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Rabbinic-lay relations in Jewish law

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Old and New Formulas

Walter Jacob

The American synagogue is an eminently democratic institution. Its boards and committees vote on a wide variety of issues. Such complete democracy is, of course, at variance with the official traditional view of rabbinic authority. According to it, every aspect of human life is governed by obedience to God and the necessary guidance is provided by the Written Law and Oral Law entrusted into the hands of rabbinic interpreters; the scholars might in fact vote but within the parameters of tradition which carried the day. It is somewhat akin to a statement made about Abraham Lincoln who queried his cabinet on an issue and they took a united stand against him. He took the opposite view and indicated that although it was a vote of ten to one, the action would follow the single vote.

The rabbinic ideal has been taught in the literature for the last two thousand years and it is ever present as a basic substrata of all action taken by the rabbinate. As the uncontested arbiters of the Divine tradition, their voice should rule Jewish life and the Jewish people.

Although this may have represented the rabbinic dream, it has never been the reality. The American synagogue with its power sharing between the rabbi and the congregation has been reflected to a greater or lesser degree throughout our long history. Compromises and concessions have been made on both sides in all ages. They reflect the strength of the lay community or the rabbinate. The struggle and tension was often destructive, but as seen over the long span of the centuries it represents one of the most creative forces within Judaism. This tension between the

various forms of leadership which have been built into the system has brought renewal and new ideas. It has also led to the survival of the rabbinate as a unique institution able to modify itself and to share its power.

The rabbinate was an ingenious invention of post-Biblical Judaism. It has no Biblical roots or antecedents. As an institution it changed through the ages; it provided at a minimum the basic guidance needed to survive, but in many periods much more.

The Biblical Period

There was, of course, a Biblical precedent for the struggle between the secular and religious forces as one may see in the continuous animosity between the kings of Israel and the outspoken prophets. The lines, however, were not clearly drawn for the official religious representatives, the priests, who were part of the royal entourage. When they played a role in the inner palace intrigue it is not clear whether they were fighting for religious power or only as part of a palace clique. Sometimes they were kingmakers and on other occasions simply a minor force. When the High Priest, along with the prophet, sought to establish Solomon on the throne as David approached death, how much was it an effort for a stronger religious voice? Was the rapid construction of the Temple by Solomon a result of this support? Was the later view of Solomon as a religious author a part of this picture? Although the lines of battle between the kings of Israel and the great prophets, who spoke for social justice and against idolatry and foreign alignments, were clear and sharp, this was not a fight over power within the community as none of these prophetic figures wished to exercise the prerogatives of the king. They simply sought to redirect the royal policy along religious lines.

Talmudic Period

The struggle becomes clearer when we enter the Talmudic

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age. As Jacob Neusner has pointed out,¹ it had its roots in the earlier Persian and Arsacid Empire. But we hear only vague echoes and nothing definite about that. In the Sassanian period the Jewish community along with other minority communities within the empire exercised a good deal of self government. They were left autonomous as long as these minority populations were loyal and quiet. The Jewish secular power lay in the hands of the Exilarch. This ruler claimed his authority through Davidic descent. The position was sometimes directly hereditary while at the other times different branches of the family produced a new leader. During the centuries, there were long periods in which the Exilarch and the rabbinic leaders of the great academies got along very well. At other periods there was intense strife over political power. One of the problems for the rabbinate during these periods of struggle was the claim of Davidic descent of the Exilarch; which lent power and prestige, particularly in the eyes of the general population ("The scepter shall not depart from Judea nor a law giver from between his feet").² Such descent could hardly be challenged by rabbinic authority.

The accounts of struggles have come down to us in the form of anecdotes and historic reminiscences often vague and altered through long periods of transmission. For much of the chronology we are dependent on the account of Sherira Gaon.³ Many of these battles centered around the appointment of the heads of the great rabbinic schools. Eventually the Exilarch succeeded in obtaining the right to make those appointments. He thus gained control over the rabbinate and through it a large number of the judicial appointments throughout the empire and in the subsequent period in more distant lands as well. The bad treatment of rabbis by Exilarchs is mentioned in various places in the Talmud.⁴ All of this led to strong expressions of dislike on the part of some rabbinic authorities for the Exilarch.⁵ As Neusner points out, at the end of the Talmudic Period when the Exilarch had control over the surviving academies, the members of his family attended those

academies. This brought the Exilarch and the rabbinate closer together. The alliance was uneasy, and considerable tension always remained. Presumably this state of affairs continued during the subsequent period of the early Islamic Empires under the Caliphate which began in 651.

