Rabbinic and Lay Communal Authority

EDITED BY

Suzanne Last Stone

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THE ORTHODOX FORUM

The Orthodox Forum, initially convened by Dr. Norman Lamm, Chancellor of Yeshiva University, meets each year to consider major issues of concern to the Jewish community. Forum participants from throughout the world, including academicians in both Jewish and secular fields, rabbis, *rashei yeshivah*, Jewish educators, and Jewish communal professionals, gather in conference as a think tank to discuss and critique each other's original papers, examining different aspects of a central theme. The purpose of the Forum is to create and disseminate a new and vibrant Torah literature addressing the critical issues facing Jewry today.

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Series Editor's Preface

The current generation, perhaps more than any other in the Western world, has experienced dramatic changes affecting its identity, stability, and continuity. Demographic shifts, egalitarianism, and instant access to information have resulted in new challenges to the authority of spiritual leaders and to the matter of decision-making in general.

An ever increasing knowledgeable Orthodox laity, *yeshivah* educated and university trained, has become more self-reliant regarding the religious choices they are called upon to make. In the open society, top-down leadership has been increasingly replaced by networking lay-professional partnerships and collaboration models. Consensus-driven processes focusing on what works and what doesn't, what satisfies and what doesn't, have substituted for the approaches that governmental and spiritual leaders utilized for centuries.

At the same time, the rejection of authoritarianism is

accompanied by an increasing yearning for the emergence of authoritative, enlightened, and courageous communal leadership.

The Modern Orthodox community is seeking to find paths that reflect fealty to Jewish law and tradition but at the same time maximize opportunities for individual expression and a sense of personal ownership in the realm of religious, cultural, and intellectual life.

In this volume, *Rabbinic and Lay Communal Authority*, capably edited by Professor Suzanne Last Stone, the reader will be guided through a range of historical, political, sociological, and Jewish legal (halakhic) perspectives that provide insights and perspectives that can help guide our community as it moves forward.

We trust that this fourteenth volume in The Orthodox Forum Series will meaningfully enrich the discussion of the pressing issues of the day.

Robert S. Hirt
August 2006

Introduction

Suzanne Last Stone

Who, ideally, governs the Jewish community? The Jewish polity, as described in the Bible in Deuteronomy, consists of priests, judges, kings, prophets, and elders, each wielding distinct, although sometimes overlapping powers. Today, we speak instead of rabbis and "lay leaders." Although lay leadership is nowhere mentioned in the Torah, and only marginally in the Talmud, lay leaders, ordinary members of the community, have historically exercised authority over communal affairs in conjunction with rabbinic authority. Broadly speaking, lay leaders attended to social and economic matters, the classic category of *mamona*, while the rabbis exercised authority over religious matters, the category of *issura*. In this view, rabbis are the masters of the law, of religious norms, while the realm of politics and social and economic life is remitted to the community. This division of authority between rabbis and lay leaders roughly corresponds to the division in modern life between the religious and secular realms. And it is a model of considerable appeal to modern sensibilities because it resonates with democratic culture, where ordinary citizens govern

mundane life. But is such a division of authority in fact contemplated by the Torah? Is there room for leadership, even over mundane matters, by those who are not masters of Halakhah? And, if so, what are the precise boundaries between rabbinic and lay authority?

These questions lie at the heart of the contemporary divisions within Orthodox Judaism. On the one hand, the concept of *da'at Torah* presupposes that solutions to current political questions, and to practical, worldly matters, are best discerned by masters of Torah. In theory, for those who adhere to this concept, no area of life is beyond rabbinic authority. Within centrist Orthodoxy, on the other hand, there are increasing clashes with rabbinic authority even in areas traditionally viewed as religious in nature. The tension between lay and rabbinic authority stems from a variety of factors, including the rise of a more educated laity possessed of both professional sophistication and knowledge of halakhic sources, the wider role of women in Jewish religious life, the growing sense that today's rabbinic leaders are not sufficiently attuned to the reality and complexity of modern life, as well as a heightened yearning of individuals for spiritual independence and self-expression in an age of personal autonomy. As a result, many Orthodox Jews today are advocating a more prominent role for lay leaders in local Jewish communities, often at the expense of rabbinic authority.

In this volume of The Orthodox Forum, halakhic authorities, historians, sociologists, political theorists, and communal leaders offer their perspectives on the historical and contemporary tensions between lay and rabbinic authority. What emerges is a more complex picture of the evolving nature of both the rabbinate and lay leadership. Neither the rabbi nor the lay community is a monolithic, unchanging entity. While halakhic norms provide some guidelines about the basic duties of the rabbinate and the limits on lay authority, economic, social, cultural, and political factors affect both the degree of authority invested in the rabbi and the degree of confidence invested in lay authority. As these conditions vary, so does the dynamic of cooperation and conflict between the rabbinate and lay leaders. The essays in this volume attempt to present a candid picture of the conditions that today shape the relationship between

the rabbinate and the lay community. While some of our writers express optimism, many others express concern and even despair. Nonetheless, the airing of these concerns is an important first step toward inaugurating a renewed relationship between the rabbinate and the lay community.

Does the Halakhah offer an ideal model of governance of the Jewish community against which contemporary divisions of authority between lay and rabbinic leadership should be measured? Rav Aharon Lichtenstein, in "Communal Governance, Lay and Rabbinic: An Overview," addresses this fundamental question. If we were to start anew and attempt to enact the ideal political structure, Rav Lichtenstein concludes, we would still be left with a broad range of possibilities. Despite some clear guidelines for political leadership in Jewish sources, Halakhah leaves wide latitude about the form such leadership should take. Rav Lichtenstein argues that political decisions fall under the rubric of *devar ha-reshut*, matters of critical importance but do not rise to the level of commanded law, of *mitzvah*. The commentators are divided even on the centrality of the monarch, the primary symbol of Jewish lay leadership. While Rambam categorizes the appointment of a king as a positive commandment, others view the monarchy as merely permissive, a concession to the people's desire for that form of governance. Thus, for Ramban, the king is simply a reflection of the will of the people. And Abarbanel viewed the choice of kingship as far from ideal, advocating instead republican rule.

The nature of the rabbinate is equally open-ended. The *rav*'s qualifications, standing, powers, responsibilities, and relationship to local government have taken different forms both in the halakhic literature and in practice. Nevertheless, Rav Lichtenstein notes three roles that must be filled by the *talmid hakham*. First and foremost, the *rav* is indisputably the ultimate halakhic authority for his community or congregation. The second area reserved for the *rav* is enactments for the community. Finally, the *rav* engages in communal governance and policy. This activity, however, can be deemed as extra-halakhic. In this last arena, the issue of *da'at torah* comes to the fore. To what extent should we value the opinions and pronouncements of rabbis

in areas that may extend beyond their expertise? Rav Lichtenstein insists on the spiritual weightiness of rabbinic input in all aspects of communal life. Torah knowledge should, and often does, translate into insight, spiritual sensitivity, and a better sense of priorities. At the same time, he laments the insularity of today's rabbinic leaders, most especially the *rashei yeshivah*, who are deliberately raised in a cloistered environment devoid of the experiences and exposure necessary for sound policy leadership. In the end, he concludes, the role of the *rav* in these matters should remain one of consultation.

While Rav Lichtenstein focuses on models of the rabbinate compatible with Halakhah, Professor Gerald Blidstein, in "On Lay Legislation in Halakhah: The King as Instance," turns to halakhic conceptions of communal power, specifically the power to enact legislation. His interest in this question is not merely theoretical; it has important implications for the halakhic validity of legislation enacted by the parliament of the State of Israel. Traditionally, Jewish sources restricted legislative powers to the rabbinate. Yet the medieval *kahal* enacted legislation, and halakhic authorities recognized lay legislation as legitimate. To unravel this puzzle, Professor Blidstein examines a possible precedent for such communal legislation: the powers accorded to the monarch. As Professor Blidstein points out, the monarchy is an "organ of governance which is not constituted by sacred or spiritual characteristics." Thus, monarchy represents the realm of civil authority, as does the *kahal*. Neither the Bible nor the Talmud portrays the king as a legislator, however. True, the Talmud accords gentile kings the power to legislate, and, pursuant to the doctrine of *dina de-malkhuta dina*, the Halakhah recognizes such legislation as valid. But this rule is nowhere applied in the Talmud to Jewish kings. Yet, in the medieval period, when interest in the idea of monarchy re-emerged, several commentators seem to grant the Jewish king legislative authority. Moreover, the impetus for this amplification of the powers of the Jewish king, Professor Blidstein argues, was a need to enlarge the powers of the community.

For example, according to Ramban, the king may declare a *herem* upon anyone who does not follow his decrees. Ramban also recognized communal legislation as legitimate and emphasized the

community's role in declaring a *herem*. Taken together, Professor Blidstein writes, it is reasonable to conclude that Ramban thought there was a place in Jewish government for a "lay" component authorized to articulate norms. Similarly, in his Eleventh Homily, Rabbi Nissim of Gerondi famously extended the judicial powers of the monarch to punish criminals. Although it remains open to question whether Ran also granted the king legislative powers, the thrust of the sermon, Professor Blidstein argues is to grant the king the power to order society effectively, which implies the right to make new law. In any event, Professor Blidstein notes, Ran's extension of the powers of the Jewish king was a reflection of his major intention: to enlarge the scope of communal power. Again, king and community seem to "form a single continuum." Maimonides, of course, was the most sustained and articulate advocate of kingship, and contemporary scholarship emanating from Israel has sought to locate in Maimonides, too, a Jewish monarchic legislator and, with it, a "secular" realm of Jewish government. Professor Blidstein doubts that Maimonides envisioned a Jewish king with legislative powers beyond the rules necessary for administration of the state apparatus. A gentile king may legislate, but the gentile king represents the totality of government, which is not the case with a Jewish king, who shares governance with the rabbinic estate. Indeed, Professor Blidstein argues, Maimonides, in contrast to Ramban and Ran, seems to have restricted the power to legislate to the rabbinic estate.

The general fascination in Israel today with the topic of monarchic legislation, and the specific attempt to locate such powers in the Maimonidean king must be understood, Professor Blidstein argues, in light of the pressing question of the halakhic validity of Israeli parliamentary legislation. Professor Blidstein analyzes one striking example: the responsa of Rav Shaul Israeli. In his first responsum, Rav Israeli concludes that the halakhic monarchic system in its entirety derives its supremacy from the people, and upon its dissolution, the power returns to the populace. By transferring monarchic powers to the populace, Rav Israeli thought he was empowering the new state to function. He later came to realize that the classic Talmudic/Maimonidean monarch lacked a crucial power the power

to legislate. His second responsum provides an innovative solution to this problem. Rav Israeli proposes that all governmental powers are derived in halakhic theory from popular consent. Accordingly, the populace can redraw its social contract and apportion new powers to its government. Echoing Rav Lichtenstein's observation that the Halakhah leaves wide latitude with regard to political arrangements, Professor Blidstein concludes by observing that Rav Israeli clearly does not see the "classic halakhic arrangement to be ideologically, intrinsically inescapable."

If the precise duties, status, and power of both the rabbinate and the lay component of Jewish government, as well as their interrelationship, are left open-ended by Halakhah, as both Rav Lichtenstein and Professor Blidstein suggest, what forms of leadership have these two realms exercised in actual history? We begin by focusing on the rabbinate in early modern times. In assessing the role of the rabbi in early modern Eastern Europe, Shaul Stampfer, in "*Rav*, *Rosh Yeshivah* and *Kahal*," notes that the rabbi initially served at the pleasure of the *kahal*, and his political reach was intentionally curtailed. The community strove to keep its local rabbi from exercising political influence; thus the rabbi would be selected only on the basis of legal expertise and knowledge. The rabbi's functions were limited to the strictly religious sphere: performing marriages, granting divorces, running a rabbinical court, supervising *kashrut*, and, in some instances, running the local *yeshivah*. Although even these tasks technically could be performed by laymen, the community viewed the presence of a rabbi as an enhancement of the *kahal*'s prestige. In short, while the rabbi filled an important communal role, no one viewed him as a communal leader. Rather, the rabbi was merely an employee of the secular body that established communal policy.

In the nineteenth century, however, the status of the rabbi was dramatically transformed. Stampfer surveys the chain of events that led to a transformation in the attitude toward rabbinic authority. In the eighteenth century, the Council of the Four Lands was abolished. The abolition of this communal superstructure eventually led to a weakening of the individual member communities. Shortly

thereafter, new threats to the once-stable structure of communal religious life emerged, from the Jewish Enlightenment to Hasidut to acculturation. The loss of respect for traditional norms was accompanied by a loss of respect for the rabbis who espoused them. To preserve stability, rabbis pushed for family succession. This response only exasperated the problem, because the succeeding generation usually represented a diminishment in quality. At the same time, government-imposed rabbis were selected on the basis of their secular education at the expense of Talmudic mastery. The result was a rabbi who could not command the respect of his presumed followers, leading to schisms within the communities. In response to this crisis, new rabbinic types emerged as leaders and role models, specifically the *rosh yeshivah* and the Hasidic master, who filled a religious void while at the same time establishing significant relationships with their devotees. These new rabbinic figures gave rise to a changed perception of the role of the rabbi. The rabbi now was seen as a person who serves as a spiritual guide and inspiration, and sometimes as a pastoral counselor or as a sage in political matters. This perception eventually entrenched itself in the Orthodox world.

Nehemia Polen's "Charismatic Leader, Charismatic Book: Rabbi Shneur Zalman's *Tanya* and His Leadership" complements Stampfer's contribution. While Stampfer provides a panoramic view of the change in the nature of the rabbinate in early modernity, Polen offers an in-depth analysis of one form of charismatic rabbinic leadership that emerged in the eighteenth century and since has grown into one of the most potent spiritual movements in the Jewish world today. His focus is on Rabbi Shneur Zalman of Liady, the author of the *Tanya*, and the founder of the branch of Hasidut known as Habad. The *Tanya* describes the relationship between the *tzaddik* and the *beinoni*, the intermediate individual. In the Tanya, the *tzaddik* is a flawless leader with no temptation to stray. The intermediate person is instructed to struggle to behave precisely like the *tzaddik*, and must bind himself through an oath to do so, but he is also told that this goal is virtually unattainable. The *beinoni*'s struggle over his nature becomes a warlike quest, and, indeed, the *Tanya* is replete with images of combat and militancy. Polen argues that the *Tanya*

reshapes the spiritual landscape cultivated by the earlier Hasidut by exploiting the tension between control by the spiritual leader and empowerment of his followers.

Chaim Waxman's "The Role and Authority of the Rabbi in American Society" moves us to the present. Waxman situates today's rabbinate within the larger context of American religious forms of authority. This context is one of increased privatization of religion and a concomitant decline in religious authority in general. In America's increasingly heterogeneous communities, social control no longer suffices to guarantee compliance with religious norms of behavior. Instead, religion is equated with personal growth or with the search for meaning in life. The modern age is characterized by choice, not compulsion, and this holds true even in traditional denominations like Orthodox Judaism. Thus, denominational allegiance across the spectrum of Judaism is no longer ascriptive, shaped by birth and upbringing, but is a matter of choice. It is against this background that the decline in authority and prestige of American clergy must be understood. Across the religious spectrum, a career in the clergy is now viewed as less desirable than in the past. The demands placed on clergy are increasing, while the level of satisfaction clergy experience from their work is falling. Even among Orthodox Jews, where many people still seek ordination, the number who actually enter into the pulpit is unimpressive. No community, no matter how traditionally conceived, is immune from these trends, Waxman asserts. A decline in religious authority is evident in Christian fundamentalist sects. And, despite the rhetoric of *da'at Torah*, rabbinic authority and control have diminished even in *haredi* communities.

What model of rabbi, then, is most likely to succeed in contemporary conditions? In the mid-fifties, sociologists predicted the re-emergence of the "scholar-saint" role, the most characteristic model of the rabbi in the Jewish community across the ages until the Emancipation. Waxman notes that this is precisely the rabbinic model that the seminaries of each of the three major Jewish denominations now wish to produce. All three place greater emphasis on producing rabbinic scholars as opposed to communal workers, and all three have become "more tradition-oriented." Nonetheless,

Waxman cautions, it is unlikely that the growing number of disaffiliated Jews will relate to a scholar-saint model of rabbi. And "if the process of disaffiliation continues, the role of the rabbi may undergo change once again."

It is against this new perception of the enlarged spiritual and political role of the rabbi, as identified by Stampfer and Polen, and of the heightened demands placed on rabbis today by congregants, as described by Waxman, that clashes between lay and rabbinic authority take place. They also take place against the backdrop of novel lay initiatives. None is as dramatic as those involving women. Chana Henkin, in "New Conditions and New Models of Authority: The *Yoatzot Halakhah*," describes the rabbinic receptivity to new initiatives in women's leadership in the Orthodox Jewish world in Israel and seeks to explain why these initiatives have so far not penetrated North America. In Israel, the shock of the Oslo Accords made even the national-religious community vulnerable to the onslaughts of the postmodern search for individual modes of spiritual self-fulfillment. What emerged from this encounter was increased experimentation in religious life. This receptivity to experimentation, coupled with the rise of women in positions of leadership in general contemporary culture, led to the creation of higher Torah learning institutions for women. Women's mastery of halakhic sources, in turn, has opened a wide variety of new leadership roles for them. Henkin, through the Nishmat Institute, herself initiated the novel project of training women as *yoatzot halakhah*, halakhic advisers in the area of marital relations. They field questions about marital purity on a hotline open six hours a day, with a rabbi on call to answer halakhic issues that may arise. In essence, the women advisers become gatekeepers for the presentation of halakhic issues to the rabbi.

The critical question this initiative raises is whether it impinges on rabbinic authority. According to Henkin, women advisers facilitate the rabbinic halakhic process. Because of the complexity and delicacy of the subject matter, halakhic questions that might arise are often submerged or ignored. Moreover, someone must be available not only to find the right page in *Yoreh De'ah*, but also to enable the questioner to describe sensitive specifics to a sympathetic ear. These

specifics can be conveyed more easily to other women than to the local synagogue rabbi. The adviser does not seek to answer halakhic questions on her own; rather, she seeks to generate more candor in the presentation of the facts surrounding the halakhic issue, so that she can then present them to the rabbi with greater clarity.

Institutions of higher learning for women and new female leadership roles are thriving in Israel. Why is this not the case in North America, where, in Henkin's words, "near-apocalyptic terms" are used to describe "the dangers of Orthodox feminism," which is perceived to be either anti-halakhic or intent on usurping the rabbinic role for itself? Three factors are critical. First, in contrast to North America, the national-religious movement in Israel does not look over its shoulder to see what Agudah and *haredi* circles think. Instead, it seeks to expand the network of its own institutions. Because the two Orthodox communities rarely interact in Israel, talk about a schism within Orthodoxy over the feminist issue is virtually absent. Second, institutions of higher learning for women preceded the feminist movement in Israel and therefore are not perceived to be linked to it. Third, American Orthodoxy is centered on the synagogue, so American Orthodox feminists are more preoccupied with changing synagogue ritual to make it more inclusive. Whether this climate will change is open to question. But in Israel, at least, the rise of an advanced Torah-educated female population is reallocating status and influence within the Orthodox community.

Steven Bayme, in "New Conditions and Models of Authority: Changing Patterns within Contemporary Orthodoxy," takes a closer look at new forms of communal leadership in the American Orthodox community. He identifies four new types of lay Orthodox Jewish leaders today, who each represent "a unique challenge to the traditional authority of the rabbinate": Orthodox academic scholars in Jewish studies, women, communal professionals, and Jewish agencies. The academic scholar and the rabbi compete on the playing field of knowledge. Bayme agrees with Henkin that friction, rather than cooperation, characterizes the relationship between the American rabbinate and the American Orthodox women's movement. Com-

munal professionals, once nearly all secular, are now more often than not Orthodox. They form yet another group within the Orthodox community that commands respect and thus competes with the rabbinate on social and political issues. Similarly, more Orthodox laypeople have joined Jewish agencies and participate in their leadership-education programs. They make up yet another group of highly educated communal members who challenge exclusive rabbinic expertise. "Where, then, are we?" Bayme asks. The two most common responses are a turn to the right and, with it, the exaltation of *gedolim* or a turn in the opposite direction and, with it, a call for enlarging the realm of personal decision-making. Bayme eschews both directions. Instead, he calls on Orthodoxy to embrace a posture of more openness both to the general Jewish community and to the world of ideas. In short, the Orthodox rabbinate must face reality: neither isolation nor anti-intellectualism helps its prestige; rabbis must face challenges openly if they are to cement their voice in the broader Jewish community.

If some of the writers in this Forum believe that the Modern Orthodox rabbinate and the laity are on a collision course, Marc Stern sees the two groups indifferently speeding past each other. Both sides clutch insistently to their shortcomings instead of prudently confronting the acute problems facing the community. Stern, in "On Constructively Harnessing Tensions Between Laity and Clergy," pulls no punches, identifying, with painful insight, the grave miscommunication on both sides of the fray. Modern Orthodox laypeople now have serious, if not rigorous, exposure to sources of Jewish learning. While this phenomenon has produced countless blessings, it also has created a crisis. The rabbi's word no longer carries the currency it once did. A rabbi who makes authoritative pronouncements without articulating a reasoned basis in sources fails to satisfy the modern-day congregant. Some laypeople have created their own forms of halakhic Judaism, virtually dispensing with a rabbinate that won't conform to their views. When one adds the wholesale adoption of firmly entrenched American values, such as free expression and self-determination, the laity that emerges is

one with an inflated sense of its own magnitude, too smug to respect rabbinic authority, too preoccupied with its wealth and status, and too wedded to modernity to connect to serious halakhic devotion.

But, instead of responding to the challenges of a self-assured laity, the rabbinate proceeds as if its authority has remained unquestioned. Rabbis, more often than not, lose followers by dismissing secular study or by displaying little sympathy for the ordeals of the modern work world. They impose religious demands that prove too burdensome, or offer advice that they are not competent to dispense. And most tragic of all, even the bearers of the highest Torah ideals succumb to the allure of affluence. Lacking the courage to face down the wasteful consumption that has unduly infected Modern Orthodox communities, the rabbis have silently watched as even weddings, bar mitzvahs, and day schools have transmogrified into vulgar displays of materiality. In the end, a growing hostility threatens what should be a thriving symbiotic relationship. The two crowds increasingly speak different languages, with neither side seeking an adequate interpreter. While Stern's article will hardly inspire optimism about the near future, it closes with a prayer that the recognition of some of these issues can illuminate a path toward changed attitudes, mutual respect, and ultimate resolution.

1

On Lay Legislation in Halakhah: The King as Instance

Gerald J. Blidstein

A recent experience summed up the topic of our conference for me. I had sent off a review of R. Eliyahu Capsali's *Meah Shearim* to the magazine one with a large circulation in the Orthodox community that had commissioned it. Within days I received a phone call from a perturbed and puzzled editor. "You write," she objected, "that R. Eliyahu Capsali was sometimes the rabbi of Candia in Crete, and then you write that when he was not rabbi, he was head of the community. But the rabbi is the head of the community," she concluded triumphantly. I shall not be concerned in this paper with the broad issue of communal governance, but with the more specific topic of legislation: Who decides and defines the norms to which the community and its members are to be held? Are all topics halakhic and thus to be located in the rabbinic bailiwick, or are there areas and

concerns that are subject to nonrabbinic determination? And this, I would add, not from a historical perspective (that is, how Jews actually behaved) but from a halakhic one.

I understand that the topic we are considering is one with concrete resonance in today's American Orthodox community, reflecting specific recent historical experiences within that community. In Israel, the topic has been a staple of discussion for decades. All treatments of the Jewish, halakhic legitimacy of democracy quickly confront the fact that in democracies citizens legislate, not rabbis; to be more precise, citizens who are not rabbis elect legislators who are not rabbis. This is also true as regards all the other organs of governance. For some, this situation compounded by the fact that most citizens of the state and most of its governmental figures are not observant disqualifies democratic government in a Jewish state; for others it does not. But in either case, it is grist for the intellectual mill.

Traffic moves in the opposite direction as well, due to both the doctrine of *da'at Torah* and the overall phenomenon of rabbis promoting political positions. Does lay governance retain any but an administrative role, reduced to executing what are ultimately rabbinic decisions? The question first arises when rabbis endorse a political party, although that now seems normal and harmless enough; it reaches more significant proportions when rabbis rule (as rabbis) on the major political issues of the day, implying that in an ideal world, these decisions would be in rabbinic hands. Needless to say, all societies have figures whose opinions weigh more heavily than those of others; the question remains whether some distinction exists between a halakhic ruling and an opinion.

Twentieth-century scholarship has paid a good deal of attention to the medieval *kehillah*, a phenomenon that seemed particularly relevant to the modern situation. Actually, the *kehillah* or more precisely its theoretical legal structure seemed to touch on a number of issues. There is, first, the demonstration of autonomy, already present in the title of Louis Finkelstein's *Jewish Self-Government in the Middle Ages*.[1] Jewish political existence, we are told, did not end with the destruction of the Temple or the exile from the land. This

moral could be appropriated by both the fledgling Zionist movement and by those who argued that diasporic existence was not necessarily politically barren. In Irving Agus's hands, the *kehillah* became living proof of Jewish democracy, where both freedom of the individual and majority rule were realities long before Western Europe toppled its kings.[2] Yitzhak Baer addressed all these motifs, adding a dollop of comparative history by urging that while the *kehillah* had ancient roots, it had flowered under the sun and sky of Christianity.[3]

Recent times have seen another motif added to the ones outlined above. Both Menahem Elon and Avraham Grossman have focused on the sociological composition of the *kehillah*, a point touched on by Agus as well. Their crucial point is that the *kehillah* was led by laity. To put it differently, they argued that when halakhic authority recognized *takkanot ha-kahal* produced by the *kehillah*, it was recognizing local lay legislation.[4] By and large, this legislation dealt with social and economic matters; religious issues were not legislated by the communal leadership. There may be exceptions to this rubric, and the line is not always easy to draw, but the distinction between *mamona* and *issura* was generally respected.

A number of specific points relating to *takkanot ha-kahal* are in order: First, this legislation was recognized by halakhic authority as legitimate; we are not able to trace whether such recognition was preceded or accompanied by rabbinic opposition. Second, as regards the interface of *takkanah* and Talmudic law, some rabbinic supervision was probably required in places where a competent figure existed, although the exact definition of this *adam hashuv* and the scope of his involvement are matters of discussion.[5] Not infrequently, rabbis and lay figures signed on to *takkanot* together. Third, it is generally acknowledged that this recognition of lay legislation broke the Talmudic mold, which only recognized *takkanot* of *hakhamim*. Talmudic materials did enable guilds and citizens to legislate for their members, and medieval figures enlisted these sources to buttress lay authority, but it is not fully clear that the communities felt themselves empowered by these sources rather than by the intuition of their own simple charismatic status.[6] On a terminological level, I believe that the Talmud nowhere uses the root *t-k-n* to designate

guild or communal legislation, thus indicating its differentiation between such legislation and that of rabbinic authority.[7] Perhaps, too, the Sefardic predilection for the term *haskamot* for communal legislation (rather than *takkanot*) derives not only from a stress on the consensual elements of such legislation, but also from a desire to differentiate it from rabbinic legislation. Last, recognition of lay legislation did not imply recognition of a lay judiciary, which rabbis frequently resented and fought especially if the stakes were high. Rabbis also insisted that the interpretation of *takkanot ha-kahal* was in their hands.[8]

Another area that displays lay authority is custom: *minhag Yisrael Torah*. Custom does intrude into the area of religious law; liturgy and prayer, Sabbath, *kashrut* these are all affected by custom. The halakhic theory of custom is not monochromatic, however. While there are those who see custom as produced by the laity, even by a righteous/charismatic laity, others assume that custom was either initiated by halakhic figures or at least approved by them before it became authoritative and binding.[9] This divergence of opinion is clearly not based on historical materials or on textual interpretation. Rather, it is ideological, reflecting disagreement as to the legitimacy of lay authority in matters halakhic.

The bulk of my paper will raise another, related, issue: the legitimacy of monarchic legislation. The materials will be ancient and medieval, but I shall also focus on modern discussion, for I claim that this discussion should be seen, as some of the discussants themselves indicate, in the perspective of the modern problematic.

The fact that halakhic governance is in part monarchic has, naturally, been an embarrassment not only vis-à-vis the democratic milieu in which we live, but also vis-à-vis the democratic ethos we have internalized. Thus, the medieval *kehillah* structure has not only been studied as historical fact but also as demonstration that the people Israel has never relinquished its political component even in times and places where it lost state sovereignty. The *kehillah* has also attracted students because of its nonmonarchic and presumably nonaristocratic structure, allowing some to claim it as a protodemocracy. The *kehillah* has been seen as granting legitimacy to

noncentralized rule, a phenomenon also associated with democracy. In all these ways, the attraction of the *kehillah* is merely the obverse of the unpopularity of the monarchy.

Yet, however one accommodates (or does not accommodate) a monarchic structure, we ought recognize that it bears another significance. It is a basic component of the separation of powers formally articulated in *Hazal* but already clearly present in the Bible. The monarchy is balanced against priesthood and prophet in the Bible, and against sage and Sanhedrin in *Hazal*. Such balancing implies, of course, institutional differentiation as to functions and areas of competence, a point to which we shall shortly turn. What is most basic, though, is that the monarchy is an organ of governance that is not constituted by sacred or spiritual characteristics.[10] The king is not a sacramental figure. He is what we would call today a layperson, a "civil sovereign" as R. Aharon Lichtenstein has termed him, ancestor of the medieval *parnas*.[11] In this sense at least, monarchy dovetails with the *kehillah*.

The function of the king vis-à-vis the other organs of governance and authority is not always fully clear. He leads the people to battle and Biblically at least has the dominant, though not the only voice in deciding when and where to fight. But as for judging the people, the task falls on both monarch and elders, making it difficult to know where judicial responsibility lies. The area of legislation seems clearly out of bounds: the king does not legislate. In contemporary terms, we would say that law is not produced by the state.

In the Bible, God is the only lawgiver a fact of great cultural and religious significance. In rabbinic literature, we learn that the sages and their courts also legislate, so that a legislating monarch would not be a theological scandal. Thus, the Talmud's not so privileging the king probably represents a commitment to a division of powers according to which (post-Biblical) legislation is the bailiwick of the sages.

There is, of course, one striking instance of monarchic legislation in Talmudic law: *dina de-malkhuta dina*, "the law of the kingdom is law." But it is precisely this rubric that illustrates the point I made earlier. *Dina de-malkhuta dina* is applied in the Talmud to

gentile monarchs (or kingdoms) only; the rule is not found in the context of Jewish kingship.[12] The reason is simple: the Jewish polity presumably has other sources of law first God as divine legislator, and then the sages as authorized interpreters and legislators. In the Jewish polity, then, with its more complex division of powers, the king or the state does not make law.[13]

This thumbnail description of the role of the monarch is appropriate, I think, for the Biblical/Talmudic king. Medieval times see a deepening and expansion of the king's role. I think of figures like Maimonides, R. Nissim, and even the Ramban. We shall focus on two historiographical issues. The first is relatively straightforward: locating the medieval Jewish revival of interest in the monarch and, perhaps, identifying its context. The second issue is more complex and derives from my intuition that this medieval deepening was not immediately apparent or perhaps more accurately, not valued until modern scholarship excavated it. An important aspect of this "new" monarchic authority was the legislative role of the king. My second question, then, seeks to identify the context of this modern perception; a context, I believe, that can be located by noting the implications and function of the argument for monarchic legislation.

Ramban is an interesting place to begin. On a systemic level, he recognizes the authority of the *tzibbur*, a fact that expresses itself not only in his recognition of *takkanot ha-tzibbur*, but in other topics as well. Ramban highlights the role of the *tzibbur* in declaring a *herem*, stating that even a court may declare a *herem* only because it represents the *tzibbur*.[14]

Shochetman claims that Ramban was the first halakhist to grant the king legislative authority.[15] It is possible, it appears, to construct this position by assembling comments of the Ramban, a project apparently initiated by the Hatam Sofer.[16] In his comment to Lev. 27:29, Ramban explains that both king and Sanhedrin may declare a *herem* on all who violate their "decrees and ordinances" (*gezeiratam ve-takkanotam*). This looks like legislative authority, though it is somewhat disappointing that the Biblical proof-text is the incident where Saul wished to punish Jonathan for violating his ban on eating on the day of battle more a royal command or order than a permanent law

enacted for the public as a whole. Other examples are Joshua's ban on the rebuilding of Jericho and the ban on intermarriage with the tribe of Benjamin. These are broader in scope, but are noted in the context of the bans of the Great Court and its leadership. The Ramban also parses the "statute and ordinance" established by Moses (Ex. 15:25) as the making of "customs for them concerning how to regulate their lives and affairs," much as Joshua established the "customs and ways of civilized society" for the people, recorded in the Talmud as *takkanot Yehoshua* ("the ordinances of Joshua").[17] For Lorberbaum, both Moses and Joshua act by virtue of their "leadership positions," which is undoubtedly true. We cannot be certain, though, that this activity reflects, as Lorberbaum prefers, their role as a "political leadership" independent of their spiritual status.[18]

It is possible to challenge each of these indicators, taken separately; but taken together they may warrant the conclusion that the Ramban felt there was room in Judaic governance for a "lay" component that was empowered to articulate norms. What might bring the Ramban to recognize the legitimacy of lay legislation? It is possible, of course, that we should not look for more than what the Ramban himself gives us; that is, that we should take him at his word and assume that his normative conclusions derive naturally from his proof-texts.[19] But it is not illegitimate, at the same time, to note certain tendencies in his thought, tendencies that may also reflect the world around him.

In my work on R. Nissim Gerondi (Ran), I raised the possibility that Ran's amplification of the judicial/legislative role of the king was, in effect, a refraction of his major intention, which was to enlarge the scope of communal power.[20] This is because the king and the community form a single continuum. Could the same have been true of the Ramban? As we have seen, the power to announce a *herem* which is the Ramban's proper topic in these texts was fundamentally rooted in the community (*tzibbur*) according to the Ramban.

It also seems to be the case that the Ramban's work reflects the growing role of monarchy in Europe as a whole, a role that expressed itself in monarchic legislation, as in the Spain of his contemporary, King James I.[21] Thus, the Ramban extended a halakhic recognition

to "king's courts" that he denied to other courts of the land.[22] But at the same time, and contrarily, the Ramban argued that the rule of recognition, *dina de-malkhuta dina*, applies to the hoary and traditional law of the kingdom, but not to law made by the king, which did not attain that status.[23]

The parade example for the legitimacy of lay monarchic legislation in matters civil and criminal is the Eleventh Sermon of R. Gerondi. The Ran's adoption of this position was confirmed by R. Haim Ozer Grodzinski's well-known recommendation that it be applied to the soon-aborning Jewish state as a way of halakhically legitimating the state's secular legislature and legislation. This suggestion was rejected by R. Isaac Herzog, not because he denied that the Ran said what R. Haim Ozer attributed to him, but because he thought it was bad Halakhah and bad policy.[24] Recently, Warren Zev Harvey has argued that the Ran extended the judicial powers of the monarch, but did not grant the king legislative powers, which remained the prerogative of the Great Court.[25] But while it is true that the sermon in question does focus on the right to punish, its overall thrust is in the direction of granting the king the power to control society effectively, a power that implies the broader right to make new law, rather than the narrower right to punish individual miscreants.

Without a doubt, the most authoritative figure for this discussion is Maimonides. Furthermore, his *Code* is far and away the broadest and most systematic halakhic treatment of governance, so that we can expect to find a clear statement on the issue in his writing. Nonetheless, Maimonides' message is ambiguous, and he has been claimed as both a protagonist of monarchic legislation and one of those who restrict the power to legislate initially to God, then to the Great Court. In this latter perspective, the Maimonidean monarch is "not a legislator or sovereign…but an administrator, executor," though it is to be stressed that "the notion that an administrator makes no policy is an illusion."[26] Similarly, the statement that the king is to "fill the world [i.e., society] with righteousness" (*Hilkhot Melakhim* 4:9) is directly connected with "breaking the arm of the wicked," both of which fulfill the Biblical task of "doing justice" cited immediately thereafter, that is, enforcing the law not making it.[27]

Menahem Lorberbaum's recent *Politics and the Limits of Law* makes the most detailed and extensive case for a Maimonidean monarchic legislator, as part of its argument for a "secularizing of the political" in medieval Jewish thought.[28] While Lorberbaum claims that this position issues from Rambam's overall political posture and goals, he anchors it in the halakhic corpus. Two foci are stressed. First, there are the explicit Maimonidean endorsements of legislation by the Jewish king. Second, there is the overall doctrine of *dina de-malkhuta dina*, which, if applied to the Jewish king, would grant legitimacy to his legislation no less than to that of the gentile monarch. Let me stress that the case for a Maimonidean monarchic legislator can be made even while one admits the fact that the Maimonidean presentation in both the *Guide* and the *Code* primarily focuses on the kingly functions of waging war and providing internal security and prosperity to the people.

Before addressing the materials at the center of Lorberbaum's argument, I would like to pursue a different Maimonidean emphasis. In contrast to his Geonic predecessors, Maimonides stresses the legislative power of the sages as part of *Torah she-be-al-peh* (the oral law).[29] Moreover, he makes it clear that this legislation relates not only to religious behavior, but to social problems and norms, matters that have no direct relation to Torah law and could therefore be considered part of the "secular" realm.[30] This stress in both the *Code* and the Introduction to the *Commentary on the Mishnah* leads one to think that legislating for the social/political realm is assigned to the rabbinic authorities, thus ruling out the possibility and need for monarchic intervention.

I realize that this is not an airtight inference: Maimonides could still allow for monarchic legislation where and when the rabbinic arm is unable to function, just as he allows for monarchic judicial activity in instances where the courts are stymied. But we know when and why the courts cannot function (the case of overly rigorous laws of evidence, for example). We do not know when and why the Great Court cannot legislate, thus rendering a monarchic legislator necessary, unless one posits a chronic, endemic, inability of rabbis to legislate for the practicalities of life.

But this argument is not as convincing as it looks. Rabbinic legislation (that is, legislation by the Great Court) has significant practical drawbacks. It must pass the test of popular consent, and if it gains universal acceptance, is extremely difficult and at times impossible to repeal.[31] Monarchic legislation, the legislation of *dina de-malkhuta*, is free of these encumbrances. In other words, rabbinic legislation is not unlike rabbinic penal law in its impracticality. The justification of monarchic legislation may not be that different, then, from the justification of monarchic penal law. Be this as it may, given Maimonides' stress on rabbinic social legislation a subject that also fills the pages of the Talmud it is well-nigh impossible to argue for a dichotomization of Halakhah into a religious realm given over to the rabbis and a secular, political one delivered over to the king.

