *kedushah* (holiness), according to the Torah. This is a *Kiddush Hashem*. And each person, by saying this, if he votes, is saying, 'I want there to be a *Kiddush Hashem*, that the Name of Heaven should be sanctified, that the entire *Klal Yisroel* should act according to the Torah.' This opportunity does not present itself every day, [so voting] is the greatest opportunity. May *Hashem* help that we should merit ... a true *Kiddush Hashem*... that the entire *Klal Yisroel* should act according to the Torah, until we merit the true redemption."²²

²⁰Schneerson, *Igrot HaKodesh*, at 32, available at http://www.hebrewbooks.org/page-feed/hebrewbooks_org_31697_59.pdf (translation original); Chabad, "HaBechirot b'Yisrael: Chovat haHishtatfut b'Bechirot," *Selected Letters of the Lubavitcher Rebbe*, available at <http://www.chabad.org.il/Articles/Article.asp?ArticleID=1245&CategoryID=786>.

²¹See Havtolsky, N., "The Gedolim's View on Voting in the Israeli Elections" (Jan. 20, 2013), available at <http://matzav.com/the-gedolims-view-on-voting-in-the-israeli-elections>. The costs to which the *Chazon Ish* referred were the Israeli poll tax then in effect, long since abolished.

²²*Id.*

As with 21st century *poskim* in New York's Orthodox circles, the Lubavitcher Rebbe and *Chazon Ish* held voting to be obligatory not to promote an inclusive democratic polity, but to instill "Torah values" into government through the political power of the most religious parties electable to office. Also like modern *poskim*, neither the Lubavitcher Rebbe nor the *Chazon Ish* offered clear *halachic* justification for why voting should be mandatory, except to suggest that establishing the religious character of the State of Israel, by means of the ballot box, may hasten the particularistic redemption of the Jewish people.

By contrast, *halachic* analysis on a freestanding duty to vote as such, independent of particular policies, appears lost to history. In yet another anecdote about voting in Israel's 1949 elections, some of nascent Israel's *gedolim* – including R. Aharon Rokeach (1880-1957, the Beltzer Rebbe) and R. Dov Berish Weidenfeld (1881-1965, the Tchebiner Rav) – signed a *kol korei* that all must vote for *Agudas Yisrael*, then part of the so-called United Religious Front fielding a joint candidate list for the first Knesset. Before they issued their *kol korei*:

"[The rabbis] came to the Rav of Komemiyus, HaRav Binyamin Mendelson, *zt"l*, asking him to verify if it was *halachically* permitted to participate in elections. The Rav wrote a clear *teshuvah* based on the *Rambam* and *Shulchan Aruch*, that although the government was secular, it was permitted to participate in elections [for the purpose of promoting the United Religious Front]. HaRav Yisrael Yitzchak Mendelson, the Rav's son, says that the *teshuvah* was not publicized at the time so as not to arouse discord or even a debate on the subject. The *psak* was entrusted to a confidant, Rabbi Chaim Mandel, *zt"l*, of Antwerp, for safekeeping. Before Reb Chaim passed away, he gave the *teshuvah* to an [unidentified] erudite Yid in Yerushalayim."²³

While Mendelson's "clear" *teshuvah* concerning participation in secular elections now appears lost, still resonant in memory is his adamance that all should vote. To that end, witnesses report that Mendelson accepted no *kvitlach* (rabbinic petitions) on election day: when people came to him with *kvitlach*, he told them, "Go vote [first]." His reported

²³Younger, B., "How Gedolim Yisrael Viewed Elections in Israel," *Daily HaModia* (Jan. 29, 2013), available at <http://hamodia.com/2013/01/29/how-gedolei-yisrael-viewed-elections-in-israel>.

explanation for this behavior was that "I had no choice, because the elections are such a great *mitzvah* [that] I could not hold them back" – even to hear rabbinic petitions.²⁴

By stark contrast with these mandates to vote for candidates aligned with conservative religious values, R. Joseph Soloveitchik (1908-1993, "the *Rav*") rejected politicizing religion. Precisely to build a society in which Jewish values could be realized in a broader cultural and religious milieu – an outgrowth of R. Samson Raphael Hirsch's *Torah Im Derech Eretz* ideal associated today with Modern Orthodoxy²⁵ – the *Rav* held that Jews are prohibited from introducing *halacha* or Jewish dogma into what he called the "shared public square."²⁶ To the *Rav*, the realization of Jews' common policy and social interests with non-Jews "lie[s] not in the realm of faith, but in that of the secular orders."²⁷ One reason is the pluralistic context in which many modern Jews now live; another reason, the *Rav* wrote in 1940, is that rabbis today "cannot be relied on to direct the people in ever-changing political issues, and thus only a political system can guide the people" through the straits of social change.²⁸ Hence, the *Rav* concluded, a Jew "fulfills God's will in working for the public good, despite the fact that he does so without reference to ... particularistic Jewish beliefs," and thus Jews must vote in

²⁴ *Id.*

²⁵ In contrast to cultural and religious isolationists of his day who advocated segregating Jews from non-Jewish society, Hirsch held that the urgency of preserving Judaism against modernity's cultural onslaught constituted a *hora'at sha'ah* (temporary imperative) to relax Jewish separatism. To Hirsch, Jewish preservation required adopting certain ways of the secular world – hence Hirsch's "both/and" doctrine of "Torah with the ways of the world."

²⁶ See Soloveitchik, J.B., *Chamesh Derashot* (Telzner trans.), Jerusalem: Tal Orot (1974); "Kol Dodi Dofek," in *B'sod HaYakhid V'haYahad* (Peli, ed.), Jerusalem: Tal Orot (1976), at 333; Wurtzburger, W., "Rav Joseph B. Soloveitchik as *Posek* of Post-Modern Orthodoxy," *Tradition: A Journal of Orthodox Thought* ("Tradition"), vol. 29:1 (1994), available at http://www.lookstein.org/articles/soloveitchik_posek.htm.

²⁷ Soloveitchik, J.B., "Confrontation," in *Tradition*, vol. 6:2 (1964), at 21.

²⁸ Soloveitchik, J.B., "Eulogy for R. Chaim Ozer Grodzinsky," *HaPardes* 14:7 (1940), at 6-9.

secular elections.²⁹ Perhaps regrettably, the *Rav* did not explicate this view in a published *teshuvah*,³⁰ so his precise *halachic* reasoning is unavailable for analysis.

Indeed, research indicates no *halachic* analysis (either Orthodox or liberal) as to whether Jews must vote – whether to promote an inclusive civil society or for any other purpose – other than to vindicate specific policies that a *posek* might hold to be mandatory. As shown above, Orthodox *poskim* embracing that approach offer little *halachic* guidance for the civic act of voting itself detached from particular social values in a particular election. Moreover, their tacit theory – that voting for specified candidates is necessary to vindicate particular "Torah values" – raises difficulties so substantial as to defeat rather than address the question presented. On their reasoning, a politically conservative *posek* holding same-sex marriage to be sacrilege, and a politically liberal *posek* holding interventionist military policies tantamount to murder, each could mandate votes for opposing candidates based on "Torah values." This result is impossibly subjective based on each *posek's* individual politics, and invites confusing and conflicting mandates that by definition can provide no meaningful *halachic* guidance. Thus, any answer to the question of whether a Jew has a *halachic* duty to vote, which relies on a qualitative assessment of the candidates or particular issues contested in the election, ultimately cannot address the question presented.

Moreover, in non-Orthodox circles, research suggests no *halachic* analysis of voting based on candidate views, public policy or a general duty to vote. The Rabbinical Assembly ("RA") deemed voting key to democracy and urged reforms against voter suppression to fulfill the verse, לֹא־תַעֲשׂוּ עִוָל בְּמִשְׁפָּט לֹא־תִשָּׂא פְּגִידָל וְלֹא תִהְיֶה רַחֲמֵי גְדוּל / "Do not render an

²⁹Finkelman, Y., "Religion and Public Life in the Thought of Rabbi Joseph Soloveitchik," *in Jewish Political Studies Rev.* 13:3-4 (2001).

³⁰As the *Rav's* legal philosophy was democratic and resisted hierarchy, he rarely wrote *teshuvot* even while regularly offering *halachic* explanation to individuals seeking counsel. *See id.*

unfair decision: do not respect the poor or favor the mighty."³¹ While this result impelled what the RA called fair election mechanics (*e.g.* open registration) to enforce the practical right to vote and have each vote counted,³² it affirmed only a *right* to vote, not a *duty* to vote: the RA held only that an election "decision" should be fair, not that there exists a *halachic* duty to participate in this "decision." For its part, the Reform Movement's Central Conference of American Rabbis ("CCAR") adopted a 2001 resolution calling for election reform after the disputed U.S. presidential election of 2000. The CCAR narrated a societal "ethic of political participation [that] has guided Jews" and that renders anathema to Jewish thought what the CCAR called undue barriers to voting.³³ Much like the RA, however, the CCAR termed voting not a mandate but an "ethic" vital to encourage. The CCAR held a 2010 symposium on this subject, in which leading liberal rabbis offered case studies of Jewish religious community participating in the civic sphere, but even a symposium expressly dedicated to this cause did not ask much less answer the question of whether there exists a general Jewish duty to vote.³⁴

Based on the foregoing, there appears to be no precedent directly answering the question of whether Jewish law recognizes a general duty to vote in civil elections. Does

³¹Rabbinical Assembly, "Resolution on Election Reform" (2001), available at <http://www.-rabbinicalassembly.org/resolution-election-reform?tp=270>, quoting Lev. 19:15; see also "Resolution on Voting Rights in the United States" (2014), available at <http://www.rabbinicalassembly.org/story/resolution-voting-rights-united-states?tp=1355>.

³²Similarly, the RA advocated public financing of campaigns to equalize political influence, based on the Deuteronomy 16 ban on partiality in judgment. See Rabbinical Assembly, "Resolution on Campaign Finance Reform in the United States," available at <http://www.-rabbinicalassembly.org/story/resolution-campaign-finance-reform-united-states?tp=378>.

³³Central Conference of American Rabbis, "Resolution on Election Reform" (June 2001), available at <http://ccarnet.org/rabbis-speak/resolutions/all/election-reform-resolution-on>.

³⁴See generally Central Conference of American Rabbis, *Symposium Issue on Politics and Spirituality*, *The Reform Jewish Quarterly* (summer 2010), available at <http://www.ccarnet.org/rabbis-speak/ccar-journal-reform-jewish-quarterly/summer-2010>.

there exist a freestanding *halachic* duty for Jews to support the democratic process by voting? If so, on what *halachic* grounds does this duty depend, and what limits or discretion (if any) might these grounds imply for any Jewish duty to vote? In the final *halachic* analysis, may a Jewish citizen unenthused by candidate views on Israel, Mideast policy and "Jewish issues" decline to vote for that office? May a Jewish citizen sit out an election entirely?

