I turned to Rabbi Krauss for advice and guidance on all four sections of the *Shulhan Arukh* and on personal matters.

Many stories will eventually be told about the *bet din* (rabbinic court) he founded in 2014 – when he was 77! – to help people around the globe cope with the systemic inequities in Jewish divorce law. While both parties have to agree to a *get* (writ of divorce), the requirement for the husband’s willingness is far more absolute. When a recalcitrant spouse holds up a *get* proceeding, they cause tremendous pain and suffering. This is the crux of the contemporary *agunah* crisis.

Rabbis historically have been able to solve many (but not all) problematic cases. We see this in their correspondence with each other and Rabbi Krauss’ halakhic methods were not new. One halakhic solution he employed is called *kiddushei ta’ut*. That is, a determination after extensive investigation that the marriage was contracted under mistaken assumptions or through an invalid ritual. Talmudic sources for this notion are few. But throughout the post-talmudic period rabbinic authorities expanded the potential application of the argument that “the marriage is void based on an error” (see for e.g. *Iggerot Moshe Even Ha-Ezer* 1:79-80 and 4:113). In some cases, Rabbi Krauss reached the same
conclusion about the marriage when an officiant at the wedding made egregious errors or when the witnesses were invalid. In such cases, no halachic marriage ever took effect, and therefore no get was needed.

Despite his strong desire to help agunot, he shied away from methods that would not have been widely accepted by other rabbis. One highly controversial approach is to retroactively annul a marriage on the basis of rabbinic authority. This goes back to the Mishnah (Gittin 4:1-2), to the time of Rabban Gamliel. The Gemara says kol demekadesh ada’ata de-rabanan mekadesh—when a man marries a woman he does so under the conditions laid down by the rabbis—va-afk’inhu rabanan le-kiddushin minei—and the rabbis can nullify his marriage. The basic concept, as Rashi explains in Yevamot (110a), is that when a couple marries kedat moshe ve-yisrael, what we mean is: according to Jewish law as determined by the rabbis. If the rabbis decide this marriage needs to be annulled, then they have the authority to do so. This leads to the same outcome as kiddushei ta’ut: a marriage never took place, so no get is required.

The Talmud records five cases of hafka’at kiddushin, some of which involve immoral behavior, like abuse, on the part of the husband. Some say that hafka’ah can only be used in those five cases (Responsa of Rashba 1:1185). Others maintain that we cannot use hafka’at kiddushin after the talmudic period (cf. Darkei Moshe Even Ha-Ezer 7:13 and Rema Even Ha-Ezer 28:21). In keeping with this precedent, Rabbi Krauss did not rely on this method.

A good example of Rabbi Krauss’ deference to other rabbis was that he abstained from using one truly innovative solution, despite having intellectual sympathies for the approach. Over half a century ago, Rabbi Yehiel Yaakov Weinberg, the last head of the Hildesheimer Rabbinical Seminary in Berlin, hesitantly considered, and ultimately withdrew from, the innovative solution of a get issued on behalf of the husband by the bet din (see Sridei Esh 3:25). A rabbinic court in Tzfat made use of this halakhic tool in 2014—not without controversy—as a basis for ending a marriage. But Rabbi Krauss never did.

Unlike many rabbis who often keep their lenient rulings unpublished, Rabbi Krauss made his decisions publicly available, including on the internet. In addition to helping women, Rabbi Krauss wanted to sensitize the public to their pain and to promote Torah learning about the issues. He envisioned a more transparent rabbinate.

When I told Rabbi Krauss about a series of classes I was giving to college students on Jewish family law, he pushed me to include sources that didn’t fit the standard party line of today’s rabbinate about birth control: “I know you know the Yam Shel Shlomo and Bet Shmuel on that, why don’t you teach them?” Rabbi Krauss was as much about elevating rabbinic discourse and behavior as he was about freeing women.
It wasn’t just through his *bet din* that Rabbi Krauss showed unusual fearlessness and courage. When I was a young rabbi in Ann Arbor, Rabbi Krauss helped me clear up a misunderstanding with a senior rabbinic judge in Jerusalem. Rabbi Krauss went several times, with and without appointments, to advocate on my behalf. “It is not right for a *dayan* (judge) to express a view on this without speaking to you, but you’re there in Michigan and I’m here, so I’ll speak for you,” he told me. In the end, Rabbi Krauss sent me a written letter from the rabbinic judge supporting me. I’m certain many others felt this kind of tangible support from Rabbi Krauss. He didn’t just say that he supported you. He acted on it, even when he had difficulty walking.