As I have said, the argument for a monarchic legislator ("royal law" in Lorberbaum's phrase) in Maimonides' halakhic writings rests on two phenomena: the use of terms like *din ha-malkhut* ("the law of the kingdom") to describe monarchic authority, and the rubric *dina de-malkhuta dina*, interpreted to empower Jewish kings as well as gentile ones.[32]

The use of the phrase *din ha-malkhut* is actually more limited than one might think. It appears, first, in the context of the king's power to punish. Now, the power to punish is a judicial power, not a legislative one. It is true that the king's penal authority need not abide by normal halakhic strictures, but it should also be pointed out that this authority is not unlimited (at least in my reading).[33] Second, the phrase appears in the context of the power to tax (a power explicitly delivered to the king in the Book of Samuel). Thus, "From these verses we infer that the king imposes taxes and fixes customs duties, and that all his laws (*dinav*) with regard to these and like matters are valid."[34] This is legislation, but in a limited context; moreover, we are on the border separating administrative rules from law. It is possible, too, that the king's *din* is valid in areas in which he has a direct interest,[35] or in matters of public law alone. This last possibility does open a broad area to monarchic legislation, as does even the possibility that a king delivers administrative rules.[36] But we should also avoid the anachronism; the scope of "administration" has been

enlarged greatly in the modern state, and it may be a mistake to read Maimonides without taking this into account. The following is also limited: "if a king of Israel wishes to put them to death by royal decree (*din ha-malkhut*), he may do so."[37] Here *din* is penal decree, not law. All in all, then, I think it is difficult to generalize a doctrine of "royal law" from these instances and others like them.

Dina de-malkhuta dina is, however, a more promising rubric. As I have indicated elsewhere, I believe that Maimonides includes the Jewish king in this rubric; indeed, it is likely that the legitimacy of the gentile monarch and his laws is inferred from the powers given the Jewish king in the Book of Samuel and elsewhere.[38] Now, given that the gentile king can legislate, it may very well be that the Jewish king can as well.[39] From a literary point of view, then, the place to look for such license is not in the *Laws of Kings*, which deals exclusively with the Jewish king, but in the *Laws of Robbery and Lost Objects*, which is the *locus classicus* for the rules governing *dina de-malkhuta*.

On the other hand, things may not be that straightforward or unambiguous. There may be good reason to treat Jewish and gentile kings differently, empowering the gentile king in a way that the Jewish king is not empowered.[40] The gentile king represents the totality of gentile governance, so it is natural for legislative authority to be situated in his office. Not so the Jewish king, who shares governance with the Great Court and, more broadly, with the rabbinic estate. As we have seen, Maimonides expects this estate to legislate in the social sphere as well as the sacral, making a monarchic legislator superfluous if not a downright inconvenience. On the other hand, we have pointed out that rabbinic legislation can be an inflexible instrument, thus making monarchic law-making welcome.

All in all, then, it is questionable whether Maimonides would countenance a Jewish king who made laws beyond the rules necessary for the day-to-day administration of the state apparatus. This may be implied by *Guide* 2:40. After stating that the law is brought by either the prophet or the bringer of the *nomos*, Maimonides continues that among those who have the "faculty of ruling" are also "those who have the faculty to compel people to accomplish, observe,

and actualize that which has been established by the prophet and the bringer of the *nomos*."[41] The figure who compels observance of the law is someone like a king who, it will be noted, does not himself bring the law. Now, it is true that Maimonides recognizes that the original *nomos* will stand in need of further adjustment either temporary or permanent but the authority to do this is given to the Great Court alone.[42] All this does not completely rule out the possibility of monarchic legislation, especially under the rubric of *dina de-malkhuta dina*, but it comes close to saying that in a state whose law was brought by a prophet or some similar figure, the king's functions will not include legislation.

Although the question of monarchic legislation is a legitimate topic for completely disinterested discussion, it appears that it along with issues like communal self-government and *dina de-malkhuta dina* is often raised in modern times because of its possible bearing on the legitimacy of lay, indeed secular, governance in Israel. This nexus is apparent in surveys such as the one by Eliav Shochetman, who considers it as a possible precedent for the halakhic legitimacy of the legislation of the Israeli parliament. Menahem Lorberbaum asserts that the value of his *Politics and the Limits of Law* lies in what it can contribute to "the ongoing constitutional debate on church/state relations and to the theory…of theocratic societies," but his conclusion that the medieval Jewish thinkers he treats Rambam, Ran, Abravanel, Spinoza "reject the halakhic polity as untenable" is apparently made with at least one eye cocked in the direction of contemporary Jerusalem.[43]

An interesting example of this tendency is found, I believe, in the writing of the late R. Saul Israeli. Rabbi Israeli, who was a mainstay of the Religious-Zionist rabbinate, served as communal rabbi (in Kfar ha-Ro'eh), as *maggid shiur* (in Yeshivat Merkaz ha-Rav), and as a member of the Rabbinic High Court. His *Eretz Hemdah* was the first attempt to systematically consider the entire range of halakhic issues connected with the sanctity of the Land, while his *Amud ha-Yemini* was a similar attempt to deal with the halakhic ramifications of the political renaissance of the Jewish people in the State of Israel. Rabbi Israeli wrote influential responsa, and many of

his court opinions and some occasional writings have recently been published.[44] Much of *Amud ha-Yemini* appeared initially in the rabbinic journal *Ha-Torah ve-ha-Medinah* (which R. Israeli edited for the rabbinic organization of the Religious Zionist movement). This means that the various chapters of *Amud ha-Yemini* were originally written and published at different times, a point that will be of great significance in what follows.

I wish to consider two responsa penned by R. Yisraeli in the early years of the state. One is titled "On the Authority of the President and Elected Institutions in Israel."[45] Here R. Israeli asserts, in the spirit of a famous discussion by Rabbi A.I. Kook, that since the authority of the king derives from the people, it returns to the people with the demise of the monarchic institution. This bestows legitimacy upon popular government, allowing the freely elected government of the State of Israel halakhic viability.

The second responsum deals with "The Legitimacy of Monarchic (or Governmental) Law in Our Time."[46] This responsum engages the question of whether governmental powers are necessarily limited to those possessed by the traditional (Talmudic/Maimonidean) monarchy. Here R. Israeli asserts that all such powers are derived in halakhic theory from popular consent, the proof-text being the Book of Joshua. If so, the populace is also authorized to redraw its "contract" and allocate new powers to its government (or, for that matter, reduce its powers). This dynamic is clearly necessary in R. Israeli's vision of governance in "our time."

Both these responsa contain much that is new and indeed revolutionary but that is not my present concern.[47] I wish to probe the implications of the responsa before us for our proper topic: monarchic legislative powers and, specifically, the relevance of this topic in today's Israel. In that light, I ask: once R. Israeli has established that all monarchic powers devolve from the people and return to them, why the need to guarantee the people the right to redraw the constitutional provisions that empower the monarch?

The answer to this question lies partly in chronology and partly in the detail R. Israeli provides. The first responsum was published in 1949. I suggest that R. Israeli believed then that by transferring

monarchic powers to the populace, he was fully empowering the new state to function in all spheres. By 1950, when he published the second responsum, he had come to realize that even the monarch model for parliamentary government and the Knesset lacked one crucial power: the power to legislate. Indeed, when listing the powers held by the classic Talmudic/Maimonidean monarch, he includes the powers "to judge the rebel, execute the murderer, impose taxes and punish those who refuse to pay them." Note that the power to legislate is missing from this list, which in fact recapitulates what we earlier found to be explicit in the Maimonidean summary.[48] But it was also clear to R. Israeli that without enabling the Knesset to legislate, he was cutting the new democracy off at the knees. The second responsum, then, creates a modality whereby legislative powers can be bestowed upon the Knesset by its contemporary subjects despite the fact that such powers were denied the monarch in the classic arrangement.

If this analysis is correct, its message is dual. On the one hand, we are informed that R. Israeli in fact thought that the classic Halakhah does not endow the monarch (or lay governance) with the power to legislate. On the other hand, we infer that he found this situation unhelpful and wished to craft a halakhic alternative. If that is the case, we would also have to assume that he did not find the classic halakhic arrangement to be ideologically, intrinsically, inescapable. I am hardly in a position to evaluate R. Israeli's position, or to assert that it is representative.[49] But it is instructive.

NOTES

1. Louis Finkelstein, *Jewish Self-Governance in the Middle Ages* (New York: Jewish Theological Seminary, 1924).
2. Irving Agus, "Democracy in the Communities of the Early Middle Ages," *Jewish Quarterly Review*, n.s. 43 (1952–53): 155–176.
3. Yizhak Baer, "Ha-Yesodot ve-ha-Hathalot Shel Irgun ha-Kehillah ha-Yehudit bi-Yemei ha-Beinayyim," *Tziyon* 15 (1950): 1–41.
4. Menahem Elon, *Jewish Law: History, Sources, Principles*, vol. 1 (Philadelphia: Jewish Publication Society, 1994), pp. 678–731; Avraham Grossman, "Yahasam Shel Hakhmei Ashkenaz ha-Rishonim el Shilton ha-Kahal," *Shenaton ha-Mishpat ha-Ivri* 2 (1975): 175–199.

5. On *adam hashuv*, see Elon, pp. 751–760. On the overall requirement that *takkanot* meet the criteria of Jewish ethics and fair play, see Elon, pp. 760–779.
6. See Gerald J. Blidstein, "Individual and Community in the Middle Ages," in *Kinship and Consent: The Jewish Political Tradition and Its Contemporary Uses*, ed. Daniel Elazar (Ramat Gan: Bar-Ilan University Press, 1981), pp. 218–223. It is interesting that the Talmud (*Bava Kamma* 81b) has the tribes of Israel reaching commercial agreements with each other, very much on the model of communal agreements mentioned in *Bava Batra* 8b.
7. Not infrequently a form deriving from the root *t-n-h* (see supra, n. 1) is also used in the context of individuals who reach commercial agreements distinct from Torah law, as in *Bava Metziah* 7:10–11; this terminology may also serve to distinguish communal agreements from true legislation.
8. Elon, pp. 777–778.
9. Ibid., pp. 880–895.
10. There are indications of such characteristics in the concept of sacred kingship, but these are winnowed out. I am speaking, of course, of Jewish kingship. See Gerald Blidstein, "Halakha and Democracy," *Tradition* 32 (Fall 1997): 12–13.
11. A. Lichtenstein, "Religion and State," in *Contemporary Jewish Religious Thought*, ed. A. Cohen and P. Mendes-Flohr (New York: Scribner's, 1987), pp. 774–775.
12. An exception in *Midrash Tanna'im* to Deut. 17:19 is cited by Eliav Shochetman, "Hakarat ha-Halakhah be-Hukei Medinat Yisrael," *Shenaton ha-Mishpat ha-Ivri* 16–17 (1990–91): 426–427. But see Saul Lieberman, *Tosefet Rishonim*, vol. 2 (Jerusalem: Harry Fischel Institute, 1937), p. 160 to 130.
13. Note, however, the enactments attributed by the Talmud (*Bava Kamma* 80b–81a) to Joshua (*takkanot Yehoshua*). In the Talmudic view, did he make these as sage and head of the Sanhedrin, or as a political leader?
14. Blidstein, "Individual and Community," pp. 230–232; Menahem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford: Stanford University Press, 2001), pp. 106–112.
15. Certainly not the *geonim*, who could do without a king altogether! See Shochetman, n. 11.
16. It has been pointed out that Hatam Sofer initiated the widespread use of Ramban's commentary to the Torah as a halakhic source. See the opening pages of Admiel Kosman, "Tafkidah ha-Merkazi Shel 'Uvda de-Hol' be-Ti'unav ha-Hilkhatiyyim Shel Hatam Sofer," in *Mishpat ve-Historiyah*, ed. Daniel Gutwein and Menahem Maunter (Jerusalem: Merkaz Shazar, 1994), pp. 75–101.
17. *Bava Kamma* 80b–81a.
18. Lorberbaum, pp. 109–110.
19. R. Naftali Zvi Yehudah Berlin (Netziv), *Haamek She'eilah* 142:9, challenges Ramban vigorously, but more as to his claim that the king and court can impose capital punishment on the violator of the *herem* than on his assertion that they can ban certain behavior. Netziv does not relate at all to the possibility that Ramban allows the king to legislate.

20. Gerald Blidstein, "'Ideal' and 'Real' in Classical Jewish Political Theory," *Jewish Political Studies Review* 2 (Spring 1990): 57–59. This is virtually explicit in Rashba; see Lorberbaum, pp. 112–122.
21. See, in general, Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), pp. 404–519.
22. *Hiddushim* to *Gittin* 10a. See Ya'akov Blidstein, "Medinat Yisrael be-Pesikah ha-Hilkhatit," *Dinei Yisrael* 13–14 (1986–1988): 40 n. 2.
23. This material is summed up in S. Shiloh, *Dina de-Malkhuta Dina* (Jerusalem: Defus Akademi, 1972), pp. 185, 199–200.
24. See Blidstein, " 'Ideal' and 'Real,'" 54–59; Aviezer Ravitzki, "Political Philosophy: Nissim of Gernoa vs. Isaac Abrabanel," in *History and Faith* (Amsterdam: J.C. Gieben, 1996), pp. 43–75; idem, *Dat u-Medinah be-Mahshevet Yisrael* (Jerusalem: Israel Democracy Institute, 1998), pp. 11–14, 45–65; Lorberbaum, pp. 93–106.
25. In private conversations.
26. Len Goodman, *Judaism, Human Rights and Human Values* (Oxford: Oxford University Press, 1998), p. 76; see also Ya'akov Blidstein, *Ekronot Mediniyyim be-Mishnat ha-Rambam*, 2d ed. (Ramat Gan: Bar-Ilan University Press, 2001), p. 115.
27. Though *tzedek* ("righteousness") may well be more than the elimination of wickedness. See Blidstein, *Ekronot*, p. 109.
28. Lorberbaum, *Politics*, pp. 1–6, 13–14.
29. Gerald Blidstein, "Oral Law as Institution in Maimonides," in *The Thought of Moses Maimonides*, ed. I. Robinson et al. (Lewiston, NY: Edwin Mellen, 1990), pp. 167–182.
30. See, in general, Maimonides' introduction to his *Commentary on the Mishnah*.
31. See Maimonides' *Code*, *Laws of Rebels*, chap. 2.
32. Lorberbaum, *Politics*, pp. 51–55, 61–65.
33. Blidstein, *Ekronot*, chap. 5.
3. *Laws of Kings* 4:1.
35. A frequent exegetic move in understanding Maimonides on these topics. Seem e.g., *Laws of Loans* (27:1) and *Maggid Mishneh* ad loc.; Shilo, pp. 132–133.
36. See supra, n. 25.
37. *Laws Concerning Murder* 2:4.
38. Blidstein, *Ekronot*, pp. 161–166.
39. Note the broad legislative powers granted the king in *Laws of Acquisitions and Gifts* 1:15: "[our] courts rule in accord with the king's laws in all property law" [author's translation]. The context concerns modes of conveyance of property.
40. Thus, *Laws of Acquisitions and Gifts* 1:15 may relate to gentile kings only, a reading made plausible by the contrast with "our courts" and the fact that the regulation concerns transactions between Jews and gentiles. Note also that Maimonides occasionally rules as to the legislative powers of the "king" while specifying in one of the citations that he has a gentile king in mind. Compare *Laws of Slaves* 9:4 with *Laws of Slaves* 1:8 and *Laws of Robbery* 5:16.

41. Maimonies, *The Guide of the Perplexed*, trans. S. Pines (Chicago: University of Chicago Press, 1963), 2:40, p. 382.
42. *Guide* (3:41), p. 563.
43. Lorberbaum, *Politics*, xii, 14.
44. For R. Israeli on the halakhic ramifications of *Qibya*, see Blidstein, "The Treatment of Hostile Civilian Populations in Halakhic Theory," *Israel Studies* 1:2 (1996): 27–45.
45. R. Shaul Israeli, *Amud ha-Yemini* (Tel Aviv: Moreshet, 1966), 1:7, pp. 52–63.
46. *Amud ha-Yemini*, 1:9, pp. 70–81.
47. I discuss this and other aspects of R. Israeli's political thought in my "Torat ha-Medinah be-Mishnat ha-Rav Shaul Yisraeli," in *Shenei Evrei ha-Gesher*, ed. Mordehai Bar-On (Jerusalem: Ben Zvi Institute, 2002), pp. 350–363.
48. Since this list appears in his *earlier* responsum, R. Israeli may have been aware (if my close reading is warranted) even at that earlier date that legislation is not a classic monarchic or lay function, thus possibly undermining the argument I am making.
49. Indeed, opposition was voiced to some of his positions upon their publication; see supra, n. 45.

2

Communal Governance, Lay and Rabbinic: An Overview

Aharon Lichtenstein

In the Torah world, the prospect of total Halakhah arouses ambivalence. It is, on the one hand, unquestionably appealing; and this, in two respects. First, we take great pride in the comprehensive scope of the halakhic order. *Yahadut*, the Rav was wont to state insistently, is not confined to the customary parameters of the *homo religiosus*. It relates to life in its kaleidoscopic diversity, as it legislates for the marketplace and the bedroom no less than for the *beit ha-kenesset* or the *beit ha-midrash*. It is animated by a spirit of integration, informing a system within which the sacred and the secular, *hayyei olam* and *hayyei shaah*, are distinct but not disjunct, both constituting, on both the personal and the collective plane, aspects of an organic whole.

Moreover, it is those who are, in some way, oriented to elements

of the modern spirit who espouse this theme most vigorously. The Rav and Rav Kook each, admittedly, relating to the modern world variously, and each approaching our issue from his own perspective shared a common faith in the permeating sweep of Halakhah. Focusing upon the redemptive creation of sanctity or its illuminating discovery, respectively, their affirmation of the vitality and value of the range of human experience contrasts markedly with the residual other-worldliness often encountered in *baalei mahshavah* less exposed and less attuned to the modern temper. And small wonder. The inclination to a measure of world-acceptance, often excessive, is, after all, one of the characteristic traits of modernity.

Second, the Torah world, regardless of its perception of the modern, is attracted to total Halakhah because of our overwhelming espousal of the normative. The concept of *mitzvah*, our stance vis-à-vis the *Ribbono Shel Olam* as commanded beings, as sons and servants both, lies at the epicenter of Jewish existence. Not only do we glorify servile fealty to divine orders but following *Hazal*, and in the face of intuited common morality we revel in the contention that action in response to the halakhic call is superior to the same act voluntarily undertaken. *Gadol ha-metzuveh ve-osseh*.[1] And this, presumably, not or, not only because, as some *rishonim* held, it assures a more conscientious implementation,[2] but because, over and above the practical result, the halakhic charge renders the act intrinsically and qualitatively superior, inasmuch as it engages the agent in a dialogic encounter with his Master.[3]

On the other hand, we respond to the prospect of total Halakhah with reservation, if not recoil. The thought that everything has been programmed, all eventualities anticipated, so that we can rest assured that if only we mine long enough and deep enough we will discover the definitive right solution, is staggering in one sense, and stifling in another. It emasculates us intellectually and in some respects religiously because it effectively denies genuine spiritual choice and thus severely limits responsibility. We are reduced to deciphering possibly encoded messages and to implementation of detailed orders.

Jewishly and humanly, we yearn for more. We have been

nurtured on the centrality of free will in the Torah life; and we instinctively assume that the creative impulse finds expression not only in the elucidation and explication of concepts and texts but in the process of their application as well. A committed Jew obviously does not arrogate autonomy. He regards *behirah hofshit* as the capacity to accept or reject Halakhah, but not as the right to do so. He does, however, presume that in addition to being charged with navigating his ship, he has some latitude in charting its course.

This inclination too, moreover, is reinforced by the link to modernity. While much of modern culture is grounded in determinism, that which is not, ranging from existentialism to humanism, is imbued with an enhanced sense of human worth and impelled by the conviction that this worth is, in no small measure, bound up with man's creative capacity. On the religious plane, this capacity can be harnessed toward self-sanctification, enabled precisely because the whole of the spiritual life has not been preempted by the explicitly normative. *Kaddeish atzmekha be-muttar lekha*. "Sanctify yourself through that which is licit for you."[4] One need hardly identify with Dostoevsky or Berdyaev to appreciate the value of the spiritual increment added by a dimension of freedom; and the contention that radical servitude is fully compatible with a modicum of legitimate choice is, from a Torah perspective, thoroughly tenable. *Avadai hem*; and yet, *heirut al ha-luhot*.

This ambivalence provides a context within which we can confront the primary question posed to us: Is there an ideal model that can be culled from halakhic sources of how the Jewish community should be governed? To maximalists, the answer is self-evidently positive. From their perspective, the Halakhah has addressed itself, comprehensively, to far lesser matters; and to so grave and central a concern, *a fortiori*. And if a search fails to unearth the desired formulation, the failure is to be ascribed to the shortcomings of its initiator rather than to the content of the material, which is, *a priori*, present.

My own perception is quite different. Whatever our proclivities, and our wishes notwithstanding, we should acknowledge that, in fact, the Halakhah has left many issues possibly even entire tracts largely

open. These omissions, furthermore, are not confined to mere trivia. Consider, for instance, the sphere of family relations. The *mitzvot* of *kibbud* and *mora* with regard to parents, of course, place a clear and, in time, detailed charge upon children. This, in turn, is counterbalanced by the conclusion that, unlike a regent, a parent is empowered to absolve his children of this duty, either generally or specifically.[5] To the best of my knowledge, however, nowhere do we encounter a clear halakhic ruling concerning the advisability of such forfeiture as to whether, optimally, a father should play the Bismarckian "autocrat of the breakfast table," in Holmes's phrase, or, if he prefers, may or even should adopt the role of an elder chum, laughing along with his children even as he is lampooned by them. Or again, much has been set down concerning marital relations and their reciprocal rights and responsibilities. But where is the codicil that translates into practical, normative terms the exhortation to love one's wife as oneself and to respect her more than oneself?[6] Which will delineate, ideally, the degree and scope of intimacy, the extent to which a couple leads parallel lives or a fused existence, how much time, and quality time, is spent together, and by what process they arrive at critical decisions? Whatever its appeal, the quest for total Halakhah is chimerical. There is, of course, a sense in which, as Rabbeinu Bahyyei emphasized, the whole range of human activity is fraught with spiritual import, if only because every act can be weighed against possible alternatives; so that the Rambam could confidently assert that the exemption of *yirat shamayyim* from providential governance encompasses all that a person does. This is a long way, however, from the assumption that "had we but world enough and time," a clear halakhic position could be staked out on every issue.

Hazal had a halakhic term for this presumably non-halakhic sphere: *devar ha-reshut*. It should be noted, however, that the category is multifaceted. At times, it refers to phenomena that are wholly neutral, devoid of either religious or axiological content. Thus, with respect to oaths, the Mishnah predicates that they can devolve upon matters of *reshut*, such as the eating of an apple or abstinence thereof, as contradistinguished from a *devar mitzvah*, upon which they cannot take effect.[7] On the other hand, *reshut* may denote entities such

as *tefillat arvit* (in Talmudic times), *korban Pessah* for women, or the *haggigah* accompanying the *Pessah*[8] which are, intrinsically, *mitzvah* elements per se, but whose performance is not mandatory for the person. Intermediately, it includes initiatives that are legally optional but, far from being axiologically, ethically, or religiously immaterial, are weighted with possibly portentous spiritual content. Thus, we are familiar with *milhemet reshut*;[9] maiming oneself is subsumed, on one view, under *reshut*;[10] while Rabbi Akiva includes under this rubric manumission of an *eved kenaani*, initiating *sotah* proceedings, and the defilement of a *kohen* in order to bury a close relative.[11] These nuances are clearly significant; but for our purposes it will suffice to establish sheer halakhic recognition of the category.

Given this perspective, we can approach our question in effect, we need to determine whether a community's adoption of a particular sociopolitical authority falls under *reshut*, and if so, of which strain without preconceptions. In light of the paucity of basic sources relating to the communal sphere, we might do best to begin our examination on the national plane, addressing ourselves to two primary issues: Does the Halakhah prescribe any specific form of civil government? What is the nature of the relation between religious and lay authority?

The first question is generally regarded as subject to controversy among *tanna'im* in the Tosefta, cited therefrom in the Gemara in *Sanhedrin*. Rabbi Yehudah lists a triad of *mitzvot* that became incumbent upon entry into Eretz Yisrael, the appointment of a king being the first; while Rabbi Nehorai rejoins that the relevant *parshah* is not normative, and was only stated in order to present a response in anticipation of a hypothetical complaint by a people in search of a leader.[12]

As might be expected, no definitive decision is adopted by the Gemara, and from the *geonim* on, the disagreement persisted.[13] Geonic views on the matter, through statement or omission, are a bit murky, but the *rishonim* were more explicit. Foremost among the advocates of the establishment of royalty as a *mitzvah* was the Rambam, who opens *Hilkhot Melakhim u-Milhamoteihem* by citing the statement concerning the three *mitzvot* that devolved *be-she'at*

kenissatam la-aretz.[14] Others, however admittedly of far lesser stature as *baalei* Halakhah disagreed. Some leading *parshanim* possibly under the negative impress of the account of Shaul's selection in *Shemuel* I, and, hence, impelled to interpret *ve-amarta* conditionally rather than normatively were inclined to tone down the element of *mitzvah*. Thus, Ibn Ezra summarily notes, *Som tassim reshut*.[15] Rabbeinu Bahyyei (b. Asher), for his part, opens his comment on the *pasuk* by stating that *al derekh ha-peshat zo mitzvat assei*[16] that there be a king in Israel; goes on to contend, however, that this *mitzvah* relates to the will of Israel and does not reflect the divine will, which much prefers that there be no sovereign among us but God; and, by way of expanding on the point, concludes by cataloguing the doleful tribulations caused by a list of Biblical monarchs.

Leading the opposition, however, was a late *parshan*, Rav Yitzhak Abarbanel, who drawing, in part, upon observation of the tergiversations of Renaissance monarchies argues vehemently that selection of a king is, at most, permitted; and he goes so far as to contend that this view can also be ascribed to the Rambam. In considerable detail, he analyzes the needs for a ruling body and the purposes for which such a body would presumably be established; examines, on both religious and philosophical grounds, the merits of various options; surveys the historical development of monarchy in Israel; and concludes not only that there is no positive commandment to appoint a king but even that the license to do so is, like that of *yefat to'ar*, a grudging concession to baser instincts; *Lo tzivtah ha-Torah alav gam lo tzivtah al azivato, lefi she-dibrah Torah ba-zeh ke-neged ha-yetzer ha-ra*.[17]

A significantly modified variant of this position is espoused by the Ramban. Commenting upon the *pasuk*, *ve-amarta assimah alai melekh*, he notes that, on *Hazal*'s view, the phrase has normative content, "For it is a *mitzvah* that they [i.e., the people] should come before the *kohanim* and the *leviyim* and to the judiciary and say to them, 'It is our desire to place a king over us.'"[18] This points, in one sense, in a normative direction, as the people are told to present their desire for royalty. On the other hand, any *mitzvah* of royal

appointment proper is muted, for it only takes effect after the *vox populi* has made its appeal.

In our own time, such a condition was predicated (although, to the best of my knowledge, without reference to the Ramban) by Rav Mosheh Soloveichik, who sought to adduce historical evidence. He noted that during *bayit sheini*, *Hazal* evidently made no effort to reestablish the monarchy; all such initiatives came from very different sources. He conjectured that this omission could be ascribed to the lack of requisite popular demand, in the absence of which no *mitzvah* of *minui melekh* obtains.[19] Moreover, he was inclined to assume as a further, objective, condition that it is only in force when pressing needs, such as security and social order, require. It is, of course, arguable that even where no personal monarch is chosen, any ruling body, as Rav Kook held,[20] assumes the position and prerogative of *melekh*, so that the *mitzvah* is, in a sense, fulfilled. But that is precisely the point. The end is crucial; the specific means, possibly optional.

In sum, the question of whether a particular form of national government is halakhically mandatory or even preferable is shrouded in a measure of uncertainty. No similar question beclouds a parallel seat of power the rabbinic. Both the obligation to establish a central *beit din* when conditions are ripe and the status of its authority are firmly grounded in the *parashah* in *Devarim*,[21] as elucidated by *Hazal* and later sources. The point was especially driven home by the Rambam at the opening of *Hilkhot Mamrim*: "The Great *Beit Din* in Jerusalem is the mainstay of *Torah she-be-al peh*, and they are the pillars of [instructive] decision, and from them statute and law emanate to all of Israel; and it is with respect to them that the Torah has prescribed, 'According to the law which they will teach you' this is a positive commandment. And everyone who believes in Mosheh Rabbeinu and his Torah is enjoined to ground the matter of religion upon them and to rely upon them."[22]

What is ambiguous, however, is the degree and character of the interaction between the respective authorities. The issue is, of course, immanent, and, as European history amply attests, has

been the source of considerable tension. Regrettably, however, it was scantily addressed by *Hazal*, and, until the rise of the State of Israel, was not subsequently discussed extensively. The *pasuk* prescribes that the monarch be guided by rabbinic leadership, writing his *sefer Torah*, *mi-lifenei ha-kohanim ha-leviyim*, "from before the *kohanim*, the *leviyim*."[23] However, the nature of the relation is unclear. Do *hakhamei ha-sanhedrin* instruct, inspire, or order and with respect to which realms? Presumably, they exercise "judicial review," invalidating initiatives that countermand Halakhah. But do they otherwise engage in the process of civil government? The Mishnah specifies that a royal declaration of *milhemet ha-reshut* requires the Sanhedrin's imprimatur.[24] This palpably bespeaks a measure of involvement at least at the level of "advise and consent." By the same token, however, it is clearly implied that they are generally not enmeshed in affairs of state, these being properly rendered to Caesar.

Such a division still leaves open the possibility of a role both in enforcing Halakhah and in legislating, incrementally, to extend and adopt it, thus effectively subjecting the citizen and the community to the authoritative demands of divergent and possibly competing jurisdictions. As is well known, this seemingly problematic prospect was indeed, in a limited vein, envisioned by the Rambam in the *Moreh*,[25] and was much more fully articulated by one of the foremost of latter-day *rishonim*, albeit in a non-halakhic context. Expounding in his *derashot* upon the twin *parshiyot* in *Shoftim* concerning the establishment of organs of governmental authority, the Ran constructs a model of parallel legislative and judicial systems, each with its own laws, sanctions, and canons of evidence.[26] Rav Herzog was understandably perturbed by the prospect of a civil judiciary in disregard of halakhic standards, and even strained to deny that the Ran had ever intended this.[27] More salient, however, is the fact that the proposed overlap leaves open the question of how much coincidence is envisioned and unresolved the thorny issue of how a possible clash is to be confronted.

So much for the national plane. We need to ask ourselves, however, whether and to what extent it can serve as an archetypal

model for lower echelons of communal government. This question resolves, in turn, into two components: (1) the mode and choice of rabbinic and lay authority, respectively; and (2) the nature of their interaction. Before focusing on our primary concern, the local community, we might briefly examine the intermediate tribal level. The possibility of divergence from the national model may already be entertained with respect to each *shevet*. Admittedly, the Ramban, drawing upon both the language of the word, *li-shevatekha*, in the *mitzvah* of appointing *shoftim* and upon proof-texts from *Hazal*, contends that each tribe had its own miniature Sanhedrin, serving in both a legislative and a judicial capacity, much like state legislatures and courts in modern America: "And it is possible to interpret that the text requires the appointment of a *beit din* for the entire *shevet*, and it will judge all of them…. And if it be necessary to amend or to impose a matter upon their *shevet* they amend and impose, and this will be for the *shevet* as is the import of the Great Sanhedrin for the whole of Israel."[28] However, it is highly questionable that a similar parallel exists on the civil side. The term *nassi* appears in *Tanakh* in many contexts with respect to the ruler of a *shevet*, but this may not be to our purpose. First, the halakhic implications of this fact are unclear. With respect to the special *korban hattat* brought by a *nassi*, as opposed to that of an ordinary sinner, the Mishnah specifies that only the *melekh*, qua supreme ruler, is included.[29] Similarly, with respect to the *pasuk*, *ve-nassi be-amkha lo taor*, "Nor shall you curse a ruler of your people,"[30] prohibiting cursing of a *nassi*, over and above the injunction against cursing in general, the Rambam confines it to the monarch and the head of the Sanhedrin;[31] and while the *Minhat Hinukh* contends that the statute should extend to a tribal *nassi*,[32] there is no basis for this position in the *rishonim*.

Second, even should one regard this point as open, what I believe is indisputable is the fact that there is no *mitzvah* to appoint such a *nassi* in the first place. Whatever may be the case with respect to a *melekh*, the position of *nassi* is, to the best of my knowledge, purely optional, the form of tribal government being left to the discretion of the governed.

If this be so with respect to tribal rule subordinate within a

federal structure but still an overarching entity, it is, I believe, *a fortiori* true of the local scene. Here, too, the *mitzvah* of appointing a *beit din* initially, the presumed local Torah authority obtains.[33] And here, too, there is no clear halakhic norm designating a particular form of lay civil government mandatory or, possibly, even preferable. We can, of course, looking back at the initial national model, have recourse to it for spiritual guidance that, by analogy, will point the direction local government should optimally pursue. We are mindful of the midrashic call for a pattern of precedent that should direct us with regard to details not formally included in the halakhic corpus. Relating to the proximity of the *parshiyot* of *nazir* and *sotah*, the Midrash explains that they are linked by a common thread. It posits that, fundamentally, only wine should have been proscribed for a *nazir*, grapes being essentially neutral. Nevertheless, he is enjoined from partaking of anything "which comes from the grapevine" in order to distance himself from possible transgression; and therein lies a general directive of specific relevance to *sotah*. "Do not say, 'Inasmuch as I am [only] proscribed from having relations with a [married] woman, I shall grasp her and have no sin, or I shall fondle her and have no sin, I shall kiss her and have no sin,' so the Holy One, Blessed Be He, says: 'Just as a *nazir* vows not to drink wine, and yet it is forbidden for him to eat grapes, or anything which comes from the grapevine, so it is wholly forbidden to touch a woman who is not yours.'"[34] The thrust of the passage and there is no dearth of parallel texts is clear, and its message is of possible bearing upon our issue.[35]

In the same vein, it is arguable that communal governance should be patterned after the national as regards both the structure of rabbinic and lay authority, respectively, and the character of their interaction. However, if that is the contention, an examination of the degree of similarity is very much in order; and I venture to suggest that if it be conducted, significant differences will be readily apparent. We are not dealing, either in the basic halakhic sources or in our own modern context, with classical Athens or Renaissance Venice. The community under discussion differs from a state in character no less than in scope. It has no truck with foreign policy or military security;

and, if voluntary, does not even impose taxes. On the other hand, it is more deeply engaged than remote central government in the human realm, in shaping and administering the *modus operandi* of servicing the ordinary citizen and coping with his demands. Hence, as the challenges differ, so may the solutions.

Contemporaneously, this distinction is more vividly apparent in the Diaspora than in Eretz Yisrael. Historically, there have, of course, been periods during which Jewish communities enjoyed a large measure of local autonomy, and possibly even a modicum of national autonomy, which achieved a level of halakhic recognition. *Rashei galuyot she-be-Bavel*, the Rambam pronounces, *be-makom melekh hen omdim* "Babylonian heads of the Diaspora community stand instead of a king."[36] However, in the modern era, there is no pretense even of any Diaspora *kehillah*'s serious involvement in running a town. That is readily and wholly ceded to the general municipal authorities, leaving the Jewish community and its leadership to cope with purely internal affairs. However, while this dichotomy is sharper in the *golah* a point possibly reflected, halakhically, in the sufficiency of the establishment of provincial courts, as opposed to the need for local *batei din* in Eretz Yisrael[37] it is, in our context, fundamentally valid in Israel as well.

Briefly stated, a current Jewish community does not engage in government but in internal governance; not in the exercise of power to regulate affairs of state, national or local, but in the organization and direction of the ebb and flow in the life of institutions and individuals within its confines and under its aegis. Even in contemporary Israel, there is a clear line of demarcation between the local general council, entrusted with the maintenance and development of its urban or rural locus, and the *mo'atzah datit*, the religious council, not genuinely voluntary and yet not fully empowered, which superintends activity in narrow bands of human life. Hence, even if we should conclude, contrary to my own perception, that there are clear halakhic guidelines controlling and delimiting the mode of local political government, that need hardly be the case with respect to the institutions confined to limited social governance.

Of governance in particular, halakhic sources, in their legal and

formal aspect, have relatively little to say. Halakhah can live, and has lived, on the rabbinic side, with local *batei din*, fixed or ad hoc, and with superior *batei vaad*; with independent congregational rabbis, national synods, and, intermediately, *rabbanei ir*; with acknowledged but undesignated *gedolim* no less than with formally empowered masters. On the lay side, it can function, and has functioned, with patrician *rashei avot* as with popular town meetings; with elected *parnassim* or *tuvei ha-ir* as with appointed plenipotentiaries; with oligarchic property-owners as with the compound of membership and board currently in widespread vogue.

The form and structure of the respective seats of authority is, essentially, a *devar ha-reshut* which is not to say, we remind ourselves, that it is a matter of indifference. There are, unquestionably, important axiological considerations, both moral and religious; and at any given station, some modes of government are more consonant with the spirit and substance of Halakhah than others. The point is that we need to approach the issue contextually and teleologically, with an eye to optimal results rather than to presumed rules. To be sure, there are aspects of the political realm upon which some specific *halakhot* impinge, normatively. The primary question posed to us, the quest for a composite ideal polity, is not, however, among them.

We are free, then, to deal with our issue not without preconceptions but without preconditions. In doing so, we can approach it in the spirit of Plato, conceiving, *ex nihilo*, the model of an ideal polity, although, Burke's critique of abstract constitutions ringing in our ears, not unmindful of the historical course of Jewish communal governance as it has evolved organically. Were we writing, or creating, our own *Republic*, we would obviously do what Plato did: grapple with the fundamental issues of political philosophy and social theory in light of moral and religious premises. We would define and prioritize the ends of a *polis* and of its structured governance, and then seek to determine which means best realize their attainment. In determining *telos*, we would obviously draw upon Torah sources, and then move to a distinctively although, perhaps, not uniquely Jewish conclusion. With respect to modalities, however,

our hands would not be tied not because our commitment is deficient but because the statutory norms that might bind us are, broadly speaking, simply nonexistent.

I believe we may go a step further. The flexibility I envisage is not confined to the plane of technical implementation. It encompasses attitudinal elements relating to some of the core issues of political theory: the distribution of power and the mode of its apportionment; the balance of rights and duties, entitlement and obligation; the parameters of governmental interference in individual life; the tension between personal will and the *volonte generale*; the ultimate human source of authority; the antithesis between liberty and equality; the ground of civic responsibility. With respect to this gamut of cruces, Halakhah, in its welter of detail and the legal and axiological principles immanent within it, may define the parameters of discourse, but without prescribing a definitive conclusion. In formulating that, hashkafic inclinations, moral sensibility, and even pragmatic evaluations may play a legitimate role in the determination of priorities and preference.

The point may be exemplified by reference to a wholly different sphere: religious asceticism. A halakhic order that mandates that on the holiest day of the week a person should eat heartily, and as well add a meal to his daily regimen; that postulates that *tashmish ha-mittah me-oneg Shabbat hu, lefikhakh talmidei hakhamim meshamshim mi-leilei Shabbat le-leilei Shabbat*, "Sexual relations are an aspect of Shabbat delight; therefore *talmidei hakhamim* engage in them on Shabbat eves,"[38] obviously precludes espousal of extreme ascetic views. It does not, however, ensure *a priori* unanimity on the issue; and, in fact, that has not been historically achieved. Much the same may be postulated with regard to our cluster of concerns.

This is particularly true of communal governance and the degree of its democratization. Obviously, there are *halakhot*, especially with respect to the degree of personal liberty, which run counter to democratic theory and practice; and these reflect the theocratic aspect of our *hashkafah*, particularly when authority is exercised, coercively, by an organ of governance rather than within a voluntary communal context. Nevertheless, the cardinal premises are fully

sustainable, and, if a community so wills, may be applied in practice. The twin pillars of democratic theory the factual assumption that in the long run, the people know best, and the ethical assertion that even if the results are poorer it is their right to decide and the faith in the common man, as well as the priority assigned to his interests, that undergirds them can be accepted or rejected by a Jewish polity; can be adopted at one point and renounced at another. At issue is, indeed, *devar ha-reshut*.

Nor should we be appalled if we intuit that a given structure has been adopted because of its provenance in the broader culture. It is, indeed, entirely possible that a given format is morally and politically preferable because it is attuned to the *Zeitgeist* and therefore more palatable to the governed. Let us bear in mind that when the Torah envisioned the backdrop for the selection of a monarch, it projected an expressed desire for *melekh ke-khol ha-goyyim asher sevivotai*. So long as the phrase simply depicts a familiar phenomenon and does not denote the imitative rationale for the initiative, no problem is posed. The injunction of *u-ve-hukoteihem lo telekhu* applies to sheer aping, with the concomitant loss of distinctive cultural identity; or, as in the case of Egyptian and Canaanite mores cited in the *pasuk*, with respect to undesirable or immoral practices. It has no bearing upon the favoring of institutions deemed to have social worth. The key is, on the one hand, motivation, and, on the other, spiritual consonance with halakhic and hashkafic priorities.[39] The distinctive Jewish character may be reflected in the composite gestalt of the policy and its relation to the complex of Torah values rather than in the source of its formal structure. I lack the sociological expertise to assess the effect of the rise of democracy, for instance, upon Jewish models of governance; and I lack the imperative impulse to dictate what it should be. What I can state from the vantage point of the *beit midrash* is that, within limits, the option exists; and let the decision about exercising it be made with intelligence, sensitivity, and commitment.

The latitude I have assumed with respect to the organs of lay governance exists, similarly, in the rabbinic realm. Here, it is perhaps more circumscribed, as it is subject to a broader range of *halakhot*

concerning the personal qualifications of a *rav* or a *dayyan*, the composition of a *beit din*, or the delineation of the areas of rabbinic jurisdiction. In principle, however, the fundamental analogy holds. Quite apart from the choice of the basic format of spiritual leadership a *rav*, a *marbtiz Torah*, a *beit din*, a *moreh-tzedek*, a *shtat-maggid*, or any combination thereof there is much flexibility at the level of detail. Many *rishonim* take it for granted that a community may waive formal specifications and engage a *rav* who does not technically qualify. Contrarily, a community or its spiritual leaders might choose to impose additional requirements. Thus, at one time European *rabbanim* refused to grant *semikhah* to bachelors, some going so far as to defer the recognition until the recipient had been married for eleven years.[40] Or again, the common *beit din* consists of three members, but the number is not sacrosanct. The Rambam states, "Although a *beit din* of three is a complete *beit din*, whenever there are more, it is laudatory."[41] The Ramban goes so far as to suggest that where litigants disagree upon the venue within which their case is to be adjudicated, whoever insists upon going to a larger *beit din* has the upper hand, as this is equivalent to pressing for a qualitatively superior court.[42] The point arises with respect to interpersonal quarrels but, if anything, would presumably apply *a fortiori* on the communal plane.

The clearest evidence for the element of *reshut* in this area lies, however, in the paucity of *halakhot* governing it. And, indeed, historically there has been considerable variety. We are very much accustomed to the currently prevalent model of a *rav*, however selected or appointed, engaged contractually to a community as its titular spiritual leader, with a range of duties including *pesak*, teaching, preaching, pastoral care, reproof and inspiration, performance of life-cycle rituals, administration and supervision of requisite religious services, and representation of his community vis-à-vis others, Jewish or general. This archetype has not always been the rule, however. The dawn of spiritual leadership in Eretz Yisrael, and the balance therein between *hakham* and *navi*, can only be dimly perceived; and the picture with respect to the period of *Hazal* is likewise somewhat murky. The identification of a given locale as the

bailiwick of a *tanna* or *amora*, so that its residents are guided by his halakhic decisions *le-kula* or *le-humra*, is assumed by the Gemara in several contexts,[43] so that the familiar concept of *marah de-atra* has some early basis. That is still a far cry, however, from the station of *rabbanut* as we know it. That does not appear to have evolved in Europe until the central or late Middle Ages. Estimates range from the twelfth to the latter fourteenth century, with the causes suggested varying accordingly the maturing of independent *kehillot* and the attainment of a measure of autonomy or their decline as a result of plagues and persecutions.[44] Later, *rabbanim* were appointed for larger tracts, resulting, with the rise of the modern nation-state, in the institution of chief rabbis for entire countries. In Eretz Yisrael, this development issued in the establishment of a *Rabbanut Rashit*, as Rav Kook, impelled by a blend of messianic fervor and a passion for putting the religious house in order, sought to restore centralized spiritual and halakhic leadership.

Retrospectively, even so brief a survey of the professional rabbinate invites consideration of the relationship between a *beit din*, generally communal, and the local *rav*. While, as has been noted, the origins of *rabbanut* as we know it are shrouded in some uncertainty, the prevalent perception of a shift in the center of gravity from institutional *batei din* to personal *rabbanim* is, broadly speaking, accurate. Appointment of the former, even in a fairly small community, is halakhically mandatory particularly in Eretz Yisrael, but also, albeit possibly on a smaller scale, in the Diaspora.[45] No comparable charge is cited in the Gemara with respect to the selection of a *rav*; and presumably, in *Hazal's* time, selecting one was not *de rigueur*. Contemporaneously, by contrast, almost every *shul* or community has a *rav*, while *batei din* are relatively scarce; and in much of the Jewish world, this situation has obtained for some time.

Nevertheless, the contrast should not be overdrawn; nor should the import of the shift, applauded by some and deplored by others (it has been suggested that the change sapped the vitality of the general organic *kehillah*), be exaggerated. While no reference is made to formal professional status, the Gemara does identify certain towns

as the bailiwick of a specific *tanna* or *amora*; and thus evidently subject to his halakhic and spiritual authority. On the other hand, even in the modern era, religious power is often shared by the *rav* and a *beit din*, with the former often heading the latter. And even where that is not the case as, to cite a prominent example, in London a tensile balance between the two, ranging between cooperation and confrontation, may generally exist.

In this connection, the scope of the classical local *beit din*'s functions should be borne in mind. *Rishonim* differed as to the primary impetus for its appointment. Commenting upon the *mitzvah* to establish *shoftim ve-shoterim…be-khol she'arekha*, the Ramban notes that, inasmuch as the Torah speaks elsewhere of settling interpersonal disputes in a court of law, "Evidently, it is a *mitzvah* that Israel have [such] courts."[46] This formulation emphasizes the narrow adjudicative aspect of a *beit din*'s responsibility and activity. The Rambam, however, while including this aspect,[47] focuses his summary exposition of the *raison d'être* for the establishment of *batei din* upon their role partly educational and partly coercive in molding the character of Jewish society and shaping its mores.[48] On this view, the *beit din* is not so much involved in legal judgment as in spiritual governance. Hence, the institutional differentiation between a complex of *batei din* and the professional rabbinate has traditionally been nowhere nearly as sharp as current practice might suggest. We would be wise, therefore, to acknowledge a historical transition without exaggerating it.

The point may be exemplified by reference to two diverse and yet analogous citations from the Rambam's *Mishneh Torah*. Setting forth the aims of the establishment of civil monarchy and, for that matter, of the monarch himself he concludes:

> ובכל יהיו מעשיו לשם שמים ותהיה מגמתו מחשבתו להרים דת האמת ולמלאות העולם צדק ולשבור זרוע הרשעים ולהלחם מלחמות ה׳.[49]
>
> "And all his actions should be for the sake of Heaven, and his purpose and thought to elevate the religion of truth, and to fill the world with justice, and to break the strong arm of the wicked, and to fight the battles of God."

Elsewhere, the Rambam assigns similar functions apart, of course, from the military to a *beit din*. In describing the schedule of a fast-day mandated because of some public calamity present or threatened, the Gemara states that during the early part of the day "we survey civic affairs" (*mi-tzahara le-palgei de-yoma me'ayninan be-milei de-mata*).[50]

The Rambam cites this *halakhah* but expands it significantly:

> בית דין והזקנים יושבין בבית הכנסת ובודקים על מעשי אנשי העיר מאחר תפלת שחרית עד חצות היום ומסירין המכשולות של עבירות ומזהירין ושואלין וחוקרין על בעלי חמס ועבירות ומפרישין אותן ועל בעלי זרוע ומשפילין אותן וכיוצא בדברים אל.[51]
>
> "The *beit din* and the elders sit in the *beit ha-knesset* and survey the activity of the townspeople, from after the *shaharit* prayer until mid-day; and they remove the obstacles of sins, and warn and investigate and question with respect to agents of plunder and sinfulness and divest them [from these], and with respect to the strong-armed and humiliate them, and similar sundry matters."

Not just some impersonal overview of vaguely conceived town matters, but concrete steps initiated by a conclave of *beit din* and civic fathers to investigate, admonish, enforce, and above all, like the monarch, to humble the agents of evil and break their power, as part of the community's spiritual purgation.

It should, in any event, be clear that in dealing with the professional rabbinate, we are, in a very real sense, confronted by a *devar ha-reshut* not only with respect to the selection of a mode or a person for the exercise of rabbinic authority, but as regards the very establishment of the post of *marah de-atra*. Lest I be misunderstood, let me make my point crystal-clear. Of course, a *kehillah* should have a *rav* in its midst and, presumably, at its head. Would it occur to a community to be bereft of a physician or an engineer? *Hazal* list an authorized *beit din*, alongside a doctor, a blood-letter, and a scribe, as elements in whose absence a *talmid hakham* ought not to reside in a town.[52] That does not, however, render the inclusion of these

components mandatory. The Mishnah's exhortation, *assei lekha rav*, "Establish for yourself a *rav*,"[53] constitutes, like much of *Avot*, counsel rather than decree, is addressed to the individual rather than to the public, and, on most views, refers to the adoption of a teacher-mentor rather than to commitment to a *posek* or the creation of a position. As regards a chief rabbinate, I have, in a previous contribution to the Orthodox Forum, expressed the view that even if one should assume that residents of Israel are bound to accept the rulings of the *Rabbanut ha-Rashit*,[54] a questionable proposition in its own right, it is clear that there is no collective obligation to establish it in the first place.

We are left to deal, finally, with the relation between the respective seats of authority, with their balance and their interaction. On the national plane, analysis of this issue ought begin with a survey of the cooperation or confrontation between kings and prophets during *bayit rishon*, or between *Hazal* and civil rulers, whether the Hasmonean dynasty or a Babylonian *reish galuta*, subsequently. However, for our purposes, focusing upon the local arena, we shall cut a narrower swath. Even a more limited survey, however, should presumably include two primary issues. The first concerns the process of selection of the persons of authority in the respective realms, and the extent, if any, to which each sector exerts influence in manning the other.

The halakhic data concerning these processes are unclear, inviting the impression that we are, once again, confronting a *devar ha-reshut*. With respect to the choice of lay leadership, the Gemara in *Berakhot* postulates that *ein maamidin parnass al ha-tzibbur ela im ken nimlakhim ba-tzibbur*, "no *parnass* is appointed over the public without consulting the public."[55] It is questionable, however, that we can glean much relevant evidence from this dictum. *Prima facie*, the consultation has a democratic ring, resonating with consent of the governed.[56] By the same token, however, it appears that someone other than the consulted public is doing the appointing. Just who this might be, and whether his identity has halakhic foundation, is left ambiguous, however. The Me'iri states, somewhat cryptically, that the statement admonishes *yahid oh yehidim* against imposing

their candidate upon a reluctant populace, but offers no hint of their identity.[57] It appears likely that the *tzibbur*'s spiritual mentors were, in some measure, involved, but this remains a matter of conjecture. Moreover, while the Rif cites the statement, the Rambam and the Rosh, followed by the *Tur* and the *Shulhan Arukh*, omit it. Further, the role of *parnass* itself is shrouded in uncertainty. Unlike *tuvei ha-ir*, it may very well fuse spiritual and political authority. The Gemara defines the level of knowledge requisite for a *talmid hakham* in order to qualify for appointment as a *parnass*,[58] and it is quite high; and elsewhere Mosheh Rabbeinu and David ha-Melekh are designated as singular *parnassim*.[59] Hence, the process of selection of lay leadership in *Hazal's* time to the best of my knowledge, nowhere amply discussed remains undefined, like the analogous process of the choice of the *kohen gadol*.[60] Subsequently, this lacuna was filled in, and various procedures, including reasonably democratic elections (albeit often by a limited electorate), were adopted. In the absence of *Hazal*'s sanction, these remained essentially optional, however, the mode of choice and the degree of rabbinic intervention varying significantly at the discretion of the community or in consonance with the prevalent custom.[61]

The mode of rabbinic selection, once the position was instituted, was, by contrast, relatively clear. As a prospective employee, a *rav* was generally chosen by the laity. This may be grating to some and regarded as demeaning by others, but it is a fact of life in most of the contemporary Jewish world, and has been for some time. To be sure, the Rambam defines classical *semikhah* as *minuy ha-zekainim le-dayyanut*, "the appointment of elders to serve as *dayyanim*,"[62] indicating that appointment is in the hands of *masmikhim* rather than the community. This should not confuse us, however. Whether a person qualifies to serve as a *dayyan* at all is determined by his Torah masters, who, in effect, certify him. However, the decision about who occupies which post more likely rests with the community to be serviced. Some lament the dependency that, *ab initio* and perhaps subsequently, is inevitably immanent, but the advantages of correspondence and symbiosis between a spiritual mentor destined, alternately, to shepherd his flock and to impose normative demands

upon a possibly unruly populace, are equally self-evident. Leading *rabbanim* frequently endeavor to use their influence to push their preferred candidate. But it is the community and its lay constituency that, justly, has the final word.

We are left, in conclusion, to examine the exercise of rabbinic and lay authority, respectively, in dealing with the division of jurisdiction and the degree of interaction. In this connection, I have been presented with twin questions Why grant authority to laypeople? Why grant authority to rabbis over questions of communal governance and policy? that proceed from conflicting assumptions and move along diametrically opposite lines. The point of departure of the first is the presupposition that in a Jewish community, laypeople should have no authority, and consequently, that if any authority is nonetheless granted to them, a rationale is necessary in order to justify the initiative. The latter, contrarily, patently presumes, at least with respect to the realm of "communal governance and policy," however defined, that rabbis, as such, ought be precluded from the exercise of authority, this presumably being the prerogative of the laity, and that it is this which requires explanation.

I must confess that I find myself palpably malcontent with both presuppositions. The first seems blatantly patronizing and paternalistic. It evidently assumes that, regardless of the issue, the *majores ecclesia* always know best with respect to both ends and means. Consequently, the power of decision should be concentrated in their hands, and in their hands alone.

I may be overstating the case, but this is the clear implication of the question; and one need not be Jefferson or Voltaire to find it untenable. Even if we assume that spiritual oligarchs indeed know best, it does not necessarily follow that the imposition of their will is always advisable. Even in the public sector, poorer but self-determined results may be preferable to a superior dictated bottom line. Nor is this merely a question of stroking egos. There is moral and religious value in according dignity and responsibility to citizens or *shul* members; and there may be communal benefit, pragmatic and spiritual, in the engagement and involvement of *baalei battim* in processes of decision. Provision must obviously be made to

ensure that choices be halakhically and hashkafically acceptable. This is clearly the province of rabbinic leadership, particularly with respect to the difficult and sensitive area of initiatives that are not in outright violation of Halakhah and yet not fully consonant with its tone and spirit. This is a far cry, however, from precluding lay governance entirely.

I find the second presupposition equally unpalatable, although for very different reasons. It clearly implies, as a point of departure, a restricted role for the rabbi and a constricted conception of his person. While the existence of areas, presumably halakhic, of rabbinic jurisdiction is evidently recognized, the perception of the rabbi, insofar as matters of communal policy are concerned, as a legal specialist, seems inescapable. He will be heard and heeded, so long as he addresses his congregants from the platform of the *Shulhan Arukh* as their *posek*. Barring that, however, he carries no more weight than any of them. *Devar ha-reshut* is just that purely optional in every sense.

I find this position unconscionable. It does violence to Halakhah, and it does violence to its rabbinic representatives. The notion that whatever has not been explicitly proscribed is implicitly licit, and thus not subject to rabbinic judgment, is morally and religiously abhorrent. It obviates sensitivity to *lifnim mi-shurat ha-din*, in its multifaceted manifestations,[63] obliterates meta-halakhic considerations, and potentially eviscerates the ethical and axiological components of Torah spiritual life. It invites not only Pauline and Buberian charges of arid legalism but *Hazal*'s scathing comment, *lo harvah Yerushalayim ela al she-danu bah din Torah*.[64] It diminishes the image and the reality of the rabbi's stature, and emasculates his position as the spiritual and pastoral leader of his community.

Rabbinic involvement in areas of communal governance and policy, and lay recognition that it is not only legitimate but desirable, is essential to the optimal viability and vibrancy of a *kehillah*. This should be self-evident when issues of ethical import, of social justice or economic exploitation, arise. But the point is germane even in areas seemingly devoid of such considerations. Are budgetary

planning and the concomitant assignation of priorities off-limits for a *rav*? And is *shul* architecture beyond his ken?

That a rabbi's judgment should be definitive regarding communal issues of clear halakhic import, and that these issues can be distinguished from broader spiritual questions, should be obvious. While there may be some question as to whether the *pesak* of a local *rav* must be the final word governing the personal life of every member of his *kehillah* or whether, as is increasingly the case today, a congregant may opt to follow other, possibly greater, *poskim*, is perhaps debatable. With respect to public *she'ailot*, however, his decision is definitive. If recourse is indeed to be had to superior *poskim*, that cannot be the result of lay surfing of the Internet, but a freely chosen initiative of the rabbi. If the laity insists upon defiantly relying on its own sources, a rabbi should resist and, if necessary, resign.

However, the assertiveness of the *rav* as *posek* analogous to the Sanhedrin's judicial review, on the national plane does not exhaust his role as a spiritual authority. That role is threefold. The first aspect, just noted, entails the exercise of a formal halakhic role in the rendering of halakhic judgments on the basis of halakhic resources. Akin, and yet clearly distinct, is the exercise of personal authority, possibly binding, and yet not necessarily through the medium of applying halakhic rulings to proposed initiatives.

This aspect is manifested within a context now relatively neglected (although some regard it as relevant to the current Israeli scene) but very significant in Jewish life in the premodern period: the institution of *takkanat ha-kahal*. The institution, and the authority inherent therein, is rooted in early sources, and recourse to it presumably prevailed in *Hazal*'s time. However, to the best of my knowledge, solid historical evidence on the matter is flimsy; and it appears likely that the provenance of community-initiated ordinances was limited, the sphere of *takkanot* in Babylonia and its environs being largely regarded as the province of spiritual leadership. It was not until the early medieval period that the institution truly flourished.

The kernel, however, is in *Hazal*, albeit as considerably expanded by later authorities. The Gemara in *Bava Batra* states that "a

town's residents are empowered to set down conditions with respect to measures, prices, and wages, and to punish those who violate them."[65] A number of *rishonim* extrapolated from this and generalized regarding a measure of local authority in the socioeconomic realm. Thus, the Rashba, in one of numerous relevant *teshuvot*, postulates: "Whatever has been agreed upon by the community with respect to economic matters, they are empowered [to innovate]; and it is thus agreed upon and valid as if it were *din* proper, as their agreements are transformed into *din*, provided that this is done with public consent."[66] As is well known, the instrument of *takkanat ha-kahal*, which in the sphere of social and particularly economic activity could circumvent halakhic norms or even deviate from them, proved, historically, a powerful mode of enabling the imposition of local jurisdiction with a measure of flexibility.

This authority inhered, essentially, in the hands of the laity, acting either directly or through elected representatives, such as *shivat tuvei ha-ir*.[67] There was possibly, however, a significant limitation upon this lay authority. The Gemara subsequently relates that a butchers' guild imposed certain rules and corresponding penalties governing its sphere, but that Rava invalidated its decrees. The rationale advanced by Rav Papa is that such *takkanot* can only take effect in the absence of an *adam hashuv*, "an important personage," presumably in some leadership capacity; "However, where there is an *adam hashuv*, they have no right to posit conditions."[68] No indication is given concerning the identity of this *adam hashuv*. However, in the specific case cited, it was presumably Rava himself; and in any event, a number of *rishonim* assumed that the term refers to a halakhic figure. Thus, the Rashba states, "But if there is a *talmid hakham* there, his consent must be obtained."[69] Somewhat earlier, Rabbeinu Meir ha-Levi speaks more broadly of *bi-reshut hakhameihem u-gedoleihem*, "with the consent of their scholars and their leaders."[70] Hence, while on the one hand the *sugya* affirms lay authority in critical areas of civic life let us bear in mind that in the absence of superintending spiritual leadership, the populace can proceed independently this is, perhaps, severely qualified by the veto power granted their rabbinic mentor.

I say "perhaps" because the qualification, in turn, is, on some views, significantly limited. First, the Rashba ruled that rabbinic consent was disposable where the entire community agreed upon an initiative.[71] Second, some *rishonim* did not identify *adam hashuv* with Torah scholarship alone. Thus, the Ri Migash is quoted as explaining, *adam hashuv: talmid hakham ha-memuneh parnass al ha-tzibbur*, "a *talmid hakham* who has been appointed as a *parnass* over the public;"[72] and the *Yad Ramah* states explicitly that if only one of these two conditions is satisfied, the wishes of the individual in question may be disregarded.[73] The Rambam, presumably following his master, speaks of a *hakham hashuv le-taken maasseh ha-medinah u-le-hatzliah darkhei yoshevehah*, "an important scholar, [in a position] to direct the activity of the *polis* and bring success to the ways of its inhabitants."[74] Third, it is entirely conceivable that the veto only applies when a community exercises its prerogative to issue economic directives resulting in a bottom line at variance with the one at which Torah law would arrive. It might be irrelevant with respect to *takkanot* in a social or economic vacuum. Finally, and perhaps most significantly, the Rivash contends that consent was only required for rules instituted by a specific group, such as a guild; and he notes that it was only in this connection that the Rambam spoke of *adam hashuv*.[75] Otherwise, where general local authorities sought to enact statutes, no further consent is necessary.[76]

Contemporaneously, *takkanot ha-kahal* are nowhere nearly as prominent as they once were; and yet an account of rabbinic relation to them may be of relevance as we seek to sketch models of mixed rabbinic and lay authority. The model empowers the laity to take the initiative in establishing ground rules governing much of the world of *Hoshen Mishpat* as well as neutral areas, while at the same time on some views, and in certain circumstances investing the rabbi with the right, and therefore the responsibility, to endorse or reject their proposals. The implications for, say, formulating synagogical by-laws should be apparent.

It is, however, possible that in such an instance, approval of an *adam hashuv* may not be necessary. It will be recalled that the Rivash held that it was only requisite for *takkanot* of a limited group but not

to those of the general community. This distinction can presumably be based on one of two factors. Quite simply, we may ground it upon the differing levels of authority of a local government and of a mere syndicate. The Rivash himself, however, relates it to a comment of the Ramban that Rava invalidated the guild's directives because they might conceivably have been enacted in order to advance its members' special interests, at the expense of the broader population.[77] In the case of the by-laws, then, over and above the limitations upon the need for *adam hashuv* previously cited, we might suggest, given the first interpretation, that rabbinic approval would be essential, while if we assume the second, it may very well be superfluous.

Be that as it may, the role of *adam hashuv*, however delimited, constitutes a second aspect of rabbinic involvement in general communal affairs. It should be stressed again that while the rabbi might base his decision upon non-halakhic considerations, his role as such is firmly anchored in Halakhah. We can, however, note a third aspect: rabbinic engagement in areas of communal governance and policy that is not, narrowly speaking, halakhically mandated. We are brought full circle to my gut reaction to the query, "Why grant authority to rabbis over questions of communal governance and policy?" and its implicit denial of a rabbinic role in this sphere.

It may be noted that we are confronted, *mutatis mutandis*, by a communal version of the problem of *da'at Torah*, which in recent years has generated considerable interest and a measure of controversy. In one form, the discussion has centered upon the status of general opinions formulated by *poskim* on the basis of public policy considerations, rather than those of Halakhah, narrowly defined. In its most prevalent guise, however, at issue has been the force of specific pronouncements issued by *gedolim* regarding social and political questions, especially where these have hinged on an evaluation of the facts rather than upon an analysis of theoretical issues.

The debate is presumably familiar, and the respective arguments can be summed up briefly. It turns, in part, upon historical factors. Opponents contend that the concept is of recent vintage, *sans* any basis in classical theory or practice; and they offer

historicistic and sociological explanations to account for its rise. Traditionally, they argue, the line of demarcation between *mili di-shmayah* and *mili de-arah* was acknowledged, as typified by a comment of the Baal ha-Tanya: *He-haya lah kazot mi-yemot olam, ve-eizeh eifo metzatem minhag zeh be-ahad mi-kol sifrei hakhamei Yisrael ha-rishonim ve-ha-aharonim lihiyot minhag ve-tikkun lishol be-etzah gashmiyut ke-dat mah la-assot be-inyanei ha-olam ha-gashmi, af li-gedolei hakhamei Yisrael ha-rishonim ke-tanna'im ve-amora'im asher kol raz lo anass le-hu u-nehirin le-hon shevilin di-rakia ki im li-neviim mamash*. "Has there been anything of the sort from time immemorial, and where have you found this custom in any of the books of the scholars of Israel, be they *rishonim* or *aharonim*, that there should be a custom and an institution to ask for material counsel concerning what to do regarding issues of the material world even of the greatest of the primal scholars of Israel, such as *tannaim* and *amoraim*, to whom no secret was arcane and celestial paths familiar, with the exception of actual prophets?"[78] Proponents, by contrast, concede that the term is new but claim that the phenomenon is not. *Gedolim* from time immemorial asserted leadership in all walks of communal life; masters "who had decided questions of *Yoreh Deah*," as the *Rav* stated at an early stage, "had decided serious and complex questions of political conduct."[79] And we could readily point to exemplars such as Rav Saadya Gaon or the Hatam Sofer for evidence.

Primarily, however, the debate has been substantive. Advocates hold, first, that *gedolim* are imbued with a greater sensitivity to the sacral, and so assess situations from the perspective of more spiritual priorities; second, that, apart from their concern, they have better insight whether because, on the quasi-mystical plane, they have been blessed with *sod Hashem li-yirei'av*, or because, in more rational terms, the illumination of Torah charges their entire being and thus their wisdom is more critical than mere information. Third, the submissive quest for *da'at Torah* may be regarded as constituting a fulfillment of the precept of *u-vo tidbak*, "And you shall cleave unto Him," which *Hazal* related to Torah masters:

מצות עשה להדבק בחכמים ותלמידיהם כדי ללמוד ממעשיהם כענין שנאמר ובו תדבק וכי אפשר לאדם להדבק בשכינה אלא כך אמרו חכמים בפירוש מצוה זו הדבק בחכמים ותלמידיהם.[80]

"It is a positive commandment to cleave unto the wise and their students in order to learn from their behavior, as it is analogously stated, 'And you shall cleave unto Him.' Is it possible to cleave unto the *Shekhinah*? Rather, thus have our scholars interpreted this *mitzvah*: 'Cleave unto the wise and their students.'"

Finally, it is contended that independently of the merits of a particular decision, as with parenting, great importance is to be attached to the maintenance of hierarchical authority per se. Hence, acceptance of *da'at Torah* is, quite possibly, halakhically mandatory, or, at the very least, pragmatically advisable.

Opponents advance a two-pronged rebuttal. In part, they challenge some of the relevant factual assertions; and they point, empirically, to what they regard as a questionable modern track record. Primarily, however, they rejoin that even if the factual claims be admitted, the conclusion is invalid, inasmuch as other factors are overriding. General insight is important, but it cannot be divorced from intimate knowledge, and no level of intuited perception can substitute for the grasp enabled by familiarity. In case of a leak, you call a plumber rather than an architect, and when your car breaks down you prefer a mechanic to a physicist. And, as to the maintenance of Torah authority, that will not be eroded if exaggerated claims for it are not pressed in the first place. No intelligent child loses respect for a father who sends him to an orthodontist for treatment. In any event, on critical issues, the price of possible error is too high a premium for the enhanced reverence, and that needs to be enhanced by other means.

Personally, I share much of the faith of the advocates in the illuminative character of Torah and their concern with spiritual priorities. I freely admit, however, that under present circumstances I have difficulty in its application. Much as I humbly admire the fusion of saintliness and *lomdut* manifested in some *gedolim*, it is now less

adequate to the challenges of governmental decision than heretofore. Two factors are primarily responsible. First, the issues have, exponentially, become far more complex, requiring a greater measure of expertise or, at least, access to it. Second, the relation of many *gedolim* to their ambient sociopolitical context, to the world about which they are, presumably, to be charged to decide, has changed drastically. In the premodern period, a *gadol* generally stood at the apex of a pyramid. He grew out of a society and a culture that he understood and that understood him, whose language he spoke and whose respect he enjoyed, whose lifestyle and sensibility were familiar, and whose concerns were perceived and often experienced. Today, by contrast, many *gedolim* are distanced from the general community and this, not by accident, but by design. Many first-rate *talmidei hakhamim* lead, from cradle to grave, highly sheltered lives. They receive a cloistered education, not only insulated from the general society but isolated from it. Their education has much to commend it, and may confer significant spiritual and intellectual benefits, but in many cases, it does not provide adequate preparation for in-depth understanding of the ambient culture and of the issues confronting it. The unfortunate result may be failure to appreciate long-term social dynamics, and the attendant responses and reactions, on the domestic plane, or to comprehend the consequences of proposed initiatives on the geopolitical plane.

Given these circumstances, reservations about comprehensive adherence to *da'at Torah* is understandable. However, the situation is significantly different at the local level. On the one hand, the issues are far less complex, and the potential consequences far less grave. On the other hand, chemistry with the laity and the degree of empathy with its concerns ought not be problematic. Presumably, a *kehillah* selects a *rav* who is on its cultural and ideological wavelength; and, hopefully, residence in its midst should reinforce mutual and reciprocal understanding. Consequently, it is both a *rav*'s prerogative and his responsibility to exercise moral and religious authority in relating to issues of communal governance and policy. On many questions, the community may not be halakhically compelled to accept his judgments. It is, however, bound to give them a serious

hearing. Hence, he is both entitled and bound to give his judgments a serious airing sensitively, judiciously, responsibly, and clearly.

To some, this lending of ears to spiritual counsel does not constitute the granting of authority at all, and is, consequently, irrelevant to our discussion. I think it is quite relevant, but I have no interest in logomachy. So long as the substance is clear, I shall not argue over the nomenclature. What is clear is the fact that if a rabbi is worth his salt, counsel is a highly effective means of having an impact upon communal affairs; and one need not fully subscribe to Chief Rabbi Jacobowitz's dictum concerning the trade-off between power and influence to affirm this truth.

This mode of rabbinic and lay interaction falls short of full imposition of authority, and yet is fraught with spiritual and communal significance. And thus we conclude as we began with a dual perception. On the one hand, the awareness of the scope and meaning of the concept of *devar ha-reshut* as applied to our problem is reiterated. On the other hand, we sharpen the recognition that this fact does not absolve rabbis and the laity from collective responsibility but possibly intensifies it. It is often, indeed, precisely with respect to the optional but not neutral that thought and guidance are most crucial. We note that the portions of the Torah that deal with promissory oaths and vows, the archetypal venue of *devar ha-reshut*, are channeled to the general community through the *rashei ha-matot*, the tribal chieftains, whose wisdom and direction are especially valuable in this critical context. We are not currently familiar with the institution of tribal chieftains. However, the element of spiritual leadership that, on *Hazal*'s view,[81] they represent, is a perennial aspect of our Torah world, and the mode of its integration within a Jewish community a perpetual challenge.

NOTES

1. *Kiddushin* 31a.
2. See ad loc., Tosafot, s.v. gadol.
3. See ad loc., Tosafot ha-Rosh, s.v. gadol; Hiddushei ha-Ritva, s.v. de-amar; and cf. Derashot ha-Ran, ed. A.L. Feldman (Jerusalem, 1977), pp. 88–90.
4. *Yevamot* 20a.

5. *Kiddushin* 32a.
6. *Sanhedrin* 76b.
7. *Shevuot* 27a.
8. *Berakhot* 27b, *Pesahim* 91b, and *Pesahim* 69b, respectively.
9. *Sotah* 44b.
10. *Bava Kama* 91a–b.
11. *Sotah* 3a.
12. *Sanhedrin* 20b; and cf. *Sifre*, on Dev. 17:14.
13. For a brief summary of geonic views, see Yaakov Blidstein, *Ekronot Mediniyim be-Mishnat ha-Rambam* (Ramat Gan: Bar-Ilan University, 1983), pp. 21–22; and cf. Rav Y.F. Perlow's commentary on *Sefer ha-Mizvot le-Rav Saadya Gaon*, 3:229–236.
14. *Hilkhot Melakhim u-Milhamoteihem* 1:1; and see Blidstein, pp. 19–31.
15. Dev. 17:15.
16. Dev. 17:15. In a sense, the argument, echoing *Shemuel I*, 8:6–7 and 10:19, against the choice of any human political authority would also militate against the selection of a president. Obviously, however, it cuts more sharply with respect to a monarch.
17. *Perush ha-Torah*, ed. A. Schottland (Jerusalem, 1999), pp. 271–279. The reference concerning the Torah's concession is to *Kiddushin* 21b.
18. Dev. 17:14.
19. This was cited by the Rav in the name of his father, in a lecture delivered in 1969.
20. *Mishpat Kohen* 144:15.
21. Dev. 17:8–11.
22. *Hilkhot Mamrim* 1:1.
23. See Dev. 18:18–19.
24. *Sanhedrin* 2a, 16a.
25. *Moreh ha-Nevukhim* 3:40.
26. Derashah 11.
27. Rav Yitzhak A.H. Herzog, *Ha-Hukkah le-Yisrael Al Pi ha-Torah* (Jerusalem, 1989), 2:75–83.
28. Dev. 16:18.
29. *Horayot* 10a.
30. Ex. 22:27; and see Ramban, ad loc.
31. *Mishneh Torah, Hilkhot Sanhedrin* 26:1.
32. *Mitzvah* 71:1.
33. *Sanhedrin* 16b and Rambam, *Sanhedrin* 1:3–4.
34. *Shemot Rabbah* 16:1.
35. The passage assumes that the concept of *seyag* is not only counsel addressed to *hakhamim* on a *de-rabbanan* plane, with which it is familiarly associated, but is operative *mi-de-oraita*. There are a number of analogues, but for an explicit statement, see *Avot de-Rabbi Natan* 2:1. However, while the Rambam (*Sefer ha-Mitzvot*, *lo taasseh* 353 and *Hilkhot Issurei Bi'ah* 21:1) assumes that the text there deals with a *de-oraita*, many *rishonim* held that the injunction cited is only of rabbinic origin.

   It may also be noted that the Midrash regards lesser forms of sexuality as pro-

scribed only as a safety measure to ensure that no full sexual relations occur, rather than as an axiological extension, prohibited, albeit at a lower level, for the same reason as actual relations.

36. *Hilkhot Sanhedrin* 4:13. The unqualified formulation conveys the impression that his authority extends beyond Babylonia. This is, of course, very problematic; see *Kessef Mishneh* ad loc.
37. See *Makkot* 7a; Rambam, *Sanhedrin* 1:2 (but note the textual variants; *ela be-khol pelakh u-pelakh* clearly makes the most sense and has the support of manuscripts); and Ramban, Dev. 16:18.
38. Rambam, *Shabbat* 30:14, on the basis of *Ketubot* 62b. In this context, the Rambam's premise only leads to the conclusion that marital relations should be part of the Shabbat experience, but in no way suggests anything regarding their frequency at other times. However, in the Gemara the reference to Shabbat appears in connection with the delimitation of the minimal conjugal duty of a *talmid hakham* vis-à-vis his wife; and this was cited by the Rambam, *Ishut* 14:1. This point touches upon broader issues that lie beyond my present scope.
39. See *Va-Yikra* 18:3 and Rashi ad loc.; *Sanhedrin* 52a and *Avodah Zarah* 11a; Rambam, *Avodat Kokhavim* 11:1 and *Kessef Mishneh*; and *Shulhan Arukh Yoreh Deah* 178:1 and *Be'urei ha-Gra*, 7. The nuances of motivation are difficult to define in both theory and practice, and the issue requires greater elucidation than I can give here.
40. Rav Simha Assaf, *Be-Ohalei Yaakov* (Jerusalem, 1943), p. 30.
41. *Hilkhot Sanhedrin* 2:13.
42. See his comment on Dev. 1:12.
43. E.g., *Shabbat* 130a, *Hullin* 53b, *Eruvin* 94a.
44. Yisrael Yuval, *Hakhamim be-Doram* (Jerusalem, 1989), chap. 1.
45. Tosefta, *Sanhedrin* 3:5, cited in *Makkot* 7a. Rambam, *Sanhedrin* 1:2, according to one textual reading, holds that the *mitzvah* does not obtain in the Diaspora. This is the reading with which the Ramban was familiar; and thus in an introductory remark in his commentary on *Devarim* 16:18, he challenges the Rambam's view as running counter to the Tosefta. However, another reading, probably more genuine, aligns the Rambam with the Ramban's view, based on the Tosefta and the Gemara. See the textual variants in the Frankel edition.
46. Introduction to *parshat Shoftim*, Dev. 16:18.
47. *Sefer ha-Mitzvot*, *assei* 176.
48. I believe it is more than likely that the Ramban would have argued that this aspect was within a *beit din*'s province, but that he did not regard it as the focus of the normative demand for its establishment.
49. *Hilkhot Melakhim* 3:9.
50. *Megillah* 30b.
51. *Taaniyot* 1:17.
52. *Sanhedrin* 17b.
53. *Avot* 1:6 and 1:17.
54. See my "The Israeli Chief Rabbinate: A Current Halakhic Perspective," *Tradition*

26:4 (1992): 33–34. For a different view, see Rav Shaul Yisraeli, *Ammud ha-Yemini*, chap. 6; and see the articles by Rav Eliyahu B. Doron, Ithamar Wahrhaftig, and Aviad Hakohen in *Ha-Rabbanut ha-Rashit le-Yisrael*, ed. I. Wahrhaftig and S. Katz (Jerusalem, 2002).

