



Parashat Bo: Kiddush HaChodesh: Announcing the New Moon

The dramatic climax of the exodus story, culminating in the last of the ten plagues in Egypt, is interrupted by almost two chapters of commandments. Chapters twelve and thirteen detail the preparations to be done by Bnei Yisrael for their leaving Egypt and the laws of the passover holiday. This section begins:

And the Lord spoke unto Moses and Aaron in the land of Egypt, saying: 'This month shall be unto you the beginning of months; it shall be the first month of the year to you. (12:1-2)

From these verses, HaRambam learns the mitzvah of *kiddush hachodesh*; the obligation to sanctify and declare each new month, decide if a month is to have thirty or thirty-one days, and to determine the date of all the holidays of the year. In his *Sefer Hamitzvot*, positive commandment one-hundred and fifty-three, HaRambam writes:

The one-hundred and fifty-third commandment is God's commandment to sanctify the months and to account for the months and the years. This is the mitzvah of *kiddush hachodesh*. This is the meaning of what is written: 'This month shall be unto you the beginning of months.'

This commandment of *kiddush hachodesh* is the first commandment in the Torah given to the Jewish people as a nation. As a nation birthed from slavery, the establishment and maintenance of the calendar contrasts with the subjugated lifestyle of a slave. The commandment to account for the months and the holidays is indicative of the added responsibilities assumed in the liberation from servitude. Ibn Ezra, in his commentary on this verse is bothered by the terseness with which the Torah describes this commandment:

One can ask a difficult question: Why is it that the Torah elaborates on laws relating to the skin affliction *tzaraat* which is only relevant to specific individuals and isn't applicable for all of time, Whereas the laws related to the [establishment of the] holidays [*kiddush hachodesh*], which are always obligatory for all of Israel, are not elaborated on?

Indeed, the Torah says nothing of the intricate procedure with which the *Bet Din Hagadol* (the high court of seventy-one judges that convened in Jerusalem) would declare each new month. The *Mishnayot* in tractate *Rosh Hashana* describe the process in which witnesses would travel to *Bet Din Hagadol* and testify on seeing the new moon. Those witnesses would be interrogated by the Bet Din to confirm their validity and finally: "The head of the bet din would call out '*mekudash*' [sanctified] and the whole nation would answer after him '*mekudash mekudash*'..." (2:7).

Today, the *Bet Din Hagadol* is not extant to convene and declare each new month in this way. However, *kiddush hachodesh* is essential in determining the date of each of the Jewish holidays and continues to be necessary. In the *Sefer Hamitzvot*, HaRambam addresses how this commandment is fulfilled today. According to HaRambam, *kiddush hachodesh* is accomplished by a declaration of the courts in the land of Israel: "We count the days [using a calendar] so that we know the day that those in

Eretz Yisrael will declare the new month ...and we rely on their establishment of the day” (ibid.).

Of course the Rabbis in Israel are not declaring the new month based on the testimony of witnesses, nor are they following the method described by the *mishnayot* in tractate *Rosh Hashanah*. However, according to HaRambam, their declaration is valid and binding nonetheless. HaRambam goes on to say that should there, God forbid, cease to be a Jewish presence in the land of Israel: “Our counting [using the calendar] would not be meaningful at all (ibid.).”

From the words of HaRambam, two mechanisms for fulfilling *kiddush hachodesh* emerge. Ideally, the commandment is fulfilled by the functioning *Bet Din Hagadol* in Jerusalem. The *Bet Din* admits the testimony of witnesses who claim to have seen the new moon and then proclaims the word “*mekudash*.” Today, without the *Bet Din Hagadol*, the sanctification is performed by the agreement of the halachic leadership operating in the land of Israel.

HaRamban, in his critique of the *Sefer Hamitzvot*, rejects this position of HaRambam. According to HaRamban, *kiddush hachodesh* does not require the authority of the *Bet Din Hagadol*. Instead, any set of three expert judges (*mumchin*) are qualified to perform *kiddush hachodesh*. These expert judges are judges who have been ordained with *smicha*, which is a rabbinical ordination passed down from person to person all the way from Moshe Rabbenu. Today, *smicha* has been lost and expert judges do not exist. According to HaRamban, in the absence of expert judges, new months are determined by the calculation of months set forth in the Jewish calendar established by Hillel HaNasi in the fifth century CE:

Since Hillel HaNasi, son of Rabbi Yehuda HaNasi [redactor of the Mishna], established the calculation of the months and years, [we rely on those calculations] until Elijah the prophet will come, and we will return to performing the *kiddush hachodesh* based on testimony in *Bet Din Hagadol* (critique of positive commandment one-hundred and fifty-three).

Hence, HaRambam and Ramban disagree over to whom the commandment of *kiddush hachodesh* is directed. According to HaRambam, the commandment of *kiddush hachodesh* is directed specifically to the *Bet Din Hagadol*. According to Ramban, the commandment of *kiddush hachodesh* is directed to the entirety of the Jewish people, and therefore, can be carried out by any three expert judges.

