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Political Leadership and the Law in Maimonides' Thought: Flexibility and Rigidity



Abstract: The responsibilities of political leadership, in Maimonides' thought, were once concentrated in the hands of Moses, the prophet-legislator. However, from Moses' time on, a strict separation of powers was to be preserved. The law was "not in heaven," and prophecy was to play no role in its interpretation or amendment. The prophet and the great court of law were two distinct branches of political society, and there was also an executive branch, represented by the king. The law, given at Mount Sinai and ratified by the people, was rigid: its origin was divine and its nature unchanging. Still, rigid law cannot satisfy the needs of political society at all times, so Maimonides finds that each branch of government has limited tools with which to enact changes in the law without harming the integrity of the divine constitution. Maimonides' approach to law includes, then, a high degree of flexibility, and the tension between this flexibility and the rigidity of the law is found in all his writings.

1. INTRODUCTION

There is a fundamental tension between written law, which is static by nature, and life itself, which is dynamic. Any written legal corpus is both inherently incapable of addressing the full range of human actions over time and unable to cover the entire range of possible actions at any given moment or within any limited time period. This tension may be minimized by adopting a "flexible" approach to the interpretation of law, where law is generally understood as rigid.

Several characteristics of law relate to its rigidity. One example is that law is generalizing and presents a comprehensive order directed to an entire population. Since people differ and life situations are infinitely varied, the legislator designs the law with the majority in mind and tries to ensure that the law addresses the most common occurrences. Other

characteristics of the law that relate to its rigidity are equity, consistency, stability, and predictability.¹

The presumed divine origin of Jewish law adds to its being viewed as rigid. The idea that this law is an eternal ideal—applicable to all times, places, and circumstances—precludes the possibility of external factors' intervening to “update” the law without violating the integrity of the divine constitution. Nonetheless, Maimonides and others have found that even the divine constitution must be approached with a certain degree of flexibility if it is to address all particular circumstances, individuals, and situations.

A “flexible” approach to Jewish law involves (1) expanding the ability of one or more branches of government—Sanhedrin, king, or prophet—to adapt the law to specific cases; and (2) taking into consideration the demands of time and place as well as the variety of individuals that constitute any given polity. Depending on the type and degree of flexibility introduced, the law can then be affected by new legislation, interpretation, or judicial rulings, or by the authority of the executive branch as it applies the law to specific cases.

Maimonides' approach to the origin of the law²—and to whether the law is attained through prophetic revelation or human reason—lies at the foundation of his approach to the tension between the competing needs for rigidity and flexibility. Maimonides denies that the law, as a guide for human behavior and social conduct, is an autonomous, rational entity. He emphasizes that the obligation to obey all commandments (those that are comprehensible with the aid of human reason and those that are not) derives from God's command and not from reason. Furthermore, as their obligatory status derives from the same source, all ethical principles are classified as *meforsamot* (generally accepted as known) rather than *muskalot* (intelligible).³

Still, Maimonides connects the human intellect, which is naturally capable of apprehending ethical principles, with divine Torah law, positing

¹ Aaron Kirschenbaum, “Equity in Jewish Law,” *Daat* 13 (1984), p. 43 [Hebrew].

² For studies of Maimonides' political thought in general, see Eliezer Z. Berman, *Maimonides on Political Leadership* (Ramat Gan: Bar-Ilan University, 1980) [Hebrew]; Berman, “Maimonides on Political Leadership,” in Daniel Elazar, ed. *Am V'eda* (Jerusalem: Reuven Mass, 1991), pp. 135–144 [Hebrew]; Eliezer Goldman, “Political and Legal Philosophy in *The Guide of the Perplexed*,” in Ze'ev Safrai and Avi Sagi, eds., *Research and Studies: Jewish Thought in Past and Present* (Tel Aviv: Hakibbutz Hameuhad, 1997), pp. 131–137 [Hebrew]; Howard Kreisel, *Maimