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THE NATURE AND LIMITATIONS OF RABBINIC AUTHORITY

What is the source of the rabbi's authority? Are there limits to his authority and if there are, what are they? To analyze these questions, we must first realize that the halakhah recognizes many different forms of authority, a number of which are presented in the Torah in *Parshat Shoftim*. The *parshah* begins with the commandment to set up courts of law in all communities. Later the Torah introduces the Sanhedrin in the Temple as the final arbiter of all questions of law. We are commanded (Deuteronomy 17:11) to follow their decisions: "According to the law which they will teach you and according to the judgment which they will tell you, you shall do; you should not turn aside (*lo tasur*) from the things that they will declare to you neither to the right nor to the left".

The Torah continues with the laws relating to a Jewish king. Here it only concerns itself with the laws incumbent upon the king to observe and not with his powers. It is only later, when the people demand of the prophet Samuel that he appoint a king, that he enumerates the powers of that type of authority. In the Talmud (*Sanhedrin* 20b) there is a disagreement if the speech of Samuel describes the legitimate rights of a king or if he was merely threatening the people, telling them what a king might do although he is not legally empowered to do these things. The final decision is that the powers he describes are within the legal powers of a king.¹

The Torah then presents the laws of the priests who constitute a third group with authority. Indeed, earlier, when the Torah referred to the judges in the Sanhedrin (Deuteronomy 17:9), it used the phrase "the priests from the tribe of Levi". We also know from various mishnayot that there was a separate court of priests.² In addition, it is only the priest who can rule on the status of various leprous plagues on a person, his clothing or his house³. Also, the high priest was in a position to ask questions of national importance from the *urim ve-tumim* and receive answers directly from God.

The fourth and final authority figure mentioned in the *parshah* is the prophet. The Torah declares (Deuteronomy 18:18-22) that instead of directly asking God questions one may ask a prophet. Furthermore, it continues that God will punish all those who do not listen to a prophet.

In addition to these four categories of authority, halakhah allows for two more. One is the secular king or government, *dina de-malkhuta dina*.

The other is rule by the local community or kahal, *takanat ha-kahal*. These categories of authority are not necessarily separate and distinct from each other. Rashba states that the power of the secular government is to prevent anarchy and, as such, is very similar to the power of the local community.⁴ Furthermore, Rabbi Abraham Shapiro deduces from Rashi that the court's power to expropriate money derives not from its judicial rights but rather from its similarity to kingship; i.e., it has executive powers in addition to its judicial duties.⁵ Hence, according to this position, the court is not a new source of authority but rather an extension of the king's authority.

In modern times, the authority of the Jewish king, the priest or the prophet no longer exists. What remains relevant is the authority of the courts as well as the power of the local community. It is in connection with these sources of authority that we will discuss the authority of the modern rabbi.

The Great Sanhedrin had several distinct functions.⁶ As the Torah itself describes (Deuteronomy 17:9), the primary function of the Sanhedrin was to be the final arbiter for all questions of Halakhah. Rambam stresses that anyone who believes in the Torah must rely on the Great Sanhedrin to properly explain and apply it.⁷ The Talmud states that before the days of Hillel and Shammai there was only one disagreement in all of Halakhah (laying hands on sacrifices during Yom Tov).⁸ Later scholars note that this does not mean that before then all halakhic authorities were in agreement. In fact, the Talmud itself discusses disagreements between Saul and David.⁹ What the Talmud means to say is that, before the days of Hillel and Shammai, any disagreement was decided by the Great Sanhedrin and, as a result, no disagreement was a lasting one. Indeed, the laws of the rebellious elder (*zaken mamre*) were instituted precisely to underscore the authority of the Great Sanhedrin and to prevent disagreements from dividing the Jewish people into sects. Furthermore, we wish to point out that the Great Sanhedrin was the highest court only in the sense of being the final decisor in matters of Halakhah. However, in individual cases, Halakhah does not allow for a court of appeals as does American law and, consequently, the Great Sanhedrin could not overrule the decision of a lesser court of twenty three judges or even a court of three judges. Thus, the Great Sanhedrin is the final decisor not in the sense of a court of appeals but rather in interpreting the law for all generations.

A second function of the Great Sanhedrin was to act as a court for special cases. Thus, the first Mishnah in Sanhedrin states that only the Great Sanhedrin could judge an entire tribe which sinned, the high priest for capital cases, a false prophet, the rebellious elder, a sotah, or an apostate city (*ir ha-nidahat*).

A third function of the Great Sanhedrin was to act as the representative of the entire people whenever it was not feasible for everyone to participate in some activity. Thus, for example, Rabbi Joseph B. Soloveitchik

demonstrates that the Sanhedrin was responsible for fixing the calendar, not as a function of its being a court but rather in its role as the representative of the entire people.¹⁰ Hence, according to him, when the Sanhedrin no longer functioned, each month was declared, in essence, by the Jews living in the land of Israel. Similarly, in order for land to become holy through a public conquest (*kibbush rabim*), it was necessary to have the consent of the Sanhedrin acting as the representative of the Jewish nation.

The Great Sanhedrin was located inside the precincts of the Temple itself, in the *lishkat ha-gazit*. Forty years before the destruction of the second Temple, the Sanhedrin left that area and moved directly onto the Temple mount. Although at that point it lost some of its powers, it continued to exist and exercised power throughout the days of the Tannaim and most of the period of the Amoraim. Approximately in the days of Abaye and Rava, in the fourth century C.E., the Roman government in Byzantium abolished the Great Sanhedrin and, as a result, a permanent calendar system was instituted by Hillel II. Did any of the powers of the Great Sanhedrin remain after its formal abolishment? There is a famous disagreement as to whether one can blow shofar on Rosh Hashanah that occurs on Shabbat. The Mishnah states that after the destruction of the Temple one could blow the shofar on a Rosh Hashanah that coincided with Shabbat only in Yavneh. Alfasi maintains that, in later eras, one can do so in any major court and, in fact, the shofar was blown on Shabbat in his yeshiva.¹¹ However, almost everyone else disagrees and maintains that only in the Great Sanhedrin could this be done. Another consequence of the exile of the Sanhedrin is that most *Rishonim* maintain that the prohibition of *lo tasur* is no longer applicable for, according to them, it only applied when the Great Sanhedrin sat in the precincts of the Temple itself.¹²

Side by side with the court system headed by the Great Sanhedrin was another source of authority based upon the power of communal regulations. Thus, the Talmud states that the townspeople or artisan groups have the right to establish rules concerning their produce.¹³ During the exile, and especially in the Middle Ages when the formal Jewish court system was weak, the powers of the community greatly expanded. However, authority is meaningless without a mechanism of enforcement; if it is based completely on voluntary compliance, it clearly has no force at all. This is especially true in monetary matters where the loser in a dispute will sometimes simply refuse to obey the decision of the court. As a result, a system of fines was established to insure the individual's compliance with the community's ordinances and enactments. In addition, the community also needed to have the power to impose taxes to provide money for communal expenses. Finally, any regulation of financial matters involves new rules that inevitably will cost someone money. Indeed, the Amora Shmuel says that the government has the right to expropriate money.¹⁴ Based on Ezra 10:8, the Talmud develops the concept that the courts also have the legal right to ex-

propriate money (*hefker bet din hefker*).¹⁵ Yet, already in the twelfth century, Rabbenu Tam came to the conclusion that in his time (and certainly ours) there was no court that could take away money without mutual consent.¹⁶ Only the Sanhedrin, or a major court that was accepted by everyone like the court of Rav Ami and Rav Assi, could confiscate money. Maharik extended this position of Rabbenu Tam by ruling that even the *gadol ha-dor*, whose authority is accepted by everyone, cannot introduce rules that will cost an individual money.¹⁷ It is not clear how far Maharik extends this since Rabbenu Tam himself introduced legislation that removed money from a husband and gave it to his wife's family in a case when she died shortly after the marriage.¹⁸ This indicates that Rabbenu Tam was willing to introduce new regulations even though the husband lost money as a result. Perhaps Rabbenu Tam did allow such new legislation when it was promulgated with the consent of the leaders of all the affected communities.

