When Believers Beg to Differ

One of the most remarkable recent events in American religious life has been the formation of what I call a "traditionalist entente" linking theologically conservative or orthodox believers across ancient divisions separating Protestants, Catholics, and Jews. On a wide range of issues involving public values, such as abortion and the legal recognition of homosexual couples, these traditionalists have joined hands against liberals within their own faiths. Some argue that this conservative religious alliance played a significant role in the reelection of President George W. Bush.

How influential or stable this coalition will be remains to be seen. Much depends on how the relation among faith, reason, and public law is to be understood. If various faith traditions rely on different sacred texts and modes of interpretation, then divergences of practical conclusions and policy positions are inevitable. Public arguments based on the words of specific revealed texts are bound to prove divisive and unpersuasive outside the bounds of particular faiths. More promising (at least in the abstract) is the resort to natural law, the procedures and contents of which, its proponents claim, are accessible in principle to all rational human beings. Yet, as bioethicist Daniel Callahan recently pointed out in these pages, natural-law arguments against stem-cell research have failed to convince research advocates ("Promises, Promises," January 15). Callahan noted the limitations of natural-law reasoning championed by the Catholic Church and other religious groups, especially the assertions made by proponents of natural law that the defense of the value of embryonic life does not rely on religious claims. As Callahan wrote, "In practice, I can't but note, [such arguments] don't get very far with those outside of some religious tradition."

I agree. What's more, these arguments often don't get very far across the boundaries of differing faith traditions. The Constitution's separation of church and state, let's recall, was intended to keep the peace among competing Christian denominations, not, as is sometimes erroneously thought today, between advocates of religion and defenders of secularism. The idea that traditional religious communities can be expected to speak with one voice on contemporary moral issues does not survive scrutiny.

We live in a deeply pluralistic society, and whatever moral consensus we can reach on difficult and divisive issues such as stem-cell research will have to be based on a form of
public discourse that is both more capacious and more modest in its ambitions than versions of natural law championed by many conservatives, of which Callahan is rightly skeptical. Much of the enthusiasm of natural-law advocates relies on what I regard as excessive confidence in reason's power to resolve our deepest differences.

The stakes are higher still if, as is the case with Catholic conservatives, one simultaneously affirms such an ambitious account of reason and brings religion under the canopy of reason. In its strongest form, a belief in the rational justification of religion suggests that reason suffices to decide the issue between (say) Christianity and Judaism. This stance is reminiscent of the assumption underlying medieval disputation among faiths, such as the one so memorably imagined in Judah Halevi's *The Kuzari*. It is hard to imagine that many Jews or Christians would concede the usefulness of such debates today.

Among many other difficulties, this thesis about the ultimately rational justification of basic religious propositions is contestable on theological grounds. For example, within Judaism, the faith tradition I know best, it is customary to distinguish, as Maimonides does, between religious commandments that reason is fully competent to justify, and others rooted, at least in part, in revelation. The former constitute a kind of generic religion of reason, which some scholars regard as the Jewish version of natural law. The latter define the beliefs and practices that constitute the distinctiveness of Judaism. My impression is that most other faith traditions embrace some version of this distinction, but many define a scope for reason narrower than that in Rabbinic Judaism and, by extension, much narrower than the natural-law position held by some Catholics. Because conceptions of the nature and scope of reason differ across religious (and secular) traditions, arguments of the form that "all rational beings must believe x" are likely in most instances to fail.

In a pluralistic, democratic society like ours, the theological problems created by the distinction between reason and revelation, and by the different ways in which various traditions draw that line, are likely to spill over into politics. Conflicting views on divisive issues of law and policy can rest on religious differences, rooted in what differing faiths regard as authoritative "revealed truth" that reason cannot adjudicate. In our day, this seems especially true in trying to reach a public consensus about a number of issues, particularly biotechnological controversies. For example, when Baltimore's Cardinal William Keeler participated in an ecumenical forum to discuss the ethics of cloning, he was surprised to find that in contrast to his own prohibitionist stance, one shared by the forum's Protestant representatives, the Orthodox rabbi who participated refrained from issuing a blanket condemnation of the practice. Had Cardinal Keeler inquired further, he would have found that the rabbi had spoken for the mainstream of Orthodox Jewry and that his accommodationist stance toward cloning was rooted in the fundamentals of Jewish theology. Let me try to explain.