55. *Berakhot* 55a.
56. It is clear that the dictum is not based on a concern for possible error, because the precedent cited is the divine nomination of Bezalel to be in charge of the construction of the *mishkan*.
57. *Beit ha-Behirah* ad loc.
58. *Shabbat* 114a.
59. *Yoma* 86b.
60. *Yoma* 12b, *Tosafot*, s.v. *kohen*.
61. In this connection, reference should be made to the procedure for the selection of a monarch. See Rambam, *Melakhim* 1:3, and the reference cited in the *Sefer ha-Mafteah* of the Frankel edition.
62. *Sanhedrin* 4:3.
63. This is of particular concern with respect to the quasi-normative aspects of the concept, but the concern is not limited to them.
64. *Bava Metzia* 30b.
65. *Bava Batra* 8b. See also Tosefta, *Bava Metzia* 11:12 and *Bava Kama* 116b. On some views, the authority to impose sanctions only applies to recalcitrants who initially consented to the decrees but now fail to abide by them. There is no basis, however, for a group's imposing its will upon an individual in the first place. Obviously, such a position has alarming quasi-anarchic implications. This issue lies beyond my present scope, however.
66. *She'ailot u-Teshuvot ha-Rashba ha-Meyuhasot le-ha-Ramban* 65.
67. For a succinct and lucid account of the institution, as well as its sources and parameters, see Rav A. Karlin, "Shivah Tuvei ha-Ir: Tafkidam u-Maamadam ha-Mishpati," *Ha-Torah ve-ha-Medinah* 1 (1949): 58–66. For a much fuller treatment see Rav Yosef Goldberg's comprehensive monograph, *Tuvei ha-Iir* (Jerusalem, 5760), fully annotated and replete with wide-ranging bibliographic references.
68. *Bava Batra* 9b.
69. *She'ailot u-Teshuvot ha-Rashba ha-Meyuhasot le-ha-Ramban* 65.
70. *She'ailot u-Teshuvot ha-Ramah* 302.
71. *She'ailot u-Teshuvot ha-Rashba ha-Meyuhasot le-ha-Ramban* 65.
72. Cited in *Shittah Mekubetzet* ad loc., and in *She'ailot u-Teshuvot ha-Rashba* 5:125.
73. Ad loc.
74. *Mekhirah* 14:11.
75. *She'ailot u-Teshuvot ha-Rivash* 399. See *Siftei Kohen* 231:4, who cites many opposing views.
76. In this connection, perhaps note should be taken of another possible variable. The Rivash, in the *teshuvah* previously cited (397), asserts that a community's right to legislate ordinances and to impose sanctions for their violation obtains even in the

Diaspora, for he points out that the incident regarding the butchers', guilt occurred in Babylonia. The need to make the assertion and to prove it seems to imply that a contrary position might be tenable. This could be based on the principle that certain punitive laws, *dinei kenassot*, are not adjudicated in the absence of *dayyanim semukhin*, specially ordained judges who are not ordinarily found outside of Eretz Yisrael. However, this contention seems dubious, inasmuch as there presumably are no such *dayyanim* among the townspeople in question in any event, so why should the location be significant? Alternatively, it may be based on the fact that for certain halakhic purposes, the term *kahal* is reserved for residents of Eretz Yisrael, because it is only there that the character of an organic community is fully realized; see *Horayot* 3a.

While the Rivash rejects this distinction, it may nevertheless be of relevance in more limited terms. In explaining his position, the Rivash argues that שבדבר שהסכימו עליו בני העיר הרי הוא כאלו קבלוהו כל אחד על עצמו ונתחייבו בו. "For as regards the matter which has been agreed upon by the townspeople, it is as if each person had obligated himself to it and they are bound by it." This formulation can be understood to focus upon personal commitment as a variant of a social contract rather than on the collective *vox populi* as the basis of the binding force of *takkanot ha-kahal*. This could translate, although it need not, into the view ascribed to Rabbeinu Tam that actual individual commitment is necessary in order to subject a person to the sanctions included in a *takkanah*. The upshot of this line of reasoning might conceivably be that Rabbeinu Tam's view could be accepted with respect to the Diaspora but not as regards Eretz Yisrael, where the full weight of an organic *kahal* could be harnessed.

For a full exposition of the scope of the need for an *adam hashuv*, see Rav Goldberg, *Tuvei ha-Ir*, pp. 324–328, and especially Appendix 4, pp. 459–496.

77. *Hiddushei ha-Ramban, Bava Batra* 9a, s.v. *ha*.
78. *Iggeret ha-Kodesh*, sec. 22.
79. From the eulogy delivered in 1940, of Rav Hayim Ozer, in *Divrei Hagut ve-Haarakhah* (Jerusalem, 1982), p. 192. He later changed his attitude on the topic.
80. Rambam, *Deot* 6:2, on the basis of *Ketubot* 113b. The Rambam's didactic emphasis in this connection is absent in the Gemara, and may be viewed as problematic. Surely, were any level of cleaving to God possible, its value would be intrinsic as a purgative and beatific experience, irrespective of whatever lessons could be derived therefrom. The same should presumably be true of encounters with *talmidei hakhamim*, insofar as they are regarded as a substitute.
81. *Nedarim* 78a.

3

Charismatic Leader, Charismatic Book: Rabbi Shneur Zalman's *Tanya* and His Leadership

Nehemia Polen

Rabbi Shneur Zalman's *Tanya* has become an iconic book, published in facsimile editions in towns and cities all over the world as an act of piety and talismanic protection. Its chapters have been divided into lectionary readings to be studied as a canonical text on a fixed schedule. Beginning students in Chabad houses are sometimes given *Tanya* as a gift; in its pages they receive their initial exposure to kabbalistic-Hassidic ideas and terminology, indeed to Judaism itself as understood by Chabad Hassidism.

But the original goal of *Tanya* was very different, and its initial publication was a response to the needs of a different social setting.

Tanya's appearance in 1796 reflects the transition of Hassidism from its early period, when a small group of devotees surrounded charismatic illuminates, to a larger movement with a defined social structure and a self-conscious identity vis-à-vis the wider Jewish world. In this second phase, which emerged after 1772, the movement was organized around masters, or *tzaddikim*, each of whom held sway in a relatively well defined geographical area, enjoying the allegiance and veneration of passionate followers, known as *hassidim*.[1] Each *tzaddik* was known for a certain style of teaching and sacred service, whose elements formed a unique spiritual signature. It is around this time that we see the emergence of Hassidic courts, supported by donations from followers. And it is shortly after this time that we first observe the phenomenon of dynastic succession, with a *tzaddik* founding a hereditary line.

Among the most successful courts was that of Rabbi Shneur Zalman of Liadi, whose following was so large that rules were instituted to regulate and restrict access to the court and the master.[2] In this context, the publication of *Likkutei Amarim*, or *Tanya*,[3] in 1796, plays a key role in the ascendancy of Rabbi Shneur Zalman of Liadi and the rise of Chabad Hassidism, and in shaping the communal structure of Chabad.

Likkutei Amarim / *Tanya* is one of very few works of early Hassidism that was actually written by the nominal author and brought to publication in the author's lifetime and under his direction. It is also one of very few works of early Hassidism that, rather than conveying its ideas in the form of occasional homilies linked to Biblical texts or the festival cycle, presents a sustained exposition and makes a highly structured argument.[4] While the special character of *Tanya* has long been recognized, the compositional strategies and the developmental unfolding of the book have not been sufficiently grasped.

The importance of the book in Rabbi Shneur Zalman's Chabad Hassidism is asserted in the *hakdamat ha-melaket*, the "compiler's foreword" to *Tanya*. Rabbi Shneur Zalman announces his intention to have the book replace personal audiences:

> I have, therefore, recorded all the replies to all the questions, to be preserved as a sign-post and to serve as a visual reminder for each and every person, so that he will no longer press for admission to private conference with me. For in these [writings] he will find peace for his soul and true counsel on every matter that he finds difficult in the service of God. His heart will thus be firmly secured in the Lord, Who completes everything for us.[5]

The assertion of absolute comprehensiveness is surely striking, especially in light of Rabbi Shneur Zalman's acknowledgment, just prior to this statement in the foreword, that a universal written response to personal religious questions is a theoretical impossibility. In its self-confidence and self-assurance of total coverage of a domain of analysis, this foreword is reminiscent of Maimonides' introduction to the *Mishneh Torah*, with the added feature that the author announces his intention that any questions about the advice in *Tanya* be referred to a network of disciples who will explicate its teaching. In this way, the book would serve as a resource that would largely replace person-to-person contact with the master, since "time no longer permits of replying to everyone individually and in detail on his particular problem."

The foreword does not tell us what questions Rabbi Shneur Zalman's *hassidim* addressed to him, but to judge by *Tanya* itself, they apparently were prompted by the gradual erosion of the illumination that had characterized Hassidism's earliest period, when religious exuberance reigned by virtue of partaking in a new and vital religious dispensation.[6] During the formative years, religious devotion seemed to come effortlessly and without resistance, in an intense glow of new discovery and excitement. By the 1790s, as the movement spread and the number of followers increased dramatically, routinization had set in, with all its vexing obstacles to the religious life. In early Hassidism it had seemed as if human nature had been born again; its motto could have been (to borrow from William Wordsworth) "Bliss was it in that dawn to be alive, / But to be young

was very heaven!" By the 1790s, however, despite (or perhaps because of) the geographic spread and numerical growth of the movement, the glow and buoyancy of the early days were receding. It was this that impelled large numbers of Rabbi Shneur Zalman's followers to seek out their master, to express their puzzlement at the gradual attenuation of exuberant spirituality, and to register their dismay at the return of the daily struggle with temptation.

The structure of *Tanya* deserves some comment. The book begins with a presentation of several early rabbinic texts, whose juxtaposition reveals (in good pilpulistic fashion) an apparent contradiction. In order to resolve the contradiction, the author proceeds to reconfigure the standard moral categorization of *tzaddik* and *rasha* ("righteous" and "wicked"), terms that go back to the Bible. By the time he has finished his exegetical reshaping, the entire moral landscape has changed; the spiritual topography has shifted, and no boundary marker has been left untouched. It takes fourteen chapters for this seismic shift to work itself out, and when it does, the average reader might be forgiven if he forgets the questions that had launched the exploration back in Chapter 1. But the author has not: he returns to the issues he raised fourteen chapters before and, by his lights, resolves them decisively. Ancillary questions are treated in the following chapters until the *Sefer Shel Beinonim*, or "Book of Intermediate Individuals," *Tanya*'s first section, concludes. The entire effect is one of total mastery, total control; the reader feels he has been led lovingly, knowingly, firmly through a transformative journey by a leader who foresaw the outcome with total clarity from the outset. This is a *tour de force* that compels the reader by the power of argument, but even more by the power of the mind, which advances it.[7] One is hard pressed to think of another Hassidic work anywhere that presents such a sustained, cogently set out argument as *Sefer Shel Beinonim*, with its long development arch cresting to a conclusion that is both triumphant and inevitable. Since its appearance, readers from all camps Hassidic, maskilic, and academic have expressed admiration for the style of *Tanya* no less than its substance.

It is hardly an accident that *Tanya* begins with a Talmudic passage on the administration of an oath. According to a *beraita*

cited in *Niddah* 30b, every individual is given an oath before birth, adjuring him to "be righteous and not wicked; and even if the whole world tells you that you are righteous, regard yourself as if you were wicked." The fact that the author chooses this passage to open his work makes clear that his essential theme is duty, the obligation of the individual to fulfill his responsibility. The *hassid* is enjoined to act as a *tzaddik* acts that is, with perfect rectitude, in complete conformity with the dictates of the Torah and the 613 commandments. He may be mistaken by others for a *tzaddik*, a Hassidic saint, but inside he knows that he still struggles with temptation; hence the need for the oath, suggesting resolute commitment and unwavering attentiveness. The fact that the individual is under oath raises the stakes of the religious life, in that failure or even a simple misstep is not simply wrong, but is a violation of a solemn pledge. And the fact that an oath is required underscores the reality that the average person is in constant danger of succumbing to temptation and needs the oath to bind him to his mission.

The question arises, Of all the topics in the religious life in general and Hassidism in particular, why did Rabbi Shneur Zalman consider the redefinition of *tzaddik/rasha* to be of such crucial importance as to devote his seminal work on Hassidism, the only one to be published in his lifetime, to it? Why the need to develop and amplify the category of *beinoni* (a term that does not appear in the Bible and does not play a central role in most Talmudic presentations of religious typology) to such a degree? And why the need to make the category of *tzaddik* virtually impossible to attain? Before *Tanya*, the *tzaddik* was commonly understood to be an individual in whom virtue dominates over vice, whose good deeds outweigh his sins. But for *Tanya*, to have any sins at all consigns one to the category of *rasha*, wicked. To be a *tzaddik*, one must not only be free of sin, but free of any temptation to sin, to be so bathed in divine grace and light that one is drawn unceasingly to the good. *Tanya* explicitly teaches that the category of *tzaddik* is virtually unattainable by one's own effort.[8]

The answer to these questions appears to be that the primary goal of *Tanya* is to explain to the devotee that he is not a *tzaddik* and

should surrender hopes of becoming one. The stratification of the Hassidic world and the emergence of a clear hierarchy, which were ongoing at this time, were given a powerful justification by the appearance of *Tanya*. The category of *beinoni* is completely revised. No longer is the *beinoni* a person whose virtues and demerits are roughly in balance. Rather, the *beinoni* is a person who knows temptation but never succumbs to it. The *beinoni* is thus in constant struggle, and that is a good thing, for God delights in the victory of good over evil, and merit accrues to the individual from his unceasing victory over baser urges.[9]

Images of struggle and conquest occur frequently in *Tanya*. The *hassid* is a warrior in constant battle against the evil inclination.[10] The body is called a "small city," over which the divine soul and the animal soul fight. To be sure, there are respite moments, when, in an intense effort of concentration, the *beinoni* cultivates a state of God-consciousness, but these are achieved during recitation of the *Shema* and the *Amidah*, after which the essence of the animal soul and its propensities returns. The respite moments serve to maximize the spiritual possibilities available to the *beinoni*, while at the same time they keep the distinction between the *beinoni* and the *tzaddik* sharp and clear, since only for the *tzaddik* is the suffusion of being with God-consciousness permanent and unceasing.

In this way, *Tanya* is carefully crafted to exploit the tension between control and empowerment. The book makes it clear that the *tzaddik* is a different order of being than the *hassid*. Maximalist demands are placed upon the *beinoni*/*hassid*, who is expected to behave in thought, word, and deed like a *tzaddik*, but who yet is told that there is little if any possibility that he might ever become a *tzaddik*. This framework empowers the *hassid* to become a warrior for Hassidism, but essentially precludes any aspiration on the part of the *hassid* to become a leader himself.

The reconfiguration of the meaning of *tzaddik* / *beinoni* / *rasha* that *Tanya* effects, creates a new spiritual landscape, one unlike what is found in the writings of contemporary Hassidic masters. For Rabbi Shneur Zalman, the *tzaddik* is another order of existence, absolutely separated by nature from the average individual. This spiritual

topography is not to be found in the writings of R. Levi Yitzhak of Berditchev, for example, where there is no indication that the *tzaddik* is set off metaphysically from the average individual. Even a work like R. Elimelekh of Lyzhansk's *Noam Elimelekh*, with its powerful presentation of the role of the *tzaddik*, makes it clear that the *tzaddik* is not beyond struggle.[11]

Rabbi Shneur Zalman's desire to distinguish the *tzaddik* from the *beinoni*, whose destiny is perpetual struggle, is so strong, that he asserts that a key passage in the *Shema*, "that you seek not after your own heart and your own eyes, after which you go astray,"[12] does not refer to the *tzaddik*. Rabbinic tradition understands this verse as an admonition to resist the temptations of heresy and sexual sin. But since the *tzaddik* has no temptation at all, this verse cannot refer to him.[13]

The message of *Tanya* is sober yet reassuring: the initial era of Hassidism, the era of boundless illumination and spiritual exuberance, is over. The animal nature has reasserted itself, as we should have known it would, but there is essential, valuable work to do. That work can be done as long as the *hassid* remains faithful to his task and condition as *beinoni*, faithful to the oath he took before he was born. In sum, we are arguing that *Tanya* must be understood as a period piece, a response to a movement's transition from youth to maturity. Rabbi Shneur Zalman wrote a book that would make clear the division of labor that would prevail in Hassidism's mature phase, defining and patrolling its internal boundaries.

Part II of *Likkutei Amarim–Tanya*, called *Shaar ha-Yihud ve-ha-Emunah* ("The Gate of Unity and Faith"), is a clear exposition of early Hassidism's acosmic theology.[14] As Naftali Loewenthal and others have pointed out, Rabbi Shneur Zalman's original intention was apparently to place *Shaar ha-Yihud ve-ha-Emunah* before Part I, an arrangement that would have given further emphasis to the acosmic view. As we have it, *Tanya*'s main thrust lies more with the struggle and conquest of Part I than with the vision of unity of Part II.[15] As it stands, Part II serves to buttress the *Sefer Shel Beinonim*, reminding the *hassid* that God is everywhere, thus emboldening him to act with courage and confidence in every circumstance and location. The

total effect is not one of mystical ecstasy, but motivation to action.[16] The potent rhetorical strategy of *Tanya*, simultaneously augmenting the poles of control and empowerment, coupled with the mystical theology of God-in-all-places and God-in-all things (but downplaying ecstatic illumination) provokes the reader into action and fosters a posture of fearlessness and militancy.

The appearance of *Tanya* evoked comments from other leaders in the world of Hassidism, notably R. Avraham Kalisker, who wrote a sharply critical letter to Rabbi Shneur Zalman in 1797, shortly after the appearance of *Tanya*.[17] Here I must respectfully differ from the approach of Naftali Loewenthal in his *Communicating the Infinite*.[18] In Loewenthal's view, the essential innovation of Rabbi Shneur Zalman is his development of a systematic method of presentation of esoteric ideas. Loewenthal writes that "R. Avraham Kalisker criticized the idea of making esoteric teachings available to the ordinary members of the Hassidic fraternity.... In R. Avraham's view the attempt manifested by the *Tanya* methodically to communicate these teachings was dangerous."

I would present R. Avraham's objections a bit differently. The project of *Tanya* was dangerous because it was a retrograde movement from the teachings of the Besht and the Maggid, as R. Avraham saw them. In his view, the words of the Maggid were moments of illumination, epiphanies that could not be encased in a structure of systematic thought without doing violence to their essential character. For R. Avraham Kalisker, the concern is not so much with the promulgation of esoteric teachings, but rather with the assumption that such promulgation is possible.

In the view of R. Avraham, the communal structure that *Tanya* fostered was problematic in two respects: in its aspect of control, and in its aspect of empowerment. In the aspect of empowerment, it enabled an ever-widening circle of followers of uncertain spiritual attainments to believe they could be teachers and transmitters of authentic Hassidic teachings. For R. Avraham, only someone who had already attained a sublime spiritual state could be safely empowered to promulgate the teachings. On the other hand, at the pole of control, R. Avraham's view was that here Rabbi Shneur Zalman had

narrowed the domain of the *tzaddik* nearly to the vanishing point it was a set that appeared to have room only for a single exemplar. Here we must recall R. Avraham's emphasis on *dibbuk haveirim*, where a small circle of initiates shares spiritual insights with one other, and help one another along the path, but with little or no emphasis on the role of a *tzaddik* as a singular figure.[19]

For R. Avraham Kalisker, then, the pole of empowerment in *Tanya* spread the dimensions of the circle much too broadly, while the emphasis on control restricted the inner circle much too narrowly. R. Avraham Kalisker's vision of the Hassidic community was much smaller than that of Rabbi Shneur Zalman's, but it was a vision of community without walls, without formal structure, without (in his view) unnecessary theoretical scaffolding, without rigid demarcation lines and that did not *a priori* exclude anyone from joining its most inner circle. Kalisker's opposition to *Tanya* was not a reflex reaction to the promulgation of *esoterica*, but a principled affirmation of what he saw as the essential contribution of the Hassidism of his teachers to Jewish spirituality, and which was in danger of being eroded by a theoretical systemization that paralleled the imposition of a stratified and regimented social structure.

Ha-sayyif ve-ha-sefer yardu kerukhim min ha-shamayyim, "the sword and the book came down together from heaven."[20] In the case of *Tanya*, the book was a sword; a powerful weapon that every individual *hassid* could wield against his own animal nature and employ to great effect in the task of moral and spiritual growth. *Tanya* also was and is a potent weapon that the Chabad movement could employ to overcome opposition within the world of Hassidism, on the part of the *Mitnagdim*, the capricious turns of tsarist policy, the winds of Haskalah, secularism and modernity, as well as the cruel, relentless, and naked power of the Stalinist Soviet regime. Of all the Jewish traditional movements and institutions in tsarist Russia and the Leninist-Stalinist onslaught that followed, Chabad Hassidism was arguably the one that stood up best to the terrors, holding ground where it seemed impossible to do so. And in the much more benign times of the post–World War II period, Chabad has grasped the opportunities for external growth and expansion,

creating a network of outposts staffed by devotees who subordinate their personal comfort and even their spiritual growth in favor of the urgent needs of the movement.

As the foundational work of this religious movement, *Tanya* achieved enormous success and has been of inestimable influence. It must be recalled, however, that the initial purpose of *Tanya* was not the promulgation of mystical doctrines, much less the teaching of mystical techniques or practices, but the stratification and regimentation of the Hassidic community and the assignment of appropriate roles. The strictures of R. Avraham Kalisker might alert us to possibility that *Tanya*'s success may have been achieved at some cost to the original vision of Hassidism, and that both the control and the empowerment may not be entirely consistent with the social vision and unstructured illuminations of the movement's earliest leaders.

NOTES

1. See Ada Rapoport-Albert, "Hassidism after 1772: Structural Continuity and Change," in *Hassidism Reappraised*, ed. Ada Rapoport-Albert (London: Littman Library, 1996), pp. 6–140.
2. See Immanuel Etkes, "The Rise of Rabbi Shneur Zalman of Lyady as a Hassidic Leader," *Tarbiz* 54:3 (1985): 429–439. Etkes states that Rabbi Shneur Zalman emerged as the principal leader of White Russian *hassidim* only after 1789, about a year after the death of Rabbi Menahem Mendel of Vitebsk in 1788 (Etkes, p. 439). See also idem, "Rabbi Shneur Zalman of Lyady as a Hassidic Leader," *Zion* 50 (1985): 321–353, where Etkes presents his analysis of the "Liozna Regulations," which severely limited visits to the master and gave priority to newcomers over veteran *hassidim*.
3. The name *Tanya* is a popular designation that simply reproduces the first word of the work. It does not appear on the title page of the first edition (Slavuta, 1796), which gives the name as *Likkutei Amarim* ("Collected Discourses"); see Naftali Loewenthal, *Communicating the Infinite: The Emergence of the Chabad School* (Chicago: University of Chicago Press, 1990), p. 47. See also *Likkutei Amarim: First Versions* (New York: Kehot, 1981).

Loewenthal's discussion of *Tanya* is significantly augmented in his essay "Rabbi Shneur Zalman of Liadi's *Kitzur Likkutei Amarim* British Library Or 10456," in *Studies in Jewish Manuscripts*, ed. Joseph Dan and Klaus Herrmann (Tübingen: Mohr Siebeck, 1999), pp. 89–137. Loewenthal notes that the manuscript he is analyzing "preceded the printed book" (p. 114), and that its title is *Kitzur Likkutei Amarim* ("Abridgement of Collected Discourses"), but he does not address the significance of this title

(which also appears in other early manuscripts). It is puzzling that a work not yet published is called an "abridgement." I hope to address this in a subsequent essay.

4. See Loewenthal, *Communicating the Infinite*, p. 48.
5. Translation based on that of Nissan Mindel in the bilingual edition of *Tanya* (London: Soncino Press, 1973), p. xiv.
6. Rabbi Israel Hapstein (1737–1814), the Maggid of Kozienice, was one of the founders of Hassidism in Poland. He writes that he once saw the Baal Shem Tov in a dream and asked him why "when I began my service [in Hassidism] and entered the circle of *tzaddikim* to learn from their deeds…I felt a daily change for the good in my Torah study and prayer…but now I feel no change. It seems that each day is like the day before and the day after." See *Sefer Avodat Yisrael*, *Parashat Shemini*, end. This description of personal experience, when projected onto the movement as a whole, does much to explain the structural transformations of this period, to which *Tanya* was one response.
7. I am reminded here of Robert Nozick's observation in the introduction to his *Philosophical Explanations* (Cambridge. Mass.: Belknap Press of Harvard University Press, 1981). The older philosophical style, which Nozick calls "coercive philosophy," tries to force assent to its conclusions by the power of its arguments. This stands in contrast to Nozick's approach, which explains how certain beliefs and views are possible but without attempting to coerce, retaining wonder and puzzlement.
8. The one qualification here is the passage at the end of chap. 14, which allows that after unceasing effort, "perhaps a spirit from above might descend upon him, and he will merit something of the spirit that is rooted in some *tzaddik* that will be impregnated within him, so that he may serve God with true joy." For the doctrine of "impregnation" (*ibbur*), see Lawrence Fine, *Physician of the Soul, Healer of the Cosmos: Isaac Luria and His Kabbalistic Fellowship* (Stanford: Stanford University Press, 2003), p. 434 n. 73. Fine writes that *ibbur* "occurs for a temporary period of time, until the impregnated soul accomplishes its goal." If so, the ontological divide between *tzaddik* and *beinoni* in *Tanya*'s system is not really breached.
9. *Tanya*, chap. 27.
10. On the "good inclination / evil inclination," or *yetzer tov / yetzer ha-ra*, see Daniel Boyarin, "Dialectics of Desire," in *Carnal Israel: Reading Sex in Talmudic Culture* (Berkeley: University of California Press, 1993), chap. 2. See also Jonathan Schofer, "The Redaction of Desire," *Journal of Jewish Thought and Philosophy* 12 (2003): 19–53.
11. One example is found in the teaching for *Parashat Emor*, which speaks of *tzaddikim* who have been sanctified from birth, and are filled with Torah and *mitzvot*, but nevertheless may experience pride and ego-involvement, and may fall quickly from their level.
12. Num. 15:39.
13. *Tanya*, chap. 27.
14. For Hassidic acosmism, see Rivkah Schatz-Uffenheimer, *Quietistic Elements in Eighteenth Century Hassidic Thought* (Jerusalem: Magnes Press, 1980); Louis Jacobs,

Seeker of Unity: The Life and Works of Aaron of Staroselye (New York: Vallentine Mitchell, 1966); Mark Verman, "Panentheism and Acosmism in the Kabbalah," *Studia Mystica* 10 (1987): 24–37; Rachel Elior, *The Paradoxical Ascent to God: The Kabbalistic Theosophy of Chabad Hassidism*, trans. Jeffrey M. Green (Albany: State University of New York Press, 1993).

15. My understanding of *Tanya* is consistent with the view articulated by Rivkah Schatz-Uffenheimer in "Anti-Spiritualism ba-Hassidut," *Molad* 171–172 (1962): 513–528, who argues that *Tanya* is not a popularization of the teachings of the Maggid of Mezhirech but a retreat from them. Her views have been criticized by Isaiah Tishby and Joseph Dan, who argue that the teachings of *Tanya* are exoteric, while Rabbi Shneur Zalman's esoteric theology is to be found in such works as *Torah Or* (Kopys, 1837) and *Likkutei Torah* (Zhitomir, 1848). (The views of Tishby and Dan were published in their essay on Hassidism in the *Hebrew Encyclopedia*, 17:775). Be that as it may, it remains true that *Tanya* was the only work of Hassidic teachings by Rabbi Shneur Zalman published in his lifetime. He clearly had an intense interest in the appearance of the work, and the publication project was under his direct supervision. Thus *Tanya* remains the only official, authorized text of Chabad Hassidism as a movement, as envisioned by the movement's founder.
16. See Naftali Loewenthal, "The Apotheosis of Action in Early Chabad," *Da'at* 18 (1987); see also Arthur Green, "Hassidism: Discovery and Retreat," in *The Other Side of God*, ed. Peter. L. Berger (Garden City, NY: Anchor Press, 1981), pp. 104–130.
17. The letter is printed in Ya'akov Barnai, ed., *Hassidic Letters from Eretz-Israel* (Jerusalem: Yad Izhak ben Zvi, 1980), pp. 238–232; cf. David Zvi Hilman, *Igrot Baal ha-Tanya u-Vnei Doro* (Jerusalem: Mesorah, 1953), pp. 105–107.
18. Loewenthal, *Communicating the Infinite*, pp. 51–52, 77–90.
19. I am relying here on the exposition of Joseph Weiss, "Abraham Kalisker's Concept of Communion with God and Men," in *Studies in Eastern European Jewish Mysticism*, ed. David Goldstein (Oxford: Littman Library, 1985), pp. 155–169.
20. Lev. Rabbah 35:5.

4

Rav, *Rosh Yeshivah*, and *Kahal*

Shaul Stampfer

Many important issues in East European Jewish society have been linked to the communal rabbinate, to the heads of *yeshivot*, and to communal structures. Analyzing their interreactions means dealing with some of the central issues of modernization not just in the intellectual sphere but also in day-to-day life. The attempt to understand these relations is made difficult by widely held images of the past that are unrealistic and idealized. These difficulties are of more than academic interest. They seem to have an insidious impact on modern Jews who are trying to deal with contemporary problems. Many contemporary Jews, especially observant Jews, measure themselves against impossible models thought to have been standard in the past, whereas in reality they never existed. This impossible attempt can lead to the adoption of unrealistic policies and goals, and to an uncalled-for sense of failure and incompetence. It is doubtful that the study of Jewish history can give many guidelines as to what should

be done in novel situations, such as the reality of Jewish life today. However, a consideration of the history of *rav*, *rosh Yeshivah*, and *kahal* can alleviate some of the burdens of an imagined past.

To consider rabbis and communities in the modern period, it is necessary first to look at some of the basic characteristics of the rabbinate and the *kahal* in early modern East European Jewry. For our purposes, the early modern period is defined as extending from the beginning of the sixteenth century to the first half of the eighteenth century. It is important to consider some of the key changes that took place, starting with the partitions of Poland in the second half of the eighteenth century. With this done, some points of relevance to the present can be raised. This study is based, of course, on the careful and detailed studies of many scholars and historians and on their insights. Many important topics have yet to be studied, but it is already clear how important and complicated is the history of the *kehillot* and the rabbinate in Eastern Europe. While those communities are gone, we are still living today with the consequences of the changes that took place in that region.

In considering *rav*, *rosh yeshivah*, and *kahal*, it is worthwhile to start off with *kahal* and then to proceed to *rav* and *rosh yeshivah*.[1] Certainly, the institution of the *kahal*, or local communal organization, preceded that of the rabbinate; but the tyranny of chronological order is not a sufficient reason for this sequence. Far more significant is the basic fact that the rabbinate was built on and dependent on the *kahal* structure, the major changes in *kahal* structure in the nineteenth century being among the major factors in the changes in the rabbinate.

Without going into the history and sources for the *kahal* structure, it is sufficient for our purposes to note that for East European Jewry in the early modern period, the *kahal* was the basic element of organized Jewish life.[2] Membership in a *kahal* was not the free decision of individual Jews. The *kahal* was an autonomous legal body that united and had authority over the whole Jewish population of a given town or city. In the Polish-Lithuanian Commonwealth, local *kahal*s were organized in regional and national councils known as the Council of the Four Lands (Poland) and the Council of Lithuania.[3] Both

the *kahal*s and the super-*kahal* organizations owed their existence to their function as tax collectors for the noble and royal authorities. In a feudal system, it was simpler for the non-Jewish authorities to deal with representative Jewish bodies that undertook to deliver tax payments on time, rather than try to find the manpower to collect the taxes directly. Since the *kahal* and super-*kahal* structures existed and enjoyed the backing of non-Jewish authorities, they could also deal with internal needs of the Jewish community that were of little or no concern to the general authorities. For a variety of reasons, an increasing number of *kahal*s in the early modern period found themselves in economic difficulties and took on loans in order to meet their responsibilities for tax payments. Of course, this meant that in the long run they had to spend more and more money to cover the interest on their debts.

Every East European *kahal* had a rabbi in the early modern period, but *kahal*s in Europe had not always had rabbis. The institution of the communal rabbinate in Ashkenazi Jewish society can be traced back to the thirteenth century, when it developed on the model of the Christian church hierarchy.[4] The rabbi, however, differed in a number of key points from his "counterpart" in non-Jewish society.[5] The rabbi was elected by the *kahal* and could also be fired by the *kahal*. The rabbi did not have any inherent powers or authority by virtue of his ordination as rabbi. The absence of the concept of sacraments in Jewish society meant that there was nothing a rabbi did that could not be done by any layman. It should be noted that in the Ashkenazi tradition, a communal rabbi could not be selected if he had relatives in the community where he was a candidate, and sons could not succeed their fathers. This policy was designed to limit the possibility that a rabbi would be involved in local politics or favor one side over another and also to ensure that candidates were selected for their ability and not their parentage.

The early modern period was a good one for the rabbinate as a profession for the simple reason that the Jewish population was expanding and the number of Jewish communities was growing. The concentration of Jews in commerce and the skilled trades, together with the absence of industrialization, placed a natural limit on the

size of most Jewish communities. Merchants and skilled workers had to go where there were clients. This led to a constant flow of European Jews eastward in search of new markets. This migration was the force behind the establishment of new Jewish settlements in Ukraine and Belarus. Each new community founded meant that a new position of rabbi was available. Hiring a rabbi was an expense for a community, but a worthwhile one. Relatively untutored Jews founded many of the new communities, and these communities could not turn to an existing local learned elite. Thus, there was often real need for rabbinical guidance.

The appointment of a rabbi was often a useful strategy in intercommunal politics.[6] New communities usually functioned at first under the wing of more veteran communities. This presented a golden opportunity for the established communities. They generally tried to shift as much their tax burden as they could of onto the shoulders of the residents of the new communities. Therefore, there was a constant struggle between the new and the veteran, and an attempt on the part of the new communities to achieve independence and equality with older communities. Having a rabbi of its own was one way a new community could buttress its claim that it deserved equality.

The authority and function of the rabbi were linked to his ties to the *kahal*.[7] The *kahal* functioned, at least in theory, as a democratic structure very much like a medieval trade guild. Thus the selection of a rabbi was a public and popular acceptance of the rabbi as the religious leader of the community. The *kahal* gave its rabbi a monopoly on various religious responsibilities notably performing marriages and divorces and leading or supervising a rabbinical court. In larger communities, the rabbi would often head a *yeshivah* funded by the local community. These *yeshivot* were small in comparison with *yeshivot* today, but they were important irrespective of their size.

The communal rabbi was also responsible for supervision of an area that *kahal*s were keenly interested in the supply of kosher meat. Taxes on meat were a key element in *kahal* income. The rabbi guaranteed that meat was kosher, and this justified the communal surcharges on the sale of meat. The rabbi did not necessarily have

educational responsibilities, nor was he a preacher or have pastoral functions; others met these needs.

Serving as a symbol of his community was an important function of the communal rabbi that is difficult to pin down but was clearly present nonetheless. The rabbi embodied the ideals of a Jewish community, and his election by the community was a statement of identification with these values. Important communities sought out famous rabbis, but not because they could better meet the needs of the community for observing rituals. It would be difficult to quantify the advantages to a community from "better" legal decisions in ritual or business matters by a more highly acclaimed rabbi. However, the members of Jewish communities certainly attributed great importance to the quality of a rabbi's views. A great rabbi who was honored in other communities was a source of prestige for the residents of a community. In a sense, his fame and stature gave the members of his community vicarious pleasure and honor.

In theory, the authority of the rabbi, as noted above, was justified by his election by the community and the charisma he had by virtue of his knowledge of Torah. In practice however, the rabbi's authority was based on the power of the *kahal* to coerce a recalcitrant member of the community to obey his decisions and the willingness of the *kahal* to do so. It was in the interest of both the rabbi and the *kahal* to deemphasize the element of coercion as a basis of his authority and to emphasize that his religious authority, or the justification for his authority, was based on the selection process on the free choice of the members of the *kahal* to accept his authority.

Rabbinical authority had many limits. Of course, in the areas "assigned" to rabbis, they could have considerable authority. They were the legal decisors in ritual matters, often served as chief judges in rabbinical courts, and had a "monopoly" on performing marriages and divorces. However, this does not mean that rabbis were the leaders of Jewish communities. The true leaders were the secular leaders who had a major role in the appointment of rabbis and determined communal policy. Rabbis were employees whose authority was limited and depended on the cooperation of the local lay leadership. In many communities, business cases were decided by arbitration of

local businessmen rather than by rabbis. More significantly, many elements of business did not easily fit the frameworks of Jewish law. When this happened, rabbis were forced to admit their helplessness. They could either apply standards of current commercial practice to decide the case or transfer the case to arbitration.[8] In the early modern period, rabbinic authority was often severely compromised by the fact that local nobles and officials often interfered in the process of the selection of rabbis and forced communities to accept candidates of their choice choices often influenced by financial considerations, such as bribes or by personal ties between nobles and leading Jewish families.[9] The increasing indebtedness of many *kahal*s was a strong incentive for simony. It was tempting to offer the position of rabbi to a candidate who would undertake to relieve part of the communal debt.[10] Rabbis selected at the direction of a noble or in return for payments to a community treasury may have had the authority that the noble or the *kahal* leaders could give them, but their moral authority or charisma was certainly severely undermined by the way they obtained their posts.

The rabbinate differed crucially and almost totally from Christian patterns of religious leadership in the absence of a formal structured hierarchy. Selection of rabbis by local communities meant that communal rabbis were not subject to the authority of any central rabbinical authority. There was, however, a central administrative authority. The Councils of the Lands united Jewish communities and filled a key tax role for the government; these bodies coordinated the tax payments of the Jewish communities. Therefore, it was in the interest of the kings and their officials that the councils had authority. However, the kings and nobles had little or no interest in there being a strong rabbinate or a representative rabbi for a whole region or kingdom. Even though leading rabbis met at the sessions of the councils, they did not have direct channels of authority over communal rabbis. Thus, local rabbis had no formal superiors.

There was, of course, a widespread recognition that some rabbis were more knowledgeable and gifted than others. The largest communities often sought out the most talented rabbis, and smaller communities had to make do with younger or less gifted ones. Thus,

less famous rabbis often consulted with well-known rabbis, or had their decisions appealed to better-known rabbis. This often had negative consequences when individuals or groups refused to accept the authority or decision of a rabbi. Appealing the decision of a local rabbi often meant a delay in the implementation of a legal decision. However, the same flexibility produced by the absence of a rabbinical hierarchy also made it difficult to co-opt the rabbinate of a given region and meant that social upheavals, such as flight or the establishment of new communities, could be dealt with flexibly and efficiently.

