

objectives. Jewish law has become a truly inter-disciplinary field, encompassing not only distinctive approaches to Jewish law itself, but also contributions from the various outside disciplines to which these different approaches are related.

From the conception of The Jewish Law Association as a result of a conference organised by the Oxford Centre for Postgraduate Hebrew Studies in 1978 (see *Jewish Law in Legal History and the Modern World*, Leiden: E. J. Brill, 1980, The Jewish Law Annual Supplementary Series, II), such a broad approach to Jewish law has characterised its conferences and activities. The recent increase in interest in Jewish law in American law schools is to be unreservedly welcomed. But jurists alone cannot do full justice to the task: the Jewish legal tradition requires the attention equally of the various disciplines which make up the field of Jewish studies. The proceedings of The Jewish Law Association have been notable for the participation of both jurists and Judaica scholars, as is well represented by the contents of the present volume.

REB ZADOK HAKOHEN OF LUBLIN
ON PROPHECY IN THE HALAKHIC PROCESS

by

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I

The cultural discontinuity between the Biblical ("Israelite") and post-Biblical ("Jewish") periods in the religious history of Israel is one of the staples of modern scholarship, though it has never been recognized, except in the most limited way, by traditional Jewish thought. Y. H. Yerushalmi, in the recently published Stroum Lectures,¹ has most recently delineated the outlines of one crucial aspect of this discontinuity in contrasting the overwhelmingly negative attitude of all mainstream post-Biblical Jewish thought toward history and historiography—outside of Biblical "metahistory"—with the high value placed on it as a mode of discourse in the Bible.

In his third lecture, Yerushalmi investigates the astonishing efflorescence of Jewish historical writing in the sixteenth century, only to underscore its lack of influence in its own time, its lack of continuity with earlier trends—and the absence of a continuing historical school to carry on its work.² It is thus highly unusual, to say the least, to come upon a recognized, traditional thinker whose historical awareness penetrated to the very essence and center of his thought, and whose influence continues to grow. Such a thinker is the subject of this paper, the first of two, on the historical dimension in the theological system of Rabbi Zadok Hakohen Rabinowitz of Lublin. "Reb" Zadok (1823–1900) was born to a

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¹ *Zakhor: Jewish History and Jewish Memory* (Seattle: University of Washington Press, 1982), esp. 36–38, 43–45.

² *Ibid.*, 66–67.

family of *mitnagdim* in Latvia, where his father served as a rabbi. He reportedly began the study of Talmud at age three and one-half, and completed it for the first time at eight. As a young man he joined the Hasidic movement, and became a follower of R. Mordechai Yosef Leiner, of Izhbitz, Poland, one of whose successors he eventually became. R. Zadok was incredibly prolific, but most of his books, none of which were published in his long lifetime, were lost in the destruction of the Lublin ghetto by the Nazis; what remains,³ however, runs to thousands of closely-printed pages in a terse, elliptical style.

His interests were diverse, at least in terms of his time and place: his writings include commentaries on parts of the Bible,⁴ Talmudic *novellae*,⁵ responsa,⁶ discourses on Hasidism and Kabbala⁷—and historiography.⁸ His control of talmudic, midrashic and kabbalistic sources, within their traditional boundaries, was total, and his writings are composed of densely clustered collections of condensed references to those sources, interspersed with longer or shorter analyses of common themes. His thought, as noted, had a decided historical cast to it, similar in its concerns to that of Maharal, by whom he was greatly influenced, but his understanding of the Biblical period in particular was (and is) quite radical in the context of Orthodox thought.⁹

Traditionally, it is an article of faith that the entire system of *Halakhah* was revealed in minute detail to Moses and continued in force from then on to the present time, albeit with occasional losses which

³ See the list of his known works, including (some of?) the lost ones, in A. I. Bromberg, *Haadmor Mitublin* (Jerusalem: Beth Hillel, 5742), 174–76.

⁴ Among his lost works are said to be commentaries on *Job* and *Jeremiah*.

⁵ He occasionally quotes from his own notes and *novellae* on Talmud. These too are lost.

⁶ *Tiferet Tsevi*, 2 volumes (Bilgoray, 5669, repr. Bnai Brak: Yahadut, 5727). Two other collections were lost.

⁷ Chiefly *Pri Tsadik*, 5 volumes (Lublin 5661–94 [hereafter *PT*]); *Tsidkat Hatsadik* (Lublin, 5662, repr. Bnai Brak: Yahadut, 5733), but the best edition is *Tsidkat Hatsadik Hamale*, (Jerusalem: "A" Publishers, 5728 [hereafter *TH*]); *Resise Laylah* (Lublin, 5663, repr. Bnai Brak, Yahadut: 5727 [hereafter *RL*]); *Mahshevet Haruts* (Pietrikov, 5672, repr. Bnai Brak: Yahadut, 5727 [hereafter *MH*]); *Divre Soferim* (Lublin, 5673, repr. Bnai Brak: Yahadut, 5733 [hereafter *DS*]).

⁸ *Zikaron Larishonim*, see n. 40. His catholicity of interest may be gathered from the fact that he refers to the Apocrypha more than casually. Also, *Shemot Baarets* (a play on *Ps* 46:9), whose publication history is similar to that of *Zikaron Larishonim* (see n. 40 below), indicates a lively and lifelong interest in historical problems.