I take as my proof-text a statement on cloning issued in 2002 by the Orthodox Union, a group involved in public-policy advocacy on behalf of the Orthodox community. It reads, in part, as follows:
The Torah commands us to treat and cure the ill and to defeat disease wherever possible; to do this is to be the Creator's partner in safeguarding the created. The traditional Jewish perspective thus emphasizes that maximizing the potential to save and heal human lives is an integral part of valuing human life. Moreover, our tradition states that an embryo in vitro does not enjoy the full status of human-hood and its attendant protections. Thus, if cloning-technology research advances our ability to heal humans with greater success, it ought to be pursued since it does not require or encourage the destruction of life in the process.

This statement sets forth, in highly compressed form, a number of propositions that are central to the Jewish outlook. The first is a distinctive religious anthropology. In the Jewish tradition, man as the "image of God" is understood, not as contemplative, not as suffering, but rather as creative, indeed, as a kind of co-creator. Neither God's law nor nature is simply given or passively received; each is to be developed through human agency, guided by human reason.

A famous Talmudic passage encapsulates the stance of Jewish Orthodoxy on the interpretation of divine law. Several rabbis were debating a fine point of ritual. Rabbi Eliezer took a stance in opposition to the others. When his arguments failed to persuade them, he called for a series of miraculous signs, each of which came to pass, in support of his view, but the other rabbis remained opposed. Finally he said, "If the halachah [Torah-based law] agrees with me, let it be proved from heaven." Whereupon a heavenly voice cried out, "Why do you dispute with Rabbi Eliezer, seeing that in all matters the halachah agrees with him?" But Rabbi Joshua replied, "It is not in heaven."

"What did Rabbi Joshua mean by this?" the Talmud continues. "Rabbi Jeremiah said: That the Torah [law] had already been given at Mount Sinai; we pay no attention to a heavenly voice, because Thou hast long since written in the Torah at Mount Sinai, 'After the majority must one incline.'"

While this brand of Talmudic magical realism may seem odd to some, the meaning of the tale is straightforward: while the Torah is the fruit of divine agency, its interpretation and application to specific issues are a matter for human reason guided by experience and common sense. On matters of binding law, God's intervention in human affairs ended at Sinai. The rest is up to us—that is, up to judgment by the majority of those whose learning and wisdom render them competent to pronounce judgments.

In the Jewish tradition it is understood that the mutability of human affairs will produce new problems, such as issues raised by biotechnology, which the written law does not explicitly address. What can be thought of as Jewish common law arrives at judgments on such matters through the application of standardized interpretive techniques and modes of legal argument, including arguments by analogy.

Jews see the relation between nature and technology as similar to that between the Torah and what I have called Jewish common law. In each case, human agency is not only permitted but also commanded to shape what God has given. Man's dominion over nature
means that nature was designed for human use. Jewish Orthodoxy, then, is incompatible with the aesthetic or reverential environmentalism embraced by some Christians, or with any worldview that places man on the same plane as the rest of nature. Rabbi Kenneth Waxman summarizes the tradition as follows: "When human creative capacities, ingenuity, and technology are utilized to alleviate suffering or to improve the human condition even in the broadest sense, our actions are permitted, perhaps even mandated, and constitute a full-fledged accomplishment of the religious ideal of imitatio Dei."

A second key theological premise at work in Jewish thought, as expressed in the statement of the Orthodox Union, is the high value placed on healing the sick and alleviating their suffering. In this respect, among many others, Judaism emphatically rejects an otherworldly orientation: one's fate in the afterlife, however fortunate it may be, is no substitute for life and health, here and now. So important are these goods that their pursuit trumps what would otherwise be prohibitions: doctors may violate the Sabbath to save lives, and individuals may even break the fast of Yom Kippur if their health demands it.

The third key theological issue in the statement above concerns the status of the embryo. In unfolding the meaning of the Orthodox Union's statement, I rely on the authoritative exposition of Rabbi Yitzchock Breitowitz. The following are the central points:

* The Talmud distinguishes between an embryo prior to the fortieth day and those that develop past that point. A number of otherwise binding legal requirements do not apply to a woman who miscarries before the fortieth day of pregnancy. Accordingly, serious genetic defects or medical problems that do not endanger the life of the mother may justify abortion during this period.