Ra'aviah and others disagree with Rabbenu Tam and claim that any important court, even in our days, has the power to expropriate money. Furthermore, communities have the right to impose new regulations based on a majority vote even though, as a consequence, some people will incur additional expenses. Rema accepts this view and rules that the leaders of the community (*shiv'ah tuvei ha-ir*) can carry out corporal punishment and the imposition of fines.¹⁹ R. Yehoshua Falk, based on a statement of Rashba, writes that the community has the same status as the Geonim and, as a result, is in a position to issue new legislation that can even override talmudic rules. Furthermore, Rabbenu Tam maintains his position only concerning monetary matters, but to increase the religious level of the community (*le-migdar milta*) he also agrees that the community can introduce new rules.²⁰ Rabbi Moshe Sofer points out that one must accept even the decision of the majority since it is virtually impossible to ever achieve unanimous consent.²¹

It is also clear that community leaders have these powers only if they are accepted by a majority of the community; leaders who are self appointed have no authority at all.²² In this regard, their authority is very different from that of a *bet din*. At least in theory, the *bet din* is appointed by some central organization (e.g. Sanhedrin, *Nasi*, Exilarch) and is independent of the local population. The Great Sanhedrin and other major courts were able to expropriate money and issue decrees without the consent of the people, the only limitation being that most people accept their *takkanot*. However, community leaders can only function as long as they represent a majority of their constituents. Should that not be the case, they can be removed and their authority negated.

In modern times, no single organization is accepted as authoritative by all Torah observant Jews and, as a result, no group has the right to impose its views on individuals who do not voluntarily accept them. The late chief rabbi of Israel, Rabbi Yizhak Halevi Herzog, claimed that the court of

the Chief Rabbinate of Israel was, in fact, such a central organization and that all Jews in Israel are required to follow its rulings.²³ He stressed that this was based on the authority of the institution itself and was independent of the specific person who occupied the position of the chief rabbi. However, his ruling was not accepted by those groups who did not recognize the halakhic validity of the Israeli government or any of its agencies. Similarly, Rabbi David Friedman of Karlin disputed the right of Rabbi Joshua Leib Diskin of Jerusalem to issue general bans on secular studies that affected other communities outside of his own.²⁴ Hence, we conclude that a modern rabbi's authority is limited to his immediate community or to those people who ask his opinion. No rabbi has the right to impose his views on anyone else.

THE BOUNDARIES OF AUTHORITY

We have already noted that the Great Sanhedrin had ultimate authority in matters of Halakhah. Anyone who disagreed with a decision of the Sanhedrin in a matter that involved (directly or indirectly) the punishment of *karet*, was declared a rebellious elder (*zaken mamre*) and was executed. Rashi states that one must follow the Sanhedrin even if they declare right to be left or vice versa.²⁵ However, this is applicable only if the Sanhedrin took a formal vote, in which all seventy one members participated. The assumption is that, having heard all the various opinions and taken them into account, the Sanhedrin made an appropriate decision. Hence, if one argued a particular point of view before the Sanhedrin and it was rejected, that individual is required to relinquish his opinion and accept that of the majority. If not, there would be no end to arguments and the Torah would be destroyed. However, if one did not present his arguments before the Sanhedrin and, as a result, the Sanhedrin ruled without hearing his opinion, then that person is not allowed to follow any leniencies of the Sanhedrin when it conflicts with his point of view. Should he do so and it is later determined that the Sanhedrin erred, that scholar must bring a sacrifice for atonement, and cannot defend himself by saying that he relied on the Sanhedrin's decision.

Hence, the opinion of the Sanhedrin is binding on all Jews only if a formal vote was taken and all opinions were considered. Without this formal process, we do not apply the rule that one must follow the Sanhedrin even if they declare right to be left.²⁶

Given that this is the case, why cannot we (or even an Amora) disagree with a statement in the Mishnah, which was compiled by Rabbi Yehudah ha-Nasi? Indeed, what gives the Mishnah its special status? Rashi explains that, in the days of Rabbi Yehudah ha-Nasi, all the Sages of his court gathered together and reviewed the entire Mishnah text.²⁷ As a result, the Mishnah is not simply the work of one individual (Rebbi) but, rather, the

product of the entire Sanhedrin, of which Rebbi was the *nasi*. Hence, since the entire Sanhedrin, which consisted of all the great Sages of that era, agreed on the final version of the Mishnah, it has the force of a formal decree of the Sanhedrin, and future generations cannot disagree with it. From this explanation we see that Rashi maintains that this power of the Sanhedrin was not confined to the Temple period but continued as long as the Sanhedrin existed and was composed of all the greatest Sages of that era. However, our question still remains – if not for the Mishnah, then for the Gemara. What is the reason that later generations can never disagree with a halakhah in the Talmud? In his introduction to the *Mishneh Torah*, Rambam declares that those scholars who lived after the generation of Ravina and Rav Ashi accepted upon themselves not to do so. Thus, even if individual portions of the Talmud were added by later generations, they did not change the Halakhah. This viewpoint is reiterated by R. Yosef Karo in his *Kesef Mishneh* commentary on the *Mishneh Torah*.²⁸

It is interesting to note that Rav Yosef Karo mentions this limitation only with regard to the Mishnah and Talmud. He offers no such ruling with regard to Geonim and *Rishonim*. Living among the early generations of *Aharonim*, R. Karo recognized no formal barrier to disagreeing with a *Rishon* or even a Gaon.²⁹ In fact, the Gaon of Vilna disagreed with the opinions of *Rishonim*³⁰ and, even in our day, rabbis of the calibre of R. Moshe Feinstein occasionally disagreed with a *Rishon*.³¹ Clearly one could do so only if one possessed a great deal of self-confidence in one's mastery of the entire Talmud and even then only in unusual circumstances. Nevertheless, at least in theory, there is nothing preventing anyone from disagreeing with an opinion of a Gaon or a *Rishon*. However, this is true only if the opinion was that of an individual Gaon. In those cases, however, where the Geonim introduced regulations which, in reality, were issued by the entire yeshiva and accepted by all of Israel, they could not be challenged. Thus, for example, the Geonim ruled that one can collect a debt of a loan or a *ketubah* from movable property and not just real estate. Even though such a ruling, in essence, takes money from the debtor who owns no real property, no one can disagree with this ruling. It is the equivalent of a ruling issued by an entire Sanhedrin which is binding on all future generations. Even in this case, Rambam rules that it is preferable to include such a stipulation directly in the *ketubah* since a decree of the Geonim is not as binding as a decree found in the Talmud.³² Thus, according to Rambam, no *takkanah* after the completion of the Talmud is as binding as the laws in the Talmud. The *takkanot* of Rabbeinu Gershon, for example, are binding on Ashkenazi Jewry only because they were accepted by those communities during his time.³³ In fact, some people claim that even French Jewry did not accept many of these *takkanot* until centuries later. With regard to the *Shulhan Arukh*, it is well known that many contemporaries of R. Yosef Karo and R. Moshe Isserles disagreed strongly with the whole concept of authoritative

codes precisely because they would limit the options of future generations.³⁴ In fact, some rabbis justified accepting the authority of the *Shulhan Arukh* because two hundred rabbis of that generation accepted it, i.e. creating a circumstance similar to the acceptance of the Talmud.³⁵ Yet, although the *Shulhan Arukh* did become authoritative, it never was accepted blindly, and halakhic authorities throughout the generations have allowed themselves to disagree with it when they felt they had strong enough reasons to do so. Again, these reasons had to be clearly based upon their thorough knowledge of the Talmud and its commentaries.