⁹ Despite that fact, or perhaps because of it, his work has become more influential in the last generation, chiefly through the efforts of the late Rabbi Yitzhak Hutner of Yeshivat Chaim Berlin, and the late Rabbi Gedaliah Shorr, of Yeshivat Torah Vadaat. The use made by the former is particularly of interest, and I hope to deal with the similarities and divergences on another occasion. Claims have also been made for R. Zadok's influence on Rabbi A. I. Kook, but see Y. Hadari, "Shir shel Yom Betorat R. Tsadok Hakohen," *Sinai* 53 (5723 [=1963]), n. 4.

were, in the main, restored. In the course of time additions to the system were made, in the form of specific judicial legislation, but on the whole, the "*Torah*" which the Rabbis possessed was essentially identical to that which existed in the Biblical period, with all its attendant techniques and values.¹⁰ The Patriarchs were considered to have lived out their lives in voluntary compliance with norms which became compulsive only at Sinai.¹¹

This doctrine raised a number of serious historical problems with whose symptoms the rabbis grappled, with varying degrees of awareness and success. The most pervasive was the relative lack of importance assigned to learning, in the Rabbinic sense, in the Bible. The solution was simple if not altogether convincing: the Rabbis depicted various Biblical personages as great scholars, and interpreted their political and personal conflicts as stemming from scholarly disagreement.¹² That in turn led to the need to explain the instances of un- or counter-halakhic acts attributed to those Biblical figures.

For example: David's use of the shew-bread for secular purposes in *I Sam.* 21:4–7;¹³ Michal's reunion with David (*II Sam.* 3:13–16) after her marriage to Palti(el) b. Laish (*I Sam.* 25:44)¹⁴ in the light of *Deut.* 24:4 and *Yeb.* 11b, the latter of which prohibits such action even in the case of an *arusah*; and Tamar's statement to her brother Amnon, *II Sam.* 13:13) that King David, their father, would not withhold her from him, if asked in the proper manner,¹⁵ all represent such unhalakhic acts.

The general rabbinic response has been to interpret each such situation as reflecting certain unusual circumstances, which can be dealt with by a special rule that allows the problematic act to be subsumed under the usual legal forms while accounting for the anomalous aspects of the particular incident.

R. Zadok provides a solution to the problems outlined above, though he never addressed himself, at least in just these terms, to them. But he does so at the cost of denying that religious continuity the rabbis posited in its essential aspect: the role of Oral Torah in the prophetic era.

¹⁰ *Y. Peah* 2:6, "All that a mature disciple would in future times innovate [in Torah] before his master was already revealed to Moses at Sinai." An erudite defense of the traditional view may be found in Z. H. Hayut, *Torat Hanevi'im*, in *Kol Shifre Maharats Hayut* (Jerusalem: Divre Hakhamim, 5718), 1, 1–135.

¹¹ *Yom.* 28b.

¹² This is so common as not to require proof; see *Sanh.* 101b–4a, for example.

¹³ *Men.* 95b–96a; see also, *Rashi*, *ad loc.*, s.v. *mesukan*: David was in danger of death by starvation; moreover, he was at that moment faint from hunger.

¹⁴ See *Radak*, *ad loc.*, and *Sanh.* 19b.

¹⁵ See *Sanh.* 21a.

II

R. Zadok viewed the history of Biblical religion in terms of a continuing struggle between the allure of prophecy and the demands of the Oral Torah, the latter epitomised in talmudic dialectic. His basic proof-text is *Tanhuma's*¹⁶ reinterpretation of the talmudic depiction of the acceptance of the Torah at Mount Sinai as having taken place under duress, with God suspending the mountain over the heads of the recalcitrant Israelites;¹⁷ according to *Tanhuma*, their unwillingness was directed against the acceptance of the discipline required to master that dialectic¹⁸ rather than to Scripture itself. Another consideration, which appears already in an early work,¹⁹ and would seem to have been one of the motivating factors in the formation of his theory, was the inclusion of the prophets as a group, without the naming of individuals in the line of transmission of Torah in *Ab. 1:1*. According to R. Zadok, this lack of detail reflects the irrelevance of tradition in the training of the prophets, whose mission is validated from Above rather by an ordination grounded in a mastery of traditional lore. Though some degree of scholarship is necessary in a prophet according to the dictum that prophecy comes only to one who has some right to the title of scholar,²⁰ that is not its essential prerequisite. To place the prophets in the line of transmission of Oral Torah is, to R. Zadok, incongruous. Moreover, if the laying-out of a chain of transmission of a certain body of knowledge was intended in this mishnah-passage, details of that long history should have been provided. Finally, if the Mishnah's interest in the prophets is primarily for their scholarly attainments, why call them prophets?