Because no Orthodox *poskim* or liberal *halachic* authorities (e.g. the Conservative Movement's Committee on Jewish Law and Standards) have promulgated any direct *halachic* precedent by which to answer these questions, original analysis is necessary – beginning with Jewish thought concerning civil authority and the historical selection of civil leadership.

אשימה עלי מלך • "I Will Set Over Me a King"

Standing on the east bank of the Jordan River, Moses conveyed the prediction that someday the Children of Israel would demand appointment of a civil authority rather than prophets, priests and judges to rule them. Torah records Moses to instruct the people:

כִּי־תָבֹא אֶל־הָאָרֶץ אֲשֶׁר ה' אֱלֹהֶיךָ נֹתֵן לָךְ וּיְרַשְׁתָּהּ וַיִּשְׁבְּתָהּ בָּהּ וְאָמַרְתָּ אֲשִׁימָה עָלַי מֶלֶךְ כְּכָל־הַגּוֹיִם אֲשֶׁר סְבִיבֹתַי. שׁוּם תָּשִׂים עָלֶיךָ מֶלֶךְ אֲשֶׁר יִבְחַר ה' אֱלֹהֶיךָ בּוֹ....³⁵

"When you come into the land that YHVH your God is giving you, and you possess and settle it, and say, 'I will set over me a king like all other nations around me,' be sure to place over yourself the king YHVH will elect for you...."³⁵

In the first Biblical record fulfilling Moses' vision, the people demanded a king under threat of Philistine aggression, and the canon records God to instruct the prophet Samuel to appoint Saul as Israel's first monarch.³⁶ Saul's successor, David, also was appointed by divine selection but, perhaps reflecting David's political acumen, was installed more democratically by all of Israel's tribal leaders, thereby consolidating monarchic over a unified Israel for the

³⁵Deut. 17:14-15.

³⁶See 1 Sam. 9:16-17.

the first time: וַיָּבֵאוּ כָּל-זִקְנֵי יִשְׂרָאֵל אֶל-הַמֶּלֶךְ ... לִפְנֵי ה' וַיִּמְשְׁחוּ אֶת-דָּוִד לְמֶלֶךְ עַל-יִשְׂרָאֵל /

"All the elders of Israel came to [David] before God, and anointed David as King of Israel."³⁷

For David's successor, his son Solomon, the canon records divine selection by dint of David's

bloodline but emphasizes that "all the people" together ratified the choice: וַיִּקַּח צָדוֹק הַכֹּהֵן /

אֶת-קֶרֶן הַשֶּׁמֶן מִן-הָאֹהֶל וַיִּמָּשַׁח אֶת-שְׁלֹמֹה וַיִּתְקְעוּ בַשּׁוֹפָר וַיֹּאמְרוּ כָּל-הָעָם יְחִי הַמֶּלֶךְ שְׁלֹמֹה /

"Tzadok the priest took the horn of oil from the Tent [of Meeting] and anointed Solomon;

they blew the ram's horn and all the people said, 'Long live King Solomon.'"³⁸

These authorities depict among Israel's first generations of centralized power a shift from unilateral divine selection (Saul), to divine selection confirmed by tribal elders (David), to systematized selection by bloodline confirmed by "all the people" (Solomon). Consistent with this democratic evolution, Talmud took up the people's role in selecting their leaders:

אמר רבי יוחנן שלשה דברים מכריז עליהם
הקב"ה בעצמו ואלו הן רעב ושובע ופרנס טוב.
... פרנס טוב דכתיב (שמות לא, ב) (ויאמר) ה'
אל משה לאמר ראה קראתי בשם בצלאל וגו'
אמר רבי יצחק אין מעמידין פרנס על הצבור
אלא אם כן נמלכים בצבור שנא' (שמות לה, ל)
ראו קרא ה' בשם בצלאל אמר לו הקדוש ברוך
הוא למשה משה הגון עליך בצלאל אמר לו
רבנו של עולם אם לפניך הגון לפני לא כל
שכן. אמר לו אף על פי כן לך אמור להם הלך
ואמר להם לישראל הגון עליכם בצלאל אמרו
לו אם לפני הקדוש ברוך הוא ולפניך הוא הגון
לפנינו לא כל שכן.

"R. Yochanan said: the Holy Blessed One proclaims three things: famine, plenty and a good leader.... A good leader, as in (Ex. 31:2): God spoke to Moses saying, 'See I called by name Betzalel son of Uri.' R. Yitzchak said: We mustn't appoint a leader for a community without consulting it, as in (Ex. 35:30): 'See, God called by name Betzalel.' The Holy Blessed One said to Moses: Moses, do you think Betzalel suitable? [Moses] replied: *Ribono shel Olam*, if You think him suitable, all the more do I! [God] said to [Moses]: All the same, go consult them. [Moses] went and asked [Israel]: Do you think Betzalel suitable? They replied: If the Holy Blessed One and you think him suitable, all the more do we!"³⁹

In Talmudic days, selecting civil authorities evolved as a popular prerogative – at first to validate God's selections in a sacred partnership between God and the people, and then as a

³⁷2 Sam. 5:3.

³⁸1 Kings 1:39.

³⁹B.T. *Berakhot* 55a.

matter of consulting the people. R. Moshe ben Maimon (1135-1204, "the *Rambam*") held that this consultative power in selecting civil authorities rested with the rabbis:

אין מעמידין מלך בתחילה אלא על פי בית דין של שבעים זקנים ועל פי נביא כיהושע שמינהו משה רבינו ובית דינו וכשאלו דוד שמינם שמואל הרמתי ובית דינו. A king initially is appointed only on the decision of a rabbinical court of 70 elders and based on a prophet, like Joshua, whom Moses and his court appointed, and like Saul and David, whom Samuel of Ramah and his court appointed.⁴⁰

Eventually, rabbinic appointment gave way to a more democratic process as Talmud envisioned, without the *aggadic* view that human actors merely confirmed God's selections. Before Jews legally could vote in civil elections, the most direct *halachic* example of Jewish popular voting was the medieval practice of selecting tax collectors to raise revenue both internal (*i.e.* to support the Jewish community) and external (*i.e.* to remit to the non-Jewish regime). This practice raised a *halachic* question of how to collect taxes from Jews who did not participate in selecting the tax collector or dissented from the election's outcome. Citing an analysis by R. Meir of Rothenberg (1215-1293, "the *Moharam*"), R. Moses Isserles (1520-1572, "the *Rama*") took up that question in his gloss on *Shulchan Aruch*:

יש להושיב כל בע"ב הנותנים מס ויקבלו עליהם שכל אחד יאמר דעתו לשם שמים וילכו אחר הרוב ואם המיעוט ימאנו הרוב יכולין לכופו אותן אפילו בדיני עכו"ם ולהוציא ממון על זה והם צריכין לתת חלקם והמסרב מלומר דעתו ע"פ החרם בטילה דעתו ואזלי' בתר רוב הנשארים האומרים דעתו. It is necessary to assemble by writ of election all taxpayers and prompt them to speak according to their judgment for the sake of heaven, and then we follow the majority. But if a minority refuses [to follow] the majority, it is permissible to force them, even by order of star worshippers (*i.e.* non-Jews), to pay their share to the tax collector selected. If one boycotts and refuses to offer one's opinion (*i.e.* vote), then it is disregarded and the opinions of the majority remaining decide the matter.⁴¹

Several implications of the *Rama*'s conclusion are manifest. One is that there exists a divine call – "for the sake of heaven" – that "all" eligible persons should vote, much as "all

⁴⁰ *Rambam, Mishneh Torah, Melachim 3:1.*

⁴¹ *Rama, Gloss on Shulchan Aruch, Choshen Mishpat 163:1; Moharam on Sefer Kinyan 27a.*

the people" confirmed Solomon's appointment.⁴² Second, democratic majoritarian values and the practical importance of effective civil administration both require that election results for a tax collector be binding and enforceable on those who decline to vote. In the *Rama's* view, an election's legitimacy depends not on universal participation (*i.e.* a mandate for all eligible voters to cast ballots) but on the election writ's publicity and the corresponding opportunity for all eligible voters to cast ballots. Indeed, *halachically* it is well-settled that an election's legitimacy is undermined – and its outcome thus becomes unenforceable against non-voters – only if the election is inadequately publicized or some voters inhibit eligible others from voting. So also held R. Yechezkel Landau (1713-1793, "the *Noda b'Yehuda*")⁴³ and R. Moses Schreiber Sofer of Pressburg (1762-1839, "the *Chatam Sofer*").⁴⁴ The *Chatam Sofer* went so far as to hold that once a public announcement issues for an election, all who choose not to vote give up their rights to cast ballots and are treated as if they appointed those who do vote as their proxies to decide the election.⁴⁵ Even so, in modern days the *Chazon Ish* confirmed, following what the *Rama* termed a "heavenly call" to vote, that optimally all eligible voters will participate in selecting their governing representatives.⁴⁶

Three analytical threads emerge from these classical *halachic* authorities. First, these sources hold that it is not only preferable לכתחילה (ideally, or *ab initio*) for all eligible voters to vote but also a spiritual matter for all eligible voters to vote – a civic act undertaken in divine partnership and in God's service, that requires broad dissemination of each election

⁴² 1 Kings 1:39.

⁴³ See *Noda b'Yehuda*, *Choshen Mishpat* 20:1.

⁴⁴ See *Chatam Sofer*, *Choshen Mishpat* 116.

⁴⁵ See *id.*

⁴⁶ See *Chazon Ish*, comm. M. *Bava Batra* 4:15.

writ so as not to inhibit any eligible voter from casting a ballot. Second, however, the sources hold that there is no penalty for failing to vote, other than to forfeit one's right to influence the outcome. Third, בדיעבד (in practice, or in the breach) the value of following the majority and the necessity of effective civil administration both require that election results be binding on those who by their own choice decline to vote: nonvoters cannot resist the will of voters so as to impede election results. These sources at least initially suggest a negative answer to the question presented: there is a "heavenly call" to vote in civil elections, but no mandate under Jewish law to heed that call – much less any cognizable penalty for opting not to cast a ballot.

To be sure, the foregoing *halachic* authorities arguably have limited resonance in the modern era. Besides the *Chazon Ish* who wrote in 1949, these authorities harkened to a time long before modern notions of democracy and citizenship, and particularly before the so-called "civic amelioration" by which societies extended to Jews most rights and duties of citizenship. Before the *Haskalah* (Jewish Enlightenment) began in late 18th century Europe, Christian powers allowed Jews only limited powers of self-government, and then mainly as expedients to promote Jewish tax payments to the realm. Other than to remit taxes and adjudicate civil matters exclusively internal to the Jewish community, medieval Jews were disqualified from holding most public offices or otherwise participating in government: a "Jewish vote" as such simply was unthinkable. For their part, most rabbinic authorities accepted if not preferred their corresponding separation from non-Jewish society as a self-protective bulwark against the majority's economic and sometimes physical abuse.