When other rabbis attacked him for his views – usually with misleading or false information about his *bet din* – he responded forcefully but with respect. It was particularly absurd that the harsh criticism of Rabbi Krauss was largely amplified by writers knowledgeable about Jewish law generally, but who had no expertise in these specific *halakhot* and have not served in communal leadership roles. His detractors were overwhelmingly in America rather than, perhaps because in Israel the religious community worries less about institutional or denominational loyalty and has greater respect for Torah scholarship.

Rabbi Krauss always centered the conversation back to Torah and Halakhah, and insisted that people need rabbis who have courage, rather than rabbinic self-importance: “You can hurt me, you can insult me. But at the end of the day, this is not about me,” he told reporters. “We’re fighting for these women. And if we win, the whole community wins. And if we lose… more is lost than we can ever know.” Rabbi Krauss represented a rabbinic culture that cared about people as much as it cared about Torah.

I will also miss his dry sense of humor. On one visit to Jerusalem our plan to get together shifted because he was in the hospital. He told me what room he was in. When I said that I didn’t want to disturb him, he replied, “A disturbance? Where I come from it’s called *bikkur holim* (visiting the sick).”

May his students continue his legacy of infectious enthusiasm for sophisticated Torah learning and of doing what’s right, even when it is hard.

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**The “Essentials” of Orthodox Judaism**

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In May 2012, Rabbi Benny Lau and Rabbi Aharon Lichtenstein participated in a fascinating debate. Rabbi Lau published an essay proposing that, because of changes in perceptions about physical disabilities, all priests, no matter their physical limitations, would be able to perform the service in the Third Temple. Rabbi Lichtenstein vigorously objected and claimed that the positions expressed in the Torah are timeless.
They are not subject to modern views on egalitarianism and one cannot apply current ethical norms when judging its legal code. The Torah, in his view, is not concerned about advocating for equality in religious practice or opposing discrimination against disabled priests. Instead, the halakhic Jew is obliged to accept the authority of the Torah in limiting priestly service to those of normal body.

The rabbis’ exchange about equality and discrimination is thought provoking. But instead of viewing this conflict through the lens of egalitarianism, the issue of disability suggests that we consider an alternative approach to the problem of the ethical basis of Torah law, namely essentialism.

Essentialism is the belief that things have immutable sets of characteristics that make them what they are. The task of science and philosophy, on this view, is the discovery and expression of these features. One might therefore reinterpret the dispute between Rabbi Lau and Rabbi Lichtenstein as centering on the essentialist nature of the disabled priest. According to Rabbi Lau, disability is not a fixed, intrinsic feature of the priest’s persona. We are obliged, therefore, to look past it and treat such an individual like any other member of his priestly group. In contrast, Rabbi Lichtenstein considered disability to be a defining feature of the priest. On those grounds, he maintained the Torah’s prohibition against allowing a disabled priest to work in the sacrificial realm.

From a religious perspective in which adherence to divine law is compulsory, egalitarianism or other overarching principles may not be useful tools to understand Torah law and potentially implement change. Instead, evaluating what is truly essentialist in nature and delineating the consequent legal ramifications may provide a better path to incorporate altered realities into the Halakhah.

Essentialist categorization is a central feature in Jewish religious thought, in which delineation of borders and groups is a recurrent theme. Sanctity is grounded in the delineation of boundaries and group identities that cannot be crossed. These definitions of holiness are essentialist and cannot be summarized by resorting to a priori philosophical premises. Instead, essentialism suggests a positivist approach that independently lays down permitted and forbidden behaviors and interactions. This can be applied to time, place, and person. For example, the Israelite camp in the desert and Temple were subdivided into zones with restricted access to designated areas based on personal status. Times of the day, days of the week, and months of the year are defined as holy, such that there are explicit limitations on permissible activity on those occasions.

