



Parashat Devarim

Prophets and Judges: On Producing a Vital and Relevant Halakha

By Rabbi Yamin Levy

It is not surprising that one of the first events Moshe Rabbenu recalls at the beginning of Sefer Devarim is the appointment of Judges for the Jewish people. The supreme court of Israel, or the Sanhedrin was the sole source of legal authority sharing this privilege with no other governing institution including the King of Israel, the High Priest, Priesthood or the Prophet. Even the lower courts of twenty-three functioned on the judicial level and not on the legislative level¹. The authority of the Sanhedrin over any other individual member of the community is anchored on the Verse in Deut. 17:11: “You shall act in accordance with the instruction given you and the ruling handed down to you; you must not deviate from the verdict they announce to you either to the right or to the left.”² Maimonides, with a flair of rhetoric, writes:

...even if one-thousand prophets who are as Elija and Elisha would make any interpretation of the law and one-thousand and one scholars interpret the opposite ‘after the many you shall follow’ (Ex. 23:2) and we follow the position of the one-thousand and one and not the position of the one-thousand outstanding prophets. And thus the sages say: ‘By God! Even if Yehoshua

¹ See Sefer Hamitzvot Aseh 176. Also Gerald J. Blidstein “Maimonides Structures of Institutional Authority” *Dinei Yisrael* 17 (1993) pages 103-126. The Sanhedrin did have a judicial role as well but was limited to national figures like the King or Nasi per the Mishna in Sanhedrin Chapter 1. See also MT Mamrim 1:4 3:8 also Mamrim chapter 2.

² Much ink has been devoted to the subject of the scope of Rabbinic Authority for a recent discussion see Gerald J. Blidstein, *Halakhic Authority in Maimonides* which appears in *Maimonidean Studies* edited by Arthur Hyman and Alfred Ivry 2008; also Y Blidstein, *Ekronot Medinniyim BeMishnat HaRambam* 2nd edition (Ramat Gan, 2001); M. Berger *Rabbinic Authority* (Oxford U. Press 1998); R. Brody “Maimonides’ Attitude Toward The Halakhic Innovations of the Geonim” in *The Thought of Moses Maimonides* edited by I Robinson (Lewiston, 1990); Tradition devoted an entire journal to the topic Volume 27 No. 4 Summer 1993

Bin Nun had told me by his own mouth I should not have obeyed it and not have accepted it³

This might explain why Maimonides rules that a child is first taught the verse: “Moshe has commanded us the Torah (Law) it is the inheritance of the Congregation of Jacob” and only afterwards is the child taught the fundamentals of theology through the verse of the Shema.

Maimonides distinguishes between the prophet and the legislator. The prophecies of the patriarchs, as well as, the prophetic records of the later Neviim were limited to the teachings of monotheism or social justice. The exception to this rule was Moshe Rabbeinu who was unique in that he embodied, both, the prophet as well as the teacher and legislator. The need to distinguish between prophet and legislator is illustrated most dramatically in Maimonides’ ruling of the prophet who offers legal opinions based on supernatural revelations. Such a prophet is branded as a “false prophet” punishable with the death penalty⁴. If prophets would have been granted such authority the immutability of Torah would not be counted as one of the 13 principles of faith and the formation of a just state would not have been a joint effort or partnership between God and man.

Maimonides devotes the better part of his Introduction to the Mishna discussing the nature and scope of the prophet’s authority. It is the prophet of Israel whose charismatic personality combined with his or her claims of direct revelation from God that makes up the basis of his or her authority. Immediately following a short discussion about the legal doubts that arose after the death of Moshe Rabbeinu and, may arise in the legislative process throughout history, Maimonides answers the unasked question. Why not turn to the Prophet who is the source of divine will? As the verse states: “A Prophet from among you I shall appoint and him you shall listen” (Deut. 18:16). Maimonides writes categorically: “you shall know that prophecy is not helpful in the interpretation of the Torah or in the legislative process of the oral law⁵ through the thirteen principles.” This fundamental Maimonidean idea is based on the Talmudic passage in Tractate Temurah:

³ Intro to Mishna

⁴ MT Yesodei HaTorah 9:4

⁵ Yitzhcak Shilat correctly translates this expression into “UvHotza’at H’anafim” Hakdamot HaRambam L’Mishna page 28.

Rabbi Yehuda reported in the name of Shemuel: Three thousand laws were forgotten during the period of mourning for Moses. They said to Joshua: Ask; he replied; It is not in heaven (Deut 30:12). They said to Samuel: Ask; he replied [scripture says] These are the commandments, implying that no prophet has the right to introduce anything new.⁶

There is no doubt that by eliminating the Prophet from the *Halakhic* process Maimonides' system invariably lacks the certainty and security of knowing what exactly God expects of us. But for Maimonides the sense of security is a small price to pay. The alternative is a faith based community driven solely by obedience escaping into itself with little need to think and reason⁷. Maimonides diagnoses those who use Torah and mitzvot to create a community of isolated individuals whose common language is generally absolute and dogmatic as suffering from a "sickness of the soul"⁸. For such a community non-comprehension becomes the highest expression of divine fervor. Actions that seem the least comprehensible are equated with supreme demonstration of religious faith.

The disparate roles of prophet and judge, as well as the distinct logic behind the outlook of the two models illustrate the difference between a society governed by authority and a society committed to reason. Halakha cultivates the independent spirit. If authority of the author were the sole criteria of adopting the Halakha - content would become irrelevant and the only criteria would involve establishing the authoritative source of the material. When that which is sought is absolute and unconditional compliance to authority - critical reasoning is frowned upon. If however understanding of content, reason and rational appeal become the criteria the voice of Halakha becomes integral and its relevance vital.

⁶ BT Temurah 16a Note how the Talmud cleverly addresses two issues: That a Prophet cannot legislate and the immutability of the law.

⁷ See my article Maimonides on Creating Community in Legacy of Maimonides: Religion Reason and Community edited by Yamin Levy and Shalom Carmy.

⁸ Guide 3:31

