

*Rabbinic and
Lay Communal
Authority*

EDITED BY

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THE MICHAEL SCHARF PUBLICATION TRUST
OF THE YESHIVA UNIVERSITY PRESS
NEW YORK

THE ORTHODOX FORUM

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The Orthodox Forum
gratefully acknowledges the support
of the Joseph J. and Bertha K. Green Memorial Fund
at the Rabbi Isaac Elchanan Theological Seminary
established by Morris L. Green, of blessed memory.

The Orthodox Forum Series
is a project of the Rabbi Isaac Elchanan Theological Seminary,
an affiliate of Yeshiva University

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Typeset by Jerusalem Typesetting, www.jerusalemtype.com

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Library of Congress Cataloging-in-Publication Data

Orthodox Forum (15th : 2003 : New York, N.Y.)

Rabbinic and lay communal authority / edited by Suzanne Last Stone.

p. cm. – (Orthodox forum series)

Includes bibliographical references and index.

ISBN 978-0-88125-953-7

1. Rabbis – Office – Congresses. 2. Authority – Religious aspects – Judaism – Congresses. 3. Jewish leadership – Congresses. 4. Leadership – Religious aspects – Judaism – Congresses. 5. Jewish law – Decision making – Congresses. 6. Tradition (Judaism) – Congresses. 7. Orthodox Judaism – Congresses. I. Stone, Suzanne Last.

II. Title.

BM652.O77 2003

296.6 – dc22

2006102351

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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-keneset* 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 Yisrael³⁷ 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 purification.

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 bat-tim* 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, *Ekront 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 Ramban, *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 *Kesef 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 *Kesef 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. *Taanivot* 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-Maamadim 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 *Sifte Kohan* 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 .ב. "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.