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Speech: Jewish Law and the Middle East Peace Process

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Loyola Law School justifiably celebrates establishing the Sydney M. Irmas Memorial Chair in Jewish Law & Ethics. Loyola is determined, under Dean Gerald T. McLaughlin's leadership, to be a place where the law of Christianity, Islam, and Judaism is studied so that its students and the American legal system can derive and utilize the important lessons that these major religious law systems provide. This is a worthy objective, and one which friends of Loyola, and of the study of religious law, should warmly support.

Dean McLaughlin asked me to speak on the Middle East peace process, in which I was privileged to play a part while serving as Legal Adviser to the Department of State. It is especially appropriate on this occasion to focus on the invocation by some Jewish fundamentalists of what they claim to be Jewish law in expressing their opposition to the surrender of territory by Israel to Palestinian control. This is a complex and sensitive topic, impossible to cover comprehensively in this brief address. It is worth exploring, however, for at least two reasons. It illustrates the continued vitality of Jewish law and, as with all things vital, its vulnerability to misuse. Jewish law is much more than a search for enlightening tidbits from biblical and rabbinic sources; it is a huge

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and complex body of rules, traditions, and stories that provides dramatically different lessons to students and adherents. That Jewish law has been invoked to disrupt the Mideast peace process adds further, critical importance to the subject.

**THE MIDDLE EAST PEACE PROCESS**

Despite the pain and controversy that surrounds it, an active and progressively successful peace process exists in the Middle East. This has been no small achievement. Jewish immigration to the ancient land of Israel picked up steam in the late 19th century, and became a mass migration during and after the Holocaust in Europe. Arab violence against Jews and Jewish settlements in what was once the land of Israel increased with the growing migration of Jews after 1900, and included attacks in 1920, 1921, 1929, and 1936. The United Nations General Assembly voted in 1947 to partition Palestine into an Arab and a Jewish state, but the Arabs refused to accept this arrangement. When the Jewish leadership declared the existence of the state of Israel on May 14, 1948, six Arab states waged an unsuccessful war against it. Israel and each of the Arab states involved signed armistice agreements, but hostilities continued. Persistent terrorist activity led Israel to invade the Sinai in 1956, and a cease-fire was put in place under the supervision of a U.N. Emergency Force. In 1967, Egypt demanded that the U.N. force be withdrawn, reoccupied Gaza, and closed the Gulf of Aqaba to Israeli shipping. Israel, facing imminent attack, destroyed the Egyptian Air Force and occupied Gaza and Sinai up to the Suez Canal. When Jordan and Syria entered the war, Israel occupied Jerusalem, the entire West Bank, and the Golan Heights. In 1973, Egypt and Syria attacked Israel on its holiest of days, Yom Kippur. Their forces inflicted devastating casualties, but Israel counterattacked and took control of additional areas in Syria and on the Suez Canal's west bank.

At each stage of this tragic story, the Jews expanded the territory under their control. On November 22, 1967, the international community settled upon a principle for the resolution of the difficulties between Israel and the Arabs in U.N. Security Council Resolution 242, supplemented in October 1973 by Resolution 338, calling for an exchange of land by Israel for guarantees of peace by the Arab states. Not until 1974, however, was any guaranty given by an Arab state, or any land returned by
Israel. In that year, Secretary of State Henry Kissinger negotiated the first withdrawal of Israeli forces, from the west bank of the Suez Canal, which was followed by a second withdrawal in 1976. Egypt agreed to the return of U.N. peacekeepers, and promised no further military action against Israel.

The turning point came in November 1977, when Egypt's President Anwar al-Sadat went to Jerusalem on his mission of peace. On March 26, 1979, Egypt and Israel signed a treaty of peace. Israel returned the Sinai to Egypt in 1982, except for Taba, which was returned with some other small areas in 1989. The process of negotiation and withdrawal from Egyptian territory was difficult and time consuming, but it was completed. The peace between Egypt and Israel has been cold; however, the treaty has been adhered to by both sides for almost twenty years.

