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## THE ISRAELI CHIEF RABBINATE: A Current Halakhic Perspective

Whoever formulated the topic to which I have been asked to address myself—"The value and place of a central rabbinic authority in a modern Jewish state. Is there Halakhic significance to a central rabbinic authority in a democratic state?"—manifestly saw the issue of the status of the *rabbanut harashit*, Chief Rabbinate, as related to its existence within a sovereign modern and democratic context. I readily concede that this factor is, quite conceivably, of genuine importance. However, it can only be considered after one has dealt with the prior (both logically and historically) question of the role of a central rabbinic authority per se. What, we ask ourselves, is the Halakhic significance, if any, of a *rabbanut rashit* in any context?

That issue is itself to be analyzed with respect to two levels: the requisite and the optimal. We must first ask ourselves whether the establishment of a central rabbinic body and subsequent acknowledgment of its authority is normatively mandated. Even if we should determine, however, that it is not, it may still be contended that the existence of such an institution is desirable as an instrument towards the realization of clearly perceived Halakhic—and not merely social or even moral—desiderata.

As regards the first level, we must obviously differentiate between a possible obligation to found a *rabbanut rashit* in the first place and the duty to abide by its dicta once, by whatever means and for whatever reasons, it has been firmly established. The case for the former presumably rests upon the precedent of the Sanhedrin—whose institution the Rambam posited as the initial phase of the *mizvah* of setting up a judicial system rather than as its culmination: "How many regular tribunals are to be set up in Israel? How many members is each to comprise? First there is a Supreme Court holding sessions in the sanctuary."<sup>1</sup>

Not surprisingly, Rav Kook implicitly drew upon the comparison. In a brief essay written just prior to the founding convention of the *rabbanut harashit*, he expounds his conception of its prospective role and character; and, citing the verse which the Rambam<sup>2</sup> had adduced as proof that the classical *semikhah* could be reinstated, he issues a clarion call: "The revival of the Rabbinate means the return of the glory of the Rabbinate. Is this not an echo of the prophetic voice that assured us: 'And I will reinstate your judges as at first and your advisors as in the beginning.'?"<sup>3</sup>

From a rigorous Halakhic perspective, however, the analogy is just that: a suggestive model which may be regarded as embodying certain elements—and, hence, as positing certain values—but as having no direct normative relevance. The Sanhedrin<sup>4</sup> was a formally constituted body which, ideally, both provided general spiritual leadership and was invested with wide-ranging legislative and judicial authority—and this, with respect to the Diaspora as well as to Eretz Israel. In the Rambam's succinct formulation:

The Supreme Court in Jerusalem represents the essence of the Oral Torah. Its members are the pillars of direction; law and order emanate from them to all of Israel. Concerning them the Torah assures us, as it is written: 'You shall act in accordance with the directions they give you' (*Deuteronomy* 17:11). This is a positive command. Anyone who believes in Moses, our teacher, and in his Torah, must relate religious practices to them and lean upon them.<sup>5</sup>

Clearly, no modern counterpart exists—or, under present conditions, can exist. Membership in Sanhedrin was confined to those who had been ordained as a link in an unbroken chain of *semikhah* going back to Mosheh Rabbenu's investiture of Yehoshua. The Rambam<sup>6</sup> held that the institution could be restored, even in pre-Messianic times, but only under conditions, such as the overwhelming consensus of the foremost *talmidei hakhamim* of Eretz Israel—which neither currently obtain nor are anticipated on the horizon. Contemporary Halakhic sanction for a national rabbinic authority must be sought, then, without regard to the classical Sanhedrin.

That precedent aside, no solid base for the mandatory establishment of such a body exists. Not only does the Halakhah fail to prescribe such a course at the national level, but, to the best of my knowledge, it does not even require it at the local level. We are very much attuned to the concept of *mora d'athra*, a single rabbinic figure or group endowed by a specific community with spiritual hegemony; and indeed this model was prevalent in much of the Diaspora and, historically, served *knesset Israel* well. However, the Halakhic status of the *mora d'athra* related to his position in the wake of his selection. Nothing militated the creation of the post *ab initio*. It is true that the Ramban maintained, in light of the wording of the verse, "You shall appoint for yourselves judges and officers, tribe by tribe, in every settlement God has given you," that each tribe is to appoint its own central *bet din* (court). However, as he clearly indicates, this is, in effect, a miniature Sanhedrin—"Just as the Great Sanhedrin is appointed over all the courts of Israel so one court is appointed over each tribe,"<sup>7</sup>—and, hence, of no direct normative relevance to our discussion. The earlier part of the *pasuk* does, of course, mandate the appointment of a *bet din* in every locale, but it makes no reference to the need for a single overarching communal authority, either existing solely or as the pinnacle of a spiritual or even juridical hierarchy.