With Jewish "civic amelioration," however, Jewish reformers urged co-religionists to accept Europe's emerging invitation for Jews to become participatory citizens in society. Continuation of Jewish separatism from civil society, they urged, would depict disloyalty and a lack of gratitude to the non-Jewish majority, and would keep Jews insular if not backward

by their own hands rather than by the subjugation of non-Jewish powers. Perhaps the most prominent example of this intra-Jewish reform impulse emerged after the French National Assembly's 1791 decree of Jewish emancipation, when Isaac Berr de Turique (1744-1828) urged his co-religionists to swear allegiance oaths to the French Republic and undertake the duties of citizenship: "The name of active citizen [of the French Republic], which we [Jews] just obtained, is without a doubt the most precious title a man can possess in a free empire, but this title alone is not sufficient. We should possess all necessary qualifications to fulfill the duties annexed to it" – including secular education, "taking the civic oath" and voting.⁴⁷

In a sense, Enlightenment-era reformers seeking Jewish accession to citizenship were journeying back to the future. From Mishnah's earliest days, government – even non-Jewish civil government – was understood to be the necessary concern of all Jews:

רבי חנינא סגן הכהנים אומר הוי מתפלל בשלומה של מלכות שאלמלא מוראה איש את רעהו חיים בלעו. R. Chanina, assistant to the priests, said: Pray for the welfare of the government, since but for the fear of it men would swallow each other alive.⁴⁸

Mishnah's view is that government (by definition in its day, non-Jewish government) is vital to ensure public order. Talmud renders this purpose so critical that the establishment of a governmental enforcement system ranks among the seven Noahide laws binding on non-Jews and thus incumbent on Jews to support.⁴⁹ The *Rambam* held that this Noahide mandate requires police and courts to enforce other Noahide laws (*e.g.* against murder and theft)⁵⁰ – a purpose so vital that Talmud suggests the death penalty for slandering a civil regime's

⁴⁷ See *e.g.* Berr, I.B., "Lettre d'un Citoyen" ("Letter of a Citizen [to His Fellow Jews]"), in M. Diogène Tama, *Transactions of the Parisian Sanhedrin* (Kirwin Trans. 1807), at 11-29.

⁴⁸ M. *Avot* 3:2.

⁴⁹ See B.T. *Sanhedrin* 56a-b.

⁵⁰ See *Rambam*, *Mishneh Torah*, *Hilchot Melachim* 9:14.

implementation of these directives.⁵¹ R. Moshe ben Nachman (1194-1270, "the *Ramban*"), however, extended this Noahide duty beyond public order to include all government affairs promoting the general welfare.⁵² In his view, the Jewish ideal of government is to advance social justice – in Talmud's words, lest society's strong swallow the weak like fish.⁵³ Thus, the Noahide mandate obliges all societies to establish government to promote social justice, and thus obliges Jews to support that result.

Just as *halacha* obliges loyalty to non-Jewish regimes, *halacha* also obliges Jews to abide their laws. To that end, the legal principle of *dina d'malchuta dina* (דינא דמלכותא דינא) / "the realm's [civil] law also is [religious] law") evolved as a flexible accommodation that subjugates certain strictures of Jewish law to the mandates of non-Jewish civil authority.⁵⁴ For instance, under *dina d'malchuta dina*, rabbis must accept as valid most legal documents attested by non-Jews to the same extent that the civil courts accept them, overriding a more stringent *halachic* requirement of attestation by "kosher Jews."⁵⁵ Likewise, *dina d'malchuta dina* holds that where civil law requires recording a deed to convey property, a properly recorded deed supersedes the *halachic* presumption of ownership based on occupancy.⁵⁶

On the other hand, historical *halacha* is replete with Jewish reticence if not resistance to cooperating with non-Jewish civil government, bespeaking latent mistrust of non-Jewish authority. Overriding one of its own classic treatments of *dina d'malchuta dina*, Talmud

⁵¹. See B.T. *Berakhot* 58a.

⁵². See *Ramban*, comm. Gen. 34:13.

⁵³. See *id.*, quoting B.T. *Avodah Zara* 4a.

⁵⁴. See generally *Shulchan Aruch*, *Choshen Mishpat* 369:8; B.T. *Bava Kama* 113b.

⁵⁵. See B.T. *Gittin* 10b.

⁵⁶. See B.T. *Bava Batra* 54b.

invites Jews to lie to non-Jewish tax collectors by claiming that ordinary agricultural produce subject to government taxation is reserved for holy service and thus exempt from taxation.⁵⁷ Talmud presumes a tax collector (a euphemism for one who diverts Jewish funds to gentiles or who represents non-Jewish government generally) to be dishonest and thus disqualified from serving as judge or witness.⁵⁸ Despite the general duty to cooperate with government and honor its laws, *halacha* bans Jews from "informing" on other Jews to civil authorities⁵⁹ except under duress.⁶⁰ *Halacha* even invites a Jew to kill such an informer, with no prior review of a Jewish court, given the danger the informer poses.⁶¹ This "justification" to kill an informer seeks not only to save a fellow Jew's life but also to avert triumph of the non-Jewish regime to which the informer would report, as R. Mordechai ben Hillel (1240-1298) wrote:

"Even though as a general matter we do not push into a pit [to kill] any tortfeasor, even a thief or an armed robber, the reason an informer is different is that the pagans gain and the Jews lose through this conduct. This is disgusting and one who regularly trains himself to engage in such informing to pagans, his status is worse than other tortfeasors."⁶²

These authorities depict *halacha* as multi-vocal and inconsistent about how Jews should cooperate with and participate in civil government. In theory, *halacha* recognizes that government is vital to public order and social justice. To that end, during centuries of exile and then medieval anti-Semitism that placed Jews at risk of dispossession and violence,

⁵⁷.See B.T. *Nedarim* 28a.

⁵⁸.See B.T. *Sanhedrin* 25b.

⁵⁹.See *Shulchan Aruch, Choshen Mishpat* 388:9; B.T. *Bava Kama* 117a; see also *Rambam, Mishneh Torah, Hilchot Teshuvah* 3:6 (one who "betrays a Jew to gentile authorities" has no share in the world to come), 3:12 (reporting for either criminal punishment or for civil liability).

⁶⁰.See *Shulchan Aruch, Choshen Mishpat* 388:2-3.

⁶¹.See *id.* 388:10.

⁶².Mordechai, comm. B.T. *Bava Kama* 117a; see Broyde, M.J., "Informing on Others for Violating American Law" (2010), available at <http://www.jlaw.com/Articles/mesiralaw2.html>.

Jewish law evolved *dina d'malchuta dina* as a practical means to assuage civil authorities under whose control (and at whose sufferance) Jews then lived. Accommodation's "shadow side," however, was distrust of non-Jewish regimes and officers, impressing onto *halacha* a xenophobia that dampens any traditional impulse to recognize a *halachic* duty to participate in public affairs.⁶³ On the other hand, *dina d'malchuta dina* and its premise of government's necessity and legitimacy evolved as such potent forces in Jewish thought that R. Shlomo ben Adret (1235-1310, "the *Rashba*") and *Shulchan Aruch* held *dina d'malchuta dina* applicable to Jewish monarchs.⁶⁴ R. Abraham Isaac Kook (1865- 1935), first Ashkenazi chief rabbi of Mandatory Palestine, went further: Kook held that *dina d'malchuta dina* would apply even to a Jewish democracy⁶⁵ – a position undoubtedly influential to *poskim* of nascent Israel who in 1949 would articulate a *halachic* duty to vote in Israel's first elections.

שינוי פרדיגמה • Paradigm Shift

The question remains whether the legitimacy and necessity of government, and the implicit duty to abide its laws, imply a *halachic* duty to participate in the enactment of those laws by voting in civil elections. While the *Rama's* analysis above might suggest on its face a

⁶³This reticence impressed onto *dina d'malchuta dina* limits that restrict the doctrine's scope to preserve the superiority of Jewish law. According to R. Menachem b. Solomon (1249-1306, "the *Meiri*"), *dina d'malchuta dina* applies only if five conditions are met: (1) for civil laws of the realm that are not new or merely personal to the ruler, that are (2) well-known to the public, (3) found on the realm's statute books, (4) applicable to all inhabitants and not only target subgroups, and (5) serving a valid government purpose. See *Meiri, Beit HaBechirah*, comm. B.T. *Bava Kamma* 113b (Schlesinger ed.: Jerusalem 1963), at 331; Quint, E., *Restatement of Rabbinic Civil Law*, vol. 9 (Gefen: Jerusalem 2013), at 311-312. *Halacha* also evolved the view that *dina d'malchuta dina* does not supersede ritual laws, or divest rabbinical courts of commercial jurisdiction between Jewish parties. See *id.*

⁶⁴See *Rashba*, part 1, responsa 637; *Shulchan Aruch, Choshen Mishpat* 369:6.

⁶⁵See Kook, A.I., *Teshuvot Mishpat Kohen* 144. To be sure, Kook's position – though certainly formative for modern *poskim* – broke with substantial *halachic* authority that deemed that *dina d'malchuta dina* inapplicable in a Jewish state that could not deport one who violates its civil law. Cf. *Rambam*, comm. M. *Nedarim* 3:3; *Meiri, Beit haBachirah*, comm. B.T. *Nedarim* 28a.

negative answer, existing *halacha* cannot answer the question. Most directly relevant sources date to when Jews could not vote for civil government, and before most governments were subject to civil election on theories of social compact and popular sovereignty.⁶⁶ Because the question then could not have been asked, sources of that era cannot provide clear answers.

Moreover, for today's Jewish world, now two centuries into civic amelioration and 65 years after the founding of the modern State of Israel, the *halachic* foundation for tradition's ideal relationship between Jewish life and civil authority has so eroded that it cannot support the political edifices of modern life. *Dina d'malchuta dina* evolved as a response to exilic life under foreign dominion, and particularly Jewish fear of deportation. So explained R. Eliezer ben Shmuel of Metz (d. 1175): "The [monarch] owns the land and he may deport anyone who does not abide by his [or her] laws; citizens therefore are required to obey his [or her] laws or leave the country."⁶⁷ In short, rabbinic authorities recalling prior generations' pain of exilic privation evolved *dina d'malchuta dina* to assuage monarchs and avert deportation.

The difficulty for modern *halachic* analysis, however, is that most Jews in today's democracies do not see themselves as exiles or at risk of exile: Jews of Western democracies tend to actively participate as citizens of countries in which they reside. Neither do these modern Jews predominantly experience xenophobia and prejudice in government, though prejudice and anti-Semitism remain and sometimes flare up around the world to tragic effect. Now that Jews recognize themselves – and democratic governments widely recognize Jews – as active citizens, Talmud's xenophobic distrust of non-Jewish regimes has no legitimate role

⁶⁶The modern political notion of a "social compact" based on the "general will" of the whole population emerged only with a 1762 treatise by that name. See Rousseau, J., "Du contrat social ou Principes du droit politique" ("Of the Social Contract, or Principles of Political Right") (1762).