For these reasons, R. Zadok interprets this mishnah as referring to something other than oral Torah; rather, what is traced here is the line of authoritative leadership from Moses to the Rabbis, and it is in this that the prophets constitute an important link.²¹

The struggle over acceptance of Oral Torah continued after Sinai. The ill-fated mission of the ten spies, sent initially by Moses and only reluctantly agreed to by God,²² symbolizes Moses' wish to inaugurate the era of Oral Torah.²³ It is through mastery of the techniques of that Torah that human beings can in some measure acquire control over the workings of Torah, and use it as a basis for their own legislation.²⁴

¹⁶ *Tanhuma Noah 3, RL 158b.*

¹⁷ *Shab. 88a.*

¹⁸ Compare *Gitt. 60b.*

¹⁹ *ZL, 12.*

²⁰ *Ned. 38a.*

²¹ *RL, 161a.*

²² *Num. 13-14, compare Deut. 1:22-3, and see LM, 87-88.*

²³ *LM, 88a.*

²⁴ *RL, 158a-b.*

In R. Zadok's system, the Land of Israel is the proper locale for Oral Torah, in contrast to the Written one, for it has a direct relevance to life within a natural economy.²⁵ The change-over to agricultural produce from reliance on the manna of the desert represents the attempt to pass, once again, from the regime of the Written Torah which obtained in the Wilderness to that of the oral one. Both efforts were abortive, but Moses' spiritual stature insured that his command to the spies would itself become part of Scripture.²⁶ His wish for the right to begin the era of the Oral Torah was granted in part by the form the Book of Deuteronomy took: a commentary on the earlier books of the Pentateuch, which, like the command to the spies, was composed by Moses with God's agreement.²⁷

Again, the Book of Joshua symbolizes one of the sources of Oral Torah, since it was the first book to have been composed after the completion of the Pentateuch.²⁸ In some respects it is to be bracketed with the latter, however, since both were produced by men untouched by the sin of the Golden Calf, and thus more open to prophetic illumination than those involved in that apostasy or their descendants. Had Israel not sinned, the Pentateuch and the Book of Joshua alone would have sufficed as Scripture, according to the Rabbis; according to R. Zadok, the reason is that the mediation of Oral Torah would not have been necessary, and all *halakhah* could have been derived directly from Scripture.²⁹

At any rate, it seems that despite Joshua's status as a prophet himself, the era of prophecy did not begin until later.³⁰ This may explain why, when with Moses' death, according to the Talmud, many *halakhot* were lost, Joshua is reported to have refused to resort to the *Urim Vetumim*. Eventually those lost *halakhot* were restored by Othniel b. Kenaz in a way that was paradigmatic for all future learning, and which prefigured the restoration—or, actually, in R. Zadok's terminology, the *establishment*, of Oral Torah in the Second Temple period; that is, he reclaimed them by use of his intellectual acuity (*pilpul*) guided by divine inspiration.³¹ To be sure, this divine inspiration was not comparable either to that of Moses or to that of the prophets. But, in explaining Nahmanides' comments on *B.B. 12a*, wherein the latter concludes that the sage is superior to the prophet in that his intellectual endeavors are guided by an element of divine inspiration, R. Zadok declares the sages'

²⁵ *LM, 84b.*

²⁶ *LM, 89a. See also PT 127a, and compare LM 85b.*

²⁷ *PT V, 21a, RL 128b, based on Zohar III 261a.*

²⁸ *PT II, 174a, LM, 72-89. I hope to discuss this theme of repeated beginnings in more detail on another occasion.*

²⁹ *Ned. 22b, see PT V, 54a.*

³⁰ Prophecy began with Samuel, see *Ḳomets Haminah*: (Lublin, n.d., repr. Bnai Brak: Yahadut, 5733), 80a and *ZL, 2*, based on *Midrash Tehillim 90, Sot. 48b* and *Y. Hag. 2:1*.

³¹ *Tem. 15b-16a.*

understanding as greater than that of the prophets.³² For that reason it can be applied to all ages and many cases, while that of the prophet cannot; on the other hand, the sages' knowledge is subject to doubt, while prophecy, which partakes of some of the features of Holy Writ even when not actually preserved in written form, provides knowledge which is absolutely true. As such, however, it is ultimately unsuited to this world of falsehood.³³ It is only by the union of these modes of acquiring knowledge that the development of a Torah more at home in this world, one mediated by the human intellect, is made possible. That union was not achieved until the end of the Biblical era.

To proceed: Othniel's work was not to continue. After his time, *pilpul*, that is, the extraction of Oral Torah from Scripture by intellectual effort, fell into disfavor,³⁴ for the same reason that its original acceptance was attended with difficulty. With the ready availability of prophecy and prophets from the time of Samuel—twice six hundred thousand³⁵—it was far easier to bring one's legal, personal or theological problems to one's local seer than to seek the answer either by one's own endeavors or to seek out a sage who was likewise remote from absolute truth. R. Zadok rein-terprets the criticism leveled by R. Jeremiah on Babylonian Amoraic methods of study—applying to them the verse “He sat me down in darkness”—as a reference not only to the nascent Babylonian Talmud, but to the uncertainty associated with all intellectual studies, which are symbolized by darkness.³⁶

This emphasis on the limitations of human intellect is quite different from the same note as sounded by Maimonides. For the latter, intellect remains, despite its limitations on the human plane, the only common ground between the human and the divine; it is the only “quality,” in the Aristotelian sense, which can be applied precisely and without ambiguity to the two; it is the one aspect of which it can truly be said that man is made in the “image of God.”³⁷ But for R. Zadok, certain, clear, reliable knowledge comes not from the intellect, but from divine, prophetic or mystical, illumination. Intellectual methods are reliable only to the extent to which they are guided by divine inspiration; reason unaided is untrustworthy.³⁸

After the prophet Samuel's time, people resorted to the prophets for guidance, *hanhagah*. But prophecy, though certain, is limited in other ways.

³² DS 41b, see RL 158b.

³³ RL, 161b, *passim*.

³⁴ R. Zadok does not actually date this process, but it must precede Samuel's time.

³⁵ Meg. 14a.

³⁶ RL, 160b, based on Sanh. 24a.