Mastery of Jewish law was not an indication that an individual was a rabbi. In all large Jewish communities there were highly educated Jews, and there was a significant overlap between the educational elite and the socioeconomic elite. The educational system created a situation in which mastery of Talmud, which was generally acknowledged to be the key to entry into the intellectual elite, was usually limited to the upper elements of Jewish society. Scholarliness was one of the elements for the reproduction of class distinctions in Jewish society. Rich men sought out scholars as sons-in-law, and thus study could be a route for economic advancement. Scholarliness did not necessarily mean a rabbinic career. It was widely felt that the ideal was to be wealthy without having to spend too much time on business and to devote most of the day to the study of Talmud and holy texts. This was not only a paper ideal but one that was often put into practice. A common element in a rabbinic biography is the statement that after marriage, the groom started off in business, and only after losing his wife's dowry through poor investments did he accept the responsibility of the rabbinate. The rabbinate or the taking of a salary in return for the fulfillment of certain communal responsibilities was not an ideal, but a fall-back.

The position of *rosh yeshivah* in early modern Poland was intimately linked with the position of communal rabbi. Polish *yeshivot* were communal institutions, and they operated in the familiar pattern of the Ashkenazi *yeshivah*.[11] The host communities funded them, and the communal rabbi was usually the head of the communal *yeshivah*. Running a *yeshivah* was an expensive undertaking.

Therefore, only large communities could host a *yeshivah*, and the larger the community, the more students it could support. For rabbis, being the head of a *yeshivah* had an obvious appeal. It was an opportunity both to teach and to enjoy the respect and discipleship of students. Therefore, heading a *yeshivah* was in their interests, and it was standard for a community to commit itself to supporting a fixed number of students. This commitment was part of the contract it gave to a rabbi, and the number of students was sometimes an element in the negotiations with a prospective rabbi.

The Polish *yeshivah* disappeared in the course of the mid-seventeenth century, and with it the institution of *rosh yeshivah*. It is easy to attribute its disappearance to the social and financial crises engendered by the wars of Poland with Ukrainians, Swedes, and Muscovites. The destruction in this period was very real; in Polish historiography it is termed the "Flood." However, and significantly, while Jewish life revived by the late seventeenth century, the famous *yeshivot* were not reestablished. Their place in the educational system was taken by the *beit midrash* and independent study. The institutions of the *yeshivah* and the *rosh yeshivah* remained familiar to East European Jews from the literature, but not from observation.

From the mid-eighteenth century and onwards, the status and characteristics of the Jewish community were changed in many ways that had a significant bearing on the familiar nexus of *rav*, *rosh yeshivah*, and *kahal*. One of the most dramatic early changes was the dissolution of the Council of the Four Lands in 1764. Despite the attention given to this event, it probably had little effect on the local level. As we saw, it had been a structure of communal leaders and not a council of rabbis. To be sure, rabbis had met at the meetings of the councils, but their role there was secondary, and the rabbis did not derive their authority from their ties with the council. The Polish government carried out a census the same year with the intention of replacing the declarations of the council on Jewish population size with more reliable data. The census revealed a far larger Jewish community than had hitherto been reported, and this in turn led to higher taxes. However, the local *kahal*s remained responsible for the collection of taxes, and they continued to transmit the tax

payments to the appropriate governmental officials. Thus the *kahal* maintained its authority within the community, and this helped it to enforce internal decisions and policies. However, its authority was not to be maintained over the long run.

The process of the weakening of the *kahal*s continued in the seventeenth and eighteenth centuries.[12] Their indebtedness increased, and concern about funding accumulated debt became a serious issue. In the Vilna *kahal*, communal indebtedness led to the sale of leadership positions and to the appointment of the twenty-one-year-old son-in-law of a local financier to the position of rabbi of Vilna and this in the lifetime of the Gaon of Vilna![13] This, however, was not his only position. He also purchased the rabbinates of Koenigsberg and Danzig perhaps for a rainy day![14] The extent of this phenomenon has not been documented, and there is no reason to think that Vilna was a very typical community. However, contemporaries apparently did not express amazement at the situation in Vilna, which supports a suspicion that it was a familiar situation if not widespread.

The local *kahal*s became weaker and their authority diminished in subsequent years. Tax collection began to be administered directly. The community lost the right to maintain an independent court system and to punish members of the community. The religious functions and some social welfare functions remained, but on a very different basis. Compliance was now voluntary, and funding was more in the form of charity than taxation. Where there was taxation, it was in the form of a surcharge on the sale of kosher meat, known as *korobka* or *gabella*.[15] In Galicia, the autonomy of the local *kahal* ended in 1785.[16] In the tsarist empire, the same happened two generations later, in 1844.[17] It would be an oversimplification to claim that this transformation took place overnight. Habit and established patterns continued to influence Jewish communities for a generation and more; this was especially the case in smaller communities. However, change could not be postponed inevitably.

At the same time that the *kahal* was weakening in the late eighteenth and nineteenth centuries, Jews and Jewish life were undergoing change in almost every area. This was the period of the rise of

Hassidism, the spread of Haskalah, and no less important, the rapid and rampant process of acculturation by the Jewish economic elite. It was precisely among this elite that apathy and skepticism with regard to halakhic practice and traditional belief became widespread. The link between the rich and the learned began to weaken. Wealth was now a product of connections with government officials, and the wealthy began to absorb the values and practices of non-Jewish society. They began to seek out sons-in-law who were university students or Russian-speaking, German-speaking or Polish-speaking businessmen.[18] Without rich dowries to look forward to, the rabbinate remained the great hope for Talmud students.

The second half of the nineteenth century was a period of crisis for the rabbinate. Its members no longer enjoyed the support of the rich and the option of intermarriage with them. Moreover, the rabbinic job market was in crisis. The border of Russia barred the continuation of migration eastward precisely at a time when there was a great deal of economic activity in the interior of Russia. This in turn slowed down the formation of new communities. At the same time, the process of urbanization was spreading elsewhere in the Pale of Settlement. Concentration in cities was bad for the rabbinical job market because just as a single rabbi can serve a small community, so can he serve a much larger number of Jews crowded into a town or city. Thus, while the Jewish population was growing, and also presumably the number of Talmud students who hoped for a position in the rabbinate, the number of new positions did not keep pace. Even when jobs were available, the weakened *kahal* could not pay a decent salary.[19]

Selecting rabbis became a nightmare for the *kahal*s in the late nineteenth century. When the *kahal*s were responsible for taxation and relations with the government, the communal leaders had been powerful figures with experience in wielding power. In that context, selecting a rabbi was just one more difficult decision that had to be done and was done. With less authority and fewer responsibilities, making a hard decision was more difficult than in the past. This was exacerbated by the ideological splits that marked communities.

There were *hassidim* and *mitnagdim*, modernizers and conservatives, Zionists and anti-Zionists, and there were splits within each camp. The symbolic role of the rabbi as representing the values of a community or the elite of a community meant that each camp was intensely concerned that a rabbi who identified with them be selected for the position of local rabbi. This was not because the presence of a rabbi with different views would have required them to change their positions. It would not. However, selection was a reflection of the balance of power in a community and symbolized the wave of the present (or of the near future). Therefore, in many cases, it was simpler just to avoid choosing a rabbi and to function without a communal rabbi altogether.

At the same time, rabbis were necessary in one way or another. Kosher meat supervision remained a key element of communal life because taxes on kosher meat were an important source of communal income. Of course, as increasing numbers of people ceased to keep kosher, this source became more problematic, but it was always significant. However, kosher meat supervision could be achieved without having an official communal rabbi with all the symbolic authority he held as representative of the community. There was no shortage of learned individuals who could be hired as "technicians" without many political implications.

One easy way out of this bind was simply to select the son or son-in-law of a rabbi as his successor. Such a choice did not indicate identification with his beliefs or outlook, but instead showed a degree of mercy to the family of the previous rabbi. It could even function as a form of pension in a pre-pension era. An heir might have the charisma of his father, but he was less likely to serve as a symbol of the values of his community, and therefore his selection was a less charged process. In the tight market for rabbinical positions in the nineteenth century, sons and sons-in-law of rabbis were quite interested in strengthening this practice. There was no shortage of proof in rabbinic texts at their disposal. The consequence of a less qualified rabbinate did not deter many communities. Many did not care anyway how qualified a rabbi was, as long as the community

was quiet. These factors operated together and led to a sharp rise in the inheritance of rabbinical positions. This did not lead to a rise in the prestige and level of the rabbinate.[20]

From the mid-nineteenth century on, the traditional communal rabbinate faced competition in the form of the crown or government rabbinate.[21] The Russian government, from 1844 and on, required communities to appoint Russian-speaking rabbis. The hope and assumption was that the Jewish communities would accept their authority and model. The existence of such rabbis would speed the process of acculturation. The goal of acculturation was to be achieved to a large extent, but more because of economic pressures and opportunities. The government rabbis were generally unable, at the outset, to establish their authority in communities that measured the quality of a rabbi by his mastery of Talmudic literature. Therefore in many communities, there were two rabbis an official rabbi and a "spiritual" rabbi. Many of the new-style rabbis were cynical or incompetent (or both), and it was easy to dismiss them in the early years. However, by the end of the century there were already some talented, committed, and popular crown rabbis who had some influence among the acculturated Jews for whom the old-style rabbis were totally meaningless.[22] Even in the traditional sector there was a growing recognition, at the beginning of the twentieth century, that a general education could enable rabbis to reach and influence an important segment of the Jewish community. But for the time being, the dual rabbinate served to divide communities. On the other hand, the populations attracted to each type of rabbi were so different from each other that a single-rabbi system would probably not have made any difference.

At the same time that the communal rabbinate was facing increasing difficulties, the Hassidic movement and the *yeshivah* movement were developing new models of leadership in the Jewish community. The *tzaddik* filled a key role in the leadership of the Hassidic movement.[23] His charismatic authority was linked to the beliefs of his followers about the special nature of his soul, his ability to guide his followers and help them, and their identification with his teachings. The literature on the early Hassidic movement has

given attention to the relationships between the Hassidic *tzaddikim* and communal rabbis. The working assumption was that communal rabbis should have resented the growing importance of Hassidic rabbis and Hassidism, and that this should have led to conflict and opposition. A closer look at reality suggests that conflict was not inevitable and may not have been widespread. Communal rabbis did not see themselves as spiritual guides of their communities, nor did they offer blessings or personal advice to members of their communities. Their responsibility was to answer questions of law and to supervise *kashrut*; this was not necessarily undermined by the new role of the *tzaddik*.

Starting from the beginning of the nineteenth century, there was a revival of the institution of the *yeshivah* in Eastern Europe.[24] This began with the foundation of a *yeshivah* in Volozhin at the beginning of the century, followed shortly by the establishment of a *yeshivah* in Mir. In the last quarter of the century other *yeshivot* were founded. By the end of the century almost all advanced study of Talmud in Lithuania and Belarus was carried out within the framework of *yeshivot*. This dramatic growth should not hide the fact that there was a concurrent collapse of the *beit midrash* system. Thus, there was probably a decline in the absolute numbers of Talmud students during this period. By the end of the nineteenth century there were probably more Jewish students in *gymnasia* and universities than in *yeshivot*. Unquestionably, more young Jews dreamed of getting a general education than of sitting at the feet of a famous *rosh yeshivah*.

The new *yeshivot* differed significantly from the traditional Ashkenazic *yeshivot* in that they were not communal institutions. R. Hayyim Volozhiner maintained his *yeshivah* by collecting money from supporters all over Eastern Europe. His students did not eat meals with local householders, as had previously been the practice in the *batei midrash*. Instead, they received a stipend from the head of the *yeshivah* and used it to rent rooms and pay for their meals. His *yeshivah* was not only independent of the community of Volozhin, but over the course of time, much of the local community became dependent on the *yeshivah* as a source of income. This pattern of

regional and later international fundraising as a means of support gave the *rosh yeshivah* a great deal of independence from local pressures and a great deal of authority among the students. However, in a sense, one dependence was traded for another. When funding is local and support for a *yeshivah* is part of a contract between a community and a rabbi, the rabbi can devote his efforts to his rabbinical functions and teaching. Independence from the community means that the head of a *yeshivah* is personally responsible for raising funds. His success is a direct result of his personal popularity and charisma; this requires a significant investment of time and effort.

The structure of the new *yeshivot* encouraged strong ties between the heads of the *yeshivot* and the students. The dependence of students on the *yeshivot* for financial support and the long academic year created conditions in which *rashei yeshivot* took on many parental functions. Students of the *yeshivot* had to deal consciously or unconsciously with the question of whether to remain traditional or to follow in the footsteps of the richer and more successful. The decision to remain in a traditional framework was often closely related to the influence and model of the *rosh yeshivah*, and thus there was a strong emotional dimension to these ties. At the same time, it would be imprudent to assume that every student felt close to a *rosh yeshivah* or was strongly influenced by him. Such feelings are reported in memoirs, but there are also records of the opposite attitudes. It is not easy to determine what was typical and what was atypical.

From the start, the heads of the *yeshivah* often played a major role in Jewish communal life. Rabbi Hayyim Volozhiner acted as a spokesman for the non-Hassidic Jews of Eastern Europe on a number of occasions, and so did his son and successor, R. Isaac. Subsequent heads of the *yeshivah*, notably R. Tzvi Yehudah Berlin (the Netziv) and R. Hayyim Soloveichik, were also prominent spokesmen. The same is true with regard to R. Eliezer Gordon of Telz, the Hafetz Hayyim, and others. It was not always the case; the leaders of the *mussar* movement were not active in communal life. Here as well, it would have been possible to anticipate tensions and opposition between heads of *yeshivot* and communal rabbis. However, in practice

there was generally little tension. The functions filled by the heads of *yeshivot* were not the same as those filled by local rabbis. Moreover, in many communities, there was no elected communal rabbi but rather a multitude of rabbis who had specialized local tasks, such as *dayyan*, *kashrut* supervisor, and teacher, none of which was adversely affected by the *yeshivot*. When Talmud study became concentrated in *yeshivot*, there was a concomitant rise in the fame and influence of *rashei yeshivah*, but it was not at the expense of communal rabbis. The most famous rabbi in Eastern Europe in the late nineteenth century was probably R. Isaac Elhanan Spector. Not only was he not opposed to the *yeshivot*, but he was actually called on for assistance by most of the *rashei yeshivah* of his time. Given the fact that *yeshivot* were always in need of funding, it is clear that *rashei yeshivot* had no interest in tension between them and communal rabbis. They often turned to communal rabbis for assistance in fundraising.

Hassidic courts and *yeshivot* faced similar dilemmas with regard to choosing a successor to a departed *tzaddik* or *rosh yeshivah.*[25] The ownership of the court or *yeshivah* was not clear. It was not personal property, nor was it the property of the local community. It belonged to a "virtual" community, but that body was not a legal entity. Therefore it was not clear who was actually entitled to appoint a successor, or how this was to be done. The strong personalities who usually headed courts or *yeshivot* did not usually encourage decision-makers in their near vicinity. One alternative was for the followers or students to split into smaller groups and for each to attach itself to whoever it chose. This was possible and happened, but it was not in the interest of many dependent on the court or *yeshivah,* and usually not in the interest of the institution. In this vacuum, inheritance by a son or son-in-law was usually the best solution, even though there was no guarantee that the successor was at the level of his predecessor. However, a weak candidate was often better than a struggle over succession.

At the same time, many of the elite of the Jewish community were moving in nontraditional paths, and the broader masses were preparing to follow. There was a conservative reaction that we can term a transition from Traditionalism to Orthodoxy.[26] This

involved a voluntary and often conscious commitment to the authority of tradition and Jewish law. Until then, the model of the communal rabbi as the rabbi of all the Jews in a given community had prevailed. His authority was limited in scope, but enjoyed the sanction of communal authority. What developed was much closer to the American model of several autonomous synagogues in any given area. Acceptance of rabbinic authority became a question of choice. Individuals who shared a similar ideology or point of view formed communities of like-minded individuals that went on to select rabbis. The authority of these rabbis rested on acceptance of them as authoritative interpreters of Judaism and not on the power of a communal body to enforce obedience.

Some elements of the developing Orthodox sector based much of their ideology on a total acceptance of the authority of rabbis.[27] In these sectors, local rabbis had more authority then they ever had in the past. This phenomenon was most vivid in its early stages in Hungary among the followers of the Hatam Sofer. However, the pattern of charismatic community rabbis and highly committed groups of laymen soon spread to Eastern Europe. Thus a rabbi like R. Hayyim Ozer Grodzinski could wield great authority among supporters in Vilna and elsewhere even though he did not have an official position as rabbi of Vilna. His authority was internal and limited to certain circles.

In the relations of Jews with non-Jewish society, rabbis played a major role, from the dissolution of the Councils of the Lands until the Holocaust. The frameworks on the basis of which laymen could claim to represent a Jewish community or the Jewish population in a region disappeared. In the resulting vacuum, the rabbis often took on roles as representatives of the Jewish community in the absence of recognized communal leaders. The authority of these rabbis over their fellow Jews was far more limited than in the past, but the decline in the authority of the secular leadership was even greater. In the absence of strong lay leaders, rabbis often filled a vacuum.

There never was a golden age of the rabbinate. Whenever a historical period is examined, the past always seems to have been better. Rabbis were always dependent either on communal leaders,

or on non-Jewish power brokers, or on subelements of the Jewish community. Their roles and authority were directly tied to the nature of their supporters, to the tasks assigned them and to the perceived need of their supporters for rabbis. Their opponents were usually not individuals who claimed equal or greater competence in Jewish matters, and often indifference or jealousy was the greatest problem. In this respect, in the nineteenth and twentieth centuries in Europe, *rashei yeshivah* were more likely to be allies than competitors.

The nature of Jewish communal life in America differs radically from what it was in Eastern Europe. The expectations congregants have of a rabbi to be a speaker, to be a religious guide, to perform pastoral functions are equally different. In the past, popular preachers spoke, and not rabbis. There was little need for religious guidance because there were few alternatives. The pastoral functions of contemporary rabbis also reflect the influence of non-Jewish circles and the decline of traditional frameworks like the *hevrot* that often filled these roles. At the same time, new modes of communication make it possible for institutional leaders to approach affluent individuals for support without working with communal rabbis. These new conditions mean that there are changing relationships between school and society, and between *rosh yeshivah* and communal rabbi. In this case, an awareness of the differences should make it clear that the past is not much of a model. What can be learned from the past is the legitimacy of flexibility and innovation, and that commitment can be expressed in many ways. Regarding the questions of how to innovate and develop, the only lesson the past can give us is that the answers to these questions cannot be learned from the past.

NOTES

I am grateful to the participants of the Orthodox Forum and to Professor Gershon Bacon for their good counsel in the preparation of this paper.

1. A standard work on this topic is Isaac Levitats, *The Jewish Community in Russia, 1772–1844*; vol. 1 (New York: Columbia University Press, 1943), vol. 2 (Jerusalem: Posner, 1981).
2. Jacob Katz, *Tradition and Crisis*, trans. Bernard Cooperman (New York: New York

University Press, 1993) gives a fine introduction to the topic of communal organization in the medieval period.

3. Much more has been written on this topic in Hebrew than in English. A useful source that should be used with care is Shmuel Arthur Cygielman, *Jewish Autonomy in Poland and Lithuania Until* 1648 (Jerusalem: S.A. Cygielman, 1997).
4. A fascinating discussion of many aspects of the medieval and early modern European rabbinate is found in Yisrael Yovel, *Hakhamim be-Doram* (Jerusalem: Magnes Press, 5749).
5. For a useful survey of the rabbinate, see Simon Schwarzfuchs, *A Concise History of the Rabbinate* (Oxford: Blackwell, 1993).
6. To the best of my knowledge, this topic has not been systematically studied. My views are based on random reading in the sources of the period.
7. Adam Teller, "The Laicization of Early Modern Jewish Society: The Development of the Polish Communal Rabbinate in the 16th Century," in *Schoepferische Momente des europaeischen Judentums,* ed. Michael Graetz (Heidelberg: C. Winter, 2000), pp. 333–350. See also Schwarzfuchs, *Concise History.*
8. See Edward Fram, *Ideals Face Reality: Jewish Law and Life in Poland,* 1550–1655 (Cincinnati: Hebrew Union College Press, 1997), pp. 144–164.
9. M.J. Rosman, *The Lord's Jews: Magnate-Jewish Relations in the Polish-Lithuanian Commonwealth during the Eighteenth Century* (Cambridge, Mass.: Harvard University Press, 1990), pp. 185–205.
10. See the description in Yisrael Klausner, *Vilna be-Tekufat ha-Gaon* (Jerusalem: Mass, 5702), pp. 50–82.
11. See the description in Nathan Hanover, *Abyss of Despair*, trans. Abraham Mesch (New York: Bloch, 1950). On *yeshivot* in general, see the fine overview in Mordechai Breuer, *Ohalei Torah* (Jerusalem: Shazar, 2003).
12. Many of these topics are dealt with in Gershon Hundert, *The Jews in Poland-Lithuania in the Eighteenth Century: A Genealogy of Modernity* (Berkeley: University of California Press, 2004). See especially chap. 5, "Was There a Communal 'Crisis' in the Eighteenth Century?" for a discussion that gives due attention to stability.
13. On Vilna in this period, see Israel Cohen, *Vilna* (Philadelphia: Jewish Publication Society, 1943). On the many rabbinates of R. Shmuel b. Avigdor, see Klausner, *Vilna be-Tekufat ha-Gaon*.
14. See Yisrael Klausner, *Vilna: Yerushalayim de-Lita: Dorot Rishonim* 1495–1881 (Kibbutz Lohamei ha-Getaot, Beit Lohamei ha-Getaot, 1988), p. 92.
15. See Levitats, *Jewish Community in Russia,* vol. 1, chap. 3.
16. Avraham Yaakov Brawer, *Galitziyah Yehudiyah* (Jerusalem: Bialik, 5725), p. 182.
17. See the classic study, Azriel Shohat, "Ha-Hanhagah be-Kehillot Russiyah im Bitul ha-Kahal," *Tziyon* 42:3–4 (5737).
18. For examples see Zvi Nissan Golomb, *Damen Rekht* (Vilna: Rosenkrantz & Shriftzetser, 1990), p. 18.
19. See Immanuel Etkes, "The Relationship Between Talmudic Scholarship and the Institution of the Rabbinate in Nineteenth-Century Lithuanian Jewry," in *Scholars*

and Scholarship: The Interaction Between Judaism and Other Cultures, ed. Leo Landman (New York: Michael Scharf, 1990). For a detailed description of the tribulations of a communal rabbi, see the autobiography of Rabbi Kook's father-in-law, Eliyahu Rabinovitz-Te'omim, *Seder Eliyahu* (Jerusalem: Mossad Harav Kook, 1984).

20. I discussed this in "Inheritance of the Rabbinate in Eastern Europe in the Modern Period Causes, Factors and Development over Time," *Jewish History* 13:1 (Spring 1999): 35–57.
21. See Azriel Shohat, *Mosad* "*ha-Rabbanut mi-Taam*" *be-Russiyah* (Haifa: University of Haifa Press, 5736).
22. For an autobiography of an exceptional (and martyred) rabbi of this type, see Jacob Maze, *Zikhronot*, 4 vols. (Tel Aviv: Yalkut, 1936).
23. The literature on the *tzaddik* is, of course, immense. A useful starting point is David Assaf, *The Regal Way: The Life and Times of Rabbi Israel of Ruzhin* (Stanford: Stanford University Press, 2002).
24. The discussion of the Lithuanian *yeshivah* in the following pages is based on Shaul Stampfer, *The Formation of the Lithuanian Yeshiva*, 2nd ed. (Jerusalem: Merkaz Zalman Shazar, 2004). An English edition is forthcoming and will be published by the Littman Library.
25. See Stampfer, "Inheritance of the Rabbinate."
26. See on this topic the many works of Jacob Katz and Moshe Samet. Also see Haym Soloveitchik, "Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy," *Tradition* 28 (1994): 64–130.
27. This topic is explored in Michael K. Silber, "The Emergence of Ultra-Orthodoxy: The Invention of a Tradition," in *The Uses of Tradition*, ed. Jack Wertheimer (Cambridge, Mass.: Harvard University Press, 1992), pp. 23–84. See also the detailed discussion in Gershon C. Bacon, *The Politics of Tradition: Agudat Yisrael in Poland,* 1916–1939 (Jerusalem: Magnes Press, 1996), chap. 3.

5

New Conditions and New Models of Authority: The *Yoatzot Halakhah*

Chana Henkin

I propose to examine one example of the reconfiguring of leadership in Orthodox life today, an area in which I am intimately involved, and that is the emergence of women in Israel's religious national community as halakhic consultants. The process is young, but trends are becoming apparent. I would like to examine two questions:

- Why has the last decade witnessed the emergence of female halakhic experts; what is the nature of their authority, and what role do they play in the community?
- What relevance does this Israeli phenomenon have to North America?

THE LAST DECADE

It is difficult to overstate the change in religious orientation in Israel

precipitated first by the signing, and then by the collapse, of the Oslo Accords, and the resulting weakening of eschatological expectations. The Merkaz Harav stream was dominant from the Six Day War until the mid-1990s, and the dream of a greater Israel with messianic overtones permeated non-haredi religious education in Israel. In the years following Oslo 1 and Oslo 2, many young people were faced suddenly by the emptiness of their teachers' catchwords and by a blurred vision of religious Zionism. A generation imbued with the faith that "Behold, He stands behind our wall, looking through the windows, peering through the lattice"[1] was forced to contend with the realities of "until the day cools, and the shadows flee away."[2]

Oslo presented the national-religious community with a seismic shock that made it increasingly vulnerable, or receptive, to the influence of post-modernism. Growing numbers of the young modern, observant community in Israel turned away from mutually-shared goals and collective ideals in search of individual modes of self-fulfillment. There began a surge in Carlebach davening, a quest for spirituality that included Eastern spirituality, a renewed interest in *hassidut* and finding one's own way to God, and diversity in religious externals as well as creed. Whereas for 150 years Diaspora Judaism had struggled to create a synthesis between the truths of Torah and the challenges of modernity, the national-religious community in Israel was suddenly confronted with post-modernism, in which the search for connectedness replaces the search for truth. More avant-garde *yeshivot* have gained students at the expense of the older, more established *yeshivot*. Curricula are more diversified than in the classic *yeshivot*, with a stress on *hassidut* and personal spiritual development, and sometimes including unprecedented options, such as creative *midrash*-writing workshops.

In this climate, the *midrashah* movement the world of higher Torah learning institutions for women that began in Israel in the 1980s has thrived.[3] Side-by-side with young people's reaching for enhanced religious meaning and spirituality, there has taken place an unprecedented flowering of women's Torah study on every level, and the *midrashot* have grown in number and in size.

Today, there are twenty Israeli *midrashot*. To a greater or lesser

extent, they all integrate text-based learning in a *beit midrash* setting, and many offer or focus on Talmud study. Although most are still one-year, post–high school or post–national or military service frameworks, several have progressed to multi-year programs, including *mekhonim gevohim*, the women's equivalent of a *kollel* wherein the student, who is usually married, receives a fellowship stipend to engage in multi-year high-level study. Of the twenty *midrashot,* seven are headed by women *rashot midrashot* and one by a woman-and-man team.

The opening of higher Torah learning to women in Israel predates the Israeli Orthodox feminist movement,[4] and most *midrashot* have maintained their distance from it. The *midrashah* movement in Israel is not perceived as a threat by the national-religious rabbinate, but rather as a natural extension of the flourishing *ulpanah* high school system. Teachers in girls' *ulpanot* and *midrashot* and in boys' *yeshivot tikhoniyot* and *yeshivot hesder* share a common background and religious outlook and orientation, and float easily between the different frameworks. In the post-modern climate, in fact, the women's learning movement in Israel is viewed as one of the most positive developments on the Modern Orthodox horizon. The authenticity of the religious motivation of the institutions and women has not been called into question.

CLIMATE AND CONCERNS IN NORTH AMERICA

Whereas in Israel the opening of the higher reaches of Torah learning to women preceded Orthodox feminism, in the United States the opposite is true. Both because of the centrality of the synagogue in Orthodox life in the United States, and because of the language barrier that limits access to higher Torah learning, American Orthodox feminists focused upon women's *tefillah* and upon changing synagogue ritual to be more inclusive of women. Sharing neither idiom nor scholarship with the rabbinic community, some Orthodox feminist leaders couched their concerns in confrontational terms. In response, some rabbinic leaders displayed hypersensitivity toward all displays of Orthodox feminism. Two objections repeatedly raised by American rabbis and *rashei yeshivah* concern the perceived

anti-halakhic goals of the Orthodox feminists, and the feared slippery slope toward women rabbis.

The depth of the antagonisms centering around Orthodox feminism in the United States parallels and reflects the struggles for influence and control in Modern Orthodox circles between the "right" and "left" wings, and between *rashei yeshivot* and community rabbis. In addition, Modern Orthodox rabbis often look over their shoulders at the Agudah and similar groups, which in turn devote considerable attention and energy to attacking Modern Orthodoxy and its institutions, such as Yeshiva University. This constant undercurrent of criticism and strife is very different from the situation in Israel, where national-religious groups pay little attention to what the Agudah and other *hareidim* have to say, and vice versa.[5] The focus in Israel is more on expanding the network of national-religious institutions than on overcoming real or anticipated threats and dangers. Visions of a "schism" within the Orthodox community in Israel over the feminist issue, for instance, are virtually unheard of.

THE *YOATZOT HALAKHAH*

Against this background I would like to assess the present circumstances and future prospects of the *yoatzot halakhah*, with which I am closely involved. First, a brief description.

In September 1997, Nishmat, of which I am dean (*rosh midrashah*), established the Keren Ariel Program to qualify women halakhic consultants in the area of the laws of *niddah*. The field of *niddah* was chosen because of (1) the natural affinity of women to study this area of Torah that so intimately affects them. Rightly or wrongly, very many Orthodox women do not bring their intimate questions to rabbis, at an incalculable personal and halakhic cost. (2) The easily demonstrable need for women experts to assist women in observance of *taharat ha-mishpahah* and to find solutions to problems caused by the interfacing of women's health and halakhah. The criteria for acceptance to the program are personal halakhic observance, commitment to disseminating *taharat ha-mishpahah*, absence of extraneous motivations, strong background in learning Talmud, and teaching or leadership skills. The candidate must be married.

The program itself is a two-year, half-week program that spans more than one thousand hours of halakhic study. It consists of:

- Intensive *havruta* study of *hilkhot niddah* on the order of the *Shulhan Arukh*, from the Talmudic discussions through the *rishonim* and *aharonim*, including contemporary *posekim*. The syllabus is the same as the one studied by male *kollel* students in Israeli *yeshivot*.
- A daily *shiur* by the head of the program,[6] also identical to the one he delivers to his *kollel* students.
- Bi-monthly evening lectures and seminars in areas where Halakhah and women's health and medicine interface (gynecology, fertility, sexuality, etc.).

After completion of the course of study and written tests, a lengthy oral examination is administered by outside examiners, including heads of three different *kollelim* who specialize in *hilkhot niddah.*

This is clearly a formidable curriculum, and it reflects the very high motivation of the students, who range in age from twenty-two to fifty and include women of proven academic and career achievements. The first class of eight women graduated in 1999. The second class, with fourteen women, completed its studies in 2001. The third class, with fourteen fellows, graduated in 2003, and subsequent classes are scheduled to complete the course of study every two years.

The title *yoetzet halakhah,* "halakhic consultant or adviser," was selected to convey that these women are not rendering original halakhic rulings. For new rulings, they refer to recognized halakhic authorities. However, because of the volume and diversity of the questions they handle, they are developing a practical expertise in the field superior to that of many rabbis.

Many of the *yoatzot halakhah* are currently employed in two undertakings initiated by Nishmat. The first is a telephone hotline on matters of *taharat ha-mishpahah*, fertility, and related concerns, in operation since December 2000. The hotline is conducted in Hebrew

and English, six hours a day, 6:00 P.M. through midnight and on Friday mornings. A different *yoetzet* answers the phone each day, typically handling up to twenty-five calls. A rabbi is on call when a *pesak halakhah* is needed. Six thousand inquiries were fielded the first year of operation. While most inquiries come from Israel, a substantial number come from abroad. Recently a toll-free number from the United States was established, 1-877-YOETZET, courtesy of the IDT Corporation.

The second undertaking is the *taharat ha-mishpahah* Web site, www.yoatzot.org, online since late 2002. *Yoatzot* on this site answer questions just as on the telephone hotline. All responses are rabbinically reviewed before sending. In addition, there is a constantly expanding library of terms, concepts and *halakhot* as well as relevant medical articles, accessible directly online. With virtually no formal publicity, the Web site has averaged up to ten inquiries daily as well as hundreds of visits weekly.

PRELIMINARY OBSERVATIONS

The transformation in women's roles in Orthodoxy is barely a generation old, still in its infancy, and its permanent forms and nature have not yet been determined. It would be premature to predict the degree of reconfiguration in halakhic authority that the *yoatzot halakhah* may have set in motion. However, a number of preliminary observations and predictions can be made, even if other than anecdotal evidence is yet unavailable:

1. There are the beginnings of a reallocation of influence and, concomitantly, status and prestige within the Orthodox community. In this regard, Israeli national-religious circles are more open to women's Torah learning and feel less threatened by it than their American counterparts, perhaps because American Jewry has experienced a Rav Soloveitchik but not a Nechama Leibowitz.
2. Woman's Torah study in general and *yoatzot halakhah* in particular offer the prospect of personal religious charisma based on Torah scholarship, heretofore denied to women.

3. Some *rashei yeshivah* in the United States have told me that they might accept *yoatzot halakhah* if the program were limited to wives of rabbis. The community would then view the phenomenon not in terms of women attaining independent status, but rather as part of the helpmeet role. It seems highly unlikely that such a view will prevail, even in the United States.[7]

In their opposition to reconfiguring religious leadership within Orthodoxy to include learned women, some American rabbis may be fighting the last war. Concerned lest the Orthodox feminists overturn the Halakhah and ultimately sway Modern Orthodoxy from its halakhic posture, these rabbis overlook the fact that the younger, intensively Torah-schooled Modern Orthodox generation of women is not feminist and identifies, not with the thrust to change synagogue ritual, but rather, with the desire to make for itself a place within the world of traditional Talmudic and halakhic scholarship.

Yoatzot halakhah are embarked upon a journey toward increased exercise of halakhic authority. The Talmud stresses the grave consequences both of unqualified scholars issuing halakhic rulings and of qualified scholars not issuing rulings.[8] A distinguished *hareidi* rabbi in Israel recently met a *yoetzet halakhah* and discovered, to his astonishment, the depth of her learning in the field of *taharat ha-mishpahah*. He told her, firmly, "I would never have agreed in advance to your learning all this, but now, you must utilize your learning for the good of the community." As more and more *yoatzot halakhah* contribute more and more to the Orthodox community, even those who initially opposed the idea will swing their support to it.

NOTES

1. Song of Songs 2:9.
2. Ibid. 4:6.
3. The *midrashot* were seeded by the American *baal teshuvah* movement following Israel's Six-Day War, when well-educated young Jews made their way to Israel to study Judaism. Women who were used to equality in a university setting quickly pushed for learning opportunities parallel to their university opportunities.

Although the first higher Torah learning programs in Israel were for native English speakers, they were quickly joined and soon outnumbered by native Israelis.

4. Kolech, the Orthodox feminist organization in Israel, was established only in 1998.
5. My husband, Rabbi Yehuda Henkin, observes that members of the national-religious movement in Israel have no inferiority complex regarding the *hareidim*. They serve in the army, a major religious privilege as well as civil obligation, whereas the *hareidim* do not.
6. Rabbi Yaakov Warhaftig, *rosh kollel* of Kollel Ariel, no relation to the Nishmat program of the same name.
7. Many *rebbetzins* serve as adjuncts to their husbands, but not every *rebbetzin* is capable of or interested in filling such a role in the field of *taharat ha-mishpahah*. Moreover, rebbetzins are usually trained in the practice but not in the fine points of the Halakhah and the *shitot* of the *rishonim* and *aharonim*. They will convey a question to the rabbi just as it is asked. A *yoetzet halakhah*, by contrast, often goes beyond the question as initially posed, and raises halakhic options that the rabbi may not have considered on his own.
8. *Sotah* 22a and *Avodah Zarah* 19b: "[*Horaah*] *has felled many* that is a scholar who has not reached the stature of ruling and yet rules; *and great are her fallen* that is a scholar who has indeed reached the stature of ruling yet does not rule.

6

The Role and Authority of the Rabbi in American Society

Chaim I. Waxman

I have a story that I think captures a good part of my approach to the topic at hand. Back in the spring of 1974, I was invited, as a professor actively engaged in studying and speaking about Israel and the Middle East, to speak at an interfaith clergy conference on the Middle East at a university in Bridgeport. I gave my talk in the morning, and was invited to stay for the day. I am a sociologist, which, as I tell my students, is a "professional *yente*" so, at lunchtime, I moved from table to table to speak with some of the conference participants as well as to listen in on their conversations. In many cases, they were discussing their various issues with their congregations, and I was struck by the fact that if I couldn't see who had a collar, a *kippah*, or neither, I was not able to tell whether the speaker was a rabbi, a priest, or a minister. The issues they faced were, essentially,

the same. That is why I believe it is so instructive to look at religion and clergy in American society to understand the role and authority of the rabbi.

There is no single model of the rabbinic role, and we have very few empirical measures of the authority of the rabbi. Since the United States is the largest contemporary Jewish community outside of Israel and has no publicly legislated rabbinate, the focus of this paper is on the role and authority of the rabbi within a voluntary context. In order to evaluate the rabbinic role, it is necessary to view it in a comparative perspective. This paper, therefore, looks at what the evidence indicates with respect to religion and religious authority in contemporary American society before turning to American Judaism in particular.

Most sociologists of religion agree that modernization has resulted in the decline of religious authority and an increase in the privatization of religion. Belief and participation are not highly significant because they are not bolstered by other segments of society. Goldstein and Goldstein (1996) appear to have found similar developments for America's Jews. Their research suggests that when Jews move to places where Jewish culture is not conflated with neighborhood norms, where there are no sanctions for intermarriage beyond, perhaps, the synagogue, and where violating ritual norms is ignored by family and friends, those who persist in maintaining the traditional norms are generally those who are personally and strongly committed, because religion no longer has power outside of the religious sphere. Many people now see themselves as just Jewish, and their Jewish participation is low because there are few consequences associated with lapsing in practice. This contrasts sharply with a residential area in which there is a relatively dense population of traditionalists. When Judaism and community/kinship are consolidated, as they would be in such an area, the religious participation net effect of subjective religious belief is increased (Rabinowitz, Kim, and Lazerwitz 1992, 1995).