We know that at least once in the early period of the Caliphate an Exilarch was challenged. This occurred with Bustanai. It was suggested that he was not of true Davidic descent as his mother may have been a Persian princess. The accusations were made and vigorously denied. The documentation which we possess is not clear, but despite the great debate the Exilarch remained in power.⁶

Saboraic and Gaonic Period

In the post Talmudic period of the Saboraim the struggle continued, although we see it only in a shadowy manner through the account of Sherira Gaon. We know that in 658 C.E. the great Academy of Sura was given autonomy and the same occurred to the Academy of Pumbedita in 830 C.E. Earlier both schools had been subjected to the control of the Exilarch.⁷ During the period in which the Exilarch ruled over the academies, there were occasional rivalries for the position of Exilarch in which the rabbinate participated. Sometimes each contestant appointed a head of an academy that effectively divided the rabbinate. We hear a good deal of those efforts particularly at Pumbedita as this was Saadiah's own academy and its history interested him more than that of Sura.⁸

We see the struggle between the Exilarch and the gaonate break out vigorously with the appointment of Saadiah by the Exilarch as head of the Academy of Sura. The Exilarch soon discovered that this powerful learned figure would cause him a great deal of trouble. A major division among the political forces

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ensued. The bitter enmity lasted for several years and involved mutual excommunications as well as the removal of minor officials from judiciaries. It eventually led to Saadiah's removal but only after the entire matter had been brought to the attention of the Caliph. Upon the ascent of a new Caliph in 932 the Exilarch emerged victorious over Saadiah. This was not the end of the matter. A reconciliation between the Exilarch and Saadiah occurred but that was followed by another difficult period which lasted until Saadiah's death in 942.

This episode, which has been preserved in more vivid detail, demonstrates that the struggle for power is more vigorous when an unusual figure emerges and the general authority is less centralized than it had been in the tight knit community of Babylonia.

Early Ashkenazic Communities

As we look at the relationship between the secular Jewish authorities and the rabbinate after the decline of the Gaonate in the rising communities of northern Europe, we see that it depends very much on the size of the community and whether it was new or old. For example, in northern France of the eleventh and twelfth centuries we find no conflicts between the rabbinic authorities and secular Jewish authorities as these communities were very small and there was room for only one source of authority. This was partially due to the fact that the professional rabbinate had not yet fully developed. The communities seemed to be governed by knowledgeable leaders who permitted some democracy. The rabbis who governed the religious life also took care of the communal issues, judicial questions and represented the Jewish community to the Christian rulers.⁹ They used the *herem* (excommunication) to enforce their decrees on the community,¹⁰ and other punishments from time to time as well. In all of this they do not appear to have been challenged by any secular Jewish authorities. Similarly, charities were organized entirely through the synagogue community.¹¹

The vigorous leadership given by Meir of Rothenburg shows that rabbinic leadership was unchallenged in this period, in that area.¹² Sometimes the government appointed a Jewish merchant to look after its relations with the Jewish community. This position, however, never became particularly powerful and the community did its best to see to it that no one lobbied to obtain such an appointment. This period in northern France saw the rabbinate as supreme and unchallenged. When the Black Death eliminated many Jewish communities in Germany, the smaller communities relied more and more on the few remaining rabbinic scholars. Thus, in the fifteenth century we see rabbinic authority dominant.

From the thirteenth century onward, rabbis in Germany exercised greater authority. This was confirmed by Joel Sirkes¹³ who felt that the rabbi should also be compensated appropriately.

Early Sephardic Communities

Matters were quite different in the contemporary Spanish Jewish communities. There, as shown by the responsa of Simon Zemah Duran and Solomon ben Adret, an oligarchical aristocracy took local communal power into its own hands.¹⁴

A rather thorough picture of communal life emerges from the thousands of responsa of Solomon ben Adret. We see a community in the latter part of the thirteenth century and in the early fourteenth century which was tightly organized and largely under the guidance of a group of *berurim* (lit. clear minded). These individuals, although elected by the community, were essentially an aristocracy and were charged with all communal responsibilities; they appointed other communal officials as well as the judiciary and dealt with the communal property and charity. The election procedure was recorded as closely supervised and democratic. The upper echelons of the community voted. The

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status of the rabbi and his relationship with the *berurim* is not clear. We do, however, know that the *herem* was invoked by both groups. *Taqanot* protected the honor of the rabbi. Excommunication could result from infringements of their rights.