³⁷ *Guide of the Perplexed*, I:1.

³⁸ See immediately below.

Prophecy, which is (after all) the word of God, is “garbed” in writing and is thus inevitably limited and restricted (both) by the means (of transmission, that is, the prophet) and the “garb” (language). The prophet can perceive only that which God wishes to show him by prophetic means. Nevertheless, even though they (the prophets) were sages as well, intellectual means of perception were considered as naught in comparison with the overwhelming plenitude of prophecy and revelation, inasmuch as intellectual activities lead to dimness and doubt. . . . (At that time) all guidance (of public and private affairs) was by prophecy. . . . All decisions for that time (*lesha'ah*, as opposed to *ledorot*, for future generations as well) were made by prophets. . . .³⁹

It is extremely instructive to compare the description here with R. Zadok's reconstruction of conditions in Biblical times given in an unfinished work, *Zikaron Larishonim*.⁴⁰ This work dates, according to the author himself in a short introduction, from shortly after his Bar Mitzvah, though his references to a work on prophecy named *Divre Hanevu'ah*, now lost, and also to a responsum (his word) which he composed on an ancillary problem, indicate either that he reworked it later, or that its composition extended over a long period, for his known and dated responsa date from his thirties,⁴¹ though that fact is not an infallible guide; certainly his youthful work betrays the hand of a mature scholar.

In this early work, then, begun long before his conversion to Hasidism, he develops at great length the theme that the major teachers of Torah in the Biblical period were the kings and high priests in Judah, and the prophets in Israel. He investigates, based on Talmudic and Mid-rashic sources, the relative positions as teachers, of various contemporaries (David and Nathan, Hezekiah and Isaiah, and so on) on the basis of the number of their students and depth of knowledge.⁴² Even more striking than the specifics of the inquiry is the “Lithuanian” atmosphere with which the discussion is permeated: what counts primarily is Torah

³⁹ RL, 160–61.

⁴⁰ Printed from a copy made by Rabbi David Alter, apparently in Lublin, which reached Palestine, where A. I. Bromberg published it in *Sinai*, 5707, 1–25, together with *Shemot Baarets*. Prof. S. Z. Leiman has kindly provided the following bibliographical information on its later publication history: it was reprinted in E. Garetenhaus, *Eshel Hagedolim* (New York, 1958) as an appendix, 1–25, and in H. Y. D. Azulai, *Shem Hagedolim Hashalem* (Jerusalem, 1979), II, Appendix, 2:25; see Hadari, *supra* n. 3. As to the question of extended composition, the somewhat inchoate state of his surviving works indicates that R. Zadok seldom returned to them once the initial inspiration which called them forth weakened, though he often returned to subjects of interest to him; hence the duplications to be found in his work. It is thus likely that the responsum he referred to dates from the same time as ZL.

⁴¹ At least from the few dated ones published in *Tiferet Tsevi*. See I, 8, dated Sunday, (Parashat Shofetim, 5623 [=1863], when he was about 40; the earliest are II 14 and II 22, both from 5621 [=1860/1]).

⁴² ZL, 8–9.

knowledge; prophecy, while important, is nonetheless secondary. The statement quoted above, that "intellectual means of perception were considered as naught in comparison with the overwhelming plenitude of prophecy and revelation," is inconceivable in the context of this youthful work. It is precisely this which distinguishes *Zikaron Larishonim* from the work of R. Zadok's Izhbitz period.

III

We have seen that R. Zadok allows the prophets an important role in the halakhic process, at least in his mature writings. The point is so important, and yet so controversial, that it behooves the present writer to pause to substantiate this interpretation of *hanhagah* in R. Zadok's works. What areas of public and private life came under their jurisdiction, as it were? What were the parameters of the "guidance" they provided?

(Prophecy is limited) by the need to obtain a new decision in each instance. But the sage's perception is general and subsumes all cases under its rule; it applies to each individual in all times and epochs, inasmuch as (the sages) perceive the hidden parts of Torah and not only the outward "garb."⁴³

Thus prophet and sage address themselves to the same problems; each approach has its advantages and disadvantages, but they are *comparable*, they relate to the same types of decision.

Another indication is the juxtaposition of "Divine Guidance" (*hanhagat Hashem*) and "legal exposition" (*perush hamitsvah*).⁴⁴ Since the Torah is the blueprint of creation,⁴⁵ parallel processes operate in each, creation and Torah; the sage who can innovate in Torah can create new worlds as well.⁴⁶ By the same token, "guidance" refers to both Torah and to the world. This is a roundabout way of saying that the prophet could make *halakhic decisions*.

Nevertheless, since it is not by virtue of his learning that the prophet is allowed this right, the prophet as prophet is not to be counted among the authorized transmitters of Torah; the passage in *Abot* discussed above refers not to the transmission of Torah, but to the regime under which *hanhagah* would be delivered. What was handed over was the authority to interpret Torah in particular circumstances, for societal and individual guidance. The phrase R. Zadok employs is *mesirat hanhagah*,

⁴³ *RL*, 162a.

⁴⁴ *RL*, 160b; see Maimonides' Introduction to *Mishneh Torah*. It should be noted that R. Zadok's interest in Maimonides was life-long, as could be expected; one of his youthful works, *Otsar Hamelekh*, (Lodz 5699), composed at age 16, was on *Sefer Hamada*. His use of Maimonidean terminology is not fortuitous.

⁴⁵ *Genesis Rabba*, beginning.

