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Center for Modern Torah Leadership



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## SHOULD THE SANHEDRIN BE ELECTED?

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Should the Great Sanhedrin, when it is reconstituted, be elected? What can the selection of the Sanhedrin teach us about rabbinic leadership today?

One apparent forerunner of the Sanhedrin originates in this week's parshah. Bamidbar 11 describes a devolution of some form of authority from Moshe Rabbeinu to a group of seventy. The shift is occasioned by Moshe's complaint that he is unable to bear the weight of the people by himself, and Hashem states explicitly (11:17) that

וְנִשְׂאוּ אִתְּךָ בְּמִשַּׁל הָעָם  
וְלֹא-תִשָּׂא אֹתָהּ לְבַדְּךָ

They will bear the weight of the people together with you  
You will not bear it alone

Rabbi Joseph B. Soloveitchik derived from here that the Sanhedrin is not merely a court of judges tasked to determine Torah law. Rather, one role of the Sanhedrin is to function as a representative of the Jewish nation with concern for its political and not just religious wellbeing.

Symbolic representation is often a figleaf for totalitarianism, as in fascism, where the people often have no say in choosing their self-declared "representative" and have no control over actions performed in accordance with "the spirit of the folk". The Rav made sure to clarify that this was not the case with regard to the Sanhedrin. Rather, the people have a "pocket veto" over actions of the Sanhedrin taken in its representative role. Thus declarations of leap years (Tosefta Sanhedrin 2:13), and Rabbinic decrees (Horayot 3:2, Rambam Hilkhhot Mamrim 2:5-6), are nullified if they are not adopted by a majority of the affected population. (Rambam does not explain how the Sanhedrin should determine that a decree has or has not been adopted, or how it can be held accountable for the accuracy of that determination. I suggest that this is because he is focused on ends, not means; he is open to a wide variety of mechanisms for accountability, but he would not allow the rabbis to make such determinations by unreviewable fiat.)

A careful reading of the text suggests that the people also had a role in choosing the original Sanhedrin. Hashem tells Moshe (11:16)

אֶסְפְּהֶֹלִי שִׁבְעִים אִישׁ

מִזְקְנֵי יִשְׂרָאֵל

אֲשֶׁר יֹדְעַתְּ

כִּי־הֵם זְקֵנֵי הָעָם וְשֹׁטְרָיו

Gather for me seventy men  
from among the elders of Israel  
whom you know

that they are elders of the people and its bailiffs.

The verse is plainly redundant. If the men are to be gathered "from among the elders", what is added by saying that Moshe must "know that they are elders"? Numerous commentators suggest that Moshe was required to ascertain that these officeholders were popularly considered to be worthy of their positions. (The text does not specify how Moshe ascertained this, but Moshe's epistemology is generally not valid precedent for subsequent halakhah; thus "lo bashomayim hi".)

In an essay entitled "Judaism and Fascism", published in a 1935 Jubilee volume honoring Rabbi Dov Leventhal of Philadelphia, Rabbi David de Sola Pool takes this argument a brilliant and creative step further.

"Again and again [Moses] works not on his ipse dixit, but through the zekenim, later organized into an official body of seventy elders (Numbers 11:24-39), and the 12 nesiim, an upper chamber . . . By the time of his death, constitutional government had been definitely established through himself as the head of government, the two bodies of the nesiim and the zekenim together constituting the edah, and the courts. This was a form of bicameral popular representative government . . ."

Rabbi de Sola Pool's argument likely is that Rabbinic literature sometimes understands the Biblical term "edah" as referring to the Sanhedrin, and that the Torah refers to both "elders of the edah" and "nesiim of the edah". His argument accords with the Rav's claim that the Sanhedrin has an explicitly political role, but to my knowledge is

unprecedented in its assertion that the *nesiim* constituted an upper chamber of the same body as the Seventy Elders. His conception of the Sanhedrin as distinct from the judiciary, rather than as its apex, likewise seems novel to me, but deserves serious analysis and consideration. Regardless, it should be clear that he and the Rav both see democratic accountability as essential for any political role, even if that role is played by great Torah scholars, and even if Torah scholarship is a necessary qualification for that role.

Rav Avraham Yitzchak HaKohen Kuk (Responsa Orach Mishpat Choshen Mishpat 2) extends that accountability to the judicial realm. Indeed, he uses the selection of judges as the model for halakhic recognition of the value of representation:

“... This matter (proportional representation) dovetails with the path of Torah, for there is a *mitzva* for each tribe to judge its members (Sanhedrin 16a), and the *mitzva* of establishing judges refers specifically to judges for each tribe respectively,

as is written in Tosafot there s.v. judges, to the point that even were the population of one city to include members of two tribes, we would establish two sanhedrins (courts of 23 members, with jurisdiction over almost all civil and criminal matters, including capital cases) in that city,

although whether this ever actually happened depends on the dispute (Sanhedrin 111b) as to whether one city is ever apportioned to two tribes.

Nonetheless, we see that the Torah opinion is that any time there is an aspect of division among the people, it is a curtailment of their right to not have an appointee from their side of the divide, a fortiori if they agree to unite under a single authority, for it is impossible that they should lose out as the result of their side's love of peace and unity.

And with regard to peace - it is certain that the communal mind will be secure only when it has a representative of its side in the leadership of the whole.

This can be derived a fortiori from the rule of “This litigant chooses one for himself” in private matters, for we say (Sanhedrin 23a)

“Since this litigant chooses one judge for himself and this litigant chooses one judge for himself, and the two of them choose for them yet another one, the law will emerge in accordance with its truth”, and Rashi there s.v. “will emerge” explains that this means that the litigants will obey the verdict, as the one found liable will reason thus: ‘I myself chose one of the judges, and had he been able to find merit in my cause he would have’, and the judges themselves will find it agreeable to seek merit in both cases because they were chosen by both.

If it is a praiseworthy path in private matters to pursue the path of peace and straightforwardness by means of a representative, a fortiori this is so in communal matters, and the peace of the community is included in the last statement, for there is no path more desirable than that each faction should be appeased by knowing that it has a representative who seeks merit for its causes in the leadership of the community. This is impossible other than through elections leading to proportional representation.”

Recognizing the democratic foundation of rabbinic authority can have at least three salutary consequences.

a) It requires a halakhically committed population to compel all Jewish institutions to be publicly accountable, regardless of the piety or scholarship of its advisory board.

b) It prevents laypeople from disclaiming responsibility for the failures of their community's rabbinic leadership.

c) It compels supporters of minority halakhic positions to acknowledge that their positions are losing not because the halakhic authorities are out of touch with the desires of the laity, but rather because they are very much in touch. Contentions about the existence of “silent majorities” are no more convincing in halakhah than anywhere else.

Some readers will respond that one can recognize that rabbinic authority **ought** to be democratically founded, but in practice is imposed by rabbis on people. I contend that this argument has only superficial appeal in the vast majority of cases. All religious communities in America are voluntary, and the power of the Israeli Chief Rabbinate is wholly derived from that of the elected Knesset.

In all democratic societies, people who care most about specific issues will exercise disproportionate power over such issues. It is reasonable and legitimate for Charedim to care more about religious issues than *chilonim*. It is reasonable for Modern Orthodox Jews to care more about day school tuition or even kosher restaurants than *batei din*, because “If there is no flour, there is no Torah”. But in the end we get the religious leadership that we want, or at least that reflects our priorities.