⁶⁷Ben Shmuel, *Sefer Yereim*, quoted in *Rashba*, part 1, responsa 637; see also Quint, *supra* n.63, at 317.

in dictating a modern *halacha's* views on democratic governments and the contours of Jewish citizenship. Along the same lines, to the extent that *dina d'malchuta dina* applies to the State of Israel and Jewish citizens of democratic nations no longer face deportation due to religion or violations of civil law, fear of exile no longer can serve as a rational basis for *dina d'malchuta dina* and its privilege for civil law over rabbinic authority.

For all of these reasons, *halachic* discourse about the modern Jewish citizen's proper relationship with government must be updated to reflect modern realities. If *dina d'malchuta dina* is to retain modern resonance, this legal construct requires a new foundation reflecting most modern Jews' lived realities of life in advanced democracies. Only by such a rethinking can a coherent *halacha* emerge for Jewish civic life. Only then can meaningful *halachic* answers emerge about Jewish citizens voting or not voting in civil elections.

This rethinking is not only permissible but also mandatory within the four corners of classical *halacha*. After all, *halacha* wisely refuses to base itself on an impossibility – in this instance, the past impossibility of Jewish voting in civil elections – based on the Talmudic legal maxim היכא דאפשר אפשר דלא אפשר לא אפשר / "What is possible is possible, what is impossible is impossible."⁶⁸ It also is well-established *halachically* that sociological change that shifts the foundation for prior *halacha*, or frames a new issue that could not practically have arisen at that time, requires reconsideration under the *halachic* doctrine of שינוי עתים / changed times and circumstances.⁶⁹ As prior generations of *poskim* could not have asked much less answered the question presented from a practical vantage, today's Jews must address the question through their own eyes and the lens of their own conditions based

⁶⁸B.T. *Bava Kama* 84a; B.T. *Chullin* 11b-12a; B.T. *Niddah* 67b.

⁶⁹See e.g. Tos. *Avodah Zara* 24b; Tos. *Beitza* 36b; see also Roth, J., *The Halakhic Process: A Systemic Analysis* (Jewish Theological Seminary of America, New York 1986), at 257-263.

on the doctrine of דור דור / each generation must decide for itself,⁷⁰ after Torah's edict to inquire of decisors אֲשֶׁר יִהְיֶה בַּיָּמִים הָהֵם / "[presiding] in the days" when an issue arises.⁷¹

These *halachic* principles frame the basis for שינוי פרדיגמה / paradigm shift, the phenomenon of new perspective arising from changes in circumstances so fundamental that existing perspectives based on outdated views cannot stand. While historically some paradigm shifts emerged from disasters, such as destruction of the Temple and the exile that drove evolution from cultic to rabbinic Judaism, other paradigm shifts emerged from leaps in consciousness, such as viewing the Earth from space as a holistic and living unity. On this subject, R. Zalman Schachter-Shalomi (1924-2014) explained that paradigm shift means:

"being post triumphalist.... It means that many things have shifted in our awareness, in our mind. And, if this is truly our new situation, then we need to go beyond the limitations that the old system now imposes so that we can, again, practice in a way that leads to transformation."⁷²

Critically, *halachic* paradigm shift requires not discarding the "old system" entirely but adapting it to both include and transcend the *halachic* thinking that preceded it. Only with such backwards compatibility can a paradigm-shifted *halacha* – indeed, any *halacha* historic or modern – be rooted "organically to the past so that it has a connection" to a living tradition.⁷³ Only when rooted connectively in this way can a meaningfully directive *halacha* of civic participation have legitimate resonance for Jewish citizens of advanced democracies in the present era. Only with the benefit of this re-thinking can *halacha* offer a resonant response to the question presented.

⁷⁰ See e.g. B.T. *Sanhedrin* 34b.

⁷¹ Deut. 17:9.

⁷² Schachter-Shalomi, Z. & Siegel, D., *Integral Halachah* (Trafford: Victoria 2007) at 1, 22.

⁷³ *Id.* at 14.

אלהות • אלהות מדינה וגלות • God, Country and Exile

The task of formulating a modern and backwards compatible *halacha* of Jewish civic participation must begin with the canonical derivation of Jewish life in broader non-Jewish society. Suitably enough, one of the canon's most prominent expressions of the Jewish ideal of relating to the civic realm arises from Israel's first exile – itself the basis for a paradigm shift in Jewish life away from the ancient cult of the Temple and toward rabbinic exposition of legal and spiritual life in exile. To Israelites exiled from Jerusalem to Babylon after the destruction of the First Temple in 586 B.C.E.,⁷⁴ the prophet Jeremiah instructed:

כֹּה אָמַר ה' צְבָאוֹת אֱלֹהֵי יִשְׂרָאֵל לְכֹל־הַגּוֹלָה
אֲשֶׁר־הִגַּלְתִּי מִירוּשָׁלַם בְּבָבֶלָה. בְּנוּ בָתִּים וְשִׁבוּ
וְנִטְעוּ גִּנּוֹת וְאָכְלוּ אֶת־פְּרִיָן. קַחוּ נָשִׁים וְהוֹלִידוּ
בָּנִים וּבָנוֹת וְקַחוּ לְבָנֵיכֶם נָשִׁים וְאֶת־בָּנוֹתֵיכֶם
תָּנוּ לְאִנְשֵׁים וְתִלְדְנָה בָּנִים וּבָנוֹת וְרַבּוּ־שֵׁם וְאַל־
תִּמְעָטוּ. וְדַרְשׁוּ אֶת־שְׁלוֹם הָעִיר אֲשֶׁר הִגַּלְתִּי
אֶתְכֶם שָׁמָּה וְהִתְפַּלְלוּ בְעֵדָה אֱלֹהֵי כִי בְשְׁלוֹמָהּ
יְהִיָה לְכֶם שְׁלוֹם:

"Thus says the Lord of Hosts, God of Israel, to all the captives I caused to be carried from Jerusalem to Babylon: Build houses and dwell in them; plant gardens and eat their fruit. Take wives and have sons and daughters; take wives for your sons and give your daughters to husbands, so they can bear sons and daughters; multiply there and do not be diminished. Seek the peace of the city where I caused you to be taken captive, and pray to God for it, for in its peace you will have peace."⁷⁵

From Jeremiah emerge two themes for a modern *halacha* of civic participation. The first is the value of individual acts: tending one's place and stake in community is a mandate that obliges not only spirituality in prayer "for the peace of the city" but also physicality of works on its behalf – building homes, planting gardens and raising children as full-fledged participants in community. Investing in community is to seek what Jeremiah termed the community's *שלום* – both its peace and its welfare – and thereby also to seek one's own peace and welfare. So noted R. David ben Solomon ibn Abi Zimra (1479-1573, "the *Radbaz*") in his commentary on Jeremiah: one must seek community peace and welfare just as "one must

⁷⁴. See generally Ps. 137.

⁷⁵. Jer. 29:4-7.

pray for the government" – in Talmud's understanding, lest public disorder reign and civilized life disintegrate into chaos.⁷⁶

Jeremiah's second principle for a modern *halacha* of civic participation concerns less individual acts of participation than their collective function. Jeremiah's admonition to exilic "captives" not to be "diminished" conveys not only emotional and spiritual comment on exilic life but also, in the view of the *Radbaz*, a physical ontology that exilic Jews must plant gardens and bear children lest exilic Jews disappear.⁷⁷ In this understanding, Jeremiah's call was for exilic Jews as a collectivity to survive and thrive amidst their host civilization, both to perpetuate the Jewish people and to serve the broader community's peace and welfare. This collective bent of Jewish civic participation later found its most eloquent modern expression in Zionist writings of Asher Tzvi Hirsch Ginsburg (1856-1927, "*Achad Ha'am*"):

"[T]he development of [a spiritual center for Jews in Palestine] must be the limited work of all the members of our nation wherever they may be scattered.... The example set by the distinguished [few who begin this work will be] followed by the rank and file until it becomes customary for every Jew of any pretensions to respectability to consider it a duty."⁷⁸

While to Jeremiah the Jewish collectivity would survive and thrive by the very fact of building community in exile, to *Achad Ha'am* the Jewish collectivity would survive and thrive by each and every Jew participating in building a spiritual home for Jews in Palestine. Jeremiah and *Achad Ha'am* both held, each in their own way, that only the collective nature of Jewish community building could effectuate Jews' spiritual purpose of redemption from exile. In *Achad Ha'am*'s words, nothing less than "all the members of our nation wherever

⁷⁶ See ibn Abi Zimra, *Metzudat David*, comm. Jer. 29:7, quoting B.T. *Avodah Zara* 4a; see also M. *Avot* 3:2.

⁷⁷ See *id.*, comm. Jer. 29:6.

⁷⁸ *Achad Ha'am*, "An Open Letter to My Bretheren in the Spirit" (1891), Simon trans. (Jewish Publ. Society 1912), available at <http://www.jewishvirtuallibrary.org/jsource/Zionism/haamopen.html>.

they may be scattered," all of them together acting for the sake of Jewish community, can achieve that result.

Now 2,600 years after Jeremiah's prophetic call to flourish in exile, a century after *Achad Ha'am* penned his Zionist call to universal participation, and now 65 years after the restoration of the State of Israel, modern Jews face a different world that begs key questions about how to understand the "exile" that Jeremiah and *Achad Ha'Am* described. How modern Jews should understand "exile," in turn, has profound implications for the question presented because the contours of "exile" shape both the Jewish historical narrative and the modern rectification of Jewish identity, purpose and civic loyalty.

While an exhaustive treatment of these matters exceeds the scope of any *teshuvah*, several possible threads emerge from both classic and modern Jewish literature – and each offers at best only a partial framework for answering the question presented. Perhaps the most traditional perspective is that Jews will remain in "exile" so long as they reside outside Israel, following Biblical promises that God would restore the Children of Israel to the Land.⁷⁹ For a modern *halacha* of civic participation, the difficulty with this view is that it is both over-inclusive and under-inclusive. Much to the chagrin of *Achad Ha'am*, the practical reality is that most diaspora Jews don't perceive themselves to live in "exile": to the contrary, most participate as citizens in the socioeconomic and political life of advanced democracies across Europe and North America. Acceding to the rights and duties of citizenship is far from the exilic malaise and disempowerment that Jeremiah confronted. Moreover, whatever the meaning of "exile," most Jews today understand its modern cause in differently than in centuries past. In Jeremiah's day, "exile" was a condition attributed to divine causation:

⁷⁹. See e.g. Gen. 12:7, 15:18, 17:8, 28:13; Deut. 1:8.

Jeremiah spoke for God לְכֹל־הַגּוֹלָה אֲשֶׁר־הִגְלִיתִי מִירוּשָׁלַם בְּבָלָה / "to all the captives whom [God] caused to be carried from Jerusalem to Babylon,⁸⁰ regarding life in אֲשֶׁר הִגְלִיתִי הָעִיר הַזֶּה / "the city to which [God] caused you to be exiled."⁸¹ It was plain to Jeremiah and his contemporaries that they could not return to Israel at will – but today's Jews can. The State of Israel's "Law of Return" guarantees admission and settlement to most Jews,⁸² and modern socioeconomic and political realities accord most Jews relatively unfettered mobility and immigration among democratic nations. Simply put, Jews who want to live in Israel may do so, Jews who want to live outside Israel may do so, and thus Jeremiah's notion of compelled political exile belies the modern reality of almost all Jews around the world.