⁴⁶ *TH*, n. 4.

"transfer of leadership"; to R. Zadok the passage is a listing of successive spiritual regimes.⁴⁷

The prophets exercised authority (*hanhagat hanevu'ah*) by virtue of their abilities, not tradition; nevertheless, prophecy, which may in some cases be written down, is an extension of, and relates to, Written Torah. We can better understand the prophetic role by contrast to that of the Elders, who preceded them. The functions of the latter were *hanhagah* and *limmud*—leadership and teaching (perhaps: interpretation, the derivation of law from Scripture).⁴⁸ These teachings or interpretations the Elders received from Moses, and, according to R. Zadok, it is for that reason that they are called "Elders": their claim to leadership proceeded from their personal contact with Moses. The prophets could not make that claim; that is, their status as disciples of other prophets counted as nothing unless validated in a very concrete way from Above. But the prophet also hands down decisions regarding the precise application of Scripture: the content is similar, the means divergent; the requisite knowledge came to them through revelation and not intellection.⁴⁹

As long as (the Israelites) did not accept (the Oral Torah) willingly, it was not yet handed over to them entirely (*legamre*), and they conducted themselves in accordance with the (decisions of the) prophets—all in "writing from God" (based on *I Chron.* 29:19).⁵⁰

We may understand the one side of the coin from the other. With the end of prophecy, the sage finally came into his own, and the Men of the Great Assembly gained the right to legislate—to erect "fences" around the Law—by virtue of their mastery of Oral Torah.⁵¹ They could lay down guidelines, set precedents. The prophets could only make decisions on a case by case basis—but decide they did, and in the very same areas of law!

What then of the Oral Torah in the prophetic era, if not in terms of techniques of reaching decisions, of dialectic, at least in the sense of a body of knowledge which must be preserved, if not extended? It would seem likely that R. Zadok would allow for the transmission of what Maimonides refers to as the Oral Torah in the narrow sense, *perush hamitsvot*, the minimum required interpretation of Scripture which would enable us to comprehend what is demanded of us. It is scarcely conceivable that Scripture could have had any place at all in Israelite society without that modicum of Oral Torah.

⁴⁷ *RL*, 161a.

⁴⁸ *Idem*.

⁴⁹ *Idem*.

⁵⁰ *RL*, 158b.

⁵¹ See *Y. Sheq.* 5:1, cited in *RL*, 158b, and see *PT V*, 38b–39a.

It is clear to all, *now* that Oral Torah has been revealed to *all*, that it is impossible to attain a correct understanding of any *mitsvah* (*perush shum mitsvah*) or warning in the Written Torah (without reference to Oral Torah). It is impossible to know anything of it; therefore it is impossible to understand Divine governance (*hanhagat Hashem*) of the world, which is in accordance with Torah, since (Written) Torah is itself also hidden (without mediation).⁵²

Now, in the era of Oral Torah, *hanhagah*, *perush hamitsvah*, and Oral Torah are inextricably bound together; in the prophetic era this was not the case, and prophecy could in some cases serve as a substitute for Oral Torah.

A clue to this problem of the Oral Torah in the age of prophecy, and simultaneously to R. Zadok's own solution to the halakhic problem posed by prophetic input in the halakhic process, may be found in *Zikaron Larishonim*, to which we now turn.

IV

R. Zadok's theory, which allows for direct prophetic intervention in the *Halakhah*, runs counter to those Talmudic rules which place strict limits on it. "[The Torah] is not in Heaven, [therefore] innovation through prophecy in now forbidden [*i.e.*, from the completion of the Pentateuch described in *Deut.* 31:26]."⁵³

(At that point) the revelation of Torah innovations by prophecy was suspended; from (then) on (the Torah was) no (longer) "in Heaven"; there would no longer be a heavenly revelation of "words of Torah" in this world, and all the prophecies of the prophets "thereafter" were intended only to warn, encourage . . . , and predict. . . .⁵⁴

Here R. Zadok appears to draw back a step from the position outlined above. It is possible to account for this discrepancy either by limiting the semantic range of "guidance" in the passages from *Resise Laylah* quoted above, or by extending the range of "to warn" (*lehazhir*) to include legislative authority in the passage from *Mahshevet Haruts* quoted immediately above. But if we take this latter formulation literally, R. Zadok's scheme, as set forth in *Resise Laylah* and elsewhere, which culminates in the flowering of Oral Torah in the Tannaitic and Amoraic periods, loses its cogency and force. If the prophetic role is to be understood in traditional terms, there is no need for people to turn to the prophet for any specific prophetic insight in Torah. He may serve as

clairvoyant (*I Sam.* 9:6f.), and double as a sage in determining *halakhah*, but not as prophet. These were certainly not the terms in which R. Zadok cast his discussion in *Resise Laylah*.

Luckily, however, we may have, in fragmentary form at least, R. Zadok's own solution to this problem. In *Zikaron Larishonim*, which predates in some form his conversion to Hasidism, his discussion of the role of the Great Assembly is understood quite traditionally.⁵⁵ There is no mention of them as originators, or founders, of the Oral Torah as we find in his later work (*Resise Laylah*, *Likute Ma'amarim*, *Mahshevet Haruts* and *Pri Tsadik*); we nonetheless find here the kernel of his later views on the history of prophecy in Israel, though, as noted, the resistance of Israel to Oral Torah has not yet entered the system as an essential element. There is, though, his unique interpretation of the *Abot* passage, with its denial of a chain of tradition which included the prophets, and the idea, taken from midrashic sources (and not the Zohar, as later), that Samuel was the first of the prophets.