On the contrary, from the *gemara* it would clearly appear that several *batei din* can coexist in the same town. It speaks, for instance, of litigants' rights to choose between "the courthouses of Rav Huna and Rav Hisda," both of these being, as Rashi explains, "in one place."<sup>8</sup> Or again, in delineating the scope of the prohibition of "You shall not gash yourselves," which, *inter alia*, Hazal interpret to include an injunction against divisiveness, "You shall not make separate groups," Abbaye and Rava treat its parameters with respect to contradictory *pesakim* issued by different local *batei din*—taking it for granted that several may exist in the same community, with none designated supreme.<sup>9</sup> *A fortiori*, then, there need be no single supernal national rabbinic authority. Again, it is entirely conceivable that the decisions of such a body, once chosen, may be normatively binding; but its initial designation is, ordinarily, purely optional.

This by no means suggests, however, that the matter is religiously neutral. No spiritually sensitive person, much less a *ben Torah*, can countenance the proposition that, beyond the mandatory, nothing matters. Surely, a Halakhic chasm divides a *devar mizvah* from a *devar hareshut*; but the latter, too, can be of considerable spiritual moment. It may be judged more contextually than normatively—but judgment, in the light of Halakhic categories, is nonetheless significant. At this level, then, we may weigh the impact of a central rabbinic authority upon Halakhic interests—often related to the pragmatic but hardly identical with them—with respect to the various functions of the rabbinate; and this, with an eye to both the constant aspects of the problem and its manifestation within the contemporary Israeli context.

Rabbinic functions are many and can be variously classified. For our purposes, they can best be divided into two broad categories, as they relate to the communal and personal sectors, respectively. Maintenance and supervision of Halakhically-related services; development of religious institutions; public Torah instruction; representation of the religious sector in relation to others—or, of the general Jewish community vis-a-vis its gentile counterpart; concern for the Jewish character of the Jewish street—all form one cluster of roles. Others clearly address themselves to the individual: participation in rites central to the life-cycle; harnessing him or her to Halakhic observance; provision of pastoral guidance or support. Still others straddle both realms. *Pesak* may be either public or private, depending upon the substance of the question, the channel of query, and the mode of response. General spiritual influence and inspiration clearly has a dual impact, sensitizing *yahid* and *rabbim* alike. Finally, moral initiative clearly relates to both realms. At one level, the enactment of the prophetic mandate, "Execute the judgment of truth and peace in your gates"<sup>10</sup>—understood in both its broad general sense and, in Hazal's<sup>11</sup> vein, as a specific call for settling litigation via amicable compromise—provides a measure of

personal relief even as it, concurrently, promotes communal harmony. At another, commitment to *hesed*—regarded by Rav Haym of Brisk<sup>12</sup> as the cardinal rabbinic obligation—both sharpens social conscience and enhances the quality of individual lives.

Surveying this spectrum with reference to our problem, we instinctively sense a functional relation between the public component and the advisability of centralization. On the whole, the instinct is sound, although not uniformly so; it clearly applies to the supervision of *kashrut*, for example, more than to the instruction of Torah. While, to many, the issue is debatable even with regard to largely administrative sectors, (the equivalent of the familiar arguments for community control as opposed to distant and faceless big government can be readily harnessed), in this area, the case for a central authority, with the scope and weight attendant upon it, is palpably strong—all the more so, as, within a modern socioeconomic context, the problems transcend narrow geographic bounds and are not readily amenable to local jurisdiction. Admittedly, this does not necessarily militate for regarding centralization as the sole option. A measure of cooperation between various rabbis or rabbinic groups or some loose confederation might constitute viable alternatives. Nevertheless, with respect to the public sphere, the merits of centralized authority are manifest.

*Ishut* provides a clear example. *Hazal* demanded that, “whoever does not know the nature of divorce and marriage should not have any dealings with them,”<sup>13</sup> and they set a rather high standard for what constitutes sufficient knowledge. Although they addressed themselves to the individual, obviously there is a public need for safeguards to ensure that those who lack the expertise do not, out of irresponsible indifference or ignorance of their own limitations, involve themselves in this sensitive area. To this end, a central authority can be enormously helpful. Conceivably, the safeguards could be alternatively provided, as in the medical and legal fields, by voluntary professional organizations; and a community can admittedly sustain itself, as in most of the Diaspora today, in their absence. The potential contribution of a central authority is nonetheless self-evident—not to mention its invaluable assistance in coping with the sheer administrative difficulties, such as the maintenance of adequate and reliable records in an age of great mobility.