Until relatively recently, the authority of religion, even when not manifested in daily religious involvement, could be seen in the characteristics highlighted by the anthropologist Carl Withers, who,

writing pseudonymously, analyzed the town of "Plainville." He described the role of religion as follows:

> It is difficult in a few words to fairly assess the role of religion and churches in Plainville. The daily interests of most people…seem to be not religious at all, but work ("making a living"), sociability, and gossip. Yet religion seems to permeate the daily air, not as a stress on discriminating the "saved" from the sinners…but as a vital concern with the negations on moral conduct which the churches set up. The religious control of morals operates mainly through gossip and the fear of gossip. People report, suspect, laugh at, and condemn the peccadilloes of others, and walk and behave carefully to avoid being caught in any trifling missteps of their own. (West 1945, 162)

Social control of this sort is no longer feasible, if for no other reason than the increasing heterogeneity of communities, both religiously and culturally. In addition, with modernity's emphasis on the autonomy of the individual, there is an increasing tendency to tolerate all forms of behavior that do not directly infringe on the rights of others. This is what it meant by civil rights in the public sphere, and it contributes to privatization in the religious sphere.

Privatization and personalization are so strong in contemporary culture that they even influence patterns of religious fundamentalism. Thus, Linda Kramer, a born-again Christian in Ohio, when asked why she goes to church and whether church attendance is a requirement for religiosity, responded in terms of her own "growth." As she put it, "You don't have to go to church. I think the reason I do is because *it helps me grow*. It's especially good for my family, to teach them the good and moral things. To see that families can operate as a unit" (Roof 1993, 105; emphasis added). As religiously committed as she is, Linda values religion for what it does for her own spiritual growth and that of her family. Roof found this emphasis on personal spiritual growth to be representative of the quest of the religious returnees in his study (Roof 1993, 191–194).

This pattern is not unique to Christian returnees. In three

separate studies of male and female newly-Orthodox Jews, *baalei teshuvah*, the psychological and sociological benefits or functions, especially those of order and meaning, almost invariably had the greatest attraction for them. In Danzger's study of newly-Orthodox men (1989) and in the studies of Davidman (1991) and Kaufman (1991) of newly-Orthodox Jewish women, there is hardly any mention of theology or articles of faith. Overwhelmingly, and somewhat ironically for a group and system whose name derives from "ortho" and "dox," meaning "correct belief," it was not the articles of faith, per se, that attracted them but what the religion did for them. Davidman, for example, found that it is often a personal crisis that leads women to turn to Orthodoxy, which would appear to reconfirm Peter Berger's thesis (1967) of the significant role that religion plays as a shield against anomie. It was precisely the sense of order and meaning that they saw Orthodox Judaism as fostering, that attracted these returnees. They were attracted to Orthodoxy's system of order and meaning in general, and especially to the meaning it had and continues to have for them as women.

As for American Judaism as a whole, Charles Liebman offers an analysis of the increase in ritual among the Orthodox and the flourishing of ceremonial behavior among the non-Orthodox. Rituals, he argues, are *mitzvot*, commandments, whereas ceremonies are symbolic acts, which derive from and appeal to personalism, voluntarism, universalism, and moralism. He focuses on the non-Orthodox, who constitute about 90 percent of American Jewry, and details how they are creating a uniquely American Judaism by both reinterpreting and transforming traditional rituals into ceremonies as well as by producing entirely new ceremonies, all of which are performed within the context of the aforementioned modern doctrines or "isms." These isms, he concludes, "now have become major dimensions or instruments through which American Jews interpret and transform the Jewish tradition" (Liebman 1990; Liebman and Cohen 1990, 123).

Robert Wuthnow (1988) analyzed the "restructuring" of American religion, in which there has been a distinct decline in religious authority and intensification and a broadening of the ideological

divide between liberal and fundamentalist religion. Institutionally, one of the manifestations of the decline of religious authority is the declining significance of denominations as institutions. Denominational organizations are still significant, but this does not mean that the denominations are. Rather, as Demerath and Williams (1992) suggest, the decline of religious authority in modern society may, at the very same time, have sparked a growth in the influence of religious organizations in a number of much more narrow areas. Be that as it may, the extent of the control of the denominations over their members is evident in the degree to which the members determine religious belief and in the ease with which Americans transfer denominational allegiance. In terms of the former, there is evidence from numerous studies that individuals increasingly arrive at their own religious beliefs (McNamara 1992; Roof 1993, 1999; Eisen and Cohen 2000; Waxman 2001). The predominance of individual choice in religious matters and the increased switching indicate that the power of denominations to win and preserve loyalty has been greatly reduced.

Tom Smith (1991b) suggests that net religious change may be due to a number of factors, including immigration, marriage, and fertility. Focusing on the three major American religions, he finds that Catholics have benefited from both migration and fertility, but they have the largest loss due to religious mobility. Protestants lose from both migration and mobility, and fertility has been a negligible factor. Jews lose the most because immigration is a not as great a source of strength as it was, mobility is a negative factor, and their fertility rate has been and can be expected to continue to be low. Although he does not state it explicitly, he implies agreement with Greeley that American religious patterns are basically stable. Greeley himself (1989, 10) argues that the empirical data indicate stability, and since there are no "social indicators which can be used to measure changes (if any) in these symbol systems," we can only rely on the data for our perceptions and interpretations of the religious condition.

Many others, however, argue that despite the continuing value that Americans place on religion and their continuing belief, there

indeed appear to have been some dramatic changes in the institutionalized religious sphere. Precisely what they mean, however, is subject to varying interpretations. To a significant extent, the American changes are part of the larger "culture shift" analyzed by Ronald Inglehart (1990, 1997), the initial indications of which in the United States were first observed by Daniel Yankelovich (1974). Yankelovich found a pattern of new values, a "new morality" that manifested itself in three major areas: moral norms, primarily in respect to sex and gender, authority, and religion; social norms, primarily dealing with work, family, and marriage; and those norms that emphasize self-fulfillment as opposed to obligations to others. He suggested that the source of the new morality was to be found in the impact of the Vietnam War. Intriguing as his suggestion is, it does not explain why that war should have had such a profound impact on American society, greater even than the two world wars.

Inglehart's surveys and analyses are much more comprehensive, reveal much broader international patterns, and are characterized by a much deeper sociological explanation. In his analysis of survey data gathered in twenty-five industrial societies, primarily in Western Europe and the United States, between 1970 and 1986, Inglehart (1990, 3) argues that "economic, technological and sociopolitical changes have been transforming the cultures of advanced industrial societies in profoundly important ways." Following Maslow's (1954) "need hierarchy," according to which the needs for food, shelter, and sex are on the lowest rung and must be satisfied before a person can move up the pyramid to its apex, self-actualization, Inglehart maintains that individuals are most concerned with the satisfaction of material needs and threats to their physical security. "Materialist" values, which are characteristic of societies that are less secure economically and otherwise, Inglehart avers, are values that emphasize material security. In the area of politics, these would focus on such needs as strong leaders and order. In the realm of economics, the values emphasize economic growth and strong individual-achievement motivation. In the area of sexuality and family norms, the emphasis would be on the maximization of reproduction within the two-parent family. And within the realm

of religion, the emphasis is on a higher power and absolute rules. However, once the basic material needs are satisfied and physical safety is assured, people strive for "postmaterialist" values that entail the satisfaction of more remote needs, many of which are in the spiritual, aesthetic, and interpersonal realms. Their focus becomes self-fulfillment and personal autonomy, rather than identifying themselves with their families, localities, ethnic groups, or even nations. The "culture shift" is manifested in a declining respect for authority and increased mass participation, an increasing emphasis on subjective well-being and quality-of-life concerns, an increasing emphasis on meaningful work, greater choice in the area of sexual norms, declining confidence in established religious institutions and, as well, declining rates of church attendance, and an increasing contemplation of the purpose and meaning of life. This shift, which entails a shift from central authority to individual autonomy, took place in postmaterialist society, that is, the West, in the late twentieth century. Inglehart's thesis helps explain the decline in the fertility rate in Western countries in the latter part of the twentieth century, and especially the specific decline in the American Jewish fertility rate. It follows that when postmaterialist sexual and family norms become prevalent, we can expect a relatively low fertility rate. One problem with the thesis as far as this is concerned is that the low fertility rate of American Jews is not limited to the latter half of the twentieth century (Goldscheider 1967).

For institutionalized religions, this has meant that they can no longer count on traditional allegiance. For one, religion's ability to locate us and to provide order and meaning is greatly diminished in modern society and culture. As Peter Berger (1967) puts it, the intricately interrelated processes of pluralization, bureaucratization, and secularization, which are endemic to modernity, have greatly shaken religious "plausibility structures." Although "a rumor of angels" prevails, it is but a "rumor" in modern society, and it co-exists with a "heretical imperative"; that is, the pluralistic character of modern society impels us to make choices, including religious choices. We are no longer impelled to believe and act. We choose, even when we choose to be religiously orthodox. From the standpoint of traditional

religion, that is heresy, because, as Berger points out, "the English word 'heresy' comes from the Greek verb *hairein*, which means 'to choose.' A *hairesis* originally meant, quite simply, the taking of a choice." Where there is pluralism and choice, there is also "radical doubt" (Giddens 1991, 181–208).

It is not simply within the confines of the religious sphere that bureaucratization and pluralization have occurred along with modernization. Modernization entails bureaucratization and pluralization in all structural and cultural spheres. Durkheim (1893/1984) already alluded to this in his analysis of the shift from mechanical to organic solidarity, which entails the pluralization of the social structure and concomitant functional integration in place of the traditional cultural integration.

From a somewhat different theoretical perspective but with much the same implications for our purposes, Ralf Dahrendorf (1959) highlights the increasing institutional compartmentalization and isolation in modern society, in which such institutions as family, education, and religion, among many others, become separate, autonomous spheres, and their authority prevails over individuals only in that sphere, and only to the degree that an institution's authority exists. The prevalent tendency in modern Western society to distinguish between the private and official behavior of political leaders is a good example of this compartmentalization. This contrasts sharply with the institutional integration of traditional society, within which such a distinction was untenable (cf. Berger 1961, 219–229). In any event, pluralization and compartmentalization result in the modern individual's having plural identities and, in contrast to societies characterized by mechanical solidarity and integrated culture in which identity was ascribed, plural identities that are achieved, and that the individual constructs.

Pluralization and compartmentalization entailing the religious sphere are the highlight of modern society, as manifest in the separation of church and state, and religious demonopolization and pluralism have resulted in what Peter Berger (1967) called the religious free market and "religious free enterprise," in which there is a society of voluntary consumers to whom religious institutions must engage in

market research and religious outreach. Accordingly, the emergence of postmaterialist society means that even though individuals may continue to be concerned with spiritual matters indeed, they may be even more concerned with spiritual matters today they are much less compelled to retain membership in a particular denomination. There has developed a much greater tendency for religious switching than existed in "materialist" society.

This may help explain some of the contrasting patterns of American Jews, especially Jewish baby boomers. As I indicated in my previous Orthodox Forum paper (Waxman 2000), there has been, in the past decade or two, an increased interest in the spiritual realm both in the larger society and among American Jews, particularly the baby boomers. As the largest age cohort and at the typical age when families are established, baby boomers represent a major, if not the most prominent, cohort of consumers in American society and culture, and those in the media are particularly apt to cater to the interests of the baby boomers. The prevalence of books and television programs on spiritual topics suggests a serious interest in this area. At the same time, there is a lower degree of institutional loyalty among baby boomers, and that may be why so few of the Jewish baby boomers are synagogue members. The tendency for nonmembership in synagogues is not limited to any denomination. It is prevalent among almost a quarter of the Orthodox baby boomers, the vast majority of whom do observe the religious rituals. It is even more prevalent among Conservative baby boomers, where almost 60 percent are not synagogue members, and their Reform counterparts, among whom more than 70 percent are not members. These individuals may not be synagogue members, but they still define themselves as belonging to a religion, Judaism, and they do identify denominationally.

There is some debate over the extent and significance of interreligious switching in the larger American culture. For our purposes, an important finding over which there is little or no debate is that the more distinctive the sect or denomination, the less likely it is that adherents will switch (Greeley 1989, 122; Iannaccone 1990; Hadaway and Marler 1993; Sullins 1993; Stark 1994). This suggests

that switching would be less common among the more religiously distinct and traditional denominations than among the more religiously liberal and modern ones.

Be that as it may, the pattern of denominational switching among Jewish baby boomers, that is, switching between Orthodox, Conservative, and Reform, is much more complex. On the one hand, the vast majority, 93.3 percent, were born Jewish, which means there was relatively little interreligious switching among them (Waxman 2001). On the other hand, the data point to a significant rate of intrareligious denominational switching among Jewish baby boomers. Thus, of those who in 1990 identified as Reform, about two-thirds (64.8%) reported that they had been raised Reform, 68.1 percent of the Conservative reported that they had been raised Conservative, and 78.2 percent of the Orthodox reported that they had been raised Orthodox. And when we looked at the current denominational affiliations of those raised in a particular denomination, we found that of those reporting that they were raised Orthodox, 35.2 percent were currently Orthodox; of those raised Conservative, 58.8 percent were Conservative; and of those raised Reform, 87.9 percent were Reform.[1] These data are evidence of a significant degree of intrareligious denominational switching, and would appear to indicate that, perhaps for Jews even more than for Christians, denomination is an achieved status, that is, a status that derives from membership in a voluntary group, as the result of one's own choosing, rather than an ascribed status into which one is born. Perhaps this is one of the ways that America's Jews reconcile the inherent tension between particularism and universalism in Judaism.

One indicator of the authority of clergy is their occupational status or prestige. Tom Smith (1991a) argues that survey data reveal that the occupational prestige of clergy did not change between 1964–65 and 1989. However, the evidence with respect to seminary enrollments suggests a different picture. There are loud voices of concern among both Protestants and Catholics over the declining numbers of enrollees in seminaries. For example, the entire March/April 2001 issue of *Congregations*, the official publication of the Alban Institute, a predominantly Protestant interfaith organization,

was entitled, "Young Clergy: Where Are They?" It presents data indicating the declining enrollments, especially among Episcopalians and Presbyterians, and offers efforts at analysis of the phenomenon (Wicai 2001, 6 ff.). The Louisville Institute's associate director quotes a friend who explained the decline:

> The reason that young people do not want to be pastors is that they see all too clearly the limitations of the pastoral life, not its opportunities. Its opportunities may in fact exist for some people who have the personality and desire for it…those who are truly called. But why in the world would a talented young person commit to a life of low salary, low prestige, long hours, no weekends, and little room for advancement? (Wood 2001, 17)

Among Catholics, the decline is even more serious. As Stark and Finke (2001, 169) put it, "For the past three decades, a rapid decline in Roman Catholic religious vocations has been under way in North America and most of western Europe." On the basis of their analyses of varieties of Protestants and Catholics, they argue that it is the religious liberals who are losing but that the religious traditionalists are growing. As they put it, "to generate and sustain religious virtuosi requires constant reinforcement from an equally committed community of peers, firm belief in divine appreciation of the relevant sacrifices, and special levels of worldly recognition of virtue" (Stark and Finke 2000, 190).

It should not be surprising, therefore, that not only has there not been a decline in enrollments at the Rabbi Isaac Elchanan Theological Seminary (RIETS) over the past several decades; there has actually been a significant increase. According to its administrator, Rabbi Chaim Bronstein (personal communication, 2003), RIETS has experienced significant and steady increases in enrollment since the early 1980s. In addition, there have been significant increases in the percentages of enrollees coming from outside Yeshiva University. Approximately 20 percent now come from elsewhere, including Ivy League universities and *yeshivot* of *baalei teshuvah*.

It might be argued that the institutional ideology of a synthesis

of Torah and worldly knowledge emphasizes the value of learning for its own sake and for enabling every individual, in whatever occupation, to grow in Torah knowledge, and that ordination, therefore, is not career-related. However, the available data indicate otherwise. For example, an analysis of those ordained between 1998 and 2002 indicates that only 21 percent planned to enter totally secular professions. Another 7 percent planned careers in the Jewish organizational field. The majority planned to enter the pulpit rabbinate (16%), Jewish education at the primary, secondary, or post–high school level (52%), or the chaplaincy in either a hospital or a university setting (3%).[2] It must be pointed out, however, that only 16 percent expected to enter the pulpit rabbinate. We have no data on the percentages of previous classes entering the pulpit rabbinate, so it cannot be determined whether there has been any change in the patterns, but nevertheless, there is a small percentage of ordainees who do plan to become pulpit rabbis.

With respect to Reform Judaism, both the Union of American Hebrew Congregations (UAHC), the temple and synagogue organization, and the Central Conference of American Rabbis (CCAR), the rabbinic organization, have expressed concern about the shortage of Jewish professionals, especially rabbis (Yoffie et al. 2000; see also Heller, Rips, and Bergman 2002). It should be noted, however, that the "critical shortage" may not necessarily be linked with declining seminary enrollments but rather with the rapid growth of Reform congregations, which outpaces the growth in the number of ordained rabbis. Indeed, data on Rabbinic School admissions at Hebrew Union College–Jewish Institute of Religion (HUC-JIR) indicate that enrollment declined from approximately 1970 to the mid-1980s, remained more or less steady from the mid-1980s to the end of the century but has increased steadily since then. Enrollment went from forty-one in 1999–2000 to seventy-six in 2002–2003 (Schneider-Shapiro 2003). Although some view this increase as related to the state of the economy and the shrinking job market, especially at the professional level, Rabbi Roxanne Schneider-Shapiro, national director of admissions and recruitment for HUC-JIR, attributes the bulk of the increase in enrollments to expanding opportunities in the rabbinate

proper as well as in related arenas, such as day schools, camps, and Jewish organizations (Weiner 2003). Again, however, it appears that only a small minority plans to enter the pulpit rabbinate.

The Jewish Theological Seminary of America began admitting women to its rabbinical school in 1984, and since then women have constituted 30–40 percent of the classes. Nevertheless, the overall number of rabbinical students has not increased significantly (Jack Wertheimer, personal communication, 2003).[3] According to Wertheimer (2003), non-Orthodox American Jewry, especially Conservative Jewry, is facing a severe "rabbi crisis." The crisis is, essentially, part of the larger clergy crisis in America and stems from the declining allegiance of Americans to community in general, including communities of faith. As a result of this and other American cultural patterns, the status of rabbis has diminished, and, at the same time, increasing demands are made of them by their lay leaderships, including the demand that they be spiritually "meaningful" and satisfying.

Even the non-Orthodox denominations that may not be experiencing declining rates of seminary enrollment have voiced considerable concern recently about sociocultural changes in the roles of both the synagogue and the rabbi, and many point to the contemporary cultural patterns even among American Jews who are institutionally affiliated (see, e.g., Hoffman 2002; Reconstructionist Commission on the Role of the Rabbi 2001). In their study of young "moderately affiliated" American Jewish baby boomers, Cohen and Eisen (1998, 29) found that they "did not identify God with the synagogue and that they were turning inward for meaning, not to institutions" (for a more extensive analysis of this study, see Cohen and Eisen 2000). For them, Judaism is increasingly personalistic, voluntaristic, and nonjudgmental. "Everyone interacts with Judaism in ways that suit them, none of us is capable of determining what is a good Jew (an elusive term, to say the least), and therefore none can judge another's Judaism" (Cohen and Eisen 1998, 76). It should thus be no surprise that "Many respondents reported negative encounters as young-adults or newly-married couples with rabbis and congregations." (ibid., 38) If each individual's choice is as legitimate

as the next person's, rabbis, who have a tradition of speaking with authority, are going to be viewed as obstacles.

Much of this part of the discussion does not apply, by and large, to Orthodox rabbis, and Wertheimer, for example, explicitly excludes them from his analysis. But that does not mean that Orthodox rabbis are immune to the consequences of the changes in American society and culture. Far from it! Leaving aside the whole issue of the decline of community in American culture, which affects the Orthodox much less than the non-Orthodox, contemporary American Orthodox rabbis experience numerous pressures and stresses that their predecessors did not. Yocheved Schacter (2003) avers that,

> Over the past number of decades it has become clear that today's rabbi must develop his talents in many areas. He must be successfully able to teach, to *pasken sha'alos*, to mediate, to counsel, to deliver sermons, to be politically aware, to be up on the latest novels, to administer a staff, to balance a budget, to raise money, and in some cases, to play golf and/or tennis, and more. All this plus forty years of experience before the age of thirty!

Although the tasks enumerated by Schacter may be characteristic of what some Modern Orthodox rabbis must do, a number of them are increasingly irrelevant to the much more typical role of the contemporary American Orthodox rabbi. He no longer has to cater to congregants who demand that he be politically aware, up on the latest novels, participate in sports, and the like. Rather, as a result of basic changes in American Orthodoxy (Waxman 1998), his challenges are much more likely to be the greatest halakhic scholar, to "be up on" the latest *humrot*, to be the most Israel-nationalistic, and perhaps even to be the most separatist in the Jewish community.

There is considerable evidence of a frequent correlation between religious and political orientations, that is, people who are religiously traditional tend to be politically conservative, and vice versa; likewise, those who are religiously liberal tend to be politically liberal, and vice versa. (Johnstone 2001, 13–180; Hunter 1991; Owen,

Wald, and Hill 1991). It seems reasonable to expect, therefore, that the degree of obedience to the authority of the rabbi will vary along the liberal-traditional spectrum. Thus it is not all that surprising that there is much more blanket acceptance of the notions of *emunat hakhamim* and *da'at Torah* among *hareidim* of both hassidic and mitnagdic backgrounds than among even other Orthodox Jews. The *hareidi* approach to these notions is expressed well in the writing of the late Rabbi Eliyahu Dessler:

> You must know, my revered friend, that Rabbi Elchanan [Wasserman] is certainly very great, and it would be wrong to set aside his words, much less to reject them, because of what we puny people think that we see with our eyes. Our Rabbis have told us to listen to the words of the Sages "even if they tell us that right is left," and not to say, God forbid, that they must be wrong because little I "can see the mistake with my own eyes." My seeing is null and void and utterly valueless compared with the clarity of their intellect and the divine aid they receive. No Beth Din can revoke the decrees of another Beth Din unless it is greater in number and wisdom; failing this, it is very likely that what they think they "can see the mistake with their own eyes" is merely imagination and illusion. This is the Torah view concerning faith in the Sages. (Dessler 1978, 218–219)

Whether that is, in fact, "the Torah view concerning faith in the Sages" is irrelevant within the context of this paper. As the sociologist W.I. Thomas pointed out in his famous theorem, "If men define situations as real, they are real in their consequences" (Thomas and Thomas 1928, 572). As for the validity of R. Dessler's assertion, his assertion clearly obfuscates the significant distinction between a halakhic ruling of a *beit din* and a nonhalakhic opinion. In contrast to his assertion, Rav Sherira Gaon explicitly stated that *hakhamim* have authority in Halakhah but not necessarily in other fields he specifically mentions medicine and they are not to be heeded on nonhalakhic matters (*Otzar ha-Geonim*, Gittin 68b, 376).

A similar approach is found in the writing of R. Avraham the

son of Maimonides (printed in the introductions to a number of editions of the *Ein Yaakov*), where he says that rabbis have authority in halakhic matters but not necessarily elsewhere. It is not solely in medicine or in the physical sciences that rabbis have no special authority. As Haym Soloveitchik (1994/1999, 345) points out, "The lay communal leadership had always reserved political and social areas for itself. Even in the periods of maximum rabbinic influence, as in sixteenth-century Poland, political leadership was firmly in the hands of laymen." In large measure, as a response to modernization, pluralization, and secularization (Berger 1967), Hareidism developed and, along with it, the notion of the rabbi's all-encompassing charismatic authority in the original sense of the term charisma. Given their strong sense of community and strong communal bonds, the authority and power wielded by rabbis in *hareidi* communities far surpasses what is found in any other Orthodox community, including those that are not *hareidi*. No other community has the kind of social control commonplace in *hareidi* communities, and thus, for example, no other community has been witness to the variety of religious bans public, widely circulated pronouncements of *herem* that are prevalent in the *hareidi* communities. In the year 2002 alone, such pronouncements have succeeded in forcing an Orthodox writer from participating in speaking tours with his Reform co-author (Hirsch and Reinman 2002), in having the Chief Rabbi of the United Hebrew Congregations of the British Commonwealth revise a book that was already in production (Sacks 2002), and in banning a book on nineteenth- and early twentieth-century rabbinic scholars (Kamenetsky 2002), all because they did not conform to the perspectives and not solely halakhic of some militant *hareidi* rabbis. Such power is found only in *hareidi* and other, non-Jewish, fundamentalist groups, which are composed of individuals who are much more amenable to submission to authority (Owen, Wald, and Hill 1991).

It should, however, be emphasized that the close-knit character of *hareidi* communities and the concomitant strong social controls do not necessarily mean that the rabbis have complete control. On the contrary, there is more than good reason to suggest that *hareidi*

communities are not impervious and are not immune to many of the same forces at work in the larger society. They, too, have experienced the consequences of modernity, and even among them, the authority of rabbis has declined. If nothing else, there is now much greater heterogeneity even among *hareidi* rabbis. Consequently, it is frequently "independent" zealots with little or no formal authority who are able to instigate "witch hunts" and incite significant sectors of the *hareidi* masses to enforce their desired ends. Accordingly, the authority of rabbis in these communities is significantly weaker than is typically perceived, even as the zealots legitimate their actions under the banners of *da'at Torah*.[4]

As for the future of rabbinic authority in the United States, more than thirty years ago Charles Liebman (1968) analyzed the training of American rabbis, and since then there has been little systematic analysis of the relationship between the objectives set forth by the seminary, the expectations in the field, and its rabbinic program. Writing in the mid-1950s, Carlin and Mendlovitz interviewed a series of American rabbis in order to see how they coped with the loss of rabbinic authority in modern American society. On the basis of their interviews, they suggested that there are now seven rabbinic models in American society, ranging from the Traditional rabbi, on the right, to the Intellectual Reform, on the left. Between them are the Modern Orthodox, the Conservative, the Social Reformer, the Traditionalistic Reform, and one other type, who "earns his livelihood from rabbinic functions but refuses to accept any responsible rabbinic role" (Carlin and Mendlovitz 1958, 412), the Free-Lancer. In their conclusion, they predicted "that the scholar-saint role which from the time of the early rabbi was the most characteristic rabbinic role in the Jewish community, but which was submerged under the impact of Emancipation, is once again destined to re-emerge as the most characteristic rabbinic role" (*ibid.* 414).

A cursory look at the programs at the three major rabbinic seminaries, RIETS, JTS, and HUC, seems to confirm this prediction by the two sociologists almost a half-century ago. At the close of the twentieth century, the programs were much more rigorous and demanding in terms of the breadth and depth of traditional

Jewish knowledge than they were at mid-century. All three place much greater stress on producing rabbinic scholars in addition to communal workers, and all three have become much more tradition-oriented. Much of this is, undoubtedly, related to the greater traditionalism of the communally affiliated segment of American Jewry since the 1980s as well as the significant growth in the field of Jewish Studies on college and university campuses around the country. The "consumer market" (Berger 1967) now expects and demands greater cognitive knowledge as well as "spirituality" from rabbis, and the seminaries have apparently responded. On the other hand, it must be recalled that the organized Jewish community is shrinking, one of the major reasons being that fewer and fewer American Jews affiliate with the institutions of the community. It does not seem very likely that the unaffiliated will relate to rabbis in general, much less to scholar-saints. If the process of disaffiliation continues, the role of the rabbi may undergo change once again.

What are the implications of all this for rabbis of this and future generations of American Jewry, and especially Orthodox Jewry? In addressing the non-Orthodox, Wertheimer (2003, 39) sees positive change only if rabbis reassert their authoritative role.

> Rejecting defeatist advice from among their own colleagues, they would need to gird themselves to combat the present solipsistic moment in American Judaism, reeducating their congregants to think beyond their immediate personal needs, their inchoate yearnings for "spirituality," and their consumerist notion of religious life. They would need to insist on synagogue rituals focused on communal rather than privatized concerns, and they would need to reorient the synagogue itself as an institution focused on the transcendent needs of the Jewish people. Above all, they would need to take their own role seriously, accepting the burden and the challenge of their calling as individuals who speak with authority not only for themselves but for the Jewish tradition, the Jewish people, and God.

Implementing all this is much less of a challenge for the Orthodox

rabbi. To a much larger large extent than among others, his position commands authority even when he, as an individual, does little to reinforce that authority. Given the open, pluralistic nature of American Judaism, it may be assumed that those who affiliate with Orthodoxy do so out of some allegiance to it. Although this certainly does not secure the position of any specific rabbi, it does provide extremely strong support for the position of rabbi per se. The specific individual then needs to legitimate himself by demonstrating that he is deserving of that position. Within the context of American Orthodox Judaism, this can probably be best accomplished by demonstrating commitment to principles, manifesting sacred Jewish knowledge, teaching congregants, and being empathetic even when not agreeing with them or acting in accordance with their wishes. The evidence suggests that contemporary Orthodox congregants increasingly want a rabbi who is a role model and an authority figure, not a "best friend," entertainer, or political analyst. Perhaps we might paraphrase Rabban Gamliel and R. Yehoshua ben Perahyah and apply their Talmudic dictum, "*aseh lekha rav*," to candidates for the pulpit: "make yourself a rabbi," that is, act like one. Internalize the role, and your congregants will respect and appreciate you for it.
Notes

NOTES

I gratefully acknowledge the assistance and comments of the participants in the 2003 Orthodox Forum, and especially those of Rabbi Dr. Moses D. Tendler, Rabbi Dr. Aharon Lichtenstein, Dr. Steven Bayme, and Rabbi Robert Hirt.

1. These figures may not be as dramatic as they initially appear. As I have pointed out elsewhere (Waxman 2001, 78), we are actually not sure what the NJPS respondents meant when they stated that they had been raised Orthodox. They may have meant that they had been raised as observant in the Orthodox definition of the term, but on the other hand, they may have simply meant that they had attended an Orthodox synagogue. The two are very different. Many of the latter may have been part of what Marshall Sklare termed the "non-observant Orthodox" (Sklare 1972, 46), that is, individuals who were not Orthodox in observance, but when they went to synagogue, went to an Orthodox one.
2. Unpublished data supplied by Rabbi Robert Hirt, based on a survey of ordainees in the 2002 *Hag ha-Semikhah*.

3. It should be noted that there is now another Conservative rabbinic seminary, the University of Judaism, in Los Angeles, so the sum total of rabbinic candidates has actually grown. The same may be said of the Orthodox. I took one major seminary as representative of the denomination as a whole, but, in fact, there are other seminaries and more rabbinic candidates than these figures indicate, though we don't know how many. The figures may be more indicative of specific institutional trends than of denominational patterns.
4. On the politics of the concept, see Bacon 1996; Kaplan 1992; Brown 2002. Evidence that even in the *hareidi* community the rabbi may not have as much authority as is generally believed may be inferred from the fact that, despite the *herem* signed by numerous *hareidi* authorities against the book *Making of a Godol*, there was a humorous *pashkevil* (poster) in the *hareidi* neighborhood of Geula, Jerusalem, before Purim of 2003, which indicates that some members of the *hareidi* community with a sense of humor feel free to poke fun at the so-called *herem*.

7

New Conditions and Models of Authority: Changing Patterns within Contemporary Orthodoxy

Steven Bayme

The scene was a leading Modern Orthodox high school. The instructor, trying to explain Cain's motivation in killing his brother Abel, cited a *midrash* that Cain feared that the Temple would ultimately be built in Abel's domain. A student quickly challenged the instructor, saying that worrying about something that might happen a thousand years hence hardly constituted a realistic motive for murder. Taken aback by the student's unwillingness to bow to rabbinic authority, the teacher trivialized both the comment and the *midrash* by saying, "It's just a *midrash* anyway!"

In truth, this seemingly small incident (and small-minded instructor) illustrates the dilemma of Modern Orthodoxy: how does one preserve rabbinic authority and simultaneously constrict that authority so as to make room for intellectual freedom and

permissibility for expression of doubt? In turn, what limitations upon personal freedom need to be in place so as to preserve the hierarchical value of sacred text in teaching? A truly modern Orthodoxy will celebrate both renewal of Torah scholarship and rabbinic authority yet acknowledge that questions arising from the insights of critical scholarship and modern cultural values need to be confronted honestly rather than dismissed or trivialized.

This paper emanates from a dual perspective the critical eye of a student of the American Jewish community and the personal experience of someone who occupies the increasingly common position of Modern Orthodox Jewish communal professional. The American Jewish Committee, in its role as think tank and catalyst of the Jewish community, monitors communal trends and proposes measures to enhance positive currents and counteract negative ones. In addressing shifting models of communal authority, I will draw upon both professional and personal experiences. The initial focus will concentrate on what is happening on the general American and Jewish scenes; subsequently, I will turn more specifically to the Orthodox Jewish community. Some thoughts for future direction and modest proposals for communal policy formulation will conclude the discussion.

In terms of America generally, the autonomy of individual conscience clearly stands as a defining hallmark of Western liberalism. Freedom of choice is the dominant American norm.[1] Laws once on the books concerning individual behavior have either been repealed or permitted to lapse. Occasionally, when a law surfaces that seems to violate freedom of individual action, such as the Texas statute criminalizing homosexual behavior between consenting adults, we immediately denounce the legislation as an anachronistic legacy of the Dark Ages. The "American way" upholds the right of individuals to make their own moral decisions a value perhaps best expressed in the slogan of the abortion rights movement, "No one can tell me what to do with my body!"

Needless to say, this unbridled individualism is hardly consonant with a Judaic language of communal norms and personal restraint. Yet, as we shall see, these positions of "freedom from

authority" have already infiltrated wide sectors of the Jewish community, including some components of contemporary Orthodoxy. Moreover, despite America's self-understanding as a uniquely religious society, the American model of religion underscores personal freedom and individualism. Robert Bellah's team of sociologists discovered this some years back in interviewing "Sheila" a woman who defined her religiosity as a little of this and a little of that. Sheila effectively incorporated a few diverse elements of American religious life to form her own religious current popularly termed "Sheilaism."[2]

Within the Jewish community, Jack Wertheimer and others deemed Sheilaism to be corrosive of religious authority and of any serious form of Judaic expression.[3] Yet, in fact, Sheilaism is already here in the contemporary Jewish community. Intermarriage is perhaps the finest symbol of the growing American Jewish personalism. Once considered an arch sin, intermarriage has become so accepted in the Jewish community that Jewish leaders no longer find it possible to criticize mixed marriage or even uphold the primacy of the Jewish in-marriage norm. Even some Orthodox leaders minimize the significance of mixed marriage or, worse, claim that it represents not a danger to be contained but an opportunity to be welcomed.[4] From the perspective of American individualism, the choice to marry out is perfectly understandable love will conquer all differences. From the perspective of communal authority, the decision to intermarry represents a fundamental rejection of the claims of Jewish tradition and the power of the community to ensure Jewish continuity.

Homosexuality is perhaps less obvious but equally trenchant as an example of Jews asserting individual conscience over communal authority. Jewish tradition, of course, is unequivocal in proclaiming homosexuality a sin, and its counsel to the would-be homosexual essentially amounts to the statement "Who is a hero? He that masters his passions." Ironically, however, few Jews in public life have stepped forth to proclaim this position. It was left to Father Richard John Neuhaus to articulate the traditionalist position that someone who recognizes that he is a homosexual should choose the path of

celibacy. Within Orthodoxy, the leading vehicle for discussion of homosexuality, the recent movie *Trembling Before God*, assumed unequivocally that homosexuality is inbred and has no components of choice a highly controversial assumption that the movie's creators accepted without question.

To be sure, Sheilaism carries with it some limited benefits. By maximizing the possibility of individual growth and opportunity, American society has proved more welcoming of Jewish participation and more encouraging of Jewish achievement than any society in Jewish history. Second, the emphasis Sheilaism places upon personal conscience serves to remind us that "*mitzvot* require *kavanah*" that the conscience does have a voice in determining human behavior even if we cannot grant it an absolute veto. Lastly, Sheilaism also serves to challenge rabbinic authority in areas where it needs to be goaded into action, as in the continuing dilemma of the *agunah*, a problem on which tangible albeit limited progress has been achieved in recent years precisely because many "Sheilas" were proclaiming loudly the need for rabbis to address the issue. To be sure, these benefits notwithstanding, Sheilaism does threaten to replace hierarchical authority with free-wheeling religious anarchism.

In this context, the recent movement of Reform Judaism toward greater traditionalism evokes some degree of ambivalence. Clearly, the specter of more Jews connecting with more aspects of the Jewish heritage represents a welcome trend. Yet the culture underlining this trend is one that emphasizes greater personalism in religious behavior. Stories of personal encounters with the Deity coexist with more libertarian positions within Reform Judaism on mixed marriage and homosexuality. Virtually absent from the vocabulary of Reform is a language of obligations and commitment. The liberal Jewish ethos has developed a vocabulary of personal fluidity each individual pursues his or her own unique "journey" to the Jewish heritage. With the notable exceptions of the theologians Emil Fackenheim and Eugene Borowitz, one is hard pressed to find Reform voices calling for a return to Judaism as a return to "the commanding voice of Sinai."[5] The word *mitzvah* itself today connotes more a "good deed" and a social conscience than a Jewish imperative. In a movie

some years back, the actor Rob Reiner rationalized a Bohemian artist's propensity for adultery by proclaiming, "We artists answer to a higher authority!" Truth surpasses fiction when the director of the movie, Woody Allen, can proclaim in real life, "If it feels right, just do it."[6]

As suggested earlier, American Orthodoxy has by no means been immune to these developments. Superficially, in the eyes of most sociologists, Orthodoxy remains perhaps the one sector in Jewish life in which rabbinic authority still prevails. People do care about the demands of tradition and pay at least some heed to what rabbis are actually saying. Yet, on the ground, on the Orthodox "street," the situation is more complex. One can discern at least three positions within Orthodoxy one that limits rabbinic authority to matters of Halakhah, one that expands the realm of rabbinic authority, and one that challenges authority to enter into uncharted regions.