Since it is important to understand the exact relationship of *Zikaron Larishonim* to his later works, we should list some of the salient differences in his understanding of the history of Oral Torah between the two periods of his intellectual development. The non-role of the Great Assembly has already been mentioned. Coupled with this is the idea of progressive revelation,⁵⁶ which will be discussed, *D.v.*, elsewhere. In the earlier work, R. Zadok explicitly attributes the learning of the Great Assembly to traditions *received* from the exiled scholars in Babylon, that is, those exiled before the destruction of the temple. In *Resise Laylah*, Torah is seen as completely lost during the Babylonian Exile, and it is the Great Assembly which restored it by the *quasi*-prophetic intellection of the sages.⁵⁷

Despite these differences of approach, a fair amount of continuity in his thinking on this matter may be observed, and his later writings may in this case be supplemented by his comments on the role of the prophets in this early work, at least in the absence of a fuller discussion of this point elsewhere.

Here R. Zadok deals with the multitudinous Talmudic references to a functioning apparatus of Oral Torah, courts and oral transmission, in Biblical times. Withal, he assigns the prophets an important role in *Halakhah*. Based in part on *Deut.* 18:15 and *Yeb.* 90b: "him shall you obey—even if he tells you to transgress a command of the Torah, as (did) Elijah at Mount Carmel—all *lefi sha'ah*, according to the situation

⁵² *RL*, 160b.

⁵³ *Meg.* 2a, *Shab.* 64a, also *Yom.* 80a, *Tem.* 16a, *Y. Meg.* 1:5.

⁵⁴ *MH*, 141b (bottom).

⁵⁵ *ZL*, 9–10.

⁵⁶ *RL*, n. 13, esp. 14b.

⁵⁷ *RL*, 130a. Strictly speaking, Torah may have been forgotten by the common people (*hamon*), but preserved by the sages.

and only for a time—obey him!”⁵⁸ Prophetic power he limits, however, to questions, or decisions, whose force is only temporary (*lesha’ah*), and not *ledorot*, for future generations, as he did in the passage in *Resise Laylah*, quoted above. He also distinguishes between the general law and the details of its performance in light of the exigencies of the time.

All the days of the prophets . . . there was no need to obey the sages. It seems likely that, even though it is true that there is no place for prophecy as far as the study and knowledge of Torah (*hokhmat Hatorah viyediyato*), as it is written: “[The Torah] is not in Heaven, etc.” (*Deut. 31:26*), as it is quoted in *Tem. 16a*. . . (This rule) applies to knowledge of the laws of the Torah and its general rules (*mishpateha hakelaliyim*), but there is ample room (for knowledge acquired by means of) prophecy (as far as) the details of their performance at any particular time (*behoveh*), as Maimonides describes at length in his *Introduction (to the Commentary on the Mishnah)*: as a temporary expedient (*lefi sha’ah*) the prophet has the power to suspend the commands of the Torah (*Sanh. 90a*).⁵⁹

The translation of *lefi sha’ah* as “temporary expedient” is not quite accurate, for R. Zadok intends it as equivalent to *hora’at sha’ah*: in halakhic terms, Torah law, which includes matters of public policy (see below), was *all* extra-legal during the prophetic era, as far as the application of general rules to concrete cases was concerned. On the one hand, decisions were made by prophetic means in particular cases; on the other, no general principles could be derived from such decisions; thus, *all halakhic decisions fell under the category of hora’at sha’ah*,⁶⁰ no precedents were set, no norms established, the “normal” operation of Oral Torah, as understood by the Rabbis, was, as it were, suspended. If the Sanhedrin did meet to consider an issue, it did have authority, as will be seen below, but most of its members were *themselves* prophets; and the Sanhedrin seldom met.

It goes without saying that in doubtful instances they (the people and the sages) were required to obey the prophet, and many prophets arose (in) Israel (to) command action in particular situations (*hagudat hanhagat hahoveh*) at all times. . . . Therefore *the general leadership of the(se) generations was in the hands of the prophets*, who were the leaders (*roshe*) of the(se) generations as far as the affairs of (each) generation (were concerned).⁶¹

He notes that although King David was prepared to build the Temple in consonance with the Torah’s command to do so, he desisted at Nathan’s command.⁶²

⁵⁸ ZL, 8–12; see *Tosafot Sanh. 89b s.v. Eliyahu*.

⁵⁹ ZL, 11.

⁶⁰ I owe the full awareness of this important insight to Prof. B. S. Jackson.

⁶¹ ZL, 11.

⁶² *II Sam. 7:5–7, 12–13; I Chron. 17:4.*

On the other hand, the Sanhedrin did have the authority to review the legitimacy of each prophet. “But in cases on which [the prophet] and Sanhedrin agreed [that the man in question was indeed an ‘authorized prophet’] . . . , it is true that *even the Sanhedrin [itself] was required to obey him* [in his extra-legal pronouncements].”⁶³

However, the Sanhedrin too could act on the need for an *hora’at sha’ah*, but, on the basis of *Tosafot Yeb. 88a s.v. mitokh*, and a number of other sources, he distinguishes between the extraordinary powers of court and those of the prophet by the requirement that the court not act without an explicit reason (*ta’am*).