Discussions aimed at returning land to the Palestinians in some form of autonomous rule began in conjunction with the Egyptian/Israeli negotiations. Many issues were discussed, but no agreement was reached. The Gulf War led to the Madrid Conference in October 1991, at which all the Arab states and Palestine Liberation Organization representatives sat down for the first time to discuss peace with Israel. In 1992, an Israeli government under Prime Minister Yitzhak Rabin and Foreign Minister Shimon Peres secretly negotiated with the PLO. Israel agreed in 1993, in exchange for commitments by the PLO to forsake violence and live in peace, to recognize the PLO as the representative of the Palestinians, and, in 1994, to grant limited self-rule, beginning with withdrawals from Gaza and Jericho.

On July 25, 1994, Israel and Jordan ended their 46-year state of war, and on October 26, they signed a peace treaty, establishing diplomatic relations, with Israel returning to Jordan territories seized during the 1967 War. On September 28, 1995, Israel and the Palestinians expanded self-rule further to include more areas and more authority. Neither the assassination of Prime Minister Yitzhak Rabin on November 4, 1995, nor the election of Prime Minister Benjamin Netanyahu, nor numerous horrendous acts of terror, caused this process to cease. A partial withdrawal from Hebron was agreed to on January 15, 1997, and the Wye Memorandum of October 23, 1998, expanded the territory to be placed under exclusive Palestinian control from about 2 to 12 percent, adding some 13 percent of the West Bank to some form of
Palestinian control. The Wye Agreement was ratified by Israel’s Knesset on November 17, and the process of redeployment began on November 20, with additional withdrawals originally scheduled for December and January 1999, but suspended as of the time this Article was published.

In sum, events of the last twenty years establish that, despite continued bloodshed, political turmoil, and repeated delays, a peace process does exist in the Middle East, in which Arabs are securing the return or control of territory from Israel, as the international community prescribed in 1967, in exchange for peace. A great deal remains to be done in the Israeli/Palestinian negotiations, and negotiations between Israel and Syria, which are key to an Israeli/Lebanese accord, have stalled. Israel has made clear, however, that it is prepared in principle to negotiate the return of territory for peace, and a steady pattern of progress is evident. This principle is at the heart of the attack on the peace process supposedly based on Jewish law.

JEWISH LAW AND THE JEWISH STATE

Israel is a Jewish state. That is not to be confused, however, with its being a state governed by Jewish law. Muslims in Iran, Pakistan, Sudan, or among the Taliban in its de facto control of most of Afghanistan, are able to influence national policy by arguing that their national law must be consistent with the Sharia, the laws of Islam. During the Taba negotiation, Egyptian lawyers told me that one of their concerns in insisting on the return of an area only seven acres in size, rather than agreeing to a territorial compromise, was that they would be attacked as having violated the sacred command that “[f]or Muslims, no piece of land once added to the realm of Islam can ever be . . . renounced.”

Some Jews have the same position with regard to all the land now controlled by Israel, based on their view of Jewish law. While Muslim governments could conclude that making a territorial concession is consistent with Islam, and therefore permissible national policy, the government of Israel faces no analogous need to justify such a decision. The Israeli government is not required by its laws to give any weight to an argument based on Jewish law,

even if it were theologically correct.

Israel is not a religious state in the same sense as those states governed by Islamic law, or those nations previously governed by Christian or other religious doctrine. An effort was made prior to 1948 to make the Torah part of the law of the land, binding on all Israeli Jews. It was rejected by Chief Rabbi Herzog and others as divisive. A less ambitious effort would have applied Jewish law instead of English common law where no statutory or decisional law previously existed, but this proposal also failed. Instead, Israel continued preexisting law, with no special place for Jewish law other than in the religious courts, to which Jews could voluntarily take disputes. From 1948 to 1980, Israel’s legislature, the Knesset, and its civil courts, often considered potentially applicable Jewish law in adopting statutes and deciding cases, but only occasionally adopted aspects of Jewish law, with the exception of rules relating to personal status (marriage, divorce, support, etc.), which were adopted into Israeli law by general reference, although subject to important exceptions. Jewish law was sometimes looked to for guidance, but was not considered binding, and was frequently rejected or ignored.

In 1980, Israel adopted the Foundations of Law Act, repealing the requirement that courts look to the common law if no other binding precedent existed, and requiring instead that courts reach decisions in the absence of established law “in the light of the principles of freedom, justice, equity, and peace of the Jewish heritage.”

This language, modeled on Israel’s Declaration of Independence, references limited aspects of Jewish law, and applies only when no other legal basis for a decision exists. It has been used to protect minorities and privacy, to limit detentions, and in other humanitarian contexts. Even when the Knesset or courts do incorporate Jewish law into the civil law of Israel, they do not thereby create religious law or affect aspects of religious law that are not incorporated. Nor does incorporating Jewish law into Israeli law impair the sovereign authority of the Knesset to incorporate only that which it deems suitable.