With respect to other sectors, however, the balance of pros and cons shifts perceptibly. It is not for naught that the Torah postulated that judges are to be posted *bi’shearekha*—in Eretz Israel, in virtually every hamlet.<sup>14</sup> Presumably, this insistence was not intended solely to afford easy access to judicial redress. It likewise ensures spiritual leadership which is organically related to its ambient society, aware of its problems, and sensitive to its needs; which can communicate effectively with its constituency in light of direct knowledge of its existential milieu; which can, intelligently, assign

priorities and impose demands while yet aware of limitations; which can serve as a transcending spiritual mentor even as, like the Shunamite Woman, “amongst my people I dwell.”

*Bi'shearekha* relates to both the appointment and the exercise of spiritual leadership. The benefits of rabbinic independence in attaining and maintaining a position are obvious. In many cases, however, whoever is not responsible to a community is also not responsive to it. At times, a stance of defiance (although not, of insouciance) is of course desirable. Over the long run, however, the patient wisdom needed by a spiritual leader to stimulate the spiritual growth of a community, his ability to speak and its readiness to listen, are enhanced by knowledge that he has been its choice—without external pressures, and *sans* remote-control politicization.

Yet, this is not to suggest, of course, that selection of a *mora d'athra* can be regarded as a purely sociopolitical matter, wholly independent of definitive standards. According to the prevalent view, the Halakhah has, classically, posited *semikhah*, defined by the Rambam as “the appointment of the elders to judgeship,”<sup>15</sup> as a prerequisite to serving on a *bet din*—to membership, that is, in a body which, in *Hazal's* time and beyond, constituted the primary seat of local rabbinic authority and the matrix of communal spiritual leadership. That has, however, only served to qualify a person to occupy such a post, enabling him to sit on an ad hoc constellation or to be a candidate for a more permanent position which the *semikhah* per se had not conferred upon him. Who then determines which *samukh* assumes a specific position is, to the best of my knowledge, nowhere spelled out in the *gemara*. But if intuitive judgment and prevalent historical practice are any guide, the community within which he is to serve seems the most likely choice.

Yet, appreciation of the significance of the communal factor in no way obviates the possible role of a central authority in rabbinic appointment. The process can be both general and local—licensing, in accordance with proper objective standards, being assigned to one level, and selection to another. Halakhically, to be sure, *semikhah* need not be central at all. Any group of three *semukhim*—on the Rambam's view, even a single *samukh* joined by two non-*semukhim*<sup>16</sup>—can confer the title. Moreover, according to the Rivash,<sup>17</sup> licensing was only necessary with respect to classical *semikhah*. That tradition having been terminated, every qualified and knowledgeable person can now serve as a *moreh hora'ah*. Nevertheless, a median course of essentially dual appointment can be adopted; and, under present circumstances, may be deemed as highly warranted. The need for maintaining standards and assuring reasonable qualification in all major respects is palpably greater today than in medieval Spain or in the sixteenth-century setting of the Rama who cited the Rivash with apparent approval. That function can perhaps best be consigned to a hopefully disinterested central authority. “Shall a priestess not be the equal of a

hostess?” The concern for standards so properly endemic to secular professions can hardly be ignored in the Torah world; and to this end, a central body can be most effective.

Given a measure of goodwill and readiness to prefer the general interest—admittedly rare qualities when both ideology and power are at stake—analogue cooperative accommodations should probably be attainable, *mutatis mutandis*, in other areas as well. However, one sector is presumably not so amenable and needs to be singled out for special discussion. At a primary level, Halakhah is avowedly pluralistic. Within certain limits, it not only entertains but encourages diverse views, and the world of Halakhic discourse is animated by the sense that “these and these are the words of the Living God.” At a secondary level, however, discourse is to issue in decision, presumably authoritative and definitive; and the diversity which, in the *bet hamidrash* is regarded with admiration, becomes, in *bet din*, the object of aversion. *Mahloket*, the very stuff of which so much Torah study is made, translates, in the context of *pesak*, into divisive dissent. In its stead, univocal summary decision, optimally typified by the Sanhedrin, is posited as ideal.