The position that I grew up with and that presumably remains the official position within centrist Orthodox circles is that the rabbis are authoritative on matters of Jewish law. By contrast, matters of social and communal policy represent neutral ground on which the individual is free to follow the dictates of conscience. Thus Maimonides departed from rabbinic teachings on issues of science and medicine and rejected unreasonable *midrashim*. Azariah de Rossi went further, upholding rabbinic authority on law but claiming that the rabbis had no special expertise on questions of Jewish history.[7] Rabbi Samson Raphael Hirsch sharply distinguished between law and culture, claiming that the latter, including dress, secular culture, and issues of German politics, represented neutral ground on which reasonable people could disagree without penalty.[8] In more recent times, the late Rabbi Joseph B. Soloveitchik urged that matters related to the territories in post-1967 Israel represented political questions best left to diplomats and generals rather than rabbinic authorities.[9]

In this context *hareidi* scholars began to invoke *da'at Torah*, i.e., that the "view of the Torah" must be adhered to whether halakhic issues were at stake or not. A relatively insignificant concept mentioned only once in the Babylonian Talmud, *da'at Torah* has

come to mean *ex cathedra* pronouncements of the rabbis, and the acceptance of rabbinic authority signals the critical divide between Ultra-Orthodox and Modern Orthodox Jews.[10] Thus Rabbi Elijah Dessler, responding to critics who claimed the rabbis should have encouraged *aliyah* prior to the Second World War, responds that no one should ever say that the rabbis made a mistake. To be sure, some compare the very concept of *da'at Torah* to an intellectual *akeidah*, submitting personal conscience to the superior wisdom of the *gedolim*. Nonetheless, the prevalence of this view, certainly within *hareidi* circles, is well known.[11] More surprising is how it has penetrated Modern Orthodox circles. The recent conflict over the presidency of Yeshiva University is one case in point, but relatively unsurprising given the enormity of the stakes involved. More suggestive was the case of the well-intentioned rabbi who limited the number of hot dishes to be served at his congregation's *kiddush* so as to ease competition and reduce resentment among less wealthy congregants as the size of the congregation grew and the cost of celebrating *semahot* escalated. With the best of intentions, the rabbi was arguing that Jewish law may permit sumptuous *kiddushim*, but as the rabbi of a congregation of rich and poor alike, he forbade it. Conversely, when a Modern Orthodox rabbi recommended to his congregation a more liberal *mehitzah* and explained why he believed it to be halakhically permissible, he encountered the response, "Why not consult the *gedolim* don't they know better?"

These tendencies toward expansion of rabbinic authority by an Orthodox laity that is moving rightward do in fact coexist with limited but high-profile challenges to the limits of rabbinic authority. The declaration of prominent *rashei yeshivah* against women's *tefillah* groups is now close to two decades old. Yet the number of such groups has only grown rather than diminished.[12] More recently, some have accepted the opinion of Rabbi Mendel Shapiro permitting women to receive *aliyot* even though the preponderant weight of Orthodox rabbinic opinion strongly opposes the concept.[13] To be sure, the number of Orthodox Jews challenging rabbinic leadership in this regard remains small. Nonetheless, the view has made substantial headway in recent years, given its high profile and the

prominence of its spokespersons. Interestingly, these views relate more to Jewish feminism than to a broader range of Jewish communal issues on which American Orthodoxy has moved rightward Israel, intra-denominational cooperation, and modern scholarship, for instance, although these too have been voiced in recent years, notably at Edah conferences.

In this latter context, Modern Orthodoxy has witnessed the emergence of at least four new types of leaders, each representing a unique challenge to the traditional authority of the rabbinate. First, over the past forty years there has been an explosion of academic Jewish studies at American universities. Initially supported primarily by secular scholars I well recall my personal disgust with a professor of Jewish history who tried to regale us with stories of how he and his friends ate ham sandwiches on Yom Kippur in recent decades practitioners of academic Jewish studies have moved closer to tradition rather than rebel against it. Given this trend, the number of Modern Orthodox academics has grown, and their influence in American universities and in the Association for Jewish Studies has generally been quite positive. As a result, within Modern Orthodox congregations there are knowledgeable and articulate scholarly individuals who command great respect and esteem on issues traditionally the province of the rabbi. Over a century ago, the *maskil* Moses Leib Lilienblum was perhaps the first to suggest a new alliance of lay Jewish intellectual and Orthodox rabbi as the source of authority. In other words, Lilienblum revealingly was willing to accept the authority of the rabbis if they would meet the challenges arising from modernity together with, rather than in opposition to, the emerging Jewish intellectuals. The Modern Orthodox rabbi of today confronts an America in which a fair percentage of academic Jewish scholarship lies in the hands of Modern Orthodox Jews potentially a resource, as Lilienblum proposed, but at least equally as likely a potential ground for friction and tension.[14]

The second source for challenging rabbinic authority emanates from a well-organized and vocal women's movement. Initially dismissed by Orthodox leaders as a nuisance, the point by now has been established that Orthodox women do have legitimate grievances

and their voices will be heard, that feminist leaders have developed special expertise in both scholarship and communal organization, in effect creating a resource and pressure group within the community that can no longer be ignored. If nothing else, rabbis who attempt to dismiss or trivialize feminist concerns are now subject to criticism that rabbinic leaders are discouraging rather than encouraging the participation of women in Jewish life at the very time when the Jewish community is so threatened by assimilation and communal indifference.

More subtle but by no means less noteworthy as a source of authority has been the emergence of Modern Orthodox communal professionals. Long considered the bastion of the "secular" Jewish community, Jewish organizations for decades were staffed primarily by non-Orthodox rabbis and like-minded professionals. In recent years, however, Jewish organizations have come to value both the expertise of Jews with Orthodox training and the critical need to reach out to Orthodox constituencies. At the risk of sounding overly personal, I would point to the case of the American Jewish Committee. Once considered the most assimilationist of Jewish agencies, the AJC today boasts a staff of whom no fewer than 40 percent of its senior management team define themselves as Modern Orthodox. The same tendency is evident in other Jewish organizations. These individuals have the potential to impact significantly upon the culture of Jewish organizations. Within Orthodox congregations they form a third resource within the community whose expertise on communal issues compels respect and authority.

Last, much as Orthodox professionals are recruited by Jewish agencies, Orthodox laity have discovered the potential for men and women of means to be heard by the general Jewish community. Jewish federations in particular deem it important to have Orthodox participants on their boards. The leadership seminars sponsored by the Wexner Heritage Foundation regularly include Orthodox Jews as participants. While some Orthodox rabbis may express annoyance that leadership education programs of this kind hold out the promise of a "secular *semikhah*," most would agree that those entrusted with "*tzarkhai tzibbur*" should be knowledgeable in Jewish

text, tradition, history and thought the curriculum that Wexner seeks to implement.

Common to all four groupings is a decreased willingness to accept the authority of the *gedolim*. For some, the study of history suggests that frequently the *gedolim* have been wrong, as in their opposition to political Zionism, to secular studies, and to emigration from Eastern Europe to the United States. Others are so involved in contemporary communal matters that they question the wisdom of the *gedolim* on contemporary issues; consider, for instance, the somewhat pathetic attempt by Agudath Israel to state that it in fact supported the pro-Israel rally in Washington in April 2002 even though it could not participate. Still others express not disagreement with the *gedolim* on matters of substance so much as dissent from the relatively closed style and the dismissal of alternative voices within the rabbinic culture.

My experience at the founding conference of Edah in 1999 was instructive. At the time I was also teaching an honors seminar at Yeshiva College. At the conference, I encountered a number of my students and subsequently asked them what they thought of it. The dominant response was that it was not that the ideas presented were so different or new. Rather what was different was the open atmosphere in which ideas were discussed.

Where, then, are we? Two simultaneous trends appear to be occurring within Modern Orthodoxy. Some call for enhancing the voice of the *gedolim*. Often the products of one and even two years of post–high school study at Israeli *yeshivot*, these voices criticize Modern Orthodoxy for its openness to secular culture and identify the modern camp with decreased commitment to Torah. Others, inspired by their relative success in the non-Orthodox world and upset over increased Orthodox isolation from it, call for lessening the influence of *rashei yeshivah* and enlarging the realm of personal conscience and decision-making.

Both camps, to be sure, reject Sheilaism. They acknowledge the real dangers of diminished religious authority. Reform Rabbi Eric Yoffie, for example, in advocating rabbinic officiation at gay marriages, claims, "We have to interpret the Torah according to our

principles," suggesting that Jewish teaching can be so deconstructed as to mean anything we wish it to mean.[15] Similarly, Ari Goldman reports widespread mixing and matching of halakhic practice, suggesting, *pace* Dostoevsky, that it is not when God is dead that all is permitted so much as that when individual conscience reigns religion becomes meaningless.[16]

Recent years have unquestionably witnessed the ascendancy of *rashei yeshivah* and the expansion of rabbinic authority. Perhaps, one might urge, we should simply rest content with this renewal of Torah scholarship and celebrate its influence within contemporary Jewry. As argued repeatedly in this paper, religious structure assumes some degree of authority and nurtures a culture of restraint and limitation rather than the unbridled personal freedom so characteristic of contemporary America. By contrast, modernity proclaims loudly that "if it feels right, just do it." There are some who maintain that an Orthodoxy willing to withstand the tides and combat unbridled individualism ought to be embraced rather than critiqued.

Throughout, this paper has acknowledged the central importance of authority and its counter-intuitive message to an America that embraces Sheilaism. I caution, however, that the renewal of Torah authority has often carried with it the inhibiting of discussion, an intellectually closed atmosphere, and the commission of errors in the realm of communal policy that it would have been better to have avoided. Moreover, this paper asks that we acknowledge the reality that a well-educated Orthodox laity, professoriate, and civil service represent intelligent alternative voices that, in any case, will balk at further expansion of *da'at Torah* in Modern Orthodox circles. The beauty and strength of Modern Orthodoxy lies precisely in its willingness to live with tension avoiding simplistic answers and embracing two value systems that are both synergistic and in conflict at the same time.

Put differently, in the keynote paper delivered to this forum, Rabbi Aharon Lichtenstein called for the broad involvement of the *talmid hakham* in society morally, spiritually, and politically, yet without any concurrent expansion in the concept of *da'at Torah*.[17] In effect, Rav Lichtenstein called for greater rabbinic influence rather

than an expansion of rabbinic authority. Clearly, at a moment when the Jewish community is so concerned over its future continuity, it requires the voices of Torah scholarship on a broad range of issues confronting both Jews and American society. The general culture not only requires such guidance but in many cases may even welcome it. My disagreement with Rav Lichtenstein relates to the question of what training future *talmidei hakhamim* will require to assert their leadership in the Jewish community. For Orthodoxy to seize the opportunity to provide leadership will require Orthodox leaders who possess a broader cultural base and wider set of experiences. Serious liberal arts undergraduate education aims to nurture critical thinking and intellectual faculties and challenge students to weigh competing value systems. Involvement in broader Jewish communal affairs will require students to work together with individuals from diverse backgrounds and with differing outlooks. Many of these individuals and groups may be enlisted as allies in the strengthening of Jewish life.

More specifically, to the extent that study programs in Israel limit one's undergraduate liberal arts education, the price these programs exact in terms of limiting secular education is quite severe, in fact reducing one's college years to pre-professional concerns often packed into two or three years of undergraduate coursework. Moreover, to the extent that *yeshivah* training, especially as nurtured in Israeli *yeshivot*, creates a closed atmosphere, unreceptive to open exchange and critical thinking, its brightest graduates simply will not be equipped to confront non-Orthodox individuals and groups that are otherwise intellectually open and receptive to the study of Torah and seeking its guidance on contemporary questions. To be sure, some trivialize such concerns by simplistically proclaiming that *talmud Torah keneged kulam*. The position itself, of course, is unarguable. Yet it also limits the role of *madda* to acquisition of the skills necessary to earn a living rather than to broaden one's horizons culturally and intellectually. In short, the type of leadership that Rav Lichtenstein advocates will also require a different type of rabbi one who is not only a *talmid hakham* but also well read in history, philosophy, and literature, absorbing the insights of

these disciplines concerning human nature and behavior. We also require rabbis who are keenly aware of political currents and feel it is the responsibility of rabbis to address them. We will require rabbis who understand the non-Orthodox community and are willing to work with it rather than against it for purposes of strengthening the Jewish people. Above all, it will require rabbis with open minds and broad horizons able and willing to engage in dialogue with those who are intellectually open yet not fully committed to the enterprise of Torah.

What, then, needs to be done? Permit me to conclude with some modest and tentative recommendations for future directions within Modern Orthodox communal policy:

First, abandon the pretense that Orthodoxy will survive by virtue of its isolation. To be sure, Orthodox successes in securing Jewish continuity are remarkable and warrant wider dissemination and emulation. Again, the post–high school year in Israel provides a good case study. Nonetheless, as the 1990 National Jewish Population Study revealed, considerable slippage from Orthodoxy occurs even as it maintains continuity.[18] This fluidity into and out of Orthodoxy ought to deflate claims of Orthodox triumphalism. To the broader Jewish community, nothing so underscores the Orthodox image of smugness and self-righteousness as the oft-heard claim that we will survive while the non-Orthodox disappear.

Second, engage the general Jewish community rather than retreat from it. To be sure, as noted, there are real dangers here. I recall one *rosh yeshivah* arguing against the study of Jewish history not because of its contents so much as because one would undergo a process of secularization that would prove corrosive of traditional authority. Yet the advantages of this engagement well outweigh the risks. Orthodoxy has a major opportunity to spearhead Jewish renewal and provide wisdom to the entire Jewish community.[19] Calls for a new institute on Jewish leadership in Yeshiva University hold out the promise of bringing the voice of Orthodoxy into the centers of power and influence in the American Jewish community and reclaiming Orthodoxy's rightful place as the voice of Jewish tradition and learning. To be sure, this route is perilous. Diminished rabbinic

authority will not only make rabbis uncomfortable but will also threaten to overthrow the hierarchy of values that lies at the root of any religious system. However, an Orthodoxy that is mature and self-confident should be able and willing to undertake these risks.

Third, engage intellectual challenges rather than declare them irrelevant or impermissible. An interesting encounter occurred recently at Yeshivat Chovevei Torah at a public symposium on the permissibility of Biblical criticism. In some respects, this echoed the nineteenth-century discussion of Nachman Krochmal, who called for a new *Guide for the Perplexed* that would absorb the challenges of historical scholarship much as Maimonides had absorbed those of Aristotelian philosophy.[20] Those arguing for an open inquiry into the challenges of Biblical criticism are in fact arguing both that a truly modern Orthodoxy cannot ignore such challenges and that there is, in fact, much to be learned from Biblical scholarship that will enhance our understanding of Jewish text even as we insist upon the hierarchical authority of the text.

To be sure, as Professor Avi Sagi of Bar-Ilan University has argued, "Sacred text cannot simply be passed over." The interpreter of text accepts its authority and struggles to reinterpret difficult passages. Nonetheless, the modern interpreter also brings autonomous reason and personal judgment into the process of interpretation. Dr. Sagi makes the case for a Modern Orthodox inquiry: preserve the hierarchy of values in studying the text, but infuse the study with the insights and perspectives that modern scholarship can offer.[21] Conversely, those who in effect mandate, "Don't go there, for it will irretrievably lead to heresy," are asking that well-educated and intellectually minded Modern Orthodox Jews must close their minds dogmatically to some of the most influential trends in Jewish scholarship today.[22] This question of approach affects not only the findings of modern scholarship. Perhaps more important, it is a question of whether we approach our study in an atmosphere of open inquiry or of closed authority.

Last, acknowledge that the realm of communal policy involves matters of judgment that are more easily prone to committing error. Noted above were the views of *gedolim* who counseled against

Zionism and emigration from Eastern Europe to America. A similar debate might be held today concerning the strong limitations Rabbi Soloveitchik placed upon interfaith dialogue.[23] Obviously, the point of the exercise should not be the overthrow of rabbinic authority. On the contrary, the halakhic system cannot exist absent some degree of hierarchy. Rather, we must be wary of expanding the realm of authority to the extent that the idea of *da'at Torah* permeates Modern Orthodoxy, thereby reflecting an ascendancy of *hareidi* values within the Modern Orthodox world.

To be sure, many of these recommendations are counter-intuitive to the prevailing currents in contemporary Modern Orthodoxy. A famous *midrash* notes that the Ten Commandments were "inscribed" on the tablets and that the Hebrew for "inscribed" also connotes "freedom" namely, that ultimate freedom lies less in personal liberty than in obedience to command. This *midrash* has often served as the rallying cry of those who equate freedom with consulting the *gedolim*. In the twentieth century, Sir Isaiah Berlin addressed the history of a dual vision of freedom in Western thought personal liberty and the obligations of membership in a community.[24] Perhaps the challenge to Modern Orthodoxy lies precisely in its refusal to choose between these two concepts of freedom.

Each has its role as well as its limitations. The capacity of Modern Orthodoxy to live in two worlds to balance the claims of tradition with those of modernity, to weigh the points of consonance and of dissonance between them, and, most of all, to live with tension in the absence of simple solutions will, in the long term, be both a test of Modern Orthodoxy's sustaining power and a measure of its salience.

NOTES

1. Immanuel Kant, *Religion Within the Limits of Reason Alone* (New York: Harper & Row, 1960), pp. LIV–LVII. For a Jewish critique of Kant's moral theory, see Emil Fackenheim, *Encounters Between Judaism and Modern Philosophy* (Philadelphia: Jewish Publication Society, 1973), chap. 2. The American emphasis upon individualism and autonomy is treated in many places. See, for example, Henry Steele Commager, *The American Mind* (New Haven: Yale University Press, 1967), pp. 19–21.

2. See Robert N. Bellah et al., *Habits of the Heart* (New York: Harper & Row, 1985). A more recent scholar has even discovered "Sheilaism" on a list of world religions alongside Hinduism, Buddhism and, of course, Judaism. See Sherry Israel, "Jewish Involvement in the American Public Square: The Organizational Disconnect," in *Jews and the American Public Square*, ed. Alan Mittleman, Jonathan Sarna, and Robert Licht (Lanham, Md.: Rowman & Littlefield, 2002), p. 263.
3. Jack Wertheimer, "Judaism a la Carte," *Moment* (August 1994): 54–55, 68. More generally, see Steven M. Cohen and Arnold Eisen, "The Sovereign Self," in *The Jew Within* (Bloomington: Indiana University Press, 2000), chap. 2.
4. "A Little Bad News, a Little Good News," *New York Times*, September 23, 2000, sec. B.
5. See Emil Fackenheim, *What Is Judaism?* (New York: Summit Books, 1987), and Eugene Borowitz, *Renewing the Covenant* (Philadelphia: Jewish Publication Society: 1991), pp. 217–222.
6. See Steven Bayme, *Jewish Arguments and Counterarguments* (Hoboken, NJ: Ktav, 2002), p. 186, and Samuel Dresner, *Can Families Survive in Pagan America?* (Lafayette, La.: Huntington House, 1995), pp. 199–222.
7. For dei Rossi, following Maimonides, see Joanna Weinberg, ed. and trans., *The Light of Their Eyes* (New Haven: Yale University Press, 2001), pp. 290–291 (quoting Maimonides).
8. See Noah Rosenbloom, *Tradition in an Age of Reform* (Philadelphia: Jewish Publication Society, 1976), pp. 66–67, 85–86, 92–95.
9. Bernard Rosenzweig, "The Rav as Communal Leader," *Tradition* 30 (Summer 1996): 215–216.
10. See Jacob Katz, "*Da'at Torah:* The Unquestioned Authority Claimed for Halakhists," *Jewish History* 11 (Spring 1992): 41–50.
11. See commentary by Larry Kaplan in *The Jewish Political Tradition*, ed. Michael Walzer et al., vol. 1 (New Haven: Yale University Press, 2000), pp. 301–306.
12. Sylvia Barack Fishman, personal communication, January 5, 2005, and Freda Birnbaum, personal communication, January 4, 2005.
13. Mendel Shapiro, "*Qeri'at ha-Torah* by Women: A Halakhic Analysis," *Edah Journal* 1:2 (http://www.edah.org/backend/JournalArticle/1_2_shapiro.pdf).
14. Walzer et al., *Jewish Political Tradition*, pp. 251–252.
15. "Yoffie Embraces Gay Vows over Reform Opposition," *Forward*, April 3, 1998.
16. See Ari Goldman, *Being Jewish* (New York: Simon & Schuster, 2000).
17. See R. Aharon Lichtenstein's paper in this volume.
18. Bernard Lazerwitz et al., *Jewish Choices* (Albany: SUNY Press, 1998), pp. 78–83, 88–91.
19. See Jack Wertheimer, "The Orthodox Moment," *Commentary* (February 1999): 18–24.
20. Jay M. Harris, *Nachman Krochmal* (New York: New York University Press, 1991), pp. 129–233.
21. See comments by Sagi in Walzer et al., *Jewish Political Tradition*, pp. 104–107.

22. Interestingly, Dr. Norman Lamm's views have changed somewhat on this point. In his recent and impressive collection of published articles, *Seventy Faces*, he at one point dismisses Biblical criticism as a "nuisance" (vol. 1, p. 93) yet elsewhere describes the necessity for modern rabbis to "learn modern historical and biblical scholarship probably our greatest and most pressing need at present" (vol. 2, p. 91). See Lamm, *Seventy Faces*, 2 vols. (Hoboken, NJ: Ktav, 2002).
23. For a critique of the Rav's position, see David Hartman, *Love and Terror in the God Encounter*, vol. 1 (Woodstock: Jewish Lights Publishing, 2004), chap. 5. See also the unpublished paper by my colleague Rabbi David Rosen, International Interreligious Affairs Director for the American Jewish Committee, "Orthodox Judaism and Jewish/Christian Dialogue" (kindly lent to me by permission of the author). Similarly Rabbi Marc Angel acknowledges by implication that to be effective, interfaith dialogue must encompass both theology and social teachings. See his *But Who Am I, and Who Are My People?* (Hoboken, NJ: Ktav, 2001), pp. 116–123.
24. Berlin distinguishes between "positive" and "negative" freedom and clearly prefers the latter, noting that positive liberty can often open the door to tyranny. See Berlin, *Four Essays on Liberty* (London: Oxford University Press, 1969), pp. 118–172.

8

On Constructively Harnessing Tensions Between Laity and Clergy

Marc D. Stern

Tension between the laity and the rabbinate is not a new phenomenon. It existed in Talmudic times for example in Rabbi Akiva's reminiscences about his feelings toward scholars when he was not yet one, and, in the same discussion, in the reciprocal hostile feelings of scholars towards non-scholars.[1]

It would be surprising if a *talmid hakham* had no critics, because his function of rebuking those whose religious observance falls short is bound to generate resentment.[2] Before the rabbis, the prophets were not universally loved figures.

What is not inevitable is whether the tension will be creative or destructive. Left unchanneled, lay-clerical tension threatens to undo many of the impressive gains of American Orthodoxy. Channeled, it can invigorate them still further. A rabbinate that sees itself

at loggerheads with an indifferent laity that must be tamed and forced into a single model for Jewish living will find itself increasingly isolated from large segments of American Orthodoxy (and literally idolized by yet other elements). A rabbinate that the laity believes is abusing its authority or living in another religious and intellectual universe, unresponsive to the intellectual, spiritual, or economic needs of the average Jew the latter, the very failing for which Rabbi Yehoshua memorably rebuked Rabban Gamliel[3] is destined to failure.

Although I speak of the rabbinate as a whole, it is commonplace that the rabbinate itself is increasingly divided between pulpit rabbis and *rashei yeshivot*. Once, of course, the privilege of maintaining a *yeshivah* was a privilege of the town rabbi. In my time at Yeshiva University in the early 1970s, many, perhaps most, of the *rashei yeshivah* either were, or had been, community rabbis a phenomenon less common today. That dual role anchored the *rosh yeshivah* in the here-and-now world of the average Jew. Absent that anchor, it is not surprising that the gap between *rosh yeshivah* and laypersons is turning into a dangerous chasm.

Today, the pulpit rabbi stands in danger of being eclipsed by the *rosh yeshivah*, a phenomenon due not only to the supposedly greater knowledge of the *rosh yeshivah*, but to the fact that exposure to the *rosh yeshivah* is now all but universal in some measure for males during their formative years. (While women do not enjoy the same exposure, the tendency of men to spend a year or two or more after marriage learning means that the central rabbinic authority during the early marital years will again be the *rosh yeshivah*, not the pulpit rabbi, for women as well as men.)

A laity alienated from a rabbinate it justifiably sees as obscurantist, ignorant of the world, and lost in irrelevant and abstract Talmudic dialectic[4] will not have the resources to respond to new challenges in an authentically Jewish way and will not have the involvement in *talmud Torah* that is, or ought to be, one of the most important hallmarks of an Orthodox Jew. Such Jews will be denied the benefits of *shimush talmidei hakhmim* that is indispensable and a *mitzvah* derived from the obligation of cleaving to God.[5]

At best, an Orthodoxy estranged from the rabbinate and *rashei yeshivah* will either have only a tenuous contact with Halakhah or will have to turn for halakhic rulings to rabbis who themselves are either hostile or indifferent to modern life, and have little direct experience with it. And with certain happy exceptions Rav Moshe Feinstein and Rav Shlomo Zalman Auerbach are the most notable the results are not encouraging.

Nowhere is the tension greater than with regard to the status and role of women within the Orthodox community. Nowhere has the dialogue if it can be called that between laity and rabbinate been less enlightening. There has been much heat and noise, many charges and counter-charges, much name-calling, and too little light. Rabbis and their wives have by and large found satisfaction in current Orthodox practice. They appear to have little understanding that many women are not spiritually satisfied with these arrangements. Not all the yearnings of these dissatisfied women can be satisfied. The problem is that many in the rabbinate do not appreciate the dissatisfaction. The result is a festering sore that will only get uglier.

But women are not the only group for whom any dialogue is currently a dialogue of the deaf. Singles, and young people not successful in *yeshivot*, are increasingly without a rabbinic audience. The large number of youth at risk is evidence enough of this breakdown. Other categories, too, seem outside a lay-rabbinic dialogue. Intellectuals and the poor are two categories that come quickly to mind.

In the absence of empirical data, the danger of commenting on difficulties in clergy-laity relations is twofold. One can use a platform such as this to settle scores with rabbis or laypeople with whom the observer disagrees, or one can assume that one's own religious position is ideal, and that those to the right or left are religious fanatics or religiously indifferent.[6] I am aware of the dangers. I am just as confident I have not succeeded in avoiding them.

I attempt to describe my impressions of broad social phenomena. Such a survey necessarily involves stereotypes, and certainly depends on personal experience and subjective impressions. There are no formal sociological data to support my descriptions. I can only hope that they are not completely wide off the mark. It goes without

saying that my remarks are designed to describe broad trends, not any specific institution or person.

SOME GENERAL OBSERVATIONS

My central theses are several. The stimuli moving the contemporary rabbinate are strongly parochial and conservative, a healthy tendency that can readily deteriorate into an unhealthy petrifaction and fanaticism. In some cases, it already has.

The Modern Orthodox laity today, by contrast, is motivated by stimuli that come from the outside. It is often too interested in the religious status quo and avoiding horrors what it believes to be religious fanaticism. Too many Orthodox Jews worry about children who wear black hats or long dresses, spend time learning, and are generally more observant and less well educated secularly than their parents. Paradoxically, for a substantial segment of this community secure in its current level of observance, there is a nagging sense that authenticity lies somewhere to the right. Unfortunately, this tendency is even stronger in the rabbinate, such that laypeople reasonably sense that their own leaders are uncertain of the ground on which they stand.

These tendencies are not immutable. In American Orthodox history, there have been times when the rabbinate was more liberal and modernizing, and the laity more conservative. At other times, crucial and indispensable changes taken for granted today were forced on an unwilling and reluctant rabbinate; one thinks of the English sermon.

There are important areas where laypeople have insisted often over strong rabbinic objections on attacking social ills such as spousal abuse (Sholom Task Force), child abuse (one still has to deal with rabbinic objections to reporting abuse, though by and large less so in Modern Orthodox circles than elsewhere), genetic diseases, and, for that matter, *sha'atnez*.

In some cases, as in ideological institutions like Drisha, Edah, and Chovevei Torah, rabbis have taken the lead (notably, though, in close cooperation with laypeople) in challenging the regnant religious parochialism. The popularity of these organizations with

important segments of the Orthodox community suggests that they have struck a chord and are meeting a need that the traditional rabbinate to say nothing of the *rashei yeshivah* are not filling.

The tendency of some to see "authenticity" in movements to the right suggests that other, more parochial, spiritual needs are also not being met by the Modern Orthodox rabbinate. The gap between the right and left branches of Modern Orthodoxy is still bridgeable, but it threatens to become a yawning chasm if not addressed in ways that are mutually acceptable. Demands for one side's unconditional surrender will not work.

A second, equally important thesis is that there are a variety of tasks that are indispensable for Jewish life. No single model of religious observance fits all, or is the only, or even the best, way to serve the *Ribbono shel olam*. This is a principle in urgent need of affirmation at both the communal and individual levels by the left and by the right. The refusal of both to acknowledge this bedrock principle is both notorious and intolerable. Not everything goes, not all religious choices are wholly subjective and equally valid. There can be debate about which needs are the most urgent needs, and which forms of observance are preferable. At the end of the day there remains a wide range of acceptable choices. They are all legitimate; all should be respected.

Everyone is obligated to study Torah. We properly and necessarily give pride of place to Torah scholars and scholarship. Whatever else ails us, whatever the costs of focusing on first-rate Torah scholarship, we cannot tolerate an erosion of this commitment. Not everyone, however, is obligated, or destined, to be a Torah scholar. Torah scholarship, moreover, does not exhaust itself in mastery of Gemara explicated Brisker style; it includes *Tanakh*, Halakhah, and Jewish philosophy, even *dikduk*. A person, the Gemara observes, does not learn except what his heart desires.[7]

Not only are there various styles and subjects of *talmud Torah*, but there are many *mitzvot*, and all need to be observed. We need *talmidei hakhamim* who need much time of focused study to develop, but we also need those who clean and care for the synagogue, are devoted to *bikkur holim*, or test for *sha'atnez*. We need Jews who

religiously attend *daf yomi* classes, but we also need those who literally hang out with at-risk youth, raise funds for *mikva'ot*, or check the *eruv*. We need those who recite *tehillim* (Psalms) and those who prowl the halls of Congress on behalf of Israel. And we must treat with dignity those for whom just holding on to the major *mitzvot* and supporting a family exhausts their capacities. Too much of the Orthodox educational system does not recognize these multiple ways of serving the *Ribbono shel olam*. It is geared primarily to the budding talmudist. And much of the rest does not provide an adequate grounding in Talmud and other primary texts.

A third thesis is that while Halakhah is mostly an undemocratic system, it is not an abstract and closed legal system with only God and academic scholars as competent and authorized expositors, legislators, and adjudicators. There is room for popular input, at least with regard to some aspects of rabbinical law and especially with regard to customary observances. The Halakhah countenances, even demands, a dialogue between scholars and believers, with each obligated to give due weight to the views, actions, and capabilities of the other. This dialogue has been abandoned at the practical level and, worse, repudiated at the theoretical level.

Not long ago I cannot remember where I read a diatribe against those who follow the plain sense of the text, claiming that the *humra* of *benot Yisra'el* in *Niddah* reported by Rav Zera was an innovation of Jewish women.[8] The author suggested that those who hold this view are not affording ample respect to the rabbinate as master of Halakhah. Too bad the author did not bother to check the *rishonim*, who explicitly say that this *humra*, around which much of contemporary *hilkhot niddah* revolves, was generated by *benot Yisra'el*, noting that the rabbis did not uniformly accept it all at once.[9] And what would that author do with the Gemara, which reports that the "nation is accustomed to acting" according to the views of three minority rabbinic opinions, even though by ordinary rules of *pesak* these rulings should be disregarded?[10] The diatribe I read was an anachronistic effort to read the current trend toward a strongly rabbinic-centered Judaism back to *Hazal*.

This development is all the more surprising given that today

many laypeople are well educated. Many are *talmidei hakhimim* in their own right. Some have substantial insights into the relevant matrices to which Halakhah is applied, not just concerning technology or science, but sociology, economics, and politics. I believe, for example, that laypeople are more attuned to *hillul Hashem* than are rabbis, but that some of them are too quick to invoke *hillul Hashem* to circumvent unpopular *halakhot*. Some laypeople are more learned in specific areas of Halakhah or *mahshavah* than the average *rav* or *rosh yeshivah*. A dialogue with these people and the rabbinate would be healthy, and not just because it would enhance the *milhamtah shel Torah*. It would provide a reality check to what is an increasingly self-contained and self-regarding rabbinate.

Fourth, the insight of Lord Acton that power tends to corrupt and absolute power tends to corrupt absolutely is as applicable to Jewish life as any other human endeavor.[11] In theory, *yir'at shamayyim* ought to serve as a check on human avarice. Given human frailty, however, it does not. The community needs to devise appropriate checks and balances to check the authority of both the rabbinate and the laity. It is not easy to devise checks that will not choke the independence of one or the other side. The task is complicated because the community is merely a voluntary association without sovereign authority and independent adjudicators with binding authority. Exit is easy and cost-free.

The gap between rabbinic perceptions of the responsible exercise of authority and lay perceptions of that authority is wide. For the past few years, a committee of the Orthodox Caucus worked to revise the Orthodox Caucus prenuptial agreement. The sticking point was the scope of discretion to be afforded the *beit din* to decide cases outside the detailed prescriptions of the agreement, according to the equities of the individual case. The rabbinical members of the committee favored a large measure of rabbinic discretion; the laypeople (myself included) did not. The issue (which has since been resolved) was not purely, or even mostly, halakhic. It is both about the treatment of women in the *beit din* process and the lay trust, or lack of it, in the discretion of the *batei din*. (To put matters in perspective, I hasten to add that secular judges are just as insistent on

preserving their discretion, and secular legislators just as insistent on limiting it.)

Orthodox Judaism without rabbinical authority would be unrecognizable. Orthodox Judaism without religious authorities of unquestioned personal integrity and courage is unbearable. If rabbis lack either, or abuse their authority and given recent painful revelations, who can deny they sometimes do the laity needs protection from the rabbinate. It is not getting it. On the contrary, the rabbinate acts as if any check on its authority, or any criticism of its actions, is an intolerable assault on *kavod ha-Torah*. The most obvious cases involve sexual abuse of children or misuse of the counseling function, where the painful slowness of the rabbinate to acknowledge its failings has been fairly evident to the lay community.

The official organs of the rabbinate reacted with uniform horror to a lawsuit challenging publication of a sensitive and intimate confidence communicated to two rabbis. Much of the laity was equally appalled at the rabbis' behavior, since there were any number of effective alternatives to disclosure available of which the rabbis did not avail themselves. The rabbinate also seems to have assumed that the breach of confidence would not discourage laypersons from confiding in them. This may be right but how it can be assumed is uncertain. I, and other lawyers I know, now carefully advise clients that what they confide to a rabbi may not remain secret if the rabbi unilaterally decides the confidence ought to be revealed.

When, in a supplementary rabbinics course at RIETS, I was critical of the depressingly uniform rabbinical reaction, a student asked me why the woman had sued in civil court instead of *beit din*. I answered that this criticism would have force if one could conceive of a *beit din* that might rule against a rabbi. I found it impossible to conceive of such a *beit din*. None of the students could suggest one either.

When rabbis are accused of having affairs with persons they are counseling, it is sometimes said that adultery is not forbidden just to rabbis, and rabbis should not be singled out for blame. This is true so far as it goes, but the abuse of trust and *hillul Hashem* makes the cases different. The absence of lay confidence in the rabbinate

is exacerbated by a stubborn refusal to acknowledge the problem's existence.

The state of *batei din* rabbinic institutions is a festering sore. One leading *beit din* has been sued for accepting bribes to issue a *heter me'ah rabbanim*. A secular judge found at least enough evidence supporting the charge to require a trial (although his judgment was later reversed on constitutional grounds).[12] Too much *kashrut* enforcement is motivated either by pure greed or religious one-upmanship, oblivious to the costs imposed on companies and consumers alike.

Checks and balances are likely to minimize the recurrence of these abuses. The countervailing threat is that such checks may too closely confine genuine objections to current practice.

THE LAITY

In considering the current situation, I want to focus on several phenomena that characterize the Modern Orthodoxy laity, broadly defined. It is democratic. It is suspicious (and yet in awe) of authority. It is (too) comfortably upper middle class or better and determined not to risk its economic status. It is quite pious in comparison to the rest of American Jewry, yet it is afraid of retreating to the "ghettoes" it sees in places like Lakewood and Brooklyn. (Paradoxically, at least some segments of the Modern Orthodox community and all too many of its rabbis seem to regard these places, and the Orthodoxy they represent, as the only genuine, authentic Judaism.) It is well educated secularly as well as religiously, although on the whole better in the former than the latter. It is comfortable with religious humanism. Like other Americans, it is guilty of Sheilaism selective observance of religion as defined by what is acceptable to the believer, not the dictates of the authorized expositors of the faith. On many of these points, it is in conflict with the rabbinate.

COMPARATIVE PIETY

A Jew who keeps kosher and observes Shabbat and *taharat ha-mishpahah* is practically a saint compared to the rest of American Jewry. The Rav in *Al ha-Teshuvah* has scathing things to say about the fact

that calling someone a *shomer Shabbat* is the lay equivalent of calling a rabbi *ha-rav ha-ga'on* as a title of honor, but such it surely is.[13] A person who can read so much as a *pasuk* of *Humash* without aid of a translation to say nothing of its commentaries is nothing short of a *ga'on* in the constellation of American Jewry.

Under these circumstances, the religious complacency that characterizes much of Modern Orthodoxy is easy to understand. One does not have much of an imperative to grow when one is already at such an "elevated" spiritual level. It is a fair question whether it was not always so. R. Shimon b. Yohai long ago observed that *benei aliyah* persons always searching for spiritual advancement were few.[14]

Our memories of our ancestors are distorted by the great dislocations of the last century, the migration to America and the Holocaust. Our lasting written recollections of Jewish life in Europe are those of the intellectual and spiritual elites, the great *rashei yeshivah* and their students. But they were undoubtedly not typical, and it would be a mistake to expect the mass of American Orthodoxy to duplicate the religious aspirations, achievements, and standards of that elite.

What makes it seem natural for the rabbinate to harbor expectations of persistent spiritual growth is the fact that it is the direct heir to the earlier elite intellectual tradition of the European *yeshivot* distorted as the tradition is by the prism of nostalgia and historic dislocation and the fact that American Orthodoxy is the spiritual elite of American Jewry. (Making *this* claim runs the risk of arrogance.) Under these circumstances it is not surprising that Orthodoxy's spiritual leaders expect much from it, more indeed, than may be reasonable. It is likewise not surprising that so many of the laity resent the imposition.

DEMOCRATIC ORTHODOXY

Modern American Orthodoxy has assimilated the American democratic tradition. This includes the right I use the word advisedly to criticize the leadership of the polity without penalty or restraint. This extreme notion is difficult to fully reconcile with the *kavod*

due a *talmid hakham*. Indeed, many of the laity see the rabbi as an employee at will, who, like all such employees, has to confine himself to carrying out his employers' wishes or be discharged. The laity is likely to see democratic criticism as calculated to improve communal life and as a vehicle to force the hand of an unresponsive rabbinical establishment.[15] The rabbinate (which, by and large, is not enamored of democracy) sees in such criticism an insult to the dignity of the *talmid hakham* and, often, to the honor of the Torah. The rabbinate is far too thin-skinned, but it is not responding to ghosts.