With due regard for the different emphases apparent in these earlier and later works, especially in the radically lessened status accorded human reason (in the wake of his study of Kabbalah and conversion to Hasidism?), we may understand the halakhic nexus between *halakhah* and prophecy as inhering in a type of *hora’at sha’ah* principle. Since R. Zadok returned repeatedly to the theme of prophet vis à vis sage in his voluminous writings, without however going beyond the position outlined in *Zikaron Larishonim*, it seems likely that he viewed the latter (together with the lost *Divre Hanevua’ah* and the lost responsum on the subject) as representing his last thoughts on this matter. Certainly, the contexts in which we now find expositions of his understanding of the role of prophecy do not lend themselves to that kind of treatment, though, were he so minded by the necessity to set down a new position he most probably would have. Presumably the change of emphasis between *Zikaron Larishonim* and *Resise Laylah* did not appear to him radical enough to require additional justification, though an argument from silence is always a hazardous undertaking.

So, *mutatis mutandis*, we may say that it was only in those matters regarding which no prophecy was received that the advice of the sages of the time was solicited; given the numbers of prophets on hand—twice six hundred thousand—this must indeed have been a rare occasion!

The Talmudic dictum regarding the huge number of prophets whose prophecies were not relevant to later times and were thus not recorded,⁶⁴ and so, subsequently lost, may now be seen in a new light. Many prophets served as the religious leaders of their time, but rendered decisions valid only for their contemporaries. This would explain why so little material of an halakhic nature survives from that time.

Having said all that, it must be admitted that the exact role allotted to the Sanhedrin and the judicial system as a whole remains unclear; the statement referred to several times in this paper, that “although they [the prophets] were sages as well, intellectual means of perception were

⁶³ ZL, 11.

⁶⁴ *Meg. 14a.*

considered as naught in comparison with . . . prophecy and revelation," and the comparatively active role given the courts in *Zikaron Larishonim* cannot be squared without doing violence to one or the other.

Prof. Bezalel Safran suggests⁶⁵ that the tension between prophet and sage in R. Zadok's mature system reflects the gulf between Lithuanian scholars and Hasidic rebbes of his own time, a gulf which he himself bridged in his own person. Wherever the truth may lie, it is certain that *Resise Laylah* represents his later view of the matter in general; whether he himself ever resolved the question of the exact place of the Sanhedrin in a context which so devalued Oral Torah and its commitment to human reason must for the time being remain open.

For those who wish to see it, the tension between prophet and sage is prefigured in the Biblical text itself. *Deut.* 17:8f. ordains the establishment of a court-system, but it also promises the availability of prophets "like" Moses (*Deut.* 18:15). While the verse preceding, which prohibits resort to soothsayers and augurs, who were employed by the Canaanites, would seem to stress the clairvoyant functions of the prophet and his mission as God's spokesman, Scripture refers, in v. 16, to halakhic matters as being within the prophet's competence. The tension thus set up was resolved only with the cessation of prophecy and the final victory of the sage in the Second Temple period.

V

As already noted, a considerable portion of R. Zadok's writings was lost in the destruction of the Lublin ghetto; although the beginnings of a commentary on Joshua, apparently never completed, survives,⁶⁶ there is no evidence to suggest that he ever completed a work on all of Early Prophets, or even contemplated one. Nonetheless, we may sketch out, in the light of the foregoing, the lines of his probable understanding of those incidents in which halakhic norms seem to have been disregarded.

The image of Elijah at Mount Carmel, which served both the Talmud and the Tosafists as the paradigmatic example of the prophetic suspension of "due process," served R. Zadok equally well.⁶⁷ But for him the suspension was more thoroughgoing and more pointed. While, *de jure*, an apparatus for the application of human reason to the Divine Law existed, *de facto*, the human element was absent by default. Two contradictory elements precluded a state of stable equilibrium: a code of sorts existed in Scripture, but its application was largely in the hands of the prophets, who lacked legislative authority. This was not the Divine intent, which preferred to leave such decisions in properly-trained, human hands.

⁶⁵ In a discussion during the winter of 1983.

⁶⁶ *LM*, 77-98.

⁶⁷ *Sanh.* 90a s.v. *Eliyahu*. See also the sources cited in *ZL*, II.

How well does this explain the instances of unhalakhic actions listed in Section I? Of the three cases considered, the first, that of secular use of the shew-bread by David and his men, is perhaps the easiest with which to deal, for David and his band were indeed fugitives in danger of their lives, as the Talmud states.⁶⁸ If we add to that David's status as a minor prophet, the problem becomes still easier. Finally, Scripture itself in the person of the priest Ahimelekh comes to our aid by elliptically stating his reservations in *I Sam.* 21:5. However, his reluctance is based on grounds of ritual purity, and not the non-priestly status of the eventual consumers. To that extent, we must fall back on either the Talmud's answer, which applies only to the case at hand, or to R. Zadok's more general answer.

In the case of Michal, no word of protest (except, naturally, for that of Palti[el] b. Laish) is raised. No notice is taken by anyone, even Nathan, of the grave halakhic problems involved. The solutions proposed by the Talmud⁶⁹ either invalidate her earlier marriage to David; or, alternatively, her divorce by David (of which no hint is contained in the text) is posited, which divorce is rescinded by David, unknown to Michal, who then marries Palti(el) in innocence, thus sparing her the rigors enumerated for similar cases in *Yeb.* 87b. Or, the suggestion is made that the marriage to Palti was never consummated, thus freeing her for David. R. Zadok's solution would have the virtue of simplicity, not a small gain in the present instance. However, the fact that David's proposal to build the Temple, which occurred about the same time, is narrated in some detail, while this prophetic permission to remarry Michal goes unmentioned, is certainly surprising.