The implications for centralization are clear. Technically, this discussion may be deemed as irrelevant to our present situation inasmuch as the formal Sanhedrin is long defunct. Nevertheless, the axiological aversion to divisiveness may very well be in order. At one level, we might take note of the status of the *zaken mamre*, of whom the *gemara* says that even if the Sanhedrin whose decision he had countermanded wishes to remit him, it is unauthorized to do so, “that contention might not increase in Israel.”<sup>18</sup> Admittedly, one might contend that, given the existence of a central authority, its defiance is indeed punishable as subversion, but that the existence of competing decisions or even contradictory codices is not deplorable *per se*. However, this contention, probably questionable in any event, is clearly undercut by the *gemara*’s lament over the fact that “When the students of Shammai and Hillel whose studies were not complete became many, dissension multiplied in Israel, causing the Torah to become like two Torahs.”<sup>19</sup> Clearly, the concern here is not with ‘*lese majeste*’ but with fissure in the Halakhic universe.

Pushed to its logical conclusion, this position militates for a single universal rabbinic authority—for the establishment, that is, of a Sanhedrin or its equivalent. Some have indeed regarded this vision, animating the essay previously cited, as Rav Kook’s ultimate semi-mystical aspiration upon the founding of the Chief Rabbinate in Jerusalem.<sup>20</sup> Failing that, however, one could still yearn for maximal uniformity within a broad geographic area—at least, for adherents of the same ethnic tradition.

Individualists of course bridle at this prospect. Bristling over both possible personal constraint and public atrophy, they regard the concentration of authority as a potential threat—all the more so, if they have cause

to be circumspect or even suspect with regard to those in whose hands it might be concentrated. Sanhedrin they often regard as a unique institution, effectively relegated to a remote ideal past or envisioned as part of a Utopian future but of little relevance, even as a model, to the present. Rav Haym's refusal, early in this century, to join—and implicitly be subordinated to—a nascent *Mo'ezet Gedolei Hatorah* is typical. Electricity having then been recently introduced to Brisk, he observed that it presumably represented real progress. Yet, he noted, one could not ignore a disturbing factor. Previously, if a kerosene lamp was extinguished in one location, no other was adversely affected. Henceforth, however, if a failure were to occur at the power station, the whole of Brisk would be plunged into darkness.

Nevertheless, the merits of uniform *pesak* are varied and weighty; and recurrent historical attempts to attain it, whether through discourse and decision, or, as in the case of the *Shulhan Arukh*, by dint of personally molded consensus, illustrate this amply. Moreover, one might particularly press this cause with respect to Eretz Israel—and this, not in the light of Zionist ideology, but for sound Halakhic reasons. With reference to *pesak*, the concept of place is assigned considerable weight. Thus, with reference to the *issur* of “Do not cause factionalism,” Abbaye holds that it only applies to factionalism in a single town but not to conflicting norms propounded or practiced in different towns.<sup>21</sup> Or again, the *gemara* states that if a *posek* adheres to a minority view, even if he permits what, according to the prevalent position, is prohibited *mi'd'oraitha*, his license may be relied upon by members of his community.<sup>22</sup> By extension, the use of the phrase “in his place” notwithstanding, it is entirely conceivable that the relevant concept is as much sociological as geographic. Could not a lone Habad hasid in Melbourne rely upon a lenient decision of the Lubavitcher Rebbe even though he is poles removed from Eastern Parkway?

If this be the case, one may contend that, for our purposes, the whole of Eretz Israel constitutes a single locale. And this, on the basis of the famous *gemara* in *Horayot* which postulates—with reference to defining the community whose collective transgression by a majority of its constituents will obligate offering “a bull sin-offering for an inadvertent communal sin”—that only residents of Eretz Israel are included in the category of *kahal* (congregation): “R. Assi said: In [the case of an erroneous] ruling [of a court] the majority of the inhabitants of the Land of Israel are to be taken into account . . . From this it may be inferred that only these are included in the ‘congregation’ but those are not.”<sup>23</sup> The formulation is primarily negative and is intended to exclude Diaspora Jewry. However, it also bears a positive aspect, and expresses the conviction, of both Halakhic and philosophic moment, that residents of Eretz Israel are uniquely bound by a dimension of community absent elsewhere. Hence, the admonition against *mahloket* and the quest for univocal central authority are doubly meaningful with respect to *eretz hakodesh*.<sup>24</sup>