Israeli law, therefore, lends no semblance of support to the use of Jewish law to justify actions inconsistent with Israel’s

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commitment to the peace process. Israel has authorized the establishment of settlements, and subsidized their populations. It has also annexed the Golan Heights, and adopted other laws that may have to be revised to accommodate peace agreements with the Palestinians, Syrians, or others. None of these provisions, however, can be considered Jewish law in the sense that the state of Israel regards itself as bound on a religious basis to leave them unchanged. Therefore, in invoking what they claim to be Jewish law to support positions relating to the peace process, Jewish groups and individuals cannot credibly claim that the Jewish law they invoke has any authority as law of Israel. In fact, the positions they advocate are often inconsistent with democratically established Israeli laws and decisions.

**Jewish Law and the Peace Process**

Jewish law, in its many aspects, is referred to by several different Jewish Orthodox groups with respect to the peace process. An important distinction must be drawn, however, between those who argue that, because of Jewish law, the government of Israel should adopt a given policy, and those who argue that the government has no legitimate authority to do otherwise. The story that every Jew needs two synagogues, one to pray in and one in which he would not set foot, applies to Jewish Orthodox groups no less than to any other group of Jews. Some are opposed to the peace process, and have had their Knesset representatives and supporters vote for Likud governments. Others favor the peace process, regarding it as religiously obligatory in that it is a means for saving lives, which is among the highest of all religious duties. Most Orthodox Jews, moreover, whatever their position on the peace process, make their case within Israel’s political system, and in accordance with its rules. Thus, for example, even if an Orthodox Jew believes that it is a sin under Jewish law to surrender to non-Jews any part of ancient Israel, even in exchange for peace, it does not follow that he will violate Israeli civil law because the state of Israel has agreed to such exchanges. While most Jewish Orthodox groups in fact regard any surrender of ancient Israel as undesirable, and to be avoided to the extent possible, their position in this regard is no different from that of secular Zionists. They may invoke religious doctrine to support their arguments, but they adhere to the traditional, overriding principle of Jewish law that, particularly in
matters involving national policy, "the law of the land is law" and must therefore be obeyed.4

The peace-process-related activities of Jewish groups and individuals that concern us here are of those who regard the secular law of Israel as subordinate to what they consider to be Jewish law. These Jews not only believe that the return to Zion is a heavenly redemption that must be defended, they regard this position as justifying measures that violate Israeli law. Their messianic zeal is accompanied, moreover, by a literalism concerning biblical text and stories that makes their methodology analogous to that of Christian Fundamentalists. In reaching their legal conclusions, these individuals follow a process very familiar to Jews during the long exile. They consult with, and are guided by, rabbinic authority, based on the biblical injunction: "You shall come to the priests, the Levites, and to the judge that shall be in your day, and they shall show you the judgment.... And you shall not deviate, neither to the right nor to the left."5 The Talmud comments that this suggests Jews must obey their rabbis "even if they say that right is left and left is right." My rabbi friends would say to this, "Fat chance." But the tradition is strong, and over hundreds of years opinions have been issued by individual rabbis or groups of rabbis, sometimes publicly and sometimes privately. These opinions have been repeatedly cited by individuals or groups that have acted in ways that adversely impact the peace process as justification for their conduct. Under Israeli law, such opinions provide no legal basis for defending against a prosecution. They are used precisely for the purpose of encouraging violations of Israeli law, both by the rabbis that issue them, and by those who rely upon them to justify their conduct.

Jewish groups and individuals have in this manner invoked Jewish law on several key issues to justify actions disruptive of the peace process:

1. **Illegal Settlements.** The most common example of illegal activity by groups invoking Jewish law has been the practice of moving onto land within the borders of ancient Israel without proper legal authority. Legal settlements complicate the peace process. They are avowedly aimed at creating "facts on the

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5. *Deuteronomy* 17: 9, 11.
Illegal settlements, however, are intended to pressure the Israeli government to take control of, defend, and ultimately retain, areas within ancient Israel, even if the government considers the retention of such areas unnecessary or disadvantageous to Israel's interests. Those who engage in illegal settlement activity often oppose transferring any part of ancient Israel out of Israel's control, a principle directly in conflict with the cornerstone of the peace process—the transfer of territory for peace.