* According to Rabbi Breitowitz, a pre-implantation embryo should not be entitled to more halachic protection than a pre-forty-day implanted embryo, and there are grounds to afford it less. Thus, "if genetic testing uncovers a defect which would justify abortion of a pre-forty-day embryo, destruction of the preembryo may be similarly permitted." Many, though not all, contemporary authorities go further, permitting the destruction of so-called surplus pre-implantation embryos even when the actual abortion of the same embryo, once implanted, would be forbidden.

Rabbi Moshe Dovid Tendler summarizes the classical Jewish position in the following terms:

The Judeo-biblical tradition does not grant moral status to an embryo before forty days of gestation. Such an embryo has the same moral status as male and female gametes, and its destruction prior to implantation is of the same moral import as the "wasting of human seed"....The proposition that human hood begins at zygote formation, even in vitro, is without basis in [Jewish] biblical moral theology.

It may well be thought that this stance is morally risky, because it may lead to a slippery slope at the bottom of which is the taking of human life. The Jewish tradition is
sympathetic to this cautionary line of argument. Indeed, much of rabbinic law consists in the effort to build a protective outer perimeter (a "fence") around the law of the Torah. For this reason, says Rabbi Tendler, Orthodox Judaism "respects the effort of the Vatican and fundamentalist Christian faiths to erect fences that will protect the biblical prohibition against abortion. But a fence that prevents the cure of fatal diseases must not be erected, for then the loss is greater than the benefit."

The three propositions I have discussed—human agency as the image of divine creation, the imperatives of curing disease and of saving life, and the moral status of the preembryo as less than fully human—lead Jewish Orthodoxy to endorse a range of stem-cell research that involves therapeutic cloning. As Rabbi Tendler puts it, "In stem-cell research and therapy, the moral obligation to save human life [is] the paramount ethical principle in biblical law," one that "supersedes" concerns for the preembryo. And even when materials intended for lifesaving therapy are drawn from acts that Jewish law forbids, including many abortions, the Jewish tradition does not forbid their use: "An illicit act does not necessarily result in a prohibition to use the product of that act."

From the standpoint of traditionalists in other faiths, these positions are unwelcome and surprising. More surprising still, Jewish Orthodoxy is far from implacably opposed to reproductive cloning. In the course of a comprehensive review of Jewish law on the subject, Rabbi Michael Broyde notes that there do not seem to be any "intrinsic" halachic grounds to prohibit cloning, and that there are some circumstances in which it may be deemed acceptable. For example, in the Jewish tradition, one of the core commandments is to be fruitful and multiply, a requirement that is especially binding for men. If a man is unable to fulfill this commandment through any means other than cloning, then reproduction through cloning is not only permitted but also commended. Moreover, Broyde observes, the Jewish tradition "would not look askance on the use of cloning to produce individuals because these reproduced individuals can be of specific assistance to others in need of help." So there is nothing wrong with having a child through cloning in order to provide a life-saving bone marrow transplant; our motives for reproduction can be mixed without ceasing to be legitimate.

Let me translate this discussion from the language of theology and divine law to that of moral philosophy. If one uses the familiar distinction between deontology (where certain acts are absolutely forbidden) and consequentialism to categorize Jewish Orthodoxy, one would have to say that Orthodox ethics is closer to the latter. Jews experience the force of affirmative obligations to produce the greatest amount of good, and Orthodoxy endorses few absolute side constraints which would limit the ability of human beings to maximize the good. As Barry Freundel, an Orthodox rabbi, puts it, "Human beings do the best that they can. If our best cost-benefit analysis says go ahead, we go ahead. If things do not work out, the theological question is G-d's to answer; not ours." By contrast, Cardinal John O'Connor succinctly formulated the deontological stance of the Catholic Church as follows: "Is cloning human beings morally permissible? Categorically no."

The point of the preceding section was not simply to offer a primer on rabbinic theology, but rather to underscore a simple fact: in a pluralistic democratic society, the relationship
between religion and politics, and faith and "public reason" is bound to be complex. Orthodox faiths that unite in resisting religious liberalism and modernism may nonetheless disagree about the content of theology and about its social implications. The question is how this fact should influence our understanding of the appropriate public role of religion.