We thus see that courts do not have the authority to impose their decisions or decrees on other courts or on future generations. The only exception is when all the greatest Sages of a generation, without exception, come together and formally adopt a decision. In such a case, their decision has the validity of a decision of the Great Sanhedrin. This holds true for monetary matters and for new communal regulations (*takkanot ha-kahal*). Of course, no group today has the authority of the Great Sanhedrin to allow leniencies in other areas such as *issur ve-heter* or divorces. Also, although we popularly speak of the regulations of Rabbenu Gershon or those of Rabbenu Tam, the fact remains that these *takkanot* were never issued by these rabbis as individuals but by the entire community under their leadership. It was only after a period of time that they became associated with some famous person who presided over those meetings at which they were adopted.³⁶ As a result, these regulations were binding only on those communities which participated in the deliberations or those which later accepted these rules. However, even with the inclusion of rabbis of the calibre of Rabbenu Gershon or Rabbenu Tam, these gatherings had no power to impose their will on other communities which did not participate with them. Thus, for example, none of these *takkanot* affect the Sephardic community at all.

In our contemporary setting, it is clear that no rabbi or court has any power to impose their halakhic opinions on other individuals or communities. The authority of a rabbi extends only to the immediate congregation that has accepted him as its *posek*. Similarly, the authority of even a *gadol ha-dor* is very limited. The opinion of any individual, no matter how learned he may be, carries no halakhic force except that of persuasion. Even if the *gadol* issues his *pesak* as part of a court, that decision binds only the communities that accepted the authority of that court. If there are two courts in one city addressing issues raised by different communities within it, the customs of one community need not necessarily bind the other community. R. Moshe Feinstein has stated that today the concept of one overarching community does not, generally, exist.³⁷ Therefore, the *pesak* of any court is limited to those who freely choose to accept it.

In fact, R. Feinstein himself was very insistent that his *teshuvot* were binding only for the person who had asked the question and that, for every-

one else, they were meant only as a guide. At the end of his introduction to the first volume of his responsa, he requests that his readers study each issue for themselves and not simply take his rulings at face value. Similarly, Rav Feinstein was asked if a resident of Bnei Brak was required to follow the opinions of Hazon Ish. Rav Moshe responded that Hazon Ish could not be considered as the authority for the entire city of Bnei Brak. As a major *gadol*, Hazon Ish's opinions must surely be taken seriously and, should one disagree, it must be done with the appropriate honor for him, but there is no impediment to disagreeing with any *posek*.³⁸ Similarly, Hatam Sofer would not issue a *pesak* for inhabitants of a town with a local rabbi.³⁹ It is clear that other communities would not be required to accept his rulings in spite of his obvious greatness. The importance of the responsa of Hatam Sofer, for example, lie in their ability to convince the reader of their correctness, not in forcing him to decide in accordance with the *pesak* simply on the basis of the greatness of their author. In summary, there is no way, in contemporary society, of deciding who is "the" *gadol ha-dor* whose opinions are halakhically binding. In practice, each person must choose his or her own rabbinic authority and follow his decisions. It is also clear that one should not choose a different rav for each *she'elah* based on what he or she knows in advance to be the rav's opinion on that issue.

Moreover, excessive obedience to the teachings of previous generations can lead to a reduced level of Torah learning and creativity. There is a well-known story that Rabbi Nathan Adler took Hatam Sofer away from his father because he struck his son for criticizing an interpretation of an ancestor of his. Rabbi Adler realized that the young Moshe Sofer would never achieve greatness unless he was allowed to exercise free rein in his opinions about Torah.⁴⁰ Similarly, I once read a Torah journal in which a kollel student wrote a letter wondering who gave R. A. Hayyim Naeh (a scholar who lived in Jerusalem in the early twentieth century) the right to disagree with Hazon Ish about the size of measurements, e.g. *amah*, *ke-zayit*. The question was answered correctly that, historically, R. Hayyim Naeh preceded Hazon Ish and that therefore, on the contrary, it was the Hazon Ish who was the innovator. However, the underlying premise of the question (and to a lesser extent the answer), that if Hazon Ish expressed an opinion one is not allowed to disagree, is very disturbing. Such an attitude certainly reduces the amount of originality permitted in learning Torah. One need not be a *gadol* in order to think of and express new approaches to a subject in the Talmud or in Halakhah.

AUTHORITY IN NON-HALAKHIC ISSUES

It has been pointed out that even in purely halakhic issues a rabbi can impose his view only on the congregants that have accepted his authority. In

addition, Judaism has always distinguished between strictly halakhic issues and other, non-halakhic, ones. R. Yosef Karo states that his decisions in the *Shulhan Arukh* are based on a majority vote between Alfasi, Rambam and Rosh. In cases where only one of them discusses an issue, his opinion is accepted. Based on this view, one should be required to accept all the philosophic opinions of Rambam both in *Mishneh Torah* and in *Moreh Nevukhim*. Nevertheless, many authorities (both early and late) have accepted Rambam's authority in halakhic issues while they disagreed vociferously with his philosophy.⁴¹ Similarly, we find a talmudic discussion (*Shabbat* 33b) between Rabbi Yehudah, Rabbi Jose and Rabbi Shimon on what should be the attitude of the Jews towards the Roman government. In halakhic arguments we usually rule according to Rabbi Jose and, otherwise, according to Rabbi Yehudah; Rabbi Shimon is generally third in priority. However, in non-halakhic areas such as these, these rules do not seem to apply. A third example is in the understanding of a biblical text. While an *Aharon* will disagree with a *Rishon's* explanation of a talmudic passage only in rare circumstances, later biblical exegetes will easily disagree with an explanation of Ramban or Ibn Ezra or even with a midrash of Hazal. Rambam maintains that the whole concept that one court cannot override the decisions of another court does not apply to *derashot* of verses.⁴² In fact, in support of an idea, Rambam will occasionally cite a verse different than the one mentioned in the Babylonian Talmud.⁴³ Ibn Ezra states in his introduction to his commentary on the Torah that while in halakhic areas one cannot disagree with the Sages, one may do so in other areas. Thus, for example, he hints at the talmudic passage (*Bava Batra* 121b) that Ahiya Hashiloni lived for hundreds of years and comments that it is either the opinion of an individual or else an aggadic statement which is not authoritative.⁴⁴ Similarly, Ramban sometimes quotes Rashi or Hazal and then says that their opinion is not the correct interpretation of the verse.⁴⁵

It is also generally agreed that we do not rely on the medicines given in the Talmud.⁴⁶ Rav Sherira Gaon and Rav Hai Gaon say that Hazal were not doctors and that, in their medicine, they relied on observations and not on halakhic authority. As a result, there is no *mizvah* to listen to the Sages in these areas.⁴⁷ Similarly, Rambam (*Guide* 3:14) says that the medicines in the Talmud were not a tradition from the prophets. R. Avraham, son of the Rambam, stresses that in such issues we rely on our senses and not on the Talmud.⁴⁸ Tosafot suggests that one need not rely on the medicines in the Talmud because "nature" has changed since its days.⁴⁹ However, it seems to me that even Tosafot essentially agree that their reason is only valid because the matter under discussion is not a halakhic one for, in the case of halakhic issues such as *terefot* of an animal, we do not rely on such reasoning.⁵⁰ In another case, the Talmud (*Pesahim* 94b) relates a disagreement between the Jewish Sages and the Greek wise men concerning astronomy. R. Yehudah ha-Nasi decided that the Greeks won the argument based on his

acceptance of their logical reasons and clearly rejects any intrinsic authoritativeness of the Jewish Sages' position in scientific matters.

