The question of "law and order" is one of the most emotion-packed issues facing American citizens in this election year. It is unfortunate that such an important subject is being approached from a partisan viewpoint, that it is being treated psychologically rather than logically, and that such a momentous issue is not being analyzed substantively but has become the stuff of breezy slogans. As a result, the concept itself has become vague and much too elastic.

It is good, therefore, to search for the Jewish attitude to law and order. Of course, a systematic treatment is impossible within the confines of one brief talk. But it might be beneficial to us to seek out some of the insights of the wisdom of the Jewish tradition by referring to our Sidra, especially the episode of Cain and Abel as it is treated in the Rabbinic literature. For, as the first human conflict, it prefigures all human controversy and anticipates Jewish judgments on law and order.

The story of Cain and Abel teaches us, first of all, that wherever there are two or more people, even if they be brothers, there already arises the need for law and order. As long as man does not live alone on an island, he must have some method of...
regulating his conduct with his fellow men. Not all law need be commanded or legislated or revealed; there is a certain kind of moral law that is inscribed in the conscience of man. Interestingly, Cain was punished for his fratricide although he was never explicitly commanded not to kill. It was assumed that by virtue of his being a human being, he would recognize the evil in murder. The great Jewish poet and philosopher Yehudah Halevi taught, in his "Kuzari," that even a gang of thieves must live by a detailed code of conduct. Certainly, a civilized and humane society requires the acknowledgment of a law that stands above the individuals who are called upon to obey it.

The Rabbis were intrigued by the nature of the conflict between Cain and Abel that lead to the tragic climax. In offering various interpretations of the substance of their controversy, some of which we shall shortly mention, they asserted that Cain and Abel each came to a different conclusion on the nature of law and order itself. The Aramaic translator, Targum Jonathan, maintains that the two brothers disagreed on a number of very important philosophic issues, such as the existence of olam ha-ba and belief in the justice of God as He rules the world. But most important they differed on the question of law and order. Abel maintained it din v'it dayyan, "there is a law and there is a Judge," that man is bound by a law and a moral code for his conduct; and Cain responded with the cry, let din ve'let dayyan, "there is neither law nor Judge!"

What the Rabbis meant to tell us in this interpolation is that if,
that there is no din, then the result can only be -- brother murdering brother.

The same Agadah teaches us yet one more point, if we read it carefully. It speaks not only of the acknowledgment of din, but also that of dayyan -- not only the acceptance of a binding law, but also of the presence of a divine Judge.

Human law is important -- but it is not infallible, inviolate, or absolute. It must be subordinated to a divine dayyan. In essence this means that law prevails, but not above conscience, not above religious principle, not in the presence of a higher moral code. Therefore, for instance, Jewish religion teaches that dina de'malkhuta dina, that the law of the country wherein we dwell remains our law. However, when such governmental law bids us violate the law of the Torah, then it must yield, for human law is subordinate to divine law.

Furthermore, the belief in the existence of a dayyan means that din, law, must never be tyrannical and blind. Thus, law requires us to avail ourselves of the police and the courts -- but the dayyan teaches us that their powers must not be unlimited. That is why, for instance, the Torah permits us to shoot an armed robber or looter, but the Torah does not permit us to shoot to kill thieves who are clearly unarmed and who very obviously aim to steal but not at all to kill. So too, we are commanded by Jewish law to defend ourselves against a potential aggressor; if one seeks to kill his
fellow man, we may kill the pursuer in order to save the pursued. But, if it is easily possible for us to stop the aggressor by maiming him or attacking him in such a manner that he will not be killed, and instead we over-react and kill him -- we are guilty of murder. In short: Torah agrees to law and order, but it does not consent to trigger-happy over-reacting.