Let me be specific. As we have seen, traditional Catholics have one understanding of the moral status of early-stage embryos, traditional Jews quite another. It is possible, I suppose, that unaided reason will eventually settle this dispute, but the disputes of the past thirty years offer little evidence that this is so. It is more likely that these two great faiths' differing orientations toward the embryo represent disagreements rooted in the unchanging fundamentals of their respective theologies.

To find a public resolution, one may try to appeal to something between reason and revealed theology-namely, our everyday moral experience. But although this changes the venue of controversy, it does not resolve it. Consider, for example, the outcome of the deliberations of President George W. Bush's Council on Bioethics. While a ten-member majority of the council favored a moratorium on cloning for biomedical research, a seven-member minority would have permitted such research under suitable regulation. A noted conservative scholar, James Q. Wilson, joined the dissenters. He wrote:

A fertilized cell has some moral worth, but much less than that of an implanted cell, and that has less than that of a fetus, and that less than that of a viable fetus, and that the same [value] as of a newborn infant. My view is that people endow a thing with humanity when it appears, or even begins to appear, human; that is, when it resembles a human creature. The more an embryo resembles a person, the more claims it exerts on our moral feelings. Now this last argument has no religious or metaphysical meaning, but it accords closely...with how people view one another....This fact becomes evident when we ask a simple question: Do we assign the same moral blame to harvesting organs from a newborn infant and from a seven-day-old blastocyst? The great majority of people would be more outraged by doing the former than by doing the latter.

No doubt others have different moral sentiments and (even if Wilson were right about most people's view of the matter) would deny the relevance of counting heads to answer such questions. That is exactly my point: while moral experience may provide an essential point of departure, it speaks with an ambiguous voice. (For the record, I note the intriguing resemblance between Wilson's account of our moral sense and the stance of traditional Judaism.)

The implications for public law of this apparently intractable disagreement are stark. If the law permits the practices of stem-cell research and therapy that traditional Jews believe should be allowed, then acts will proliferate that offend the beliefs of traditional Catholics. On the other hand, if the law bans what Catholics believe to be intolerable, then it will prevent Jews from acting in ways that they consider commendable, even mandatory in some cases of dire emergency.
What is to be done? One argument takes as its initial premise the old Jewish principle that "Anything for which there is no reason to forbid is permissible with no need for justification." The second premise is that to justify coercive public law across the boundary of diverse faith communities, only arguments that do not rely, explicitly or tacitly, on disputed theological propositions count as valid reasons for public law to forbid a practice. By contrast, for individual faith communities, propositions based on specific revelation that are shared by the members of those communities but not by nonmembers rightly serve to justify morally and institutionally binding prohibitions within those communities.

This argument takes its place within a pluralist understanding of the relation between faith communities and the political community. Through coercive public law, the political authority creates a framework that requires uniformity only on those essentials that public reason can justify. The remainder of the social space is filled by diverse communities, faith-based and secular, that enjoy the liberty to order their internal affairs based on their distinctive understandings of human purpose and ultimate meaning. Further, members of subcommunities can request, sometimes demand, exemption from otherwise binding public laws when these laws command what faith or conscience prohibits or prohibit what faith or conscience demands. Two of the better-known examples of this sort of accommodation are the right of the Amish to stop schooling their children after the age of fourteen, and the exception made during Prohibition for the use of wine in the Catholic liturgy.

Clearly this stance requires each subcommunity to accept the possibility that other members of the political community will act in ways that they find morally or religiously offensive, unless they can justify their moral or religious views through the exercise of public reason. For many, this counsel of restraint may seem to ask too much. If embryonic stemcell research is the moral equivalent of slavery, as many of its foes contend, aren't the moral costs of tolerating it unacceptable? Perhaps so. The difficulty is that many morally and religiously serious people whose views are not tainted by the self-interest of slaveowners reject the analogy altogether. Whatever our stance, we must ask ourselves whether, in the name of inscribing our particular views into public law, we are willing to risk the moral equivalent of civil war.

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delivered at Princeton University to mark the twentieth anniversary of the publication of Richard John Neuhaus's The Naked Public Square.