The Talmud (*Pesahim* 56a and *Berakhot* 10b) relates that King Hezekiah did six unusual things, three of which the rabbis agreed with and three of which they disagreed with (*lo hodu lo*). The three actions he took with which they disagreed were: 1. He removed the gold from the doors of the Temple (*hekhal*) and sent it to Ashur; 2. He stopped up the waters of the Gihon spring; 3. He added a second Adar on the 30th day of the first Adar (i.e. the first day of Nissan).

The first two of these actions Hezekiah took in reaction to the political situation of the time. Sennacherib, king of Assyria, had seized the fortified towns of Judea. Hezekiah apologized to him for the perceived rebellion, but was punished with a having to make a payment of silver and gold. Hezekiah then took the silver in the Temple, stripped its doors of their gold covering, and sent it all to Assyria. Nevertheless, in spite of this payment, Sennacherib sent an army against Jerusalem. One of the Assyrian leaders, Rabshakeh, delivered a speech against Hezekiah and blasphemed God. After that, Isaiah told Hezekiah that the Assyrian army would return to its homeland. After receiving another letter from Assyria, Hezekiah prayed and was assured by Isaiah that Jerusalem would be saved. Indeed, that night, the army of Sennacherib was miraculously destroyed (II Kings 18, 19). In preparation for the battle against Sennacherib, Hezekiah closed all the sources of water outside the city (II Chronicles 32). Rashi explains that in the first two cases the Sages disagreed with Hezekiah because he should have had more faith that God would save Jerusalem in accordance with the prophecy of Isaiah. However, this interpretation is difficult to sustain because the prophecy of Isaiah came after Hezekiah sent the gold. Furthermore, the language of "*lo hodu lo*" has a very mild meaning, i.e. they did not admit to him. It does not say that they considered him a sinner for such actions; on the contrary, Hezekiah is considered one of the most righteous of all the kings (II Kings 18:6). The fact is that these first two actions were taken by Hezekiah as part of his foreign and military policy, matters left to the king and not the Sanhedrin. The consent of the Sanhedrin is not needed for every royal decree. The Sanhedrin needs to be consulted only before embarking on a permissible war and since this was a war of defense, Hezekiah did not need its permission.

The third complaint against Hezekiah is also strange. The Talmud (*Sanhedrin* 47a) states that we follow the opinion of Shmuel who maintained that one cannot add a second Adar once the month of Nissan has begun. Thus, the Talmud uses the opinion of a third century Sage to challenge someone who lived many centuries earlier! Even assuming that Shmuel's opinion is based on a previously stated halakhah, Hezekiah would still have a right to disagree. It would therefore seem that the language used against Hezekiah is deliberately mild because, indeed, Hazal recognized

that he had a reasonable defense. The fact that he disagreed with the rabbis does not, per se, make him a wicked person.

Similarly, before King Josiah died in battle, he admitted that he was wrong in not consulting with the prophet Jeremiah before going to wage war.⁵¹ Once again we see that there is no need for a king to consult with the Sages every time before going to war. Josiah only thought he should have consulted with Jeremiah because he was a prophet. In general, we see from the stories told of King David⁵² that the king was expected to conduct foreign affairs independently, without constantly consulting with the Sages. Only in certain cases, like those listed in the first Mishnah of Sanhedrin, does the Sanhedrin need to be consulted, and even in these cases it seems to me that they are consulted in their capacity as representative of the people and not in their judicial capacity. A nonobligatory war cannot be decided by the king himself without the permission of the entire nation and, in this case, the Great Sanhedrin acts as the representative of the nation. The Great Sanhedrin was also involved in teaching the people the laws concerning wars and Rashi even indicates that its members prayed for the welfare of the people.⁵³ Thus, it was not the job of the Sanhedrin to determine whether or not the king could go to war based on their analysis of the political situation.

In fact, in most periods of Jewish history the religious leaders were not the political leaders. This was the result of a conscious effort to separate the duties of the religious leaders from the non-halakhic problems of running a state or a community. Thus, throughout the first Temple period, the king represented the secular power while the prophet represented the religious authority, the continuation of the chain of the *Mesorah*. In the beginning of the second Temple period, there was a similar situation with the high priest representing the religious dimension in place of the prophet. Eventually, when the high priest took over all the powers, many abuses occurred. This combination of both the religious and secular power may be what caused Ramban (on Genesis 49:6) to blame the Hasmonean kings for usurping both the kingship and the high priesthood even though the early Hasmoneans used only the title of *nasi* and it was only Yanai who took the kingship. Rabbi Yehudah ha-Nasi purposely arranged that the leadership of the people after his death be split between his two sons, one becoming *nasi* and the other, head of the *yeshiva*.⁵⁴ Only in the days of the Tannaim did the religious and secular leadership become combined, and R. Yehudah ha-Nasi felt that this special situation could no longer continue. Yet, even in those days, the rabbis did not insist that the religious and secular powers be combined. Bar Kokhba was not a *talmid hakham* but was still recognized by Rabbi Akiva as a leader of the Jewish people. It seems difficult to me to assert that one was halakhically bound to follow Bar Kokhba since the *gadol ha-dor*, Rabbi Akiva, backed him. In fact, we know of rabbis who disagreed with Rabbi Akiva⁵⁵ and were not known to be his peers in Halakhah.

The existence of this dual leadership naturally led to conflicts as each side has its program to pursue. Thus, on occasion, in Babylonia, where the Exilarch was the secular leader, and the head of the yeshiva (or Gaon) was the religious leader there were quarrels between them, frequently about money. This does not mean that those exilarchs who were on good terms with the rabbis were righteous and those who did not were evil. One cannot categorize every community leader who disagreed with a rabbi as a wicked individual.⁵⁶

In all generations, rabbis have given their opinion on political matters from the Sages of Hezekiah's time, to Rabbi Akiva and Bar Kokhba, to the rabbinical arguments about Napoleon,⁵⁷ to modern day Israeli politics. We have attempted to show that their opinions in these areas do not carry the same weight as in halakhic ones. This is all the more so, when the opinions are not based on clear cut reasons but are simply justified on the basis of "*da'as Torah*". It is ironic that a halakhic responsa usually comes with a lengthy reasoned justification while a non-halakhic opinion is given without any justification whatsoever.

IS THERE AN OBJECTIVE HEAVENLY "TRUTH" ?