Jewish-Law Rationale. Many rabbis have issued formal and informal opinions concluding that no part of historic Israel may be given up voluntarily by Jews, and supporting actions by Jews designed to force the government of Israel to abide by this policy. As recently as October 1998, three well-known Orthodox rabbis in the United States, Herschel Reichmann, Aaron Soloveitchik, and Moshe Tendler, published a letter condemning the Wye Memorandum as violating Jewish law for this reason. A month later, twenty-eight well-known rabbis rejected these views, concluding that the Wye Memorandum did not violate any principle of Jewish law because it was based on the sound judgment of Israel's political and military leaders that exchanging the land involved for peace was necessary to save human lives.

2. Self defense. Israelis are entitled to defend themselves under Israeli law. Some groups and individuals, however, have gone beyond the recognized limits of self-defense by attacking individuals and groups of Palestinians, because they believe the Palestinians have attacked them or are planning to attack them. The Jewish "Underground" conspiracy, formed by settlers, attacked Palestinian West Bank mayors on June 2, 1980, by placing bombs under their cars. The Mayor of Nablus, Bassam Shaka, lost his legs. The Jews believed that the mayors had ordered or at least sanctioned the murder on May 2, 1980, of six Jews returning from prayers in Hebron.

Jewish-Law Rationale. Jews base their claim to act in self-defense upon the Talmud's well-known maxim: "If someone

7. See id.
comes to kill you, rise up and kill him first." They also cite opinions of rabbis to the effect that they are entitled to use self-help to defend themselves and their families while attempting to retain the land of Israel through settlement activity. They assert that self defense includes the right to attack Palestinians believed to have planned or approved attacks on Jews, because the government of Israel has failed to defend settlers effectively from such individuals and groups.

Most rabbis condemn such conduct, however, as inconsistent with both Israeli and Jewish law. The prerequisites of self-defense, under Jewish law, of imminent harm and necessity are not present, and no effort to determine reliably the responsibility of the individuals attacked is made. Jewish law is permeated with rules requiring procedural care before the taking of life.

3. Vengeance. The "Underground" and other Jews have gone beyond the pretense of a conventional self-defense rationale, arguing that to defend themselves against random killing they need to engage in random killings of Palestinians. Dozens of Arabs have been killed riding in buses or walking on roads or working in fields, as vengeance for the many Jews similarly killed. Dr. Baruch Goldstein carried this doctrine to new depths. A resident of Kiryat Arba, which is located on the outskirts of Hebron—site of the tombs of the Jewish patriarchs and matriarchs—Goldstein went to the mosque located at the burial site and, in his prayer shawl, massacred 29 Muslims and wounded hundreds of others while they were kneeling in prayer with his government-issued automatic rifle and three grenades; he was killed by the survivors. Goldstein is hailed by some Jews as a "martyr" and a "holy" man, who was driven to act by the murders of Jews, particularly of his best friend and his friend's son, who died in Goldstein's arms after futile efforts to save them. His grave in the midst of Kiryat Arba has become a point of pilgrimage. Arabs have been subjected to a number of recent, random knifings in Jerusalem, including an incident on December 1, 1998, that resulted in the death of a 41-year-old father of eight,

8. See George P. Fletcher, Self-Defense as a Justification for Punishment, 12 CARDOZO L. REV. 859, 861 n.10 (Feb./Mar. 1991) (quoting Babylonian Talmud, Sanhedrin 72a).
9. See id. at 863.
who was on his way to work.

Jewish-Law Rationale. Rabbi Meier Kahane, among others, asserted that acts of revenge are justified by Jewish law, based on the principle of life-for-life.10 Avengers frequently cite this principle as justification for their self-help, designed to demonstrate to the Palestinian community that the murder of Jews will not go unanswered. Goldstein’s actions have been defended as necessary to save the Jewish people.11 One of the Underground conspirators wrote that, while he was not involved in random targeting, “we are in a war... and in a war innocent people die, sad as that is.”12 Some have described Goldstein’s actions as the consequence of Israeli government policies that violate Jewish law. Goldstein and other followers of Rabbi Meier Kahane argue that the Torah supports their efforts to have all Muslims driven from Israel in the story of Joshua, who was ordered to lead his people across the Jordan River into the Promised Land (Israel) and to drive out all of the inhabitants there,13 and by analogizing the Palestinians to the descendents of the ancient nation of Amalek.14 Goldstein’s attack was on Purim, moreover, a holiday that his supporters noted celebrated the killing of some 40,000 Persians associated with Haman’s effort to kill all the Jews of Persia.15 Rabbi Yitzhok Greenberg of the Od Yosef Chai Yeshiva in Israel, among others, has openly argued that killing gentiles, and Arabs in particular, is less seriously regarded under Jewish law than killing a Jew.