As to the State of Israel, exilic notions all the more defy most Jews' lived reality. Except for a small ultra-Orthodox minority deeming the State of Israel illegitimate until re-established in messianic days, Israelis do not view themselves as exiles. Moreover, as Rav Kook held, *dina d'malchuta dina* expressly applies to a Jewish democracy – in derogation of that legal doctrine's exilic premise that compliance with the ruler's law is necessary to placate the ruler's unpredictable whim – thus begging questions about the *halachic* significance of exile for *dina d'malchuta dina*. That many Israeli *poskim* followed Rav Kook by mandating votes in Israeli elections, from the State of Israel's founding to the present day, underscores that even most Orthodox Israeli *poskim* have transcended both spiritual and *halachic* identification with traditional understandings of exile.

Lest Jeremiah's words become historical relics lacking modern significance, the very notion of "exile" itself requires a paradigm shift. The advent of political modernity, socio-

⁸⁰.Jer. 29:4.

⁸¹.Jer. 29:7.

⁸².See *Sefer HaChukim* No. 51 (21 Tammuz 5710 / July 5, 1950), at 151.

political freedom according Jews meaningful choice of where and how to live, a modern State of Israel, and unfettered suffrage rights for Jewish citizens of democratic nations, together compel this paradigm shift about what "exile" should means for modern Jews both in Israel and in diaspora.

As Jeremiah and *Achad Ha'Am's* understandings of "exile" no longer fully resonate with most Jews, thought leaders are undertaking to re-examine of "exile" with potentially profound implications for the question presented. To R. Art Green (b. 1941), modern Jews may be "scattered" as *tefutsot* but no longer are "exiled" as *golim*, the word Jeremiah used that Green understands as a political term. Rather, Jews (like all people) inhabit a spiritual "exile" that Green terms *galut*. Depicting this view as a paradigm shift, Green explained that:

"[A]ll Jews still live in *galut*, that is, in an unredeemed world, but this applies equally to Jews in the Holy Land and abroad. The distinction between *golah* (Jews in exile, outside the Land) and *galut* (the unredeemed state of existence, in a universal and almost metaphysical sense) is not a classical one, but the terms seem to have been used differently in recent times."⁸³

Given his sense of "exile" to mean "unredeemed" rather than displaced, Green might heed Jeremiah's prophetic call as one that beckons modern Jews to discern how to hasten the rectification of their spiritually "unredeemed" condition. Green continues:

"[T]he task of redemption calls upon [Jews] to live within the non-Jewish world, to stand as Abraham's descendants and be *ivrim*, contrarians, in societies that are otherwise too monochromatic, to be an ongoing minority, struggling for survival, providing a certain leaven to otherwise uniform societies, and perhaps also showing the way to so many minorities seeking acceptance yet frightened of disappearing. The American Jewish experience has taught us that our presence as a moral voice, when we use it well, can add much to the broader society in which we live, even when we are only a small fraction of the population."⁸⁴

⁸³Green, A., *Radical Judaism: Rethinking God & Tradition* (Yale Univ. Press: New Haven 2010), at 150 & 187 n.45.

⁸⁴*Id.*, at 151.

To Green, not only physical presence but also collective use of the "moral voice" is the Jewish purpose to hasten the world's "redemption." That "moral voice," in turn, calls for Jewish political participation in ways that neither Jewish experience nor *halacha* practically could envision until modernity. Green concludes:

"Our age is also different in being a time when Jews, a tiny fraction of humanity, live in highly privileged and powerful circumstances, having some real influence regarding crucial decisions that face us all. This is true of Jewish leaders in the political sphere, in communications media, business, the academy, and lots of other areas. Because of the role of religion in American life, our society would be happy to learn that views which influential Jews hold on major issues are in part shaped by thoughtful study of their own traditions. This is a situation for which our prior history never trained us....

"In our day, [Jewish history's] self-isolation will no longer do. There is no threat of persecution that requires it. The time calls out for a Judaism appropriate to the new reality. The defensive medieval or *shtetl* reflexes no longer speak to the reality of our current situation. ... They are not what the world needs of us in this hour.

"In some vague and undirected ways we do see the Jewish witness to the need for change articulating itself. Bearers of Jewish names are prominent in all the Western movements for civil and human rights as well as for environmental protection ... The fact that large majorities of American Jews, despite their rising economic fortunes, continue to support liberal and generous programs of social welfare also speaks to the ongoing subtle proclamation of our truth. The prominence of Jews in antiwar activities, in environmental groups, and in other causes that seek to benefit humanity and the planet, all point in the same direction....

"We need a Judaism that will speak fully to the values of these Jews, among whom I count myself. Caring for the needy and raising the banner of human dignity are *mitzvot*, part of what we are most essentially obligated to do as Jews. So too are protection of the planet and concern for future generations. We do them not because they are *au courant* or represent the best of liberal politics; we do them because they are the very foundation of Torah..."⁸⁵

By framing civic participation in terms of the Jewish people writ large acting for the sake of the world, Green takes up Jeremiah's collective focus and updates it to a modern purpose that also resonated with Schachter-Shalomi. In Reb Zalman's so-called "organismic

⁸⁵. *Id.* at 155-156.

metaphor," every religion is a vital organ in the organism that is humanity's physical and spiritual life, and Jews – like all peoples – have an essential collective purpose in humanity's evolution.⁸⁶ In this view, Jews fulfill their collective mission when they act together as social movers: Jews are to Green the societal "leaven" of diversity and innovation,⁸⁷ or to Reb Zalman the "white blood cells" of broader society to help fight off spiritual infection.⁸⁸

These modern re-understandings of Jewish roles in society – to help repair the world by all possible means, including political influence unknowable to prior generations – elevate the importance of the question presented, but cannot alone answer it. These clarion calls to Jewish advocacy retrace liberal Jewish perspectives about civic participation, amplifying the importance of that purpose but without necessarily addressing a duty to vote as such. Indeed, as noted above, such has been the position of the Conservative and Reform Movements on this matter, elevating the question without answering it. Conversely, construing Green's call as a mandate to participate in civil elections in service of particular Jewish values – such as supporting the needy, promoting peace and protecting the environment – would tread the same dubious path as Orthodox *poskim* who direct votes for socially conservative candidates based on particular policies contested in an election. As shown above, the vindication of any particular political view can provide no meaningfully directive guidance as to whether *halacha* ought to require Jews to vote. Accordingly, Green and Shachter-Shalomi's purposive analysis of the collective Jewish role in "exile" cannot fully answer the question presented.

⁸⁶ See generally Schachter-Shalomi, Z., *First Steps to a New Jewish Spirit* (Jewish Lights: Woodstock 2003), *passim*; Yuhas, S., *et al.*, "Rabbi Zalman Schachter-Shalomi and the Origins of Post-Holocaust American Judaism," Univ. of Colorado (2014), available at <http://ucblibraries.colorado.edu/archives/zalman/zalman.pdf>.

⁸⁷ Green, *supra* n.83, at 151.

⁸⁸ Schachter-Shalomi, Z., "Deep Ecumenism" (1998).

An alternative notion of redemption from "exile" emerges from Bonna Haberman, who writes as an Israeli and confronts in Zionism's political and spiritual philosophy much the same crisis of meaning that Green confronts in diaspora. For Haberman, writing 65 years after Israeli independence, traditional views concerning Zionism's call to "return" have little meaning for Jews who already "returned" to Israel, begging the question of whether Zionism has become for most Israelis a lifeless historic relic. Her reply is to re-figure "return" in more ethical than literal terms – to journey ever "deeper into the Land."⁸⁹ Haberman's "return to Zion" is to deepen relationship to the nation and to spiritual life: "Seeking the sacred is not a matter of going beyond this world, but of entering more deeply into this world."⁹⁰ Even more, Haberman argues, this ever-deepening investment is the Jewish character and purpose:

"For centuries, Jewish culture has stressed the goals of intellectual achievement combined with social justice. These priorities have informed Jewish communities and their actions. Excellence in social responsibility has been a defining trait of Jewish identity: 'There are three characteristics that distinguish the Jewish People – they are merciful, they are bashful and they are performers of acts of kindness.'⁹¹ Egged on by texts that obligate social betterment, Jews [must] contribute to the infrastructure of social justice in America and throughout the world."⁹²

To Haberman, going deeper into the land means ever more fully honoring the Jewish duty of social betterment as the Jewish collective's "particular response to history."⁹³ This response, in turn, extends beyond Israel to diaspora and the whole world. As Reb Zalman held in another context, it is the Jewish collective calling to behave in a manner that hastens the worldwide spread of redemption, so all humanity can experience greater imminence of

⁸⁹Haberman, B., *Rereading Israel: The Spirit of the Matter* (Urim: Jerusalem 2012), at 168.

⁹⁰*Id.* at 123.

⁹¹B.T. *Yevamot* 79a.

⁹²Haberman, *supra* n.89, at 130.

⁹³*Id.*, quoting Fackenheim, E., *To Mend the World* (Schocken: New York 1982), at 250 *et seq.*

lived spirituality, after the rabbinic maxim עתידה ארץ ישראל להתפשט בכל הארצות / "In the future, [the spirituality of] the Israel will spread over all the nations."⁹⁴

Haberman's approach to re-reading "exile" helpfully transcends both the geographical particularity of Zion and the philosophical particularity of political liberalism. As such, Haberman offers a path free of the political subjectivity inherent in every *kol korei* mandating a vote for a particular candidate based on a particular plank in a campaign platform. The *mitzvah* of social action arises from Zion's call to "deepen" Jewish connection to the land in all respects – environmentally, socially and politically. Threading Haberman's re-thinking of "exile" through Jeremiah's prophetic call about "exilic" life and the *Radbaz* sense of praying for and acting on government's behalf, modern Jews fulfill their redemptive journey "deeper" into the land by participating in the civic affairs of whatever land in which Jews reside.

To be sure, however, voting is only one of many forms of participation in civic and political affairs that might heed Haberman's call to journey "deeper" into the land. Voting, advocacy, protest, charitable support of social justice and the whole range of activities for the sake of *tikkun olam* arguably serve that purpose. This social justice imperative to vote, as but one of several ways to serve Haberman's purpose, thus rehearses the "heavenly call" to vote that the *Rama* and *Chatam Sofer* suggested. As noted above, these authorities recognized that because the selection of civil leadership manifests a partnership between God and the people, there exists a "heavenly call" for all eligible Jewish citizens to vote in civil elections. Those same authorities, however, also tacitly countenanced non-participation בדיעבד / in the breach

⁹⁴Schachter-Shalomi, Z. & Siegel, D., *Credo of a Modern Kabbalist* (Trafford: Victoria 2003); Amiel, M. Avigdor (chief rabbi of Tel Aviv, 1935-1946), *Hegyonot El Ami*, comm. Gen. 28:13. This *midrashic* maxim offers a creative solution to "how the whole world will gather each Sabbath and New Moon at the future Temple in Jerusalem (Is. 66:23): ... Jerusalem will spread throughout Israel and Israel throughout the world." See Danan, J., "A 'Simple' Dvar Torah" (2014), available at <http://kolaleph.org/2014/08/19/a-simple-dvar-torah-by-rabbi-julie-danan>.

by first directing election authorities to ignore non-votes in deciding election results, and then obliging authorities to enforce those results on non-voters. As such, neither these *halachic* directives, nor the "heavenly call" to which they might seek to respond, nor Haberman's call to go "deeper" into the land through political participation, alone can offer a firm foundation for a *halachic* duty to vote.