For at least two thousand years there have been disagreements between different viewpoints of Judaism and even between rabbis who shared the same general perspective. One basic question is whether all these viewpoints can be seen as legitimate or if one has a right (or an obligation) to insist that only one path is the correct one and all the others are deviant. For example, when two Tannaim disagree as to whether a certain marriage is permissible, do we assume that one was correct and the other wrong, or is it possible that both are right in some sense? Furthermore, is there any connection between this "truth" and the halakhic decision of later generations? In other words, is there a concept of "heavenly truth" or "halakhic truth", and are the two the same? As a second example, we consider the controversy over secular studies which is not a strictly halakhic issue to be found in the *Shulhan Arukh*. Again, are both points of view legitimate or is one wrong and the other right? We shall see that the issue was already raised by *Rishonim* and *Aharonim*. It has also been discussed in some recent articles reviewing the issue from the viewpoint of the limits of halakhic pluralism or from that of disagreements between *gedolim*, each of whom, one would imagine, should always be right.⁵⁸

The basic talmudic text concerns the multitude of arguments between Bet Hillel and Bet Shammai. The Talmud states that even though we generally follow the opinion of Bet Hillel, both Bet Hillel and Bet Shammai are in some sense "right".⁵⁹ Ritva, in the name of the French rabbis, explains that God phrased the Torah so that it could be explained in many different

ways, allowing both the explanations of Bet Hillel and Bet Shammai to be "correct". It was left to later generations to decide the halakhah in accordance with Bet Hillel.⁶⁰ However, Rav Moshe Feinstein disagrees with this explanation. He states categorically that, in general, in the case of a halakhic disagreement, one opinion is right and the other is wrong, as far as God and objective truth are concerned. However, as long as both sides studied with as great diligence as they could, they both receive a reward in the future world, independent of the truth of their argument. One is rewarded in heaven for effort alone and not for necessarily achieving objective truth. This is in keeping with the rabbinic statement that just as one receives a reward for composing *derashot*, one receives a reward for retracting them,⁶¹ i.e. a rabbi who composes *derashot* and then retracts them still receives a reward for his original effort. Rabbi Feinstein refers to the story of a town that was rewarded in Heaven for following the teachings of Rabbi Eliezer even though the Halakhah is not decided in his favor. Thus, according to him, even in the days of the Tannaim we do not assume that all opinions were "correct". He seems to explain that the case of Bet Hillel and Bet Shammai was different because, there, both points of view explained the verses but that, in general, this is not so.⁶² In the introduction to his *Kezot ha-Hoshen*, R. Aryeh Leib Hakohen Heller says that truth in Halakhah is what the Sages decide based on their human abilities without it necessarily coinciding with heavenly "truth", i.e. "heavenly truth" and "halakhic truth" are two distinct concepts.

Hatam Sofer goes even further and suggest that a "rebellious elder" (*zaken mamre*) may actually be objectively right and the Great Sanhedrin wrong. He continues to state that perhaps we are required to believe that the Sanhedrin was right because God would not let it err and mislead the entire nation, but he rejects this option because we do not rely in halakhic discussions on a prophet. As a result, he claims, we certainly cannot rely on the fact that just because the Sanhedrin sat in the precincts of the Temple its decisions are correct. He stresses that rabbis are human beings who can err. Even in the days of Joshua, when Osniel ben Kenaz rediscovered laws forgotten during the mourning period for Moshe Rabbenu, we have no guarantee that everything that was reinstituted was objectively correct, since he used his logic in the reconstruction, not prophecy.⁶³ The only way to avoid error is by receiving explicit guidance from God. However, since "it is not in heaven", he concludes that it is a divine decree that we follow the Sanhedrin even if they should err.⁶⁴ Rabbi Yair Hayyim Bachrach, in fact, gives a specific example, and states that Rambam erred when he claimed that there are no disagreements in laws from Moshe (*halakhot le-Moshe mi-Sinai*).⁶⁵ Ran says that we follow the majority against an individual even if that "individual" is God and, obviously God is right and the majority is wrong.⁶⁶ Thus, Ran also differentiates between halakhic truth and heavenly or objective truth. Based on the reasoning of Hatam Sofer, it is not a sin

to suggest that Rabbi Akiva erred in backing Bar Kokhba. It is only with hindsight that we can say that the Bar Kokhba revolt was a tragic mistake but, at the time, such an assessment seemed reasonable. As a result, Rabbi Akiva's stature as one of the greatest Tannaim should, in no way, be adversely affected by whatever stance he took with regard to Bar Kokhba.

I would extend the argument of Rabbi Feinstein and suggest there are other areas in which both sides cannot be right. One example is in historical arguments. Either Ketura is the same person as Hagar or she is not.⁶⁷ There are different opinions concerning how many Jews were in Egypt before the plague of darkness;⁶⁸ obviously, not all could be correct. Similarly, there are other arguments in the Talmud concerning the identity of people. Were Pinhas and Elijah the same person or not?⁶⁹ Are Malachi and Ezra (or possibly Mordekhai) the same person?⁷⁰ Who was Job?⁷¹ Was the Torah given in the present Hebrew script (*ketav ashurit*) or in a different ancient Hebrew alphabet?⁷² There are many disagreements about the order of the sacrifices in the Temple, and the appearance of the Temple.⁷³ In simple terms, all these opinions cannot be correct. Furthermore, in many of these cases, Rambam "decides" the Halakhah. It is clear that the decision of Rambam cannot determine historical facts, but rather, since these arguments have practical outcomes (or, in the case of sacrifices, an outcome when the Temple will be rebuilt), Rambam must come to some conclusion based on general principles of *pesak*. However, just because a *pesak* decides in favor of Rabbi Jose against Rabbi Yehudah or in favor of Rabbi Yohanan against Resh Lakish, for example, does not in any way mean that an objective historical determination is being made. Once Rambam, for example, decides the Halakhah, it is determined to be so regardless of future archaeological discoveries. Even if a letter were to be found written by an eyewitness describing the Temple service in detail, it would not affect any talmudic discussions or halakhic conclusions about it. The fact that Rambam may be proven wrong historically is irrelevant; after all "*lo ba-shamayim hi*" and Halakhah goes its own consistent way. Conversely, we obviously cannot change history because of a decision of Rambam but yet, as long as there is no conclusive evidence to the contrary, and there rarely is, we should assume that the historical facts coincide with the opinion favored by Halakhah.⁷⁴

Similarly, there are numerous cases in the Talmud in which two Amoraim give different versions of what a previous Amora said. Clearly, both these versions cannot be "correct". In some cases, the Talmud (*Bava Batra* 130b-31a) tries to show that neither Amora was lying, e.g. one Amora heard an earlier version of the statement while another Amora heard a revised version.⁷⁵ However, in the final analysis, both cannot be correct in terms of an objective truth.

The situation is even more complicated when Sages fight amongst themselves on a personal level. It is difficult to accept the principle "*elu va-*

elu divrei Elokim hayyim" when the proponents and opponents of Rambam's philosophy hurl accusations at each other or when Mitnagdim and Hassidim inform on each other to the government. Similarly, both sides cannot be right in the major eighteenth century controversy between R. Ya'akov Emden and R. Yonatan Eybeschütz. All sides cannot be correct when one rav says that one is forbidden to read any of the works of Rav Kook or Rav Soloveitchik while others consider these rabbis to be the greatest *gedolim* of our time. Furthermore, many views change over time. Many of the disagreements between the proponents and opponents of Rambam or between Mitnagdim and Hassidim are no longer debated. R. Moses Hayyim Luzzatto, the author of *Messilat Yesharim*, was condemned by his own community and many others, but his work was eventually accepted as a classic. Thus, even the determination of who is to be considered a *gadol* changes with different historical perspectives.