The permanence of holiness rooted in essentialism has been the subject of philosophical debate. As summarized in Menachem Kellner’s book *Maimonides Confrontation with Mysticism*, Rambam asserted that as a general matter, holiness is conditional. Only when the Jewish nation exercised sovereignty over the land of Israel was the territory...
holy; exile canceled this status. And while Rambam, like others, did attribute eternal holiness to the Temple and land of Israel, the degree of holiness was susceptible to fluctuation based on historical circumstances. Similarly, only if the Sanhedrin sanctioned the testimony about the new month did the days on the calendar become holy. Witness the famous Yom Kippur confrontation between Rabban Gamliel and Rabbi Yehoshua ben Levi (Rosh Hashanah 25a). In contrast, R. Yehuda Halevi claimed that the holiness of these categories – the land of Israel, Jewish nation, and Shabbat — is hardwired into nature and can never be revoked. The intense debate that surrounded the disengagement from Gaza, a political decision that Rabbi Lichtenstein supported, might suggest that notions of essentialism are relevant today and that rabbis may adopt different stances depending on the circumstances. Drawing on the debate between Rambam and HaLevi, this essay focuses on essentialist categories of people — men versus women, Jew versus gentile, slave versus free person, and kohen versus non-kohen — and the implications these definitions exert on personal status and religious engagement.

Personal essentialism can be divided into two subcategories, intrinsic and extrinsic. Intrinsic essentialism denotes definitions based on characteristics that inhere in the person. These include gender, race, and physical and mental capacity. From this vantage point, women are viewed as fundamentally different from men because of the biological features that distinguish the two genders. Essentialist views of race and ethnicity would hold that a person’s skin color or ethnic origins is indicative of differences that are ingrained in the person.

Extrinsic essentialism is based on features that individuals choose to take upon themselves, such as an occupation, place of residence, and lifestyle choices. Considered in this way, one could speak of doctors as essentially different from architects, people who adopt vegan diets as different from omnivores.

The underlying supposition of a legal code based on essentialism is the immutability of its defining characteristics. But new facts are calling this feature into question for nearly all forms of essentialism. Apparently immutable features like deafness can be reversed with cochlear implants, and physical disabilities can be surgically remedied. Mental capacity is amenable to remediation, and it is no longer tenable to consider cognitive impairment as a permanent diagnosis. Even gender is increasingly considered fluid. Thanks in large part to Judith Butler, gender identity is viewed by many as socially determined, amenable to medical modification. These changes are consistent with larger cultural shifts in today’s world, in which people regularly change their occupations and revamp their lifestyles. These changes suggest that personal essentialist classification schemes, whether intrinsic or extrinsic, are fluid and subject to human manipulation. This should give pause to political arrangements and legal judgments based on essentialist criteria.
What of essentialism in Judaism? Should we view identity and other critical features of personal status from a traditional essentialist vantage point? We might consider this question by looking at the rules governing one's entry into and exit from the Jewish people. On the one hand, Jewish identity is biologically determined: at the most fundamental level, a Jew is the child of a Jewish mother. This status is conferred automatically at birth. This is intrinsic essentialism in its most pure form. Alternatively, one can choose to become a Jew. Similarly, Jewish law incorporates guidelines for apostasy and criteria for banishment of Jews from the community based on violations of foundational practices, such as idolatrous behavior (*Hullin* 5a). On one hand, there is a broad acceptance of human failing by the Rabbis, and a person cannot simply discard one’s Jewish status. Yet there are actions that are beyond the pale and for which a Jew forfeits membership in the community. Thus, seen from an essentialist perspective, Jewish identity can move in both directions, whether defined intrinsically or extrinsically, and can be bestowed upon or stripped from individuals.

More generally, there is discomfort when religious identity is defined essentially. Witness a recent article in *First Things* that provoked an uproar in the Jewish community. Romanus Cessario wrote in strong support of Pope Pius IX’s ruling that Edgardo Mortara, a baptized Jew, could never be returned to his parents. The baptism by the family's maid had ineradicably altered the child. The water sprinkled on Edgardo intrinsically changed him, he was now essentially a Catholic, subject to the protection of the Papal state. The absence of volition is the same for a newborn infant of Jewish parents or Edgardo Mortara, who was unknowingly converted by his maid. Doubt about the validity of intrinsic essentialism, defined by a normal birth or baptismal waters, is present in both cases.