אמנה החברתית ובעיית הרוכב החופש • The Social Compact and Free-Rider Problem

This firm foundation, however, arguably does exist. While traditional exilic notions break down and new ones evolve, a modern *halacha* of civic participation can ground in revisiting the *halachic* presumption that religious respect for civil authority arises from the Jewish reality or fear of physical "exile." Not only is the traditional definition of "exile" now suspect, but also some *poskim* long ago dissented from the view that *dina d'malchuta dina* arose as a rabbinic expedient to avoid privations of deportation. Breaking with *halachic* authorities of his day, the *Chatam Sofer* held that *dina d'malchuta dina* hails דאורייתא / from Torah itself rather than דרבנן / from rabbinic law. As shown below, this re-understanding of *dina d'malchuta dina* relative to Jewish religious duties is pivotal to the question presented.

The *Chatam Sofer* addressed the case of a male calf born to a cow that is pregnant for the first time, where the Jewish owner of the cow sells an interest in the pregnant cow. The *Chatam Sofer* recognized that Torah renders the male calf holy (*i.e.* reserved for ritual service subject to payment of the redemption price),⁹⁵ but only if a Jew owns the cow at its calving time. Conversely, Torah's mandate of redeeming the first-born calf does not apply if a Jew sold the cow or any interest in it to a non-Jew – a determination, the *Chatam Sofer* held, that

⁹⁵. See Ex. 22:28-29.

turns on the legal validity of the sale. Because the transaction of a commercial sale to a non-Jew is subject to civil law, the *Chatam Sofer* reasoned that *dina d'malchuta dina* governs any such sale of the cow and thus also Torah's mandate to redeem its calf. Thus, the *Chatam Sofer* concluded, *dina d'malchuta dina* must apply as a matter of Torah law.⁹⁶ If so, then *halachic* respect for and deference to civil authority traces directly to Torah – inherently recognizing that Jews might live under non-Jewish governments and be subject to their laws as a matter of religious mandate.

While a Torah duty to abide each realm's civil law is distinguishable from a *halachic* duty to vote for the realm's civil lawmakers, complete *halachic* treatment of voting could not practically exist before modern notions of democratic legitimacy led to the civic amelioration of Jews and their accession to the rights and responsibilities of citizenship. A related inquiry, however, offers critical focus for the question presented. Long before the advent of modern political philosophy, R. Samuel ben Meir (1080-1174, "the *Rashbam*") offered another theory of *dina d'malchuta dina* resounding explicitly in politics, in a manner that suggests a *halachic* duty to vote now that Jewish civil rights are woven into the fabric of democratic societies. Concerning on Talmud's holding that *dina d'malchuta dina* establishes the holder of a deed properly recorded under civil law as the rightful property owner notwithstanding contrary rabbinic law,⁹⁷ the *Rashbam* explained that civil law trumps *halacha* because all inhabitants of a realm enter into a social compact to abide that realm's civil law. By opting to live in a particular jurisdiction, the *Rashbam* wrote, "inhabitants of [the realm] take upon themselves by their own free will the statutes of the [ruler] and his [or her] laws."⁹⁸ In essence, the

⁹⁶.See *Chatam Sofer, Yoreh De'ah* responsa 314.

⁹⁷.See B.T. *Bava Batra* 54b.

⁹⁸.*Rashbam*, comm. B.T. *Bava Batra* 54b, *ad loc.* והאמר שמואל.

Rashbam held that a resident's choice to live somewhere establishes a bilateral contract between the resident and the realm: the realm protects the resident's interests, and the resident abides the realm's laws. This contractual foundation for *dina d'malchuta dina* quickly found support among the *Ramban*⁹⁹ and R. Yitzchak ben Moshe (1180-1250, "the *Or Zarua*").¹⁰⁰

This *halachic* social compact theory for *dina d'malchuta dina* is striking because the Western notion of a social compact did not exist until the mid-18th century, some 600 years after *poskim* addressed the issue. Even more striking is that this social compact theory presumes a free will about where to live that, for most Jews of that time, simply did not exist. Medieval European governments imposed on Jews residency restrictions, disqualifications from public office and economic privations that belied all practical notions of Jewish free choice in residency. Only after civic amelioration began in the late 1700s did European societies begin allowing Jews to live where they wished and assume the rights and duties of citizenship in the nations where Jews resided. It is thus especially significant that centuries before Western political thought on a social compact emerged, the *Rashbam*, *Ramban* and *Or Zarua* all recognized a social compact by which Jews choosing to live somewhere thereby oblige themselves to honor that jurisdiction's civil laws as a *halachic* mandate.

If Jewish residency within a civil jurisdiction gave rise to a *halachic* social compact six centuries ago, when non-Jewish powers significantly limited Jewish freedom of residency, immigration and socioeconomic mobility, then *kol vachomer* these authorities memorialize a *halachic* social compact inhering today in the modern Jew's unfettered choice of where to live across the democratic world. It follows that if a modern Jew decides to live in any civil jurisdiction, whether in Israel or in diaspora, that choice establishes a *halachic* duty to abide

⁹⁹. See *Ramban*, responsa 46.

¹⁰⁰. See Quint, *supra* n.63, at 307, citing *Or Zarua* (Goldman ed.), responsa 745, at 1:210.

that jurisdiction's laws. Likewise if a Jew becomes a voting-age citizen of a nation, whether automatically on reaching that nation's age of majority or by immigration and naturalization, that choice establishes a *halachic* duty to accede to that nation's duties of citizenship. *Dina d'malchuta dina*, in turn, exists not as a continuing concession to the risk of physical exile but precisely because Jewish citizens of Western democracies are *not* in physical exile: in post-emancipation modernity, *dina d'malchuta dina* inheres in the social compact itself.

Thus, for example, R. David Tzvi Hoffman (1843-1921), as Chief Rabbi of Berlin, held in his מלמד הו"א / "Aid to Teaching" – his collection of responsa on then-emerging *halachic* issues in the new Jewish paradigm of civic amelioration – that no Jewish citizen may dodge the national draft and each must serve in the national military when called, even in derogation of Shabbat. A Jew who dodges a national draft in derogation of one's duty of citizenship, Hoffman held, "causes, God forbid, a desecration of God's Name if it becomes known."¹⁰¹ In Hoffman's view, Jewish disrespect for civil authority is akin to disrespecting God's Name, and averting disrespect for God in this manner rises so high on the hierarchy of Jewish obligation that it transcends even keeping Shabbat – no less than the Jewish duty of פיקוח נפש / saving life.¹⁰² To Hoffman, the social compact is the political reflection of God's Name in the world, and its implementation culminates humanity's partnership with divinity.

To be sure, few democratic nations legislate voting as a duty of citizenship. Some nations, such as Australia, require citizens to vote on pain of civil fine;¹⁰³ arguably in such nations, *dina d'malchuta dina* in any formulation fixes a *halachic* duty to comply with the

¹⁰¹ Hoffman, *Melamed Ho'il*, vol. 1, responsa 42 (Frankel ed., New York 1953), at 62-63, available at <http://hebrewbooks.org/pdfpager.aspx?req=1053&pgnum=62>.

¹⁰² See generally Lev. 18:5; B.T. *Yoma* 85b; *Shulchan Aruch*, *Orach Chayyim* 328:2.

¹⁰³ See e.g. International Institute for Democracy and Electoral Assistance, "Compulsory Voting" (2014), available at http://www.idea.int/vt/compulsory_voting.cfm.

legal mandate to vote (or pay the fine for not voting). The United States, however, is not a compulsory-voting nation. Broadly speaking, rights-based societies like the United States view compulsory voting as an affront to civic voluntarism and individual rights – here, the right not to vote. Implicit in this philosophy is tolerance for civic free-riding: all may claim the benefits of living in a democratic society without contributing their own democratic participation. In this political understanding, Western democracies that will not tolerate free-riding on paying taxes – a duty governments generally impose on all income-earning adults – will allow and even tacitly encourage free-riding on voting for tax-collecting governments. In most Western democratic regimes, the philosophical and political interests of civil freedom impel governments to impose only those compulsions necessary to support government's effective operation and thereby ensure the social compact. To that purpose, the thinking goes, all income earners must pay taxes, but all adult citizens need not vote for the tax collector.

Such may be the civil ethos of most modern democracies, but the collective bents of Jewish law and philosophy oppose free-riding far more strenuously. Jewish tradition so values collective responsibilities as to trump the individual's right to opt out. As R. Tarfon taught, לא עליך כל המלכה לגמור ולא עתה בן חורין להתבטל [ממנה] / "You do not need to finish all the work, but you are not free to desist [from it]."¹⁰⁴ Likewise, Jewish tradition so focuses on the collective that membership in community defines each Jewish individual: as R. Hillel taught, אל תפרוש מן הציבור / "One mustn't separate oneself from community."¹⁰⁵ So important to Jewish tradition is each Jew's participation in community that a Jew willfully separating oneself from community is deemed to have no share in the world to come.¹⁰⁶

¹⁰⁴ M. *Avot* 2:15.

¹⁰⁵ M. *Avot* 2:4.

¹⁰⁶ Rambam, *Mishneh Torah, Hilchot Teshuvah* 3:6.

This Jewish commitment to community far transcends aphorism and eschatology. *Halacha* obliges Jews to support the provision of collective benefits that modern economists call "public goods," which by definition are available to all and thus subject to free-riding.¹⁰⁷ A community's well supplying drinking water and outer wall providing external protection – two classic public goods that benefit everyone despite individual free-riding – are all Jews' duty to support without exception.¹⁰⁸ While Talmud initially frames this duty to require all to pay for public goods that benefit them – כל מילתא דאית להו הנאה מיניה אפילו מיתמי / "The principle is that even orphans must contribute to any public service from which they derive benefit"¹⁰⁹ – Talmud applies this maxim to persons who do not perceive themselves to obtain benefits.¹¹⁰ Mere participation in the community in which a public good arises is sufficient to compel one to support the provision of that public benefit: thus, a community can compel enforcement of each person's duty to help pay to provide public goods, lest any exception defeat the very public goods to be attained.¹¹¹ This public goods doctrine helps explain the *Rama's* holding that a community can enforce a tax collector's levy among taxpayers who

¹⁰⁷ A "public good" is a benefit that is both "non-rival" (any one person's consumption does not perceptibly reduce the supply of that benefit or impede another person's consumption) and "non-exclusive" (it is impractical to exclude any one person from obtaining the benefit without excluding others). See Samuelson, P.A., "The Pure Theory of Public Expenditure," *Review of Economics and Statistics*, vol. 36:4 (1954), at 387-389. Classic examples include lighthouses, street lights, driving on public highways and breathing clean air. Because public goods are non-exclusive, they are subject to degradation because people have natural incentives to over-consume them or not to contribute to their provision. While individual free-riding behaviors may not be practically discernible (one person's driving will not clog a highway, and one person burning garbage will not render the world's air unbreathable), collective free-riding jeopardizes the public good itself. Thus, collective action (in most instances government action) is necessary to regulate the public good and discourage free-riding.