CONCLUSION

We have shown that, in the absence of the Great Sanhedrin, a court, a community or even a *gadol ha-dor* can impose their halakhic opinions only if they are accepted by the majority of a community. Even in that case, the decisions affect only that specific community and not others. When a rabbi of a community makes a halakhic decision, it should be based on his study of the relevant halakhic sources and then on his own logic. One is not required to follow a decision merely because a famous rabbi made it. Rava tells his students (*Sanhedrin* 110a) that after his death they should only be guided by their own understanding. They shouldn't simply reject his teachings but keep them for the future, but, for the present time, they must ultimately rely on their own judgment.

The Torah commands us to follow the majority rule. However, this applies only in a court where all the judges and opinions confront one another. The law of the rebellious elder applied only when the elder presented his arguments to the Sanhedrin and, after considering all opinions, the majority ruled against him. The law does not apply if the Sanhedrin refused to listen to his opinion and simply stated that it knew better. Therefore, one is not commanded to follow the majority of rabbinic opinions when these opinions are issued in various places and times.⁷⁶ Halakhic opinions are more than a mere counting of how many *posekim* there are on each side. Furthermore, throughout the ages, Judaism has differentiated between halakhic opinions of *gedolim* and their philosophic or hashkafic viewpoints.

It is important to stress that any disagreement must be based on a proper and respectful attitude towards the Sages of all generations. Although the decision of a *posek* may not be binding on someone who did not ask

the question, that *posek* must still be respected as a great authority. One of the greatest sinners is he who abuses a *talmid hakham*. One can disagree with a specific rabbinic opinion but, under no circumstances, can one denigrate the person espousing it. Hatam Sofer describes a city that was punished because they mistreated their *rav*.⁷⁷ Even if one has studied an issue thoroughly, and legitimately decided to disagree with Hazon Ish, one must realize that a person of his greatness never said anything foolish. If one does not understand his opinion, it is likely to be because of one's lack of understanding. The Talmud (*Megillah* 12b-13a) states that the Jews were upset that Mordekhai was born and blamed him for all their problems with Haman. Only later did they realize that he was right. Nevertheless, in the final analysis, each individual has an obligation to make his own informed decision (*en lo la-dayyan ela mah she-enav ro'ot*).

Since one is required to follow the opinion of a rabbi only if he accepted the rabbi as his *posek*, it is important that each person accept for himself or herself some person of higher qualifications to be his or her personal leader and be bound by his decisions, in keeping with the dictum of *aseh lekha rav* (*Avot* 1:6).⁷⁸ Even someone who is himself a rabbi should have some other individual who is his mentor and offers guidance to him in both halakhic and personal decisions. Rabbi Soloveitchik stresses that the highest form of authority, greater than the forms of authority with which we began this paper, is the relationship of a *rebbe* to his student.⁷⁹ The strength of this relationship lies in the fact that it is a completely voluntary one. As Hazal say (*Bava Mezia* 33a), parents bring a person into this world while a teacher brings one into the next world. One who argues with his *rebbe* is considered as if he argues with God.⁸⁰ Nevertheless, one can disagree even with a decision of one's *rebbe*, if done properly.⁸¹

In summary:

1. Only when the Great Sanhedrin or (possibly) another central court representing the entire Jewish nation takes a formal vote do we apply the principle of "*lo tasur*". In particular, this commandment applies to the rabbinic rulings found in the Mishnah and Talmud but not to later generations.

2. The leaders of each community have many of the rights of the Sanhedrin, as long as these leaders are accepted by a majority of their communities. People who are not members of the community are not bound to follow their decisions. Hence, there is no obligation to follow the decisions of a *gadol* from a different community. Everyone should choose a personal rabbi and follow his decisions.

3. There is a difference between *pesak* in halakhic and non-halakhic areas. While a rabbi's opinion on non-halakhic matters may be less binding, it should nevertheless be valued.

4. *Elu va-eluv divrei Elokim hayyim* applies only to *derashot* of Torah verses made by those who lived during talmudic times. In others areas, even the opinions of those living in tannaitic times or earlier, need not be

considered always correct. *Lo ba-shamayim hi* teaches that halakhah is determined by human beings if the final *pesak* is not in accord with heavenly truth. One is rewarded for one's sincere effort in learning, not for the ultimate truth resulting from one's study. Since rabbis are human, they too can and do make mistakes. The only way to avoid mistakes is to be guided by Heaven. However, relying on heavenly guidance in halakhic matters violates *lo ba-shamayim hi*. Hence, it is inevitable that errors will occur over a period of time in the halakhic process.

5. There is a commandment to honor and respect all Torah scholars even if one disagrees with their opinions. Any disagreement with a *pesak* must be based on a thorough understanding of all the relevant issues.

NOTES

1. See Rambam, *Mishneh Torah*, Hil. Milakhim 4:1 .
2. See e.g. *Mishnah*, Ketubot 1:5 .
3. Leviticus 13:2. See also *Sanhedrin* 34b .
4. The Rashba is cited in *Bet Yosef*, Tur, *Hoshen Mishpat*, 2 .
5. See his *She'elot u-Teshuvot Dvar Avraham* (Tel Aviv, 1961), #1 .
6. See R. Joseph B. Soloveitchik, "Takkanat Moshe", in *Shiurim le-Zekher Abba Mari zt"l* (Jerusalem, 1985), II, 197-213 .
7. Rambam, *Mishneh Torah*, Hil. Mamrim 1:1 .
8. *Hagigah* 16a and *Tosafot*, s.v. Yose be Yoezer; *Tosefta*, *Hagigah* 2:9.
9. *Sanhedrin* 19b. See also *Temurah* 15b-16a and *Tosefta*, *Mahsishirin* 2 .
10. See his "Kevi'at Moadim al pi ha-Re'iyah ve-al pi ha-Heshbon," in *Kovez Hiddushei Torah* (Jerusalem, n.d.), 47-65 .
11. *Rif* on *Rosh Hashanah* 29b; see also *Rosh* and *Ba'al Ha-Maor*, *ad loc* .
12. See *Minhat Hinukh*, #496, s.v. *she-nimnanu*; *She'elot u-Teshuvot Rivash*, #271.
13. See *Bava Batra* 9a and *Tosefta*, *Bava Mezia* 11 .
14. *Bava Batra* 54b. See also Rambam, *Mishneh Torah*, Hil. Gezeilah 5:11; *Shulhan Arukh*, *Hoshen Mishpat*, 369:9 .
15. *Gittin* 36b and *Yevamot* 89b .
16. *Mordekhai*, *Bava Batra*, 8b, #480-81. See also *She'elot u-Teshuvot R. Eliyah Mizrahi*, #57; *She'elot u-Teshuvot Maharshdam*, I, #117; R. Binyamin Lipkin, "Shitot ha-Rishonim be-Takkanat ha-Kahal," in *Be-Zomet ha-Torah ve-ha-Medinah* (Alon Shvut, 1991), 139-51 .
17. *She'elot u-Teshuvot Maharik* (Jerusalem, 1973), #1 .
18. See *Tosafot* on *Ketubot* 47a, s.v. *katav lah*. See also *Shulhan Arukh*, *Even ha-Ezer*, 52 and 118 .
19. *Shulhan Arukh*, *Hoshen Mishpat*, 2. See also above, n. 16 .
20. See *Sefer Me'irat Enayim*, *Shulhan Arukh*, *Hoshen Mishpat*, 2 and *Bayit Hadash*, on Tur, *ad loc*.
21. *She'elot u-Teshuvot Hatam Sofer*, *Yoreh De'ah*, #5 and *Hoshen Mishpat*, #147. Rabbi Eliyahu Mizrahi (above n. 16) states that the leaders of a community cannot introduce any bans which are not accepted by the majority of its inhabitants and certainly cannot legislate for other communities. For more details on the majority principle in community affairs, see D. Gutenmacher, "The Legal Concept of Political Obligation in Medieval Spanish Jewish Law," *Dine Israel* 15 (1989-90): 64-95 .
22. *Tosefta*, *Sanhedrin* 2:6 .
23. See R. I. Herzog, *Tehukah le-Yisrael al pi Torah* (Jerusalem, 1989), II, 57.
24. See S.Z. Leiman, "Rabbi David Friedman of Karlin: The Ban on Secular Study in Jeru-