Most rabbinic authorities, however, have joined the Israeli secular leadership in condemning Goldstein’s action as murder, and they have condemned random killing in general. The notion that even a war would justify the deliberate, random killing of

15. See SEFFI RACHELEVSKY, MESSIAH’S DONKEY (Jerusalem: Yediot Aharonot/Sifrei Hemed 1998). Amalek was the wicked nation from which sprang Haman, chief minister of the Persian king Ahasuerus and planner of the extermination of all Jews in Persia, and which the Bible says must be destroyed.
noncombatants indicates ignorance by the Underground group of mainstream Jewish legal scholarship relating to the laws of war. Rabbi Bin-Nun and others have condemned the racist notion that Jewish life is more sacred than non-Jewish life, though yeshivas in which that notion is tolerated or taught are still supported by the Israeli government.

4. Vigilantes. Some Jews have claimed to act against the peace process as enforcers of justice under religious norms. The most notorious of these acts was the murder of Prime Minister Rabin by a young zealot named Yigal Amir. Amir told the Shamgar Commission that investigated Rabin's assassination that the concept of peace had been "turned into a destructive instrument," with the abandonment of Jews, the arming of Arabs, and the release of murderers. Many Jews expressed similar views before the assassination. A rabbi at Hebrew University, Natan Ophir, attempted to attack Rabin at a rally on October 10, 1995, shouting "Rabin is a traitor, Rabin is a murderer," words which in Jewish law signify the right to take such an individual's life. Also in that same month, a handful of Kahane supporters stood in prayer shawls in a circle in front of Rabin's residence and chanted an ancient curse, the Pulsa da-Nura, aimed at bringing death to Rabin "because of his hatred for the Chosen People."

Jewish-Law Rationale. The killing of Rabin was justified by Yigal Amir and others as consistent with two concepts in Jewish law: *din rodef*, a rule requiring Jews to kill anyone who pursues another Jew; and *din moser*, a rule that condemns any Jew for turning in another Jew to non-Jewish authorities. Amir cited opinions he had heard of and received from rabbis that ruled Rabin a *rodef* and a *moser*. Such statements were in wide circulation. Rabbi Abraham Hecht, when he headed the Rabbinical Alliance of America (a group of some 1,400 ultra-Orthodox rabbis), stated before the killing of Rabin that surrendering any part of the land of Israel violates Jewish law, and thus assassinating Rabin would be both permissible and necessary. Some rabbis supported Hecht's position by signing a statement that Rabin was a *rodef*. Most Orthodox rabbis rejected Hecht's

view, which led Hecht to elaborate:

All I said was that according to Jewish law, any one person—you can apply it to whoever you want—who willfully, consciously, intentionally hands over human bodies or human property or the human wealth of the Jewish people to an alien people is guilty of the sin for which the penalty is death. And according to Maimonides—you can quote me—it says very clearly, if a man kills him he has done a good deed.\(^1\)

Rabbi Yitzchok Adlerstein, of Los Angeles, among many others, has explained why these claims are baseless: “The Devil... can cite Scripture; his disciples turn to case law and statute.”\(^1\) A rodef, for example, is literally a pursuer who places his intended victim in imminent harm, and killing him is justified in order to save the pursued. None of these elements is present in the case of Rabin. The doctrine of moser is also inapposite because it relates to turning in Jews to non-Jewish regimes. Jews who stay in areas turned over to the Palestinians, however, are there as a matter of choice.

5. Messianic Facilitation. A grave danger to the peace process is posed by the possible destruction of the Al-Aqsa Mosque, located on the site of the Second Temple. In 1984, the Jewish Underground attempted to blow up the mosque, in one of at least three such efforts to “purify” the area as a prelude to rebuilding the Temple. Each of these efforts was foiled, and the Israeli government arrested and prosecuted the conspirators. The destruction of Al-Aqsa would likely be considered the equivalent of an act of war by all Muslim states.\(^2\) A highly placed Israeli security official described this danger as perhaps the greatest security threat facing Israel, noting that the destruction of one of Islam’s most sacred sites could put the region “in flames.”