As a second point, our Sages were realistic. They understood that the insistence on "law and order" is sometimes a disguise for selfish desires, for a kind of profit motive. They understood that with the wrong attitude, "law and order" sometimes becomes an incitement to conflict rather than a means of reconciliation. Thus, the Rabbis tell us what, according to their projection, was the cause of the conflict between Cain and Abel. They said that the two brothers decided to divide the world up between them, with Cain taking all the karka, all ground or real estate, and Abel possessing all the metaltelin, all movables or chattels. The decision was legal and legitimate. But then each of the brothers decided to pursue his own legal rights. He wrapped himself in the pious mantle of "law and order" and pursued his lawful rights to their logical but illegitimate conclusion -- fratricide! Cain, according to the Midrash, pursued Abel and said to him: perah, fly, flee, get away, you are standing on my ground. Wherever Abel would go, Cain would insist that he was trespassing. At the same time, Abel turned to Cain and told him: halotz, strip, divest yourself of
your gown and your robe and all your possessions, for everything that you possess that can be carried or moved -- belongs to me.

Each was within his rights -- and that indeed was the whole trouble.

Justice Silberg of the Israeli Supreme Court wrote a book several years ago in which he tried to show some of the major differences between Jewish law and the civil laws of other countries. Whereas the civil law of most countries is devised to protect the rights of individual citizens, Jewish law prescribes duties. The U. S. Constitution, for instance, is a document superbly executed for the defense of rights. Its greatest glory is a list of the first ten amendments, the "Bill of Rights" which protects the most sacred rights of the American citizen. Judaism, however, bases its law on the mitzvah, on the commandment, on the duties of man to his God, towards his fellow man, and towards himself.

A law and order ethic based upon duties as well as upon rights would tell neighborhood groups that they have a duty to protect the economic welfare and security of teachers, that they cannot simply tell them, balotz, divest yourself of your tenure and your rights and your future because it pleases our interest that you do so.

Law and order based upon duties would tell teachers in the community: you may not tell everyone else perah, fly, get out, this is my private domain. For years teachers have been complaining
that ghetto parents were not interested in the welfare and education of their children. If these same ghetto parents are now too concerned, too interested, too active, it is not an excuse for maintaining that only teachers have the right to determine and direct the education of their children. Each side must learn to seek an accommodation by emphasizing not only its rights, but also its duties. What happens when each side insists only upon his rights, is that law and order itself is broken down, and both sides resort to illegalities.

Finally, the current cry for severe punishment as a part of the whole "law and order" campaign was also anticipated by the Rabbis. In this aspect of the "law and order" movement, the Supreme Court has been selected as the major target and made the whipping boy of public resentment and malcontent. This is unfortunate, and it is mistaken too: one astute observer recently documented his argument that the Supreme Court decisions in favor of civil liberties have nothing to do with "crime on the streets." If anything, I believe that it results in "crime in the chambers" -- the chambers of Congress, where the nomination of a great jurist as Chief Justice was recently shot down in cold blood.

It is true that if no attempt is made to enforce the law, this may encourage crime. If we are too lenient in dispensing justice, then we reduce the risk that a criminal feels before he commits his crime. But law enforcement should never be equated with
establishment power, and should never be determined on the basis of impulse and emotion.

The Rabbis, in Midrash Tankuma, tell us that after Cain killed Abel, he was surrounded by the birds and the beasts and the animals of the field who were mightily disturbed by the primordial crime that had been committed in their midst. They gathered to cry for vengeance. This Biblical kangaroo court sought justice for the murdered Abel. But God, Who was originally sympathetic to their claims and desires, noticed in the midst of this zoological Sanhedrin the presence of -- the serpent. And therefore He denied the request of this court, and said that Cain may not be killed, that whoever should dare to do so would be punished seven times over again. Why did God utter this judgment? Because He saw that the beasts and the birds, influenced by the serpent, were concerned not so much about the blood of Abel that was spilt, but by the blood of Cain that was not spilt... He saw that this was a blood-lust disguised as a passionate cry for law and order, for the punishment of criminals.