- salem," *Tradition* 26:4 (Summer, 1992): 102-05.
25. Rashi, Deuteronomy 17:11, s.v. *yamin u-smol*.
 26. See R. Zevi Hirsch Chajes, "Mishpat Hora'ah," *Kol Kitvei Maharaz Hayyot* (Jerusalem, 1958), 374-94. See also *Derashot ha-Ran*, #12; R. Elhanan Wasserman, "Kuntres Divrei Soferim," in *Kovez Shiurim* (Tel Aviv, 1963), II, 87-116.
 27. *Sanhedrin* 33a, s.v. *ve-afilu ta'ah be-Rebbe Hiyya*.
 28. *Kesef Mishneh*, on *Mishneh Torah*, *Hil. Mamrim* 2:1. See also R. Joseph B. Soloveitchik "Shnei Sugei Masoret," in *Shiurim le-Zekher Abba Mori Zt"l* (Jerusalem, 1983), I, 220-39.
 29. See *Rosh*, *Sanhedrin* 4:8 and *Piskei ha-Rosh*, *ibid* 4:6 and 9:55 about disagreements with Geonim. Also *Shulhan Arukh*, *Hoshen Mishpat*, 25:1.
 30. See, for example, *Shenot Eliyahu*, *Berakhot* 4:1, 7:3; *Orah Hayyim*, 68. Also in several places in his commentary on *Mishnah Taharot*, the Gaon from Vilna disagrees with the explanation of R. Shimshon from Sens (Rash). R. Aharon Kotler said that the Gaon of Vilna told R. Hayyim of Volozhin that one can disagree with authorities through the era of Rosh based on proofs and until the era of Rema based on logic. See *Nefesh ha-Hayyim* by R. Hayyim Volozhin, ed. Yissachar Rubin (Bnei Brak, 1989), 456.
- For general attitudes toward disagreeing with *Rishonim*, see Samuel Turk, "Im Yesh Reshut la-Aharonim la-Halok al Rishonim," *Or ha-Mizrah* 22 (1973): 178-84; R. Moshe Tzuriel, "Sha'ar Emunah," in *Bet Yehezkel* (Bnei Brak, 1981) II, 142-44.
31. See, for example, *Iggerot Moshe*, *Yoreh De'ah*, I, #47. In the introduction to his *Ma'aneh la-Iggerot* (New York, 1974), R. Yom Tov Schwartz sharply criticizes R. Feinstein for disagreeing with *Rishonim* and *Aharonim* and brings many examples. Nevertheless, it is R. Feinstein and not R. Schwartz who was considered the *gadol ha-dor*. It is said in the name of R. Eliashiv (many years ago) that the two people on whom one makes a blessing upon seeing a *talmid hakham* are R. M. Feinstein and R. Y. Kanievsky (the Steipler Rav).
 32. Rambam, *Mishneh Torah*, *Hil. Ishut* 16:7-9.
 33. See Irving Agus, *Urban Civilization in Pre-Crusade Jewry* (New York, 1965), I, 38-41; Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (New York, 1924), 41-42; Avraham Grossman, *Hahmei Ashkenaz ha-Rishonim* (Jerusalem, 1989), 139-43.
 34. See, for example, R. Yom Tov Zahalon, *She'elot u-Teshuvot Mahariz*, #24; R. Judah Loeb ben Bezalel (Maharal from Prague), *Derekh Hayyim* 6:6; *idem*, *Netivot Olam*, *Netiv ha-Torah*, #15; and R. Hayyim ben Bezalel, *Mayyim Hayyim*, introduction; R. Shmuel Edels, *Maharsha Sotah* 22a.
 35. See *Birkei Yosef*, *Shulhan Arukh*, *Hoshen Mishpat*, 25, 29.
 36. It is interesting to note that some of those regulations which involve the loss of money are associated for posterity with the name of Rabbenu Tam who, in fact, had objected to the ability of courts to confiscate money, as indicated earlier. One of them stipulated that if a wife died within the first year of marriage, her dowry reverted back to her father, which is against the ruling of the Talmud (see above, n. 18). Thus, even though the husband loses money because of the regulation, Rabbenu Tam still agreed to it. Perhaps he did so because all the communities agreed without any dissent, or, more likely, because Rabbenu Tam felt that a gathering of all the communities was akin to a declaration of the Sanhedrin and would be considered binding even though a court of three that included Rabbenu Tam would not have such powers.
 37. *Iggerot Moshe*, *Orah Hayyim*, I, #159.
 38. *Iggerot Moshe*, *Yoreh De'ah*, III, #88.
 39. *She'elot u-Teshuvot Hatam Sofer*, *Orah Hayyim*, #2; *idem* #123; *Hoshen Mishpat*, #100; Ya'akov Weiss, *Rabbanut ve-Kehillah* (Jerusalem, 1987), 205 states that Rabbi Sofer would even refrain from checking the knife of the slaughterer from another community.
 40. R. Abraham Feigelstock, *Toledot Hatam Sofer* (Brooklyn, 1953), 6; Selig Schachnowitz, *The Light from the West* (London, 1958), 37-40; Yehudah Nahshoni, *Rabbenu Moshe Sofer* (Jerusalem, 1981), 53.
 41. *Hagahot ha-Gra*, *Yoreh De'ah* 179:13. [See Jacob J. Schacter, "Rabbi Jacob Emden, Philosophy, and the Authority of Maimonides," printed elsewhere in this issue — ED.]