If we move to the nearby society of North Africa in the fourteenth century we find a distinctive difference between the old native communities and the new Spanish immigrant settlements. The former were governed by a *zaqen* (elder) appointed by the secular government. He had complete power over the rabbinate. The immigrants' community was ruled more democratically, as we learn from Simon ben Zemah Duran. Yet, even in that community *taqanot* could be passed independently without approval of the rabbinate and the *herem* could be applied without their consent.¹⁵

David Ibn Abi Zimra provided a description of the new immigrant communities of Turkey in the late fourteenth and early fifteenth centuries. All were recent exiles from Spain and so organized themselves according to local Iberian traditions. The *qehillah* (community) was a separate entity responsible for its own internal affairs as well as some charitable ventures. It was governed by a group of *parnasim* [leaders (of a community)] who were either elected by the community or who appointed their own successors.

Each *qehillah* in Turkey selected its own rabbi and pledged itself to support that individual in every way including attending his services, utilizing his judicial decisions and listening to his sermons.¹⁶ However, the rabbi had to gain the consent of the community before he was given communal control. It is unclear to what extent the various rules and regulations (*taqanot*) were passed by the community leaders (*parnasim* or *berurim*) or with the rabbinate. Occasionally the *parnasim* had to decide a conflict between rabbis who claimed authority over a community.

Late Middle Ages

If we return to northern Europe in the fifteenth century, we shall see that in some instances rabbis predominated, in other situations *parnasim* prevailed.¹⁷ But in the late fifteenth and early sixteenth centuries this changed because a professional rabbinate had developed there. The reason for the change was the separation of powers that developed between the *parnasim* and the rabbis. The *parnasim* dealt with taxation and relations with the secular government while the rabbis dealt with purely religious matters as well as internal conflicts between members of the Jewish community. As the *parnasim* usually came from the wealthiest members of the community, they ruled without much concern for the rabbis or anyone else who got in their way. However, in the seventeenth century we find Jewish knowledge among the laity of Central Europe diminishing; this increased the power of the rabbis who were also recognized by the Christian rulers. The rabbis, however, did not wish to have too much contact with the secular powers and in some matters shared authority with lay courts.¹⁸ Occasionally there was some democracy. Nevertheless perpetuation of power from one generation to the next was frequent.

Some of the detailed statutes reveal the division of power among various groups. The appointment of communal officials and the distribution of charity were the most disturbing areas of conflict.¹⁹ There were other problems; for example, when the king or a secular ruler appointed the rabbi with the authority to preside over the uppermost level of the court system.

In sixteenth century Poland, the autonomy of the Jewish community was confirmed by the monarch as demonstrated by the great charter of 1551.²⁰ This document indicates some power sharing as it mentions "rabbi, judge or other Jewish elders." In this community, rabbi and laity shared power and each had a basis for a claim to authority. The rabbi claimed authority from the

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traditions of the past while the laity from the power which wealth and status provided. Various efforts were made to strengthen the power of the rabbinate or to at least avoid conflict. However, Joel Sirkes saw to it that some limited power continued in the hands of the laity. He wished, however, to retain ultimate control over each community for the rabbi.²¹ Joel Sirkes, Moses Isserles and Solomon Luria restrained the power of the laity by stating that the lay judges should not exceed their limited knowledge.²²

In Germany in the fifteenth century and later, efforts were made to deal with broad communal questions through synods. Almost all of these contained representatives of both the rabbinate and the laity. The texts themselves, therefore, indicated the kind of compromises worked out. A greater problem was that of the "Court Jew" who had the ear of the ruler but operated outside the normative framework of the Jewish community.²³ Here the rabbinate and the laity, which was less powerful, tried to unite in order to defend themselves against such individuals. Some "Court Jews" were unwilling to recognize the jurisdiction of a rabbinic court and so it was extremely difficult to deal with these powerful, wealthy Jews. This problem arose again and again as various synods attempted to deal with it and with the attendant issues of taxation and rights of settlement.²⁴ In the sixteenth century, lay leaders such as Josel of Rosheim emerged and the struggle with the "Court Jew" became serious. We should remember that some were learned, a few were rabbis, but most were able business leaders.