The democratic tradition is skeptical of imposed authority. It is reinforced by developments in moral philosophy emphasizing the importance of a self-generated and self-accepted ethic, not ethics imposed by outside authority.[16] No doubt these democratic impulses are the origin of the synagogue ritual committee, an organ unknown to earlier Jewry. Its existence suggests that questions of liturgy need lay approval, not merely rabbinical endorsement. Able rabbis manage most of the time to live with such committees and have them ratify their own important halakhic decisions, but not always and not everywhere. More than one rabbi has lost a position for losing such battles or even for provoking them in the first place. The very existence of such committees suggests a formal check on rabbinical authority in a place where one would have thought it at its apex the form of the *avodah* in the synagogue. (Such committees might also be an acknowledgment of a communal role in liturgical matters, but I don't have the sense that they are so perceived.)

The fact that rabbis need lay approval on such matters is one source of lay-clerical tension. In some communities, there are also lay boards that share with the rabbinate responsibility for *kashrut* enforcement. These (as well as their synagogue counterparts) can either check rabbinic excess, enhance legitimate rabbinical authority by lending community support, or thwart legitimate enforcement efforts by forcing rabbis to negotiate Halakhah with laypeople.

The American democratic impulse also encompasses an unspoken egalitarianism that questions the idea that specialists are wiser than the common man in setting communal policy. Evidence both secular and religious supports this view. Unlike Europeans, for

example, Americans do not train legislators and bureaucrats from early adulthood for leadership roles. The crisis of authority in the contemporary American Catholic Church is not just a product of the hierarchy's failure to confront sexual abuse. It is of far longer duration and predates, and will endure past, the current scandal. It is a challenge to all clerical authority. It is a quintessentially American development in a church founded on undemocratic hierarchical authority.

American Protestants at the time of the American Revolution were fearful that the British might introduce a hierarchical episcopate to the United States. Some historians think this fear fueled the American Revolution.[17] The skepticism about hierarchies probably has its roots in the Protestant belief that any person can read Scripture and reach theologically acceptable conclusions. But it also resonates with political populism and the ideal of the citizen legislator. (Term limits are the latest manifestation of this idea in American politics; so is the anti-politician politician.)

Of course, Orthodox Jews must accept some rabbinic authority. The Protestant doctrine of *sola scriptura* is alien to us. Absent the acceptance of rabbinic authority, there can be no concept of Torah, Halakhah, and *mesorah*. But it cannot be said that Modern Orthodox Jews reflexively accept every rabbinical pronouncement on any subject, particularly one that insists on departures from established custom or imposes serious inconvenience. *A fortiori*, Orthodox laity will not blindly accept rabbinic pronouncements outside of Halakhah so-called *da'at Torah*. Dr. David Berger has suggested to me orally that this rejection is not limited to the Modern Orthodox community, but extends as well to communities that in theory accept *da'at Torah*. He argues that those who shape *da'at Torah* are aware of this (silent and unacknowledged) check on their authority and moderate the doctrine's invocation accordingly. I hope he is right.

For some segments of the Modern Orthodox community, disdain for rabbinical authority goes still further. A recent article in an Anglo-Jewish newspaper discussing proposals in some Orthodox circles to allow women to be called to the Torah is illustrative. It quoted one young woman as saying that she does not see the need

for the approval of some sixty-year-old rabbi before she can engage in a practice that is spiritually meaningful for her and for which halakhic authorization has been proposed.

This sentiment, I believe, is not idiosyncratic or unique to this one woman. It reflects a basic challenge to Orthodoxy, one far more threatening than *aliyot* for women. It resonates of Yanai ha-Melekh's beguiling but false claim that *Torah munahat be-keren zavit; kol mi she-rotzeh yavo ve-yetol* ("the Torah is lying in the corner; whoever wishes, let him come and take it up");[18] or what the Rav famously referred to as the common-sense rebellion against Torah authority.[19]

There is little alternative but to combat the most extreme versions of the democratic impulse. There is urgent need for open and meaningful not rote dialogue between *rabbanim* and their congregants on many halakhic issues, especially those involving women, and more globally on what spiritual direction the community will take. Nevertheless, the extreme populist view of Halakhah needs to be rejected.[20] It is, however, an extreme that needs to be rejected, not (as is happening now) the idea of any popular voice shaping the Halakhah accepted by the community.

Merely condemning extreme forms of halakhic populism by invoking rabbinic authority will not work in the very places that most need repudiation. Persuasion works in a democratic society whereas coercion fails. The *herem* is not an effective weapon for Modern Orthodox Jews. It should be used, if at all, only in the most egregious cases. Its promiscuous use is counterproductive.

Criticism should not be equated with a lack of *kavod ha-Torah*. The late and much-missed Rabbi Walter Wurzburger told me that when he agreed to publish a critique of the Rav's philosophy in *Tradition*, he was bombarded with criticism from rabbinic colleagues on the grounds that the article would denigrate the Rav's honor. The Rav, however, brushed aside the objection, saying (I paraphrase slightly) that he learned more from critics than sycophants. As always, the Rav should serve as a model.

Anyone who has studied the second chapter of the Rambam's *Hilkhot Mamrim* knows that both before and after certain kinds of religious decision-making, rabbis must consider whether what

they demand is bearable by the community. In cases where rabbis misjudge, *K'lal Yisra'el* has the last word. *Masekhet Horayot* teaches that individuals have some level of moral culpability for sins committed in reliance on rabbinic pronouncements.[21] There is, in short, no general rule of rabbinic infallibility. The rabbinate should not act as if there were.

EDUCATION

Probably never before in history has a class of Jews been so universally educated for so long in Jewish texts as the adherents of contemporary American Orthodoxy. A Jewish high school education is now the almost invariable norm in the Orthodox community.

It is probably true that the generally available Judaic studies are not as intense as elite *mesivta*-level studies were in Europe in the generations preceding European Jewry's violent destruction, but they are surely more universal, and not, as in Europe, reserved for the most gifted. Of course, the same level of education now extends to women, a change that began in earnest only eighty years ago and whose revolutionary impact is still being worked out.

The salutary development of advanced universal Jewish education is the product of several independent phenomena. First is the entry of the Orthodox into the middle class and beyond. No longer are twelve- and thirteen-year-olds who are not destined for rabbinical greatness forced to work to help families fend off the grinding poverty of the Pale or the Great Depression. More generally, the middle class prizes education for its own sake and not just as a means of ensuring financial security.

Second is the universality of secular education to the high school level and beyond. As Jewish children were exposed to higher secular education, and to colleges where their peers were not Jewish, let alone Orthodox, the need for a firm grounding in Jewish sources became ever more pressing. However, universal Jewish education based on an elitist model has not adapted itself to the broader population it serves.

Third, the contributions of earlier generations of day schools and the example set by "right-wing" *yeshivot* have both had a

cumulative positive effect on the Modern Orthodox community. The depth and breadth of religious studies has surely improved over time. My sons and their friends know far more than my peers and I did at a comparable age. The overwhelming majority of today's students spend at least a year in Israel devoted exclusively to Torah studies, a phenomenon that is now two generations old. Of course, for many, formal Torah education does not stop even there.

The broad dispersion of knowledge means that no longer is the rabbi the only person in town with a serious and sustained exposure to Talmudic text and codes. Some "lay" people will themselves have rabbinic ordination. People so educated cannot be dictated to and will not be swayed by a bare assertion of authority. It is inevitable and a good thing that laypeople so educated will from time to time challenge their rabbi's judgment or his interpretation of a text or application of a code or decision. Often, laypeople will be wrong, but not always. It is always a mistake to infantilize educated people.

Presentations of position X as *hashkafat ha-Torah* will not be blindly accepted because Rabbi said so.[22] It may well be that the objecting *ba'al ha-bayit* is not the equal of the rabbi, but he is playing the same game in the same league with the same rules. Such challenges need to be taken seriously. I have often had the experience of being told that something had to be done in way *X*, but when I questioned the assertion, asking about source *Y*, it turns out that there is far less halakhic support for position *X* than first asserted. The rabbi's ruling is thus exposed at best as prescriptive, not normative. The result, in my case, is lay resentment at being misled.

It is also the case that, because there is nowhere to turn with such challenges, congregants simply grumble that the rabbi is wrong and cast aspersions on the rabbi (as either a fanatic, ignorant or both) that are entirely unproductive, possibly constitute *lashon ha-ra*, and certainly do not generate respect for Torah.

It cannot, however, be pretended that our educational system does not contribute in other ways to lay-clerical tensions. The problem of different values between rabbis and laypeople can in large part be traced to the educational choices open to Modern Orthodox parents especially for boys. These opportunities divide broadly into

two types of schools. One camp provides a somewhat diluted version of the traditional rabbinical curriculum, focusing on the traditional *masekhtot* of *Nashim* and *Nezikin* and the type of exposition favored in the great *yeshivot* of Lithuania. Much of this curriculum does not appeal to the average student who will be a *ba'al ha-bayit* and not a *rav*. It does not answer his spiritual needs (or obscures them) and does not prepare him to be an educated *ba'al ha-bayit*. Worse, for many it is a turn-off to Talmud, if not t*almud Torah*.

This Talmudically based education is meat and potatoes for the rabbinate and so the part of education at which rabbis excel is not a part that proves attractive to many of their *ba'alei batim*. For those for whom this curriculum appeals, it has the potential to produce *talmidei hakhamim* and certainly *ba'alei batim* who are capable of wrestling with texts the *devar Hashem* on their own.

The other group of schools provides a broader-based education, emphasizing Talmud far less and considering a far broader range of texts and subjects, often in innovative ways. Unfortunately, students who emerge from these schools generally lack the knowledge and skills necessary for lifelong wrestling on their own with the *devar Hahem* as a primary spiritual activity.

Along with universal Jewish education comes a wide exposure to secular learning and modern Western values. The exposure is not only intellectual and limited to the classroom; it is attitudinal. Modern Orthodox Jews do not simply study Shakespeare, Kant, Darwin, Lord Keynes, and Milton Friedman, but they appreciate these writers and thinkers. They have adopted many of the mores and values of the society around them. Those who go on to secular colleges or graduate schools are fully at home in that universe of ideas, a universe the rabbinate does not share and does not value. Here there is a values gap between the rabbinate and the laity that does not lend itself to an easy solution. It strikes at the core of how one defines *avodat Hashem*.

A few years after having left his *shi'ur*, I met the Rav and asked him about his *shi'ur*. He responded that the level of learning was higher than ever. Nevertheless, he complained, the *shi'ur* was, and I quote, "boring." If he wanted to discuss the morning's news, he told

me, there was no one who had any idea what he was talking about. If the Rav was troubled by this situation, it was not because he did not value *talmud Torah*.

Notwithstanding the Rav's concern, those "boring" students are today's *rabbanim*. To whom can a Modern Orthodox Jew interested in the day's news, the latest philosophical debate, political dispute, or scientific discovery, turn for an informed discussion of its implication for their Jewish selves if their *rabbanim* have not got a clue?

WEALTH

The Orthodox community that is the subject of this forum is solidly middle class indeed upper middle class or better. It is extraordinarily comfortable in America and has no desire to re-create the economic conditions of the *shtetl*, the Pale, the Lower East Side, Brownsville, or, for that matter, the Grand Concourse, even if there were clear spiritual advantage in doing so. It is fully modern, seeing the creature comforts of life as valuable in their own right. Most important, Orthodox Jews live comfortably and do not see wealth and physical comfort as a distraction from spiritual pursuits.[23] *Pat be-melakh tokhal* is not a comprehensible slogan for Modern Orthodoxy.[24] If further proof is needed, look at the physical facilities provided in Israeli *yeshivot* catering to American students or to the *kollel* students who demand to know how much they will be subsidized by their in-laws and they don't expect subsistence subsidies either. Wealth is increasingly conflated with virtue and wisdom. Its pursuit becomes all-consuming. This is without question a challenge to rabbis, who should know better and pursue (at least one hopes) a different agenda.

THE FEAR OF RETREAT INTO THE GHETTO

Given the increased parochialism of much of American Orthodoxy and its retreat into fewer and fewer neighborhoods more and more isolated from the surrounding society in dress, attitudes, reading matter, and life-style, it is not surprising that for substantial segments of Modern Orthodoxy, the fear of becoming "black" or of raising

children who reject modern society and disavow a secular education has become all-consuming.

To the extent that this fear is fueled by the exaggerated claims of our more right-wing confreres to have an exclusive hold on Torah truth or to represent "authentic Torah Judaism" to the exclusion of all other modes of Torah observance, who can blame parents for this fear? It would help if the Modern Orthodox rabbinate challenged these claims to an exclusive on Torah truth but it by and large does not. To the extent, however, that the fear is opposition to greater devotion to Torah study, to more modest dress, and most important, to a greater and admirable willingness to forgo those aspects of modernity that are a threat to the continued existence of *Torah u-mitzvot,* the fears are not unjustified, but impossible to accept.

A particularly difficult problem to deal with in this regard is relations with non-Orthodox communities. Without question, the rabbinate as a whole has rejected such ties, such that Orthodox rabbis who maintain them in one fashion or another are regarded as iconoclasts and suspect. (Some rabbis even make a fuss about using the title "rabbi" in addressing non-Orthodox rabbis, a bit of pettiness I fail to understand.)

Substantial segments of lay Modern Orthodoxy have a very different approach. They maintain a religious belief in the importance of communal peace and good relations with all segments of American Judaism. They find particularly galling the resistance of the rabbinate to cooperate with Federations or non-Orthodox rabbis. The argument that such cooperation legitimizes the Reform movement or lends credence to its theology is hard to take seriously across the range of public issues we confront and the pressing need to maximize Jewish political influence in opposing anti-Semitism, supporting Israel, or, for that matter, counteracting militant secularism.

THE RABBINATE

Speaking of the laity has the advantage of speaking about an undifferentiated mass. The reader cannot easily identify any individual or community as the subject of criticism. This is unfortunately not

true of the rabbinate. I hope nevertheless to avoid direct criticism of individuals, particularly since they are not able to defend themselves from my strictures.

I suffer from another disability in carrying out my task. Some of my opinions have been shaped by contacts with rabbis or congregants in which an attorney-client relationship was formed. The lawyer's duty to protect clients confidences inhibits me in these cases from spelling out the facts supporting my conclusions. The reader will simply have to trust (or reject) my conclusions without all of the relevant evidence.

At the outset, I note the real sacrifices we ask of rabbis. We expect them to be on call seven days a week, twenty-four hours a day. We expect them to learn and to visit the sick and the dying, to do marriage counseling and answer *she'eilot* ranging from the serious to the trivial all happily and *be-sever panim yafot* and to referee synagogue and community disputes with at least the wisdom of Solomon. We expect their wives to be perfect in dress, deportment, and hospitality (and, given the way too many rabbis are paid, to have a career besides) and their children to be models of decorum at all times.

Friends who have left the rabbinate often remark on how much more relaxed life is without all the tension a tension heightened by the fact that keeping *ba'alei baatim* who are also neighbors happy is indispensable to keeping one's job and feeding one's family. Addressing these tensions, letting rabbis and their families have a private life, would go a long way to improving relations between clergy and the laity.

Much of a rabbi's work is not controversial. Life-cycle events involve a substantial part of the modern rabbi's work, even in communities to the right. Rabbis either do this gracefully and well, or not. On the whole, pastoral work generates a large reservoir of goodwill for the rabbinate in general and individual rabbis in particular.[25] I am often struck by the depth of people's feelings about having a "family rabbi" present at a *simhah* even years after the rabbi has left town or retired.

The centrality of life-cycle events in the work of the rabbi has

one unfortunate side-effect. Those who are not at a stage of their lives to be engaged in such events have minimal connections with rabbis. The problem is acute with regard to adolescents, particularly girls, singles, and non–critically ill seniors. The point is neither new nor original, but it is one that, given how often it has been noticed, urgently cries out for a resolution.

There is also the risk that the rabbi will be seen to exhaust his responsibility with life-cycle events, becoming a sort of sacred MC or DJ, and being seen as "going off task" when addressing larger ethical or religious issues. And, of course, attendance at all these events and other pastoral functions is a drain on a rabbi's ability to excel in *limud ha-Torah* and other necessary intellectual disciplines.

There is no turning back the clock to what is depicted as the European ideal of the *rav* as a person devoted exclusively to *limud ha-Torah,* relieved of most pastoral responsibilities. It will not work today both because Jews won't stand for it and because it did not work. The gap between the East European rabbinate and the *ba'al ha-bayit* appears from this remove to have contributed to the religious decay that nearly consumed European Jewry in the decades before its final physical destruction. Neither, though, is the rabbi as master of ceremonies an attractive model.

THE PROBLEM OF *TOKHAHAH*

We expect the synagogue rabbi even in a voluntary democratic society suffering from Sheilaism to improve the religious observance of his congregants. Almost of necessity this involves criticism of existing practice. The criticism can be overt or indirect, gentle or abrasive, expressed in words or demonstrated by example, shouted in a sermon or calmly recited in a *shi'ur*. None of these is always right, and none always wrong. Each has its time and place. Any of them runs the risk of creating hostility. The technique has to appeal to a congregation whose varied members will react differently, making the choice of technique all the more complicated.

We ought to be grateful for those who reprove us and who seek to bring us to a more complete *shemirat ha-mitzvot*. Human nature being what it is, graceful acceptance of rebuke is not a universal

norm. No one, or at least no one who is not a masochist or at least a devotee of Navardok *mussar*, likes being told they are wrong. The rabbinical role requires repeated reproach and so runs the risk of generating repeated resentment.

This tension is largely inevitable. The Gemara's discussion of the *mitzvah* of *tokhahah* centers around the conundrum of rebuke as an act of respect generating dislike.[26] What we laypeople need to do is acknowledge that the rabbi's charge includes upsetting the status quo, challenging comfortable patterns of living, and calling (occasionally) for (radical) changes in personal and communal life. Even if the rabbi were always right, tension and conflict would be inevitable.

Rabbinic infallibility is not a tenet of our religion. Otherwise, as already noted, *Massekhet Horayot* would not exist. A rabbi may well be wrong about some *halakhah* or other. More likely, he may misjudge the community's ability to comply. He may be insisting on a *humra* that is halakhically desirable, popular with the rabbinate or other circles but unnecessarily burdensome. Conversely he may concede/allow a *kula* that is undesirable or an unnecessary concession to the community. He may urge a position on Eretz Yisrael or some other "political" issue that is plausible, morally primitive, or politically naive.

Unless *rabbanim* are confident that they can speak their minds even if wrong without losing their jobs, we will have a rabbinate unworthy of the name. The Reform movement demands the freedom of the pulpit for its rabbis and they are right to insist on it. What is the point of hiring a *rav* to be an authority on Torah if the only viewpoints that will be tolerated have to be acceptable to the *kahal* or, more accurately, to those in the community with the power to hire and fire?

There is a well-known dispute among the *aharonim* about whether a rabbi presumptively serves for life or serves at the pleasure of the community.[27] I am not fit to express an opinion on the halakhic question, but as a sociological inquiry, it turns out to be harder than it appears. Without some guarantee of employment, no rabbi can be expected to open his mouth. If the rabbi is free of

any restraint, it is entirely possible that he will not meet the needs of the community.[28]

One comment germane to our topic is in order. The Gaon, in his commentary to *Mishlei*, repeatedly warns against spiritual "jumps" (*kefitzot*), urging instead slow and steady progress. (This may have been an anti-Hasidic remark, as some Hassidim in the Gaon's time engaged in "jumping" as prelude to *tefillah.*)[29] What may a rabbi may see as a small and necessary step toward *shemirat ha-mitzvot* may be a great leap of faith for the average person. Following the Gaon's advice would, I think, produce both better results and far less tension.

I have had calls from people over the years asking for help in leaving work early enough on Friday to satisfy the view of the *rishonim* that the prohibition on work begins at *minhah gedolah*. In the abstract, there is a legal claim to be made for this view. As a practical matter of the workplace, it is impossible to satisfy. And yet rabbis continue to urge it on congregants.

A woman came to me once with a letter to her employer from a prominent Orthodox rabbi supporting her claim to have Fridays off so she could fulfill the view that women should bake *hallah* on *erev Shabbat*. After pointing out that she could either bake *hallah* on Thursday night or purchase them on Friday, I told her to find another lawyer. What she really needed was another rabbi. One wonders about a rabbi with decades of experience in the rabbinate lacking the good sense not to find some reason not to put the woman in a position where she would inevitably lose her (quite important) job over a custom of secondary importance.

Of course, we need Jews who observe *erev Shabbat*. But in encouraging, even demanding, such observance, *rabbanim* have to be mindful of the requirements of the workplace and, by extension, the world in which their congregants function.

Another anecdote from a year I lived out of town. The community and the rabbi were in permanent discord about the speed of the weekday *minyan*. The rabbi was constantly complaining that the davening was too fast. In this town, the workday started at 8:30. Most people had to commute some distance to work. If they wanted to eat

breakfast or say hello to their children, they also had to run home after davening. This dispute dragged on until we found out that the rabbi regularly took a nap after *minyan*. He was entitled to a nap. He was entitled to insist on a *minyan* that was not rushed. He was not entitled to complain that people were rushing through davening to go off to work when he was rushing off to a nap.

Many rabbis have never held a secular job. They do not know the pressures of the workplace firsthand. Only half in jest, I have suggested that rabbis ought to hold a private-sector job before being allowed to hold a pulpit. If this is true of community rabbis, it is *a fortiori* true of the academic *rashei yeshivah*, who like their law school counterparts all too often have no sense of the workaday world. It should not be necessary to actually experience the workplace to have some sense of empathy and understanding for those who find themselves there. Perhaps, though, it is.

THE VALUE OF SECULAR ACTIVITY

There is another explanation for the lack of empathy among the rabbinate for the stress on *ba'alei batim* their fundamental failure to value any activity but Torah and *avodah*. It denies, in effect, the validity of any form of Judaism but the *halukah*. This is, I think, a real and growing problem.

As a high school senior, I was assigned to the *beis medrash shi'ur* of Rav Tzvi Dov Kanotopsky, *zt"l*. When college finals arrived, many of the students stopped attending *shi'ur* to study for finals. Rav Kanotopsky stopped learning further in the Gemara and instead gave review *shi'urim*. I and other high school classmates being high school seniors with not a care or responsibility in the world complained that our classmates were demonstrating a lack of commitment to *talmud Torah*. If we thought this expression of *frumkeit* would gain us favor in our *rebbe*'s eyes, we were quickly and sharply set straight. How dare we, he said, criticize our classmates who were working hard and had other responsibilities?

That response would not have been possible if Rav Kanotopsky had not thought that college studies were intrinsically valuable. Equally, no one who was privileged to study with him could think

that Rav Kanotopsky thought *talmud Torah* was a second-class subject, or that any and all other obligations trumped *talmud Torah*. It is simply that he was not prepared to dismiss all other human endeavors as worthless. His attitude has long since fallen into disrepute. Until it is restored, the tensions we are talking about will grow more intense and perhaps reach the breaking point.[30]

COURAGE

The devaluation of the secular as a source of lay-rabbinic tension at least has an ideological basis. Other sources of tension are less admirable. The rabbinic world, as I see it, insists on a high degree of conformity. Breaking the mold, fresh thinking, new approaches, appear to be anathema in and of themselves regardless of their intrinsic merit with one exception. New *humrot*, no matter how burdensome or unjustified, seem always acceptable. Any criticism of this trend is dangerous to a rabbi's reputation and career. The endless pursuit of "higher standards" of *kashrut* is a case in point. Privately, *rabbanim* decry this or that application of the trend, but far too few have had the courage to say so publicly.

The fear that someone will call into question a rabbi's *frumkeit* seems to paralyze all concerned. That people lose their livelihoods, that major investments are wiped out, that there is *hillul Hashem*, that people have to strain to meet the expense of complying with these "higher standards," that some of the food is inferior in quality, are trivial concerns in comparison.

Those rabbis who shy away from controversy on the theory that it is not welcomed by their colleagues are not misjudging the situation. Dr. David Berger has been left more or less alone to combat dangerous trends in the Lubavitch movement. How many rabbis have publicly endorsed his warnings? For that matter, how many stood up to say he was wrong?

Rabbi Shmuel Goldin might have been right or wrong about supporting the Oslo Accords against the consensus of the Orthodox rabbinate. But one thing was clear from the reaction of a majority of his colleagues. An Orthodox rabbi who defies the rabbinic consensus even on a matter not subject to a *pesak halakhah* and on which rabbis

have no claim to authority or expertise risks ostracism and worse. If rabbis are not prepared to acknowledge that *elu ve-elu divrei Elokim hayyim* "these and these are the words of the living God" then what may be expected of laypeople?

Rabbi Saul Berman may be right or wrong about this or that item on the Edah agenda or perhaps even on the organization's entire agenda but the ostracism he suffers from much of the Orthodox rabbinate is inexcusable. Debating the merits of ideas is fine. It would, in fact, be enlightening and bring respect to the rabbinate. Shunning them creates the impression of an Orthodox rabbinate reluctant or incapable of responding to issues that disturb the American Jewish public.[31]

Leaders are not afraid to break eggs when necessary, nor do they shy away from controversy.[32] They have the courage to do something different, something likely to create discomfort and upset settled expectations. By this standard, there are today few leaders in the rabbinate. Laypeople have learned not to expect courage from their rabbis. It is, however, all too often true that on the rare occasions when rabbis muster the courage to challenge the religious status quo, the reaction from laypeople is as unwelcoming as that of the rabbinate.

RABBINIC OMNISCIENCE

The general practitioner no longer exists in the practice of law. The family doctor is largely a thing of the past. Academics no longer teach all of philosophy, but specialize in a period or a philosophical school. In each case, the specialist has replaced the generalist. There have always been specialists in Halakhah. Some *rabbanim* are known for *gittin, mikva'ot*, *niddah*, or *stam*. The explosion of human knowledge all but makes this development inevitable.

Why, then, when it comes to matters in the secular world is it so common for rabbis to act as if no specialized knowledge is needed? One hopes that rabbis do not decide matters of Halakhah touching upon medicine without consulting a competent doctor. Assuredly, though, too many decide legal, political, social, and other questions without consulting relevant experts. I assume I am not

alone in having sat through sermons about a matter in my field of competence, wondering how a person so knowledgeable in Torah could be so ignorant in *milei de-alma*.

The phenomenon is all the more puzzling because there now exists a large corps of Jewish professionals in all fields who are ready and willing to educate their rabbis. Many of these people are sufficiently adept at Halakhah that they could bring important insights to the decision-making process. It was characteristic of the Rav that when I and others asked him a question on public policy, he would instinctively ask, "What do you think?" Too often, laypeople today are not asked by *rabbanim* until it is time to pick up the pieces.

Some years ago, David Zwiebel of Agudath Israel, Nathan Lewin, and I were independently asked about a synagogue-zoning lawsuit. We each independently advised delaying a suit until certain events occurred. The next thing we knew, and before those events had occurred, a suit was filed by a large and expensive law firm. Several months later, David Zweibel and I were invited by the plaintiffs to take over the case, which had cost a fortune with no results. I asked them how it was that they had ignored our advice and gone ahead with the suit prematurely. The plaintiffs told us they had asked a well-known *rav* for his advice (*pesak*? *da'at Torah*?), and he had encouraged them to go ahead. I am confident that I had a firmer grip on the relevant constitutional law than the *rav* and wonder what he was thinking when he told the plaintiffs to go ahead despite the contrary legal advice. It would be a *hutzpah* for me to *pasken* a *she'eilah* relating to an *agunah*. Why isn't it an equal *hutzpah* for a *rav* to decide a question of constitutional law?[33]

CLASS AND LEADERSHIP

The major thrust of the forum on communal governance is rabbinic/lay relations. It would be tragic, however, if that subject were to obscure another question of communal governance urgently in need of discussion: whether, as I think, the Jewish community is rapidly regressing into a plutocracy.

The problem is not unique to the Orthodox community. Class divisions are an increasingly important political question for the

nation and for the world as a whole. At least in the United States, there are regularly scheduled elections with a universal franchise to check the power of the wealthy. The Jewish community has no such check.

The word "leadership" is now synonymous in Jewish communal life with those wealthy and willing enough to support an organization financially. The *Forward* recently reported on a study showing that the average income of board members of Jewish organizations approaches $200,000 a year.[34] In many organizations, the fundraisers are the highest-paid employees. I would guess that almost no regular participant in these forums is a member of the board of the OU, Young Israel, or Yeshiva University, to say nothing of a local Federation or AIPAC. Yet our regular participants most definitely excluding this writer are supposedly the intellectual pride and joy of our community.

The problem is not only that money is now the *sine qua non* of leadership; it is that donors now demand the right to select the agenda of the agencies on whose boards they sit and to micro-manage their operations. Much of the shift to the political right observed in Jewish organizations of all stripes is not a function of the leaders being born-again Republicans by political conviction, or of a fundamentally changed worldview, or of changed circumstances. Rather, the new leadership is advancing its own financial interests sometimes at the expense of Jews less well off.

To take a secular example, the softening of Jewish opposition to affirmative action is in large part due to the fact that the people who set policy are not affected. Their children continue to be admitted into elite schools. Children of less well off Jews are not so immune. Jewish civil servants have been adversely affected by such programs it is almost impossible for a Jew to be an assistant principal in New York City's public schools, but our leaders do not come from, or even know, Jews who seek these jobs. And while there seems to be plenty of money available for Jewish leaders to visit political leaders around the world, often in pursuit of the leader's own ego gratification, there is no money available to fund litigation on behalf of lower- or middle-class Jews who suffer discrimination. I could multiply examples.

Closer to home, there are now several Orthodox Jewish high schools whose *raison d'être* seems to be service to the children of the wealthy. These schools charge impossibly high tuition, cherry-pick the best teachers away from other schools by offering higher salaries (so much for the Gemara's concern about care for the children of the poor who will guarantee the perpetuation of Torah),[35] require uniforms from upper-end stores, and make no bones about their claim to superiority. In short, these schools aspire to be the Jewish equivalent of Groton.

My wife who has spent a professional lifetime thinking it is her privilege and duty to teach all Jewish children was appalled when, at the open house of one such high school, the principal announced that the school was seeking to serve only children from the finest (read richest) families.

My wife has far better manners than I. She sat and grimaced. I would have walked out then and there and announced that we are not such a family. Need I recount all the stories about special treatment accorded the children of the wealthy in our schools? In one of our local schools, teachers knew to check the craft projects to ascertain that the children of wealthy families received perfect supplies. Apparently, the less well off children could do with damaged goods. Or, at least, if their parents complained, nobody would care.

To their credit, *rabbanim* associated with Agudath Israel once tried to limit the utter crassness and conspicuous consumption associated with bar mitzvahs and weddings. In the end, they had to water down their proposal in the face of opposition from the wealthy and the businesses that cater to them thus confirming Professor Berger's view of the limits of *da'at Torah*. The original sanction of nonattendance at events held in violation of these sumptuary rules is now diluted to something along the lines of "we will not attend unless circumstances (i.e., not offending those who support our institutions) require attendance." But I do not mean to be too critical. Unlike the Modern Orthodox rabbinate, the Agudah *rabbanim* at least had the courage to speak out.

Who dares say a word about the obscenely palatial homes

that some people only two or three generations removed from the tenements of the Lower East Side deem necessary? Who protests the *kashering* of ever-more exclusive resorts for Pesah? Which *kashrut* organization has said, "No, we will not countenance such wasteful, conspicuous consumption?" Where is the Amos of our generation denouncing the *parot ha-bashan* of our age? Which institution has refused to conduct a Chinese auction offering frivolous luxury goods? Is it really necessary to build schools with marble entranceways? And for houses to be mansions, and bar mitzvahs and weddings to be obscenely lavish?

It is a fact that we depend upon a network of Jewish institutions that all depend in turn on voluntary contributions. Yeshiva University and other institutions cannot survive on donations to *pushka*s. Nothing forces the wealthy to give their money to useful ends. There are many charities in the world, many of them non-Jewish, willing to accept money from Orthodox Jews if Orthodox institutions resist donor demands. Donor control is now endemic to all philanthropy. Plutocracy is not a new phenomenon in Jewish life. We have survived it before, and we will survive it again. Still…

Questions about the distribution of power, whether economic, political, or religious, are inevitably contested. All but the most self-effacing human being wants the power to control his own life and community. Even when people yield power, they prefer to do so voluntarily. I offer no ready solution to the problems I have identified. Perhaps, if others agree with my diagnosis, we can at least work together to soften conflict and shape sound responses.

NOTES

In memory of Rabbi Walter S. Wurzberger, z'l, *sh'yirbu kamohu rabbanim b'yisrael*.

1. Pesahim 49a.
2. Cf. *Yoma* 23a and Rashi ad loc.
3. Berakhot 25a.
4. The criticism of certain methods of *talmud Torah* is not the exclusive province of the heterodox or the skeptic. There are ample precedents for such criticism from giants of Halakhah, including the Maharal (see *Gur Aryeh* to *Devarim* 6:7); see generally, Y. Levi, *Sha'arei Talmud Torah* (1990), pp. 180–184, and many others. These critics,

however, were fully versed in Talmudic law, unlike many, perhaps most, of today's critics.

5. Rambam, *Sefer ha-Mitzvot*, *mitzvot aseh* (Positive Commandments) 6.
6. I do not deny the existence of these phenomena, both of which plainly exist within contemporary Orthodoxy, just that not everyone who disagrees with me automatically falls into these categories.
7. Avodah Zarah 19a, cf. Nedarim 8a and Nimukei Yosef, ad loc.
8. *Niddah* 66a.
9. See, e.g., *Me'iri* and Ritva ad loc.; *Ba'al ha-Ma'or* to *Sha'ar ha-Sefirah* 36.
10. *Berakhot* 22b.
11. Lord Acton did not say that power corrupts, only that it tends to do so. Surely *gedolei Yisra'el* avoid the corrupting tendency of power. Nowhere that I know of has greater command of a subject been combined with greater modesty than in the person of R. Akiva Eiger, whose modesty is awe-inspiring. He surely could have abused his mastery of Halakhah for his own aggrandizement and who could have resisted him had he done so? And yet it is completely unthinkable that he would have done so. Unfortunately, not every *musmakh* is as immune to the blandishments of power. The large majority of *rabbanim* act *le-shem shamayim*; a not negligible minority do not, or at least do not do so in undiluted fashion. And, of course, as Rav Hutner reportedly once observed, much *rish'ut* can only be done *le-shem shamayim*.

    What is true of rabbis is equally true of others who occupy positions of trust in the Jewish community. In the secular Jewish community, the abuse of trust for personal advantage is, unfortunately, not uncommon. There is no reason to think the Orthodox community is immune from this phenomenon.
12. *Sieger v. Union of Orthodox Rabbis*. The judgment was reversed on appeal. 1 A.D. 3rd 180 (1st Dept. 2003).
13. Pinhas Peli, *Al-haTeshuvah* (Jerusalem: World Zionist Organization, 1989), p. 58.
14. *Sukkah* 45b, *Sanhedrin* 97b. See also *Moreh Nevukhim*, pt. I, chap. 34.
15. The democratic tradition includes a free press. It is not tenable in our society to pretend that the press does not exist and refuse to speak to it. A rabbinic refusal to reply to a pertinent inquiry suggests there is something to hide, arrogance, or both. Neither will it do for rabbis not to know how to respond to a press inquiry, or for laypeople to use the press as an outlet for personal vendettas against rabbis.
16. For a summary of the arguments as they relate to Jewish observance, see W. Wurzburger, *God Is Proof Enough* (New York: Devora Publishing, 2000), pp. 11–25.
17. Carl Bridenbaugh, *Mitre and Sceptre: Transatlantic Faiths, Ideas, Personalities and Politics* (Oxford: Oxford University Press, 1962).
18. *Kiddushin* 66a.
19. Rabbi Joseph B. Soloveitchik, "The Common Sense Rebellion Against Torah Authority," in *Reflections of the Rav*, ed. A.R. Besdin (World Zionist Organization, 1979).

20. I do not mean that every manifestation of the populist approach needs to be combated. Sometimes the principle that *mu-tav she-yih'yu shogegim* ("better that they act in ignorance") will apply; sometimes a practice may be acceptable after the fact *bedi'avad*; other halakhic principles may caution silence. It is the idea that needs to be challenged, not each of its manifestations.
21. *Horayot* 2a.
22. I am amazed at how often I hear "because the rabbi said so" from non-Orthodox Jews about something their rabbi said. They regard their rabbi as an authority of unrivaled competence because he is in fact unrivaled. Orthodox rabbis, thankfully, have to share the pedestal.
23. This is by no means a shortcoming limited to the Modern Orthodox community. If anything, much of so-called right-wing Orthodoxy is even more infatuated with the trappings of material success.
24. *Avot* 6:4.
25. The growing trend of having *rashei yeshivah* officiate at weddings threatens this reservoir of good feeling. The trend represents a welcome public demonstration of appreciation for the value of *limud ha-Torah* in its most intensive form, but its costs are probably higher than its benefits although *et hata'ai ani mazkir ha-yom*, my *mesader kiddushin* was *my* rebbe, not my shul rabbi.
26. *Berakhot* 15.
27. For convenient references, see Rabbi J. David Bleich, *Contemporary Halakhic Problems* (Hoboken, NJ: Ktav, 1977), pp. 71–73, and Rabbi Hershel Schachter, *Nefesh ha-Rav*, 2d ed. (Brooklyn: Flatbush Beth Hamedrosh,1995), p. 267.
28. That rabbis should have discretion to rebuke without consequences, except in cases of extreme abuse, does not answer the question of when a rabbi ought to exercise this right. The question of when, where, and how rebuke is appropriate was explored in an earlier Orthodox forum and could exhaust several additional forums. It is a subject well beyond the scope of this paper.
29. Compare *Peirush ha-GRA* to *Mishlei* 4:12 with Immanuel Etkes, *The Gaon of Vilna: The* Man and His Image, (Berkeley: University of California Press, 2002), p. 84–85.
30. A Yeshiva University *rosh yeshivah* once said in my hearing that the Rav engaged in secular studies only because he knew it was the only way to appeal to modern youth. This distortion of the Rav is more revealing for what it said about the speaker who himself had a college degree than what it said about the Rav. But what of *talmidim* who never knew the Rav and who think that this sort of silliness from a distinguished *rosh yeshivah* represents a "Torah true" viewpoint?
31. Although not involving the Modern Orthodox camp, the controversy over Rabbi Yaakov Yosef Reinman's co-authored book with Rabbi Ammiel Hirsch, *One People, Two Worlds* (New York: Schocken Books, 2002), and the subsequent efforts to suppress it on the grounds that Rabbi Reinman, who had obtained *haskamot* (approbations) from leading rabbis, made a mistake in publishing it, is illustrative. Aside from the fact that the reasons for condemning the book are utterly unpersuasive,

it is revealing but not surprising that it was Rabbi Reinman who had to confess error, not those who approved of the book in the first place.

32. There are some who think that controversy is good for its own sake that proof of one's virtue depends on challenging the status quo. I do not have this in mind.
33. In a similar vein, one must ask how it is that American rabbis are confident enough to question the strategic judgments of Israeli generals with decades of military experience. Perhaps they have been following the many well-schooled and experienced lay military experts in the front-line towns of Monsey, Flatbush, Teaneck, and Lawrence.
34. "Moving Right," *Forward*, January 17, 2003.
35. *Nedarim* 81a.

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