Finally, Tamar's statement⁷⁰ is in one respect the most difficult of all, for it raises the specter of the existence of a whole system of *Halakhah* quite different from the rabbinic one, for Tamar here apparently appeals to a law known to all, and not an on-the-spur-of-the-moment *hora'at sha'ah*, which she was in no position to obtain at that moment! Perhaps Ibn Caspi's remark *ad loc.*, that no halakhic significance is to be attached to her appeal in these circumstances inasmuch as it is likely that Tamar was attempting to delay Amnon, either until help arrived or Amnon regained his senses, is the simplest solution in this case.

It is important to note that this exegetical scrutiny of R. Zadok's thesis, while a legitimate exercise in its own right, is in a sense false to the spirit in which the theory was offered. First and foremost, R. Zadok provides an historiosophical doctrine rather than an exegetical rule; it arises from a highly individual conception of Jewish history, based on

⁶⁸ *Men.* 95b-96a.

⁶⁹ See n. 14.

⁷⁰ See n. 15. The Talmud suggests that she was only his half-sister.

talmudic and midrashic sources, in the main, and not the Biblical text itself. It is thus no closer to the plain sense of the text, or should be expected to be, than the Rabbinic expositions on which it is in part based; its advantage is, however, that it is not *ad hoc*, and provides a *general* solution to a certain type of exegetical problem.

It is in its own way as forced and artificial in its perhaps overschematic views, but it does serve admirably to bring into sharp focus a sense of the historical distance which the Rabbinic system as a whole lacks.

An additional talmudic objection to R. Zadok's limits on prophetic legislation, which is after all just a restatement of the old rule of "not in Heaven," should be mentioned. It is an objection not directed solely at R. Zadok's reconstruction, but a true inner-talmudic contradiction. Enough talmudic references to customs instituted by the prophets exist to allow us to state that the "Talmudic" view, insofar as one exists, is less absolute than the narrative in *Tem.* 16a allows. Elsewhere in the Talmud,⁷¹ the objection of "not in Heaven" is never allowed to go unanswered; the rejoinder is usually: such was the *halakhah* or custom of old, and the prophet(s) merely restored what had fallen into disuse or been forgotten, which in a sense is the reverse of our supposition regarding R. Zadok's system. But that *itself* is the precise measure of the divergence of these two systems. R. Zadok's theory turns the Talmud's extraordinary circumstance to the daily reality of nearly six centuries. It is only upon the return of the Jews from the Babylonian Exile, bereft of any knowledge of Torah⁷²—R. Zadok takes *Neh.* 8:14–18, which describes the returned exiles' discovery and celebration of the Biblical holiday of Sukkot, for the first time since the days of Joshua, quite literally—that Oral Torah at last began to function. It is from this low ebb that the Oral Torah reached its flowering. But of that, more later.

⁷¹ For a discussion of this point, see E. E. Urbach, "Halakah Unevu'ah," *Tarbiz* 18 (5607), 1–27, esp. 10–12; also, Y. England, "Tanur shel Akhnai—Perusha shel Agada," in *Shenaton Hamishpat Ha'ivri* I, 45–56. My thanks to Dr. Ronny Warburg for the latter reference.

⁷² *RL*, 130a.

THE CORPORATE STATUS OF HEKDESH IN EARLY SEFARDIC RESPONSA

by

DAVID FINK*

A corporation is a body of men or property which the law treats as an artificial person distinct from its component parts. This concept lies at the foundation of the classical Roman *universitas*¹ and has become vital in contemporary law.

A corporation may bring suit or be sued independently of the persons who are members of the corporation.² A corporation may bring suit or be sued independently of its members. It is a typical characteristic of corporations that their owners need not be identical with their managers, who represent the interests of the corporation.

The contemporary law of corporations has been largely influenced by the historical development of religious and community institutions which the law began to recognize as legal persons before the advent of the modern joint-stock corporation.³ The conceptual roots of modern legal persons originate in the older corporations sole, which typically consisted of a bishop or other ecclesiastic administering church property, or the Roman foundations *piae causae*,⁴ which consisted of orphanages, poor houses, hospitals, or similar religious or pious institutions.

Charitable and other community or religious institutions have always been strongly supported in traditional Jewish society.⁵ It is therefore not surprising that these institutions were the first to evolve into legal persons under Jewish law as well.⁶

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¹ See A. Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia: American Philosophical Society, 1953), 750f.

² See P. J. Fitzgerald, *Salmond on Jurisprudence* (London: Sweet and Maxwell, 1966), 66f., for a survey of the characteristics of the modern corporation.

³ See J. P. Davis, *Corporations: A Study of the Origin and Development of Great Business Combinations and their Relation to the Authority of the State* (New York: G. P. Putnam's Sons, 1905), vol. 1, especially 35–87 and 92–129, for the early history of religious and community institutions in Europe.

⁴ Berger, *supra* n. 1, at 629.

⁵ See Y. Bergman, *Hatsedakah beytsra'el* (Jerusalem: Reuben Mass, 5735).

⁶ A. Gulak, *Yešode hamishpat ha'ivri* (Tel Aviv: Dvir, 5727), vol. 1, 50–52, and

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