The verse describing *kiddush hachodesh* is predicated with: “And the Lord spoke unto Moses and Aaron in the land of Egypt, saying...” In Gemara Sanhedrin daf 16b it is written: “Moshe is interchangeable with the *Bet Din Hagadol* of seventy-one judges.” This assumption of Chazal implies that under certain circumstances, a law in the Torah that was given over to Moshe is subsequently to be performed by the *Bet Din Hagadol*. Since the commandment of *kiddush hachodesh* in the Torah was given over to Moshe and Aaron, HaRambam concludes that subsequently the commandment is performed by *Bet Din Hagadol*. The Ramban argues on the Rambam's application of the principle “Moshe can be interchanged with the *Bet Din Hagadol*.” According to Ramban, this principle is only applicable when the law in question is given over to Moshe exclusively. In the case of *kiddush hachodesh*, the law was given over to both Moshe and Aaron together, therefore, the law is directed at all of Israel and not just *Bet Din Hagadol*.

Ramban raises a difficulty with the position of HaRambam. Ramban asks that if the commandment of *kiddush hachodesh* has been given over to the *Bet Din Hagadol*, how is it possible to fulfill the commandment today? Ramban points out that other responsibilities of the *Bet Din Hagadol*, such as the responsibility for legal adjudication and the administering of capital punishment have been rendered inapplicable since the *Bet Din Hagadol* ceased to convene. Therefore, asks Ramban, why should *kiddush hachodesh* be any different?

To answer this question of Ramban, a distinction needs to be made between two different roles that are assumed by the *Bet Din Hagadol*. One role of the *Bet Din Hagadol* is that of a legislative body, empowered by the halacha to adjudicate cases and administer capital punishment. In this regard, the

Bet Din Hagadol is no different than any other court, secular or otherwise. However, in addition to the role of legal adjudicator, the *Bet Din Hagadol* is also responsible for certain communal functions. One of these functions is halachic decision making on matters that affect the Jewish nation as a whole. A second function of this kind is the fulfillment of *kiddush hachodesh*. In this regard the *Bet Din Hagadol* is more than just a legislative body, it is an entity acting on behalf of the entire Jewish nation. In the absence of the *Bet Din Hagadol*, the responsibility for adjudication and the administering of capital punishment can no longer be performed. However, the communal responsibilities, once exclusively in the hands of *Bet Din Hagadol*, are still able to be carried out. According to HaRambam, although the *Bet Din Hagadol* no longer convenes, the obligation to perform *kiddush hachodesh* is carried out by the courts and Rabbis who are in Israel and who are all in agreement about when should be each new month.

This account of HaRambam's position with regard to *kiddush hachodesh* is also useful in understanding HaRambam's position with regard to the institution of *smicha*. Only those Rabbis with the ordination of *smicha* are called expert judges and are allowed to sit on the *Bet Din Hagadol*. *Smicha*, an ordination passed down from teacher to student from Moshe Rabbenu himself, no longer exists. HaRambam in his *Mishneh Torah, hilchot Sanhedrin*, describes a way that the *smicha* ordination can be reinstated: "I maintain, that if the all the Rabbis in the land of Israel agreed to appoint judges and give them *smicha*, those judges would have *smicha* (4:11)."

HaRambam's opinion regarding *smicha* is parallel to HaRambam's opinion about *kiddush hachodesh*. Just like the ability to fulfill *kiddush hachodesh* is maintained today by the population of Jewish leadership in the land of Israel, the ability to administer the *smicha* ordination is maintained by the population of Jewish leadership in the land of Israel.

We recall that according to Ramban, we currently determine the date of each new month by following the calendar as determined by Hillel HaNasi. Based on a mishna in tractate Rosh Hashana, an additional question can be leveled against both the position of HaRambam and the position of Ramban:

If the entire Bet Din and all of Israel saw the new moon, and the witnesses were interrogated [by Bet Din] but Bet Din did not manage to finish saying [the word] "mekudash" before it got dark, the month is *meubar* (3:1).

A month that is *meubar* is a month that has thirty-one days in it. According to this *mishna*, it is impossible to sanctify the new month without saying the words "*mekudash*." Moreover, this *mishna* implies that *kiddush hachodesh* can only be fulfilled if all the details of the ceremony are carried out to perfection. According to both HaRambam and Ramban, *kiddush hachodesh* is fulfilled today without adhering to the ceremony described in tractate Rosh Hashana. This question, as well as the question of Ibn Ezra that we raised earlier, can be explained within our current understanding of HaRambam's position.

According to HaRambam, the commandment of *kiddush hachodesh* is not a regular ritualistic injunction. Instead, *kiddush hachodesh* is a requirement on the highest legal authority of the Jewish people to maintain the Jewish calendar. *Kiddush hachodesh* is the requirement that the *Bet Din Hagadol* take responsibility for the months and holidays of the yearly cycle. The Ibn Ezra asked why the Torah does not give more details of how to fulfill this commandment. According to HaRambam, *Bet Din* is responsible for sanctifying and declaring each month with whatever methodology that *Bet Din* chooses to employ. In other words, *kiddush hachodesh* is an overarching delineation of responsibility, and the specific ceremony associated with *kiddush hachodesh* is something that the *Bet Din Hagadol* determines. Similarly, in the time of the *Mishna*, the commandment of *kiddush hachodesh* could not be fulfilled unless the *Bet Din Hagadol* managed to say the word "*mekudash*," as the word *mekudash* was part of the ceremony defined by *Bet Din* for the fulfillment of the commandment. Once *Bet Din Hagadol* ceased to convene, the specific methodology used is no longer applicable or

necessary for the fulfillment of the commandment.