¹⁰⁸ See B.T. *Bava Batra* 7b-8a.

¹⁰⁹ B.T. *Bava Batra* 8a.

¹¹⁰ The classic example is the cohort of rabbis claiming that they do not need the physical protection of a community's circumferential protective wall because Torah protects them, and thus they ought not need to pay to support the wall – a view Talmud rejects. See *id.*

¹¹¹ See *id.*

declined to vote for the tax collector or who dissented from the majority's choice:¹¹² any exception would swallow the rule and hobble the collection of necessary taxes.

If *halachic* treatment of public goods and free riding ended here, then *halacha* merely would establish only a civil duty to pay taxes to support the provision of public goods. The *halachic* duty of collective participation, however, extends farther: it goes beyond paying for public goods to directly assisting in their provision. Hoffman suggested as much by holding that all Jewish citizens must serve in the military when called: civil defense is a public good for the whole society, and no modern Jewish citizen may free-ride on protecting the nation.¹¹³ What Hoffman only implied about free-riding, Talmud held outright. Concerning a navigable river used for transportation and a drainage ditch used for flood control – two other classic public goods that benefit all at least in potential – Talmud broadly compels personal aid by all members of the community to clear impediments to water flow that may imperil the public:

אמר רב יהודה לכריא דנהרא תתאי מסייעי עילאי עילאי לא מסייעי תתאי וחילופא במיא דמיטרא.	"Rav Yehudah said: When the river requires dredging, those dwelling on the lower reaches must aid the upper inhabitants, but not vice versa. But it is the reverse in respect to rain water [in a drainage ditch]." ¹¹⁴
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If a river used for transportation requires dredging at a certain point so transportation can continue past a blockage, then "upper inhabitants" along the river above the blockage can

¹¹² Rama, Gloss on *Shulchan Aruch*, *Choshen Mishpat* 163:1; see also Moharam on *Sefer Kinyan* 27a.

¹¹³ See Hoffman, *supra* n.101. To be sure, Hoffman's initial reasoning traced the same fear of exile that proponents of *dina d'malchuta dina* followed in centuries past – lest the non-Jewish public deem Jews disloyal to the state. That Hoffman feared the appearance Jewish disloyalty testifies to both the slow evolution of civic amelioration in Jewish life and the staying power of exilic concern in *halachic* thought. In view of the *Chatam Sofer's* nearly contemporaneous re-understanding of *dina d'malchuta dina* to inhere in Torah rather than arising from fear of exile, we can read Hoffman to hold that Jewish citizens must serve in the army because they benefit from the public security that the army provides. In this understanding, *chilul Hashem* (desecration of God's Name) would arise in receiving this public benefit without helping provide that benefit when called to serve.

¹¹⁴ B.T. *Bava Metzia* 108a.

compel those living below it to help restore navigation. Likewise, if a clogged drainage ditch threatens flooding, then persons living below the blockage can compel those living above to help clear it. Not only those whose participation is necessary by dint of land ownership or control can be compelled: all who potentially benefit can be compelled to assist, in service of providing the public goods of transportation and flood control, respectively.

This public goods doctrine even shapes the great *mitzvah* of פדיון שבויים / redeeming captives. Precisely to provide the public good of collective security against kidnapping, the Jewish duty to redeem captives falls on the entire community without exception.¹¹⁵ However, in the case of one habitually kidnapped, after the third redemption the public no longer has a duty to redeem that captive; what's more, redemption is discouraged lest the habitual nature of the kidnapping incentive more captivity and thereby threaten the community's security.¹¹⁶ Stated otherwise, public security and the community fisc are public goods that each Jew has a *halachic* duty to support by both appropriate action (aiding the community's redemption of captives) and appropriate inaction (not risking one's own detention habitually, and not redeeming the habitual captive).

The foregoing authorities about public goods and free-riding speak poignantly to a modern *halacha* of civic participation. Government itself is no less a public good than a military, water well, protective wall, navigable river, flood control ditch and redemption of captives. Indeed, government today is the paradigmatic public good that guarantees most others: the very notion of a public good is that the free market's voluntarism and resulting free-riding problem impede the supply of public goods commensurate with societal need, so

¹¹⁵. See B.T. *Bava Batra* 8a-b.

¹¹⁶. See Rambam, *Mishneh Torah, Hilchot Matanot Aniyim* 8:13; *Shulchan Aruch, Yoreh De'ah* 252:7. This situation applies to the person who repeatedly exposes himself to being taken captive, indentures himself, or intentionally commits a noncapital crime that results in incarceration.

only a public regulator (*i.e.* government) can redress the resulting market failure to provide public goods at optimal levels. Simply put, then, Jews have a *halachic* duty to establish and support civil government – not only for traditional purposes of providing public order and social justice,¹¹⁷ but also for the modern purpose of providing public goods whose supply inheres in the social compact of those democratic nations where Jews choose to reside.

Beyond collective action to provide quantifiable public goods like public order, public navigation, water and the like, no less a public good in this classical sense is the civic space that shapes the actions, responsiveness and accountability of any democratic government. After all, democracy is the ultimate free ride: citizens who decline to vote nevertheless accrue benefits of living in a democratic regime, even if non-voters dislike the electoral majority's choices. The act of voting necessarily entails costs that include registering to vote, paying attention to election campaigns, physically traveling to polls in most jurisdiction, and waiting on sometimes long lines to cast ballots. These costs of balloting – combined with the virtual modern guarantee of continuing to live in a democracy that honors the social compact even if one does not vote – give citizens strong incentives not to vote and instead to free-ride on others' votes. If most citizens declined to vote and instead engaged in electoral free-riding, however, then mass non-participation would jeopardize democracy's majoritarian nature, and along with it government's guarantee of the social compact and the inclusive porousness of the civic space on which government accountability depends. Thus, civil elections and the democratic civic space also are public goods whose provision Jews have a duty to support.

Through this lens, the public goods doctrine – drawing on the *halacha* of collective action and the free-rider problem – establishes a strong basis to reconsider whether and to

¹¹⁷ See M. Avot 3:2; Ramban, comm. Gen. 34:13; B.T. Avodah Zara 4a.

what extent *halacha* may suggest a duty to vote. It is within these contours of a modern *halacha* of civic participation that an answer to the question presented can emerge.

החובה להצביע בבחירות • The Duty to Participate in Elections

A modern *halacha* of civic participation grounds in the paradigm shift that began with the *Haskalah* and civic amelioration. Jews living in modern democracies today enjoy nearly unfettered free choice of residency, immigration and citizenship regardless of religion and ethnicity, and reap the public goods inhering in the social compact of nations where they choose to reside. Jewish free choice of residency and citizenship establishes a *halachic* duty for Jews not only to abide those nations' laws (*i.e.* the *Rashbam's* contract theory of *dina d'malchuta dina*), but also to participate in the democratic selection of the nations' lawgivers and secure these nations' civic space by which their governments can be held responsive and accountable. This result inheres in the *halachic* duty for Jews not only to pay for providing public goods – whether or not they subjectively believe that they benefit from them – but also to participate directly in providing those public goods when called. As noted above, modern government is the guarantor of public goods and itself is a public good, no less than public order and social justice that are government's traditional purposes. Just as all Jews without exception have a *halachic* duty to maintain rivers for transportation, clear drainage ditches for flood control and serve in militaries when called by their nation of citizenship, so do all Jewish citizens without exception have a *halachic* duty to cast ballots in civil elections when called. Any other conclusion would invite free-riding, and vitiate the *halacha* of collective action generally and government's purposes of public order and social justice in particular.

The conclusion that Jews have a *halachic* duty to vote in civil elections becomes even more manifest through the spiritual lenses of partnership and redemption. From the canon's

earliest days, the selection of civil authority was manifest as a partnership between God and the people, evolving from divine selection¹¹⁸ to a divine-human collaboration¹¹⁹ to the *Rama's* "heavenly call" for eligible electors to cast ballots.¹²⁰ Jewish citizens who refrain from voting in civil elections turn a deaf ear to this "heavenly call" and denigrate the spiritual partnership inhering in the selection of civil government when "all the people" participate.¹²¹ Jewish citizens who decline to cast ballots in civil elections thereby impermissibly separate from community and, in the *Rambam's* words, disclaim their share in the world to come.¹²² Given the Jewish redemptive purpose of civic participation that Green and Haberman recognized, these words have literal significance. Jewish citizens who decline to vote in civil elections literally give up their electoral share of shaping the world to come – the world that by definition *all* must help bring into being through the collective action of redemption from disorder and injustice, the very foundational purposes of government itself.

Critically, the conclusion that all eligible Jewish citizens must vote in civil elections is independent of the candidates, causes, policies and political parties contested in any given election. It does not turn on the particular politics of any *posek* and thus does not risk undue rabbinical subjectivity or conflicting guidance that may emerge from imposing specific political objectives on voters based on amorphous *halachic* principles such as *tikkun olam*¹²³

¹¹⁸ See Deut. 17:14-15.

¹¹⁹ See 1 Sam. 9:16-17; 1 Kings 1:39.

¹²⁰ *Rama*, Gloss on *Shulchan Aruch*, *Choshen Mishpat* 163:1 (citations omitted).

¹²¹ 1 Kings 1:39 (coronation of Solomon).

¹²² See *Rambam*, *Mishneh Torah*, *Hilchot Teshuvah* 3:6.

¹²³ See e.g. M. *Gittin* 4:2; B.T. *Shabbat* 118b.

or *darkei shalom*.¹²⁴ Neither does it risk the tax-exempt status of congregations, which clergy unwittingly do if they endorse candidates or electoral causes from the pulpit – a risk with *halachic* implications of its own.¹²⁵ Rather, this result honors the respective roles of clergy, citizen and government, reflecting the *Rav's* prescient observation that rabbis today "cannot be relied on to direct the people in ever-changing political issues, and thus only a political system can guide the people" through the straits of social change.¹²⁶ A *halachic* duty to vote inheres in the Jewish value of collective action, not particular planks in a campaign platform. As such, this result is both backwards compatible with historical *halacha* and durable to future changes in political and religious discourse that today's citizens and *halachic* decisors cannot predict.

This conclusion also preserves and honors the spiritual bond between diaspora Jews and Israel. Nothing about a *halachic* duty to vote, borne of the general duty to establish civil government where one resides, degrades the connection between *Klal Yisrael* (the Jewish

¹²⁴ See generally Prov. 3:17.