Jewish-Law Rationale. Some fundamentalist Jews believe that they are justified in adopting measures that will facilitate the coming of the Messiah. One of these is the rebuilding of the

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20. The destruction in December 1992 by Hindu nationalists of a 16th century mosque, Babri Masjid, in India (located where an ancient Hindu temple had been), has gravely complicated Muslim/Hindu relations, and relations between India and Pakistan.
Temple, or at least clearing ("cleansing") the Temple Mount. Most rabbis reject this proposition, however, for the reason that God is capable of clearing the Temple Mount when the right time comes. That Al-Aqsa's destruction could lead to war ironically lends support to the messianists' ideology, which anticipates a war of total destruction before the end they seek to facilitate.

These examples illustrate how some Jews and Jewish groups have used what they claim to be Jewish law to support acts that have disrupted or complicated the peace process. One cannot know with scientific certainty whether the justifications they advanced were merely post-hoc rationalizations for acts they intended in any event to commit, or whether Jewish-law arguments actually encouraged the actions. For several reasons, however, the Jewish-law dimension of this problem must be taken seriously. Every major incident described in this paper, in which violent, illegal measures were taken against Palestinians or Jewish leaders, was the act of ultra-Orthodox Jews, as opposed to secular extremists. This alone suggests a relationship between extremist acts and literalist beliefs. Furthermore, the perpetrators have themselves affirmed their reliance on Jewish-law concepts, including Kahane, Goldstein, the Underground members, and Amir, the latter of whom testified that he secured rabbinic guidance before killing Rabin. At a minimum, these factors justify definitive measures by Israel and the Jewish Orthodox leadership to negate the legitimacy of utilizing Jewish-law arguments to obstruct the peace process, and thereby to deter their promulgation.

One measure that is frequently suggested to curb such acts is that the government of Israel should end its support for settlement activity within the occupied territories. This Israeli government policy is said to encourage the view that Zionist beliefs and activities within the occupied territories, including actions based on Jewish law, are officially sanctioned. These arguments are mistaken. Israel's determination to control land, it must be recalled, reflects the unmitigated hostility demonstrated by Arabs toward Jews over a 70-year period. It is difficult to expect the deeply ingrained pattern of settlement activity to be abandoned in the presence of continued acts of terrorism, a divided Palestinian leadership with Hamas in open opposition to peace, and the PLO talking peace in English and jihad in Arabic. In any event, the
notion of reduced support for settlement activities could have at best a very limited effect on the use of Jewish law to complicate or undermine the peace process. Existing settlements, and their occupants and supporters, would be unaffected unless Israel began a process of closing down settlements either by compensating settlers or forcing them to leave, policies which have thus far been rejected. In fact, while these policies complicate the process of making peace, they are democratically adopted, and have not prevented the progress that has been and is continuing to be made.

The government of Israel should do more, however, to implement its laws against all forms of terrorist activity by both Palestinians and Jews. The recent refusal of Prime Minister Netanyahu, for example, to release Palestinians in Israeli prisons "who have blood on their hands," should be applied as well to Jews with blood on their hands. Instead, Jews convicted for murdering Palestinians and maiming West Bank mayors have been pardoned after serving only half their sentences, have received light sentences, and have been paroled early. This arguably indicates a degree of sympathy for their conduct that sends a dangerously ambiguous message. Furthermore, individuals who make threats, or belong to organizations advocating illegal measures, must be deprived of their weapons. More could be done, as well, to discourage illegal settlements, for example, by requiring settlers to pay the costs of their removal from illegal sites. A delicate but highly symbolic issue is the continuing display at Goldstein's grave on public land at Kiryat Arba of a tombstone praising him as a martyr. The failure to act against this use of public property could be seen to reflect an ambivalence that observers could construe as an implicit approval of the respect shown for Goldstein, or at least for the purity of his motives.