I would urge you, my dear friends, to be honest with yourselves. Let all of us be honest about our motives for calling for greater law and order in the face of the social crisis that besets us. Of course, we want law and order. The facile and simplistic answer, "social revolution," or "they are trying to make up for 300 years of slavery," will not restore his life savings to a Jewish
merchant in the ghetto area who was looted, and is innocent of any wrong-doing -- whose great-grandfather was not a slave trader in the South, but a peddler in the ghettos of Europe. It is easy, all too easy, for a white Jewish upper-class suburbanite to excuse the excesses of Negro rioters, as long as it is not his store and his savings that have been destroyed. So we must be for law and order and for controlling all extremist groups.

But -- as Jews, who have a long and peculiar and specific history, we must not allow xenophobia and fear and racial antagonisms and innate bigotry to emerge in pious disguises. We who have been the perennial victim of cruel governments and established anti-Semitic powers who legislated us into bondage -- everything according to the "law and order" which they formulated -- we must not allow the cry for "law and order" to become a tool to be manipulated for unfairness and injustice and oppression. We must, of course, practice enlightened self-interest. But we must not confuse the desire for stricter law enforcement, which is necessary, with the development of a police state.

We have learned recently that all the Jewish work for civil rights and integration has won us few friends. It is true that Jews of liberal suasion and moral fervor did not participate in these drives because of any self-interest, such as winning friends in the political and social battles to come. They did it because they believed in it implicitly and honestly. It was a moral commitment.
But there is something ironic about those Jewish super-liberals who imagined that an extreme liberal position is the essence of or adequate substitute for Judaism, who gave their all for integration, only to discover that the black community is now beginning to reject it. Whatever the case may be, our pro-Negro work has not necessarily made friends of the Jews out of the Negros. But let us remember too that if we should, Heaven forbid, make the dreadful error of becoming indiscriminately anti-Negro, of identifying with the red-necks in our society, we will not make friends of the white racists. They will remain as doggedly anti-Jewish as they are anti-Negro. It is good for us to remember a simple historical fact: six million Jews were killed by white men!!

I am not saying that the Nazis would not have done what they did had they been black. But I fear that we are beginning to lose our perspective, that in the heat and in the passion of the moment we are permitting a certain kind of primitive bigotry to color our judgment and to distort our sense of proportion.

These words are not meant as an opinion on any of the current issues before the electorate or in the political arena. The pulpit is not a platform. But I do insist that the Jewish commitment is a moral one. And morality requires above all objectivity and cool thinking. Moral passion is meaningful only after a dispassionate evaluation of the facts.
To summarize then, the insights we have gained from the Jewish tradition are: that without the rule of law, we have a jungle with anarchy and murder; that law must be just and enlightened, and conform to the will of the divine Judge; that we must beware of the demand for law and order revealing itself as a selfish tool of vested interests; and that we must take care lest the angry demand for sterner punishment prove nothing more than a disguise for deep-seated and illogical hostilities.

These words are not meant to provide a solution for our immediate problems. But they can, I submit, prove to be general guidelines for Jewish and human conduct. "Law" is for the Jew more than a social contract; it is an expression of a divine Will. The word Torah has been translated, not entirely correctly but with a large measure of truth, as "Law." And this Law is perfect: so does David say in the Psalms, and so do we repeat every Sabbath: Torat ha-Shem temimah, "the Law of the Lord is perfect." But it requires of us the energy and the initiative to study it, to probe it deeply, and to view it from every angle, and not to offer snap judgments in its name.

The Besht taught, Torat ha-Shem temimah means that, regrettably, the Torah still is temimah -- whole, perfect, unblemished -- even its surface has not yet been scratched!

Let us do more than scratch the surface of Torah. Let us plunge into its very depths, and from it derive judgments which are truly temimah. Then we shall experience the promise of the next
verse: the commandments of the Torah will be mesamhei lev, they will gladden our hearts.