Similarly, the current debate about conversion may highlight the uncertainty and anxiety created by the declaration of the person who expresses a desire to extrinsically alter his or her essential religious identity by committing to join the Jewish people. Considering our ability to alter human biology and the suspect status of racial categories based on population genetics studies, there is growing discomfort with accepting intrinsic physically based definitions of people and their halakhic implications. The dissolution of this essentialist category has clear-cut ramifications in Jewish law, namely that deafness can no longer serve as a justifiable criterion to deprive a person of religious agency, or to exclude this individual from legal proceedings and ownership rights. The extent of our contemporary ability to manipulate biology lends support to the view of Rabbi Lau. Exclusion from communal rituals based on an essentialist definition of disability, which may have been a reasonable criterion to maintain the dignity of the sacred realm in the past, might no longer pass muster.

Even granting the argument that essentialist categories are increasingly subject to change in
today's world, we might wonder about categories that were created specifically by the Torah and that are unique to the fabric of Halakhah. Here, at the very least, we might assume that immutable essentialism should be determinative. Still, even here, one example among many ought to give us pause. The law of *ben sorer u-moreh*, the "rebellious son," outlines the commandment to execute a minor based on bad behavior as a juvenile because of the inevitable progression to a more destructive life of crime in adulthood (*Sanhedrin* 71b). This is preventive justice taken to the extreme. There is no question that there are children whose youthful behavior is a virtual guarantee of worse things to come in adulthood. They appear to be essentially bad, and the Torah appears to be endorsing this position. However, the sages were troubled by the implication that the punishment is based on a bad prognosis and not actual crimes committed. The Talmud (*Sanhedrin* 71a) thus cites a position that there are no actual children who exemplify this category. The law, on this view, is theoretical in nature and the sages drastically curtail the application of an essentialist definition of primordial evil.

Similarly, there are national groups that are defined in the Torah, including Amalek, the seven tribes residing in Canaan at the time of the conquest of the land, Moav, Ammon, and the Gibeonites. There are legal restrictions placed on including these people in Jewish community, even a commandment to annihilate some of these nations. Nonetheless, the application of these laws was abandoned over time. In part, this reflects mass migration and the assimilation of ancient tribes, which rendered these laws impractical.

Alternatively, others have contended that the rabbis were motivated to minimize the applicability of these laws because they violate our moral intuitions. Viewed against the backdrop of the question of essentialism, however, perhaps a more productive perspective is to suggest that these national groups were seen as invested with different essentialist characteristics, immutable flaws in their national character. Our moral unease stems from an unwillingness to apply legal codes of engagement towards non-Jewish groups, even idolatrous ones, based on essentialist group qualities. This recapitulates the conflict outlined at the beginning of this essay between Rabbi Lau, who looked at the service of the disabled as a problem of equality, and Rav Lichtenstein who saw it as a religious requirement to adhere to an essentialist category of "disabled priest."

Where does that leave us today as Orthodox Jews? Intrusive essentialist views are dismissed in most modern circles because they violate the sense that people are what they make of themselves rather than what they were endowed with by inheritance or acquisition. They are seen as relics of an outdated mode of thought. Many women consider essentialism as a primary tool in maintaining the patriarchal status quo and in restricting their full participation in religious life. Extrinsic essentialism is seen as suspect because achieving a title or adopting a lifestyle is not seen as a source of...
privilege but as an opportunity to leverage one's accomplishments or choices in order to achieve a better life.

In conclusion, the debate between Rabbis Lau and Lichtenstein, coupled with scientific and cultural shifts, suggests that a more flexible essentialism might be the best lens through which to consider the possibility of halakhic change. [Furthermore, if it is true that the rabbis were nominalists, they would agree that there are no ideal categories of people and that how we think about women, converts, the disabled, firstborns, priests, and nations is subject to ongoing evaluation and change in response to lived experience.] To properly apply Halakhah nowadays, then, we must be willing to reassess the application of essentialist categories in the face of new data, be they scientific, demographic, social, behavioral, or moral. This, as opposed to simply pitting the law against contemporary egalitarian assumptions, might prove the most fruitful way to think about problems of applying halakhic principles in today's increasingly complex world.