42. Rambam, *Mishneh Torah*, Hil. Mamrim 2:1 .
43. See, for example, R. Hayyim Kanievsky, *Kiryat Melekh* (Bnei Brak, n.d.). The last page lists rules in the *Mishneh Torah* .
44. Ibn Ezra on Genesis 26:27 .
45. See, for example, Ramban on Genesis 11:32 .
46. See Rabbi Shlomo Luria, *Likkutim Yam shel Shlomo*, Hullin, VIII:12 .
47. Ozar ha-Geonim, ed. B. Lewin (Jerusalem, 1941), Gittin 68b (p. 105), s.v. le-dama; Zikhron la-Rishonim ve-Gam la-Aharonim, Teshuvot ha-Gaonim, ed. A. Harkavy (Berlin, 1885), 208, #394. See also Ya'akov Neuberger, "Halakhah and Scientific Method," *The Torah u-Madda Journal* 3 (1991-1992): 82-89; Judah Landa, *Torah and Science* (Hoboken, 1991) .
48. Rabbenu Avraham ben ha-Rambam, *Milhamot Hashem* (Jerusalem, n.d.), 83-89. Hazon Ish disagreed with this approach. See his Kovez Iggerot Hazon Ish (Bnei Brak, n.d.), #15 .
49. Tosafot, Mo'ed Katan 11a, s.v. kavra .
50. Rambam, *Mishneh Torah*, Hil. Shehitah 10:12-13; See also Hazon Ish, ad loc.
51. Ta'anit 22b; see also Maharsha, ad loc.
52. See Ramban, Deuteronomy 11:24 .
53. Sanhedrin 16a and Maharsha, ad loc. See also Rashi Berakhot 3b, s.v. ve-nimlakhim ba-sanhedrin.
54. Ketubot 103a. See also Zeev Yavetz, *Toledot Yisrael* (Tel Aviv, 1963), VI:246.
55. Avodah Zarah 18a; Yerushalmi, Ta'anit 4:5; Lamentations Rabbah 2:4.
See also Rambam, *Mishneh Torah*, Hil. Melakhim 11:3. For a further discussion on Rabbi Akivah's role in the Bar Kokhba revolt see M. Mor's *Mered Bar Kokhba*, *Ozmato ve-Hekefo* (Jerusalem, 1991), 218-29.
56. Rambam in his commentary to the Mishnah Bekhorot 4:4 states that only the Exilarch can appoint judges who will be exempt from payment for errors. This is true even when the Exilarch is not a *talmid hakham*. However, the heads of the yeshiva do not have similar powers. Rambam also stresses that titles do not count for anything.
57. See Simon Schwarzfuchs, *Napoleon, The Jews and the Sanhedrin* (London, 1979), 169-78 .
58. See R. Michael Rosensweig, "Elu va-Elu Divrei Elokim Hayyim," *Tradition* 26:3 (Spring, 1992): 4-23; R. Ya'akov Feitman, "Daas Torah: Tapping the Source of Eternal Wisdom," *The Jewish Observer* (May, 1992): 12-27. See also R. Yehuda ha-Levi Amichai, "Da'at Torah be-Inyanim she-Enam Hilkhati'im Muvhakhim," *Tehumin* 11 (1990): 24-30; R. Shlomo Sha'anani, "Da'at Torah be-Inyan she-Eno Halakhah (Teguvah)," *Tehumin* 12 (1991): 171-72; *Rabbinic Authority and Personal Autonomy*, ed. Moshe Sokol (Northvale, 1992) .
59. *Eruvin* 13b. See also R. S. Lamparanti, *Encyclopedia Pahad Yizhak* (Bnei Brak, 1981), letter aleph-lamed .
60. Ritva on *Eruvin* 13b in the name of "the French rabbis". See also Yerushalmi, *Sanhedrin* 4:2. In his introduction to his *Milhamot Hashem*, Ramban points out that Torah logic is different than mathematical logic. In mathematics, there is only one truth, while in Torah there can be many truths. (Incidentally, in modern mathematics one can also have more than one truth. The sum of the angles in a triangle is either less than, equal to, or more than 180 degrees depending on which geometrical model is used.) It is not clear if Ramban is talking about halakhic truth or heavenly truth. See also the introduction of Ramban to his commentary on the Mishnah.
With regard to *Rishonim*, there are areas in which they were clearly wrong. Thus, for example, Rav Shimshon from Sens (Rash) incorrectly denies the general validity of Pythagoras' theorem. See Rash and Tosafot Yom Tov on *Kil'ayim* 5:5; *Kesef Mishneh* on *Mishneh Torah*, Hil. Kil'ayim 6:2 .
61. *Pesahim* 22b .
62. See his introduction to *Iggerot Moshe*, *Orah Hayyim* I .
63. *Temurah* 16a .
64. *She'elot u-Teshuvot Hatam Sofer*, *Hoshen Mishpat*, #191; also see *Sefer ha-Hinukh*, #496 .
65. *She'elot u-Teshuvot Havot Ya'ir*, #192. R. Zevi Yehudah Kook, *Torat Erez Yisrael* (Jerusalem,

- 1991), insists that some *gedolei Yisrael* erred in their opposition to Zionism. He also stresses that it is part of a rabbi's job to teach about the settling and keeping the land of Israel. He does not distinguish between politics and religion.
66. *Derashot ha-Ran* (Jerusalem, 1977), #5 (version 2) and #7. This is based on the story of Rabbah bar Nahmani in *Bava Mezia* 86a. See also R. Ya'akov Mamrosh, *She'elot u-Teshuvot min ha-Shamayim* (Jerusalem, 1957), #3 regarding the argument in heaven whether the *tefillin* of Rashi or Rabbenu Tam are correct.
 67. *Midrash Rabbah* on *Haye Sarah* 61:4 .
 68. *Mekhilta and Mekhilta de-Rabi Shimon bar Yohai* on Exodus 13:18 .
 69. See Radak on I Kings 17:1 .
 70. *Megillah* 15a .
 71. *Bava Batra* 15a; *Midrash Rabbah* on Genesis 57:4 .
 72. *Sanhedrin* 21b. For more details of the various opinions, see R. Menahem Kasher, "Ketav ha-Torah ve-Otiotehah," *Torah Shelemah* 29 (Jerusalem, 1978), 1-22 .
 73. Compare *Mishnayot* in *Middot*, *Tamid* and *Yoma*. See also *Ketubot* 106a, *Tosafot*, s.v. *shivah* .
 74. See R. Yizhak Hutner in *Pahad Yizhak, ve-zot Hanukah* (Brooklyn, 1985), 52. Rav Hutner suggests that even though, obviously, only one historical event occurred, nevertheless, all interpretations are valid. Thus, halakhot that are learned from the *Mishkan* are independent of the way that the *Mishkan* appeared in history.
In some cases, one can explain opposite historical opinions. Thus, for example, the Gaon from Vilna explains how both Moses and Joshua wrote the last eight verses in the Torah (*Bava Batra* 15a) based on their reinterpretation of the same letters into different words. See his *Zikhron Eliyahu* (Bnei Brak, 1951) II, 20-21. This is further elaborated in *Divrei Eliyahu, Kol Eliyahu ha-Shalem* (Jerusalem, 1985) on *Bava Batra* 15a, together with a discussion of Job. See also *Gittin* 72a on the concubine in *Civah* for another case of differing opinions about historical events.
 75. See also Rashi, s.v. *mai ka-mash-la lan* and *Tosafot*, s.v. *ve-lo pligi*, *Ketubot* 57a; *Yevamot* 32b.
 76. See above n. 26 .
 77. *She'elot u-Teshuvot Hatam Sofer, Hoshen Mishpat*, #7.
 78. *She'elot u-Teshuvot Hatam Sofer, Yoreh De'ah*, #13. Rabbi Sofer would not answer *she'elot* to individuals in a community that had a rabbi (*ibid*, *Orah Hayyim*, #2, #123, *Hoshen Mishpat*, #100). When visiting other communities, he would shorten his prayers so as not to embarrass the local rabbi (Introduction to the *Siddur* of *Hatam Sofer*); see above n. 39 .
 79. See his "Who is Fit to Lead the Jewish People", in *Reflections of the Rav*, ed. A. Besdin (Jerusalem, 1979), 133-37. Also his *Divrei Hashkafah* (Jerusalem, 1992), 247.
 80. Rema, in *Shulhan Arukh, Yoreh De'ah*, 242:3 .
 81. Ketav Sofer says that, in theory, one can even sue one's rebbe in a *bet din* but he considers any such action as a desecration of God. See his *She'elot u-Teshuvot Ketav Sofer, Yoreh De'ah*, #107. See also *Shulhan Arukh, Hoshen Mishpat*, 9:7-8; Rema, *Yoreh De'ah*, 242:3 and *Sifte Kohen, ad loc.*; *She'elot u-Teshuvot Radvaz*, #495; *She'elat Ya'avez*, #5. For an example of disagreeing with one's teachers see Rambam, *Mishneh Torah, Hil. Ishut* 5:15 .