The Goldstein tombstone issue, and opinions or arguments concerning Jewish law, involve matters of belief and expression. Israel recognizes that the expression of political opinions deserves broad protection, although it has drawn the line more narrowly than the United States. Racist views, and the advocacy of violence, are more closely regulated under Israeli than U.S. law.21

21. See, e.g., Israel Has No Room for Violent Speech, Atty. Gen. Says Here, JEWISH BULLETIN, Nov. 27, 1998, at 8A (interview with Israel's attorney general Elyakim Rubinstein, in which he states, "Freedom of expression is quite sanctified, but when it has
American law has varied, however, and political views and associations have been more sharply limited in times of turmoil in the United States as opposed to times when a low level of stress prevails. In any event, even assuming that the U.S. standards of protection should apply, Israel could lawfully adopt a variety of measures to limit the use of Jewish law to obstruct peace.

In particular, Israel can and should address the practice of individual rabbis and groups of rabbis issuing opinions confirming the propriety of or even encouraging illegal conduct. Such opinions are forms of speech, and ordinarily protected. Nonetheless, issuing such opinions should be sufficient, where the evidence warrants, to bring rabbi authors within the scope of criminal law concepts such as conspiracy, aiding and abetting, and facilitating or encouraging the criminal conduct that follows. Furthermore, the government should deny financial support to institutions, including yeshivas, that tolerate opinions condoning or encouraging violations of civil law. Rabbis who issue opinions authorizing or implying the propriety of illegal conduct should also be deprived of their eligibility to serve in communities and to perform rabbinic activities under the authority of the Rabbinic Councils. Institutions that confer rabbinic authority on rabbis who engage in criminal or highly inflammatory conduct should determine whether the rabbis have so abused their positions as to warrant restrictions on their conduct or revocation of their authority.

Rabbinic institutions currently do not review the conduct of those upon whom they confer ordination as rabbis. They have done so in the past, however, and are empowered to do so by Jewish law and tradition. In one case, Yeshiva University deprived a rabbi graduate of his ordination because he had accepted a post as rabbi with a reform congregation. Standards for disciplining rabbis must be worked out in advance to provide notice to all concerned. The Jewish Orthodox leadership must respond institutionally, however, to threats to the credibility of rabbinic authority, and ultimately to the standing of Jewish law. If, as many Orthodox rabbis argue (and as I personally believe), the positions endangering the peace process and its proponents, as
stated by some rabbis, are the ravings of *meshugoyim* ("crazy people") it would seem entirely appropriate to find some effective way to prevent those opinions from being advanced for illegal purposes.

In my opinion, moreover, the claims of some rabbis and their followers that Jewish law justifies breaking Israeli law (and established Jewish principles) to block the peace process are not safely regarded as the ravings of *meshugoyim*. Racism is mad. Yet it is pervasive and continues to cause devastating consequences. The acts of Jewish extremists, too, have had grave consequences in blocking majority-based policies, and in inciting the hatred of Jews for Arabs, and of Arabs for Jews. It is unquestionably true that these acts, and the extent to which Jewish law is invoked to support them, are far less frequent than similar acts taken by Muslims against Jews, with a claim of support from Muslim law. The State of Israel, moreover, is far more active in suppressing and punishing Jewish extremists than Muslim-led governments or the PLO can be said to be engaged in suppressing anti-Jewish sentiment and actions. Nonetheless, the analogy between these actions cannot be dismissed, nor their occurrence treated as a phenomenon rather than a social reality.

**CONCLUSION**

Judaism, and Jewish law, have been a fertile source of humane and enlightening guidance for humanity for two thousand years. A real threat now exists, however, to the stature and credibility of Jewish law, created by individuals with apparent authority based on religious traditions who are providing advice that justifies or encourages acts that disgrace this cherished faith. When Moses' brilliant Midianite father-in-law, Jethro, advised him to delegate his authority to decide legal questions and make law for the Jewish people, he did not have in mind a free-for-all in which rabbinic charlatans are able to shop their versions of Jewish law in matters of life and death. The Jewish religious establishment must come to grips with this explosive situation in which devoted adherents of the faith are submitting issues of fundamental importance on unsettled questions to unfettered judges prepared to pronounce rulings in conflict with established principles in their efforts to secure political objectives inconsistent with democratically adopted policies.
The importance of dealing with this problem effectively, and in a manner that respects the power of faith, demonstrates the importance of what Loyola Law School and its supporters, such as the Audrey and Sydney Irmas Foundation, celebrate by establishing a chair in Jewish law and ethics. May their efforts be blessed with success, and the Middle East with peace.