From the Emancipation to the Present Time

The clash between rabbinic authority and lay power becomes most easily documented in Napoleon's *Assembly of Notables and Sanhedrin*.²⁵ There we find a large group of laymen and a small number of rabbis who struggled to answer the questions posed by Napoleon. In issues which were clearly religious, the rabbinate prevailed or managed to work out an appropriate

compromise; for example, the recognition of civil marriage and divorce. In other areas the rabbinate was not successful in defending tradition. Such issues were frequently raised later throughout Europe in settings less elaborate and not as well documented as this large meeting. We find echoes of such struggles in every country of Europe. In the nineteenth century this became aggravated through other divisions which made it more difficult to draw sharp lines of distinction between the rabbi and the laity. The debate between Reform and Orthodox, among various secular groups and religious movements and between Zionists and anti-Zionists all too often clouded the issues of power as the struggles involved the rabbinate and laity on both sides.

We find some of these issues emerging more clearly, especially when the Prussian government debated the official position of the rabbi within the Jewish community regarding his right to vote or to veto on boards.²⁶ Such legislation was enacted in Prussian legislation and later in other German states. We also see the tendency to secede in order to retain rabbinic council as with Samson Raphael Hirsch. We find similar kinds of debate emerge with the development of the chief rabbinate in England. It was not only a debate between the rabbi and his *dayyanim* (judges) and, therefore, an argument over the direction which Orthodoxy should take, but also between the rabbinate and the powerful, wealthy lay figures as may be seen by looking through the issues of the *London Jewish Chronicle* over the decades.

The United States

In the United States we find matters very much affected by the new status of the community. When it began there was no rabbinic leadership whatsoever and so all power rested in the hands of the laity.²⁷ As rabbis, both traditional and Reform, arrived in the United States, they found that no organizations aside from small local congregations existed. These were led by individuals

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who had only the scantiest Jewish background and who were not accustomed to the restraint of tradition. If we restrict our view to the Reform community, we shall see that in an effort to gain a broader hold on the community Isaac Mayer Wise founded *The American Israelite* which quickly became an influential paper. As an astute organizer he strengthened the rabbinate through the Hebrew Union College and the Central Conference of American Rabbis. He also recognized the need for lay leadership by earlier establishing the Union of American Hebrew Congregations. The same kind of pattern can be traced in the Conservative and Orthodox Jewish communities.

As the lay leadership acquired power in the general community, they sought it in the Jewish community as well. This was accomplished through new organizations like the Board of Deputies, the American Jewish Committee, as well as the Zionist organizations. Lay leaders like Jacob Schiff, Felix Warburg and Louis Brandeis emerged. They, however, continued to find strong resilient rabbinic leadership. For example, Abba Hillel Silver, Stephen S. Wise, Judah Leon Magnes and Barnett Brickner -all Zionists- emerged as powerful national figures. Here we, however, see the rabbinate entirely outside of its traditional role which was judiciary, ritual or legal. It now played a major political role in matters of both national and internal Jewish policy.

In the latter part of the twentieth century we see the Jewish Federations and similar organizations emerge as planners for the broader Jewish community. Power sharing is the model. Although elected lay leaders are usually at the helm of the organization, the structure is often in the hands of the rabbis who have achieved that position both through their knowledge of tradition and their leadership position. This means that the ongoing guidance is often in the hands of the rabbinate and provides considerable powers to these individuals as well as to other rabbis allied to them.

Many factors play a role in the struggle between laity and rabbinate. Each Jewish civilization has worked out its own scheme for dealing with the ongoing struggle over power and rights. The positions have never been stationary, always fluid and always changing. It is to the credit of the rabbinate that it has been able to change with the times and adjust to the different settings and thus able to maintain the influence of tradition.

As one looks over the struggle through the centuries, one can come to two conclusions:

1. It is clear that the rabbinate has been resilient and able to incorporate within its framework whole areas which were not originally intended.
2. It grew, after the Babylonian Diaspora, into a leadership which often represented the Jewish community within the broader general community, and in the last two centuries has been expanded far beyond those horizons both within and outside the Jewish community. Thus, as an institution, it has proven to be remarkably adaptive.

The continuing struggle between rabbis and laity have kept the Jewish communities somewhat democratic. The tendency for haughty dominance existed on both sides but neither side was ever able to take this too far without considerable opposition from the rest of the community and from the countervailing force. The very rivalry which sometimes caused difficulties was also a source of enormous strength for the community. As rabbis were constantly recruited from the general community, this meant that no rabbinic leader could wander too far afield from the interests of that community.

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Notes

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5. B. Sanhedrin 38a; B. Shabbat 54b.
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