¹²⁵ See T. Reg. 1.501(c)(3)-1(c)(3)(ii); Rev. Rul. 70-79, 1970-1 C.B. 127. While the tax law of rabbinic advocacy is beyond the scope of this *teshuvah*, the general principle is that under section 501(c)(3) of the Internal Revenue Code, nonprofit religious institutions and their leaders risk their tax-exempt status if they engage in lobbying or electoral advocacy. The Internal Revenue Service ("IRS") guidance holds: "Like other section 501(c)(3) organizations, some ... religious organizations take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention." See IRS, "Tax Guide for Churches and Religious Organizations," available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>. Indeed, any direct electoral advocacy – other than generic "get out the vote" efforts – risks the religious entity's tax exempt status. See generally Aprill, E.P., "The Ballot, the Bimah, and the Tax Code," in CCAR, *Symposium Issue on Politics and Spirituality*, *supra* n.34, at 58. While rabbis retain First Amendment rights to advocate, courts have upheld these strict tax restrictions on grounds that taxes are public funds and Congress legitimately may opt not to subsidize lobbying and advocacy. See e.g. *Branch Ministries v. Rossotti*, 211 F.3d 137 (D.C. Cir. 2000). *Halachically* speaking, the tax code is relevant not only because issue advocacy risks the Jewish community's funding, but also because *dina d'malchuta dina* gives religious weight to the civil law tax restriction. If Jewish religious entities cannot endorse candidates as a matter of civil law, then neither can they endorse candidates as a matter of *halacha*. Thus, rabbis must exercise caution if they participate in electoral advocacy.

¹²⁶ Soloveitchik, *supra* n.28.

people as a spiritual collectivity) and *Eretz Yisrael* (the Land of Israel).¹²⁷ To the contrary, from colonization's earliest days, Americans pioneered a sociology of belonging to multiple spheres, relationship networks and layers of identity. The congregant who asks the question presented can be an American, a New Yorker, male or female, gay or straight, liberal or conservative, able bodied or quadriplegic, rich or poor, engaged civically and also altogether Jewish – and none of these layers of identity or affiliation conflicts with another. As such, nothing about civic engagement and voting in the jurisdiction where a Jewish citizen resides – in this case, New York – denigrates Jews' historic and current relationship with Israel.

Having established a *halachic* obligation for Jewish citizens to vote in civil elections, questions next arise about the contours of this duty. In the words of the question presented, may a Jewish citizen unenthused by candidate views on Israel, Mideast policy and "Jewish issues" decline to vote on that basis? Because this *halachic* duty to vote does not depend on particular candidates or causes potentially contested in the election, this duty does not favor

¹²⁷ A counterargument is that civic engagement in a diaspora polity diminishes the incentive to make *aliyah* to Israel and engage civically in the Israeli polity. This argument has no merit. Generations of Israelis have encouraged diaspora Jews to re-settle in Israel and participate in that nation's ongoing "return to Zion," and waves of immigration to Israel over the decades testify to the continuing resonance of that call to those who heed it. Those making *aliyah*, however, either tend to have personal reasons to do so, or immigrate as response to the breakdown of the social compact in the diaspora jurisdictions from which *olim* depart. Waves of immigration from the former Soviet Union and Communist bloc, Ethiopia and today Western Europe in the wake of anti-Semitism flaring after the most recent Gaza violence, testify to this dynamic in which diaspora Jews leave for Israel when the rights and duties of diaspora citizenship erode. This dynamic, however, is the opposite of the counterargument presented: for Jews not making *aliyah*, there is no evidence that citizenship in a diaspora polity discourages immigration. A second and equally meritless counterargument is that if all Jews voted, then the non-Jewish majority would feel threatened and thus jeopardize Jews living in diaspora. In essence, the argument is that Jewish political participation can cause anti-Semitism, and thus Jews should be careful. This counterargument is both wrong-headed and empirically false. Its thrust falsely assumes that Jews or Jewish behavior can be responsible for anti-Semitism, which arises not from Jews but from irrational hatred stoked by socioeconomic forces beyond Jewish control. Moreover, the counterargument falsely assumes that Jews will or should vote as a bloc for the purpose of promoting Jewish influence. Ironically, that is precisely the dynamic now developing among those Orthodox communities that press followers to vote for particular candidates based on ostensibly "Jewish values." As shown above, the notion of a Jewish universal duty to vote would be more likely to promote Jewish political diversity than Jewish bloc voting.

or disfavor, or include or exclude, any particular criterion to drive Jewish voter behavior. On its face, then, *halacha* would appear to invite a protest vote, write-in vote or strategic vote that results in a proper ballot being cast: all of these voter behaviors manifest legitimate forms of electoral participation.¹²⁸ A *halachic* social compact theory of civic participation requires the civic act of balloting, not any specific character to the vote or any fixed basis to motivate a particular electoral choice. To the contrary, if a general *halachic* duty to vote is to have any practical resonance, then Jewish citizens cannot decline to vote merely because candidates or positions they espouse do not enthuse.

It also is especially problematic for Jews to decline to vote on the grounds articulated in the question presented – that candidates take no positions on Israel, Mideast policy or "Jewish issues" that resonate with the voter. While election choices on these grounds would be legitimate both politically and *halachically*, it would undermine the social compact for Jewish citizens in diaspora to render their civic participation as voters *solely* on the basis of sectarianism or the interests of another polity – even for the State of Israel – having its own social compact with its own citizens. Moreover, for *halacha* to validate such behavior would be tantamount to proclaiming to the non-Jewish majority that diaspora Jews remain civically loyal primarily to political and spiritual Israel rather than the nation in which they reside and declare citizenship. It is precisely this damaging affront to Jewish loyalty, and its resulting fuel for society's flames of anti-Semitism, that the *Haskalah* and civic amelioration sought to redress centuries ago.

¹²⁸ To be sure, the Talmudic principle of *בל תשחית* / *bal tashchit* (do not destroy) commands against waste. See B.T. *Shabbat* 67b; B.T. *Chullin* 7b; B.T. *Kiddushin* 32a. As such, arguably it is *halachically* impermissible to "waste" a vote. This *teshuvah* does not take the position, however, that *halacha* mandates any particular vote outcome – only well-intentioned participation in elections for the general sake of promoting effective civil government. Because a protest vote or write-in vote has expressive value that shapes the polity, it is not clear that such a vote necessarily constitutes "waste."

Also problematic is the unduly narrow and particularistic understanding of "Jewish issues" that the question presented assumes. To be sure, there certainly exist "Jewish issues" that include civil tolerance generally and also matters particular to Jewish life as such, such as school calendars and policies that honor Jewish holidays, zoning that might allow or inhibit an *eruv*, and the availability and regulation of kosher foods. These "Jewish issues" are legitimate ones for electoral consideration. But as shown above, however, "Jewish issues" also emphatically include social justice and public order – the general purposes for which Jews and non-Jews alike are obliged to establish civil government. To these latter ends, there is seemingly no limit: the full breadth of governmental policy including taxation and budget policy, criminal justice, environmental protection, education, market regulation and family law all are proper and necessary concerns of Jewish voters *as Jewish voters*. This result is especially manifest to avoid impressing sectarianism or *halachic* judgments onto policy choices in the "shared public square" – a result that the *Rav* rejected 75 years ago.¹²⁹ As such, the question presented presumes an illegitimately narrow definition of "Jewish issues": even if candidates do not espouse positions on Israel or the Mideast that enthuse the voter, there is virtually no election in which "Jewish issues" – properly understood – are not presented for public election. Because such "Jewish issues" always are presented in civil elections, there is no cause in the breadth of balance of campaign platforms to decline to vote on that basis.

A subsidiary question next arises about the balance of issues potentially arising in an election. Because candidates tend to run on multi-issue platforms, one or more positions that a candidate espouses in a campaign may be *halachically* dubious or unfavorable to Jews. In that instance, *halachically* speaking, how should Jewish voters navigate the resulting balance

¹²⁹ See *Soloveitchik, supra* nn.26, 28.

of so-called "Jewish issues"? Precisely this question arose one generation ago in the context of candidates advocating abortion rights, which some Orthodox voters deem(ed) comparable to affirming murder and thus *halachically* anathema. Accordingly, a 1986 *teshuvah* by R. Mark Dratch¹³⁰ addressed whether an Orthodox Jew may vote for a pro-choice candidate compatibly with the *halacha* of sanctifying life. Noting that most candidate platforms include multiple planks ranging across a slew of issues, R. Dratch's framed the question as whether a Jew may vote to advance one permissible political goal even at cost of encouraging a second impermissible one. He concluded:

"[C]andidates do not run on one-issue platforms. They support many social and economic issues which conform to or enhance Jewish or Noachide law. The position of Rav Ashi [B.T. *Nedarim* 62b] who sold wood to the fire-temple because it was to be used for both permissible and prohibited purposes is most relevant. A vote for a candidate who advocates legalized abortion is also a vote for one who supports many permissible and preferred positions. One would therefore be permitted to vote for him."¹³¹

If it is *halachically* permissible to vote for a candidate who advocates a position that unquestionably violates *halacha*, then *kol vachomer* there can be no *halachic* basis to decline voting for a candidate merely because that candidate's positions do not necessarily enthruse the voter. Stated simply, *halacha* does not recognize one-issue voting, much less restrict votes on grounds that one of a candidate's many positions may be less than optimal or even violate Jewish law. This result is consistent with the above conclusion that "Jewish issues" inhere in the full breadth of social policy issues potentially contested in civil elections. As such, there is no *halachic* basis to restrain a *halachic* duty to vote solely on grounds that

¹³⁰ As of this writing, Dratch serves as executive vice president of the Orthodox Rabbinical Council of America. See Histadrut HaRabanim d'America (Rabbinical Council of America), available at <http://www.rabbis.org/news/article.cfm?id=100965>.

¹³¹ Dratch, "The Ethics of Selecting a Political Candidate," *J. Halacha & Contemporary Soc.*, vol. 11 (1986) at 17, available at http://www.yutorah.org/lectures/lecture.cfm/735705/Rabbi_Mark_Dratch/The_Ethics_of_Selecting_a_Political_Candidate.

candidates do not take positions on Israel or Mideast policy that are optimal. Even if all candidates were to take positions on Israel or Mideast policy that a Jewish voter disfavors, the voter still would have a *halachic* duty to cast a ballot in that election.

תשובה • Response

On the basis of the foregoing authorities, even if all candidates running for the congregant's congressional seat hold positions on Israel, Mideast policy or "Jewish issues" that the voter rejects, it still would be *halachically* permissible to vote for one of those candidates. The social compact of modern citizenship and the Jewish value of collective action drive a *halachic* duty for Jewish citizens to vote in civil elections to promote effective civil government and enhance public order and social justice in the nations where they choose to reside and claim citizenship. Because public order and social justice are Jewish concerns potentially at issue in every election, the congregant has a *halachic* duty to cast a valid ballot in the congressional contest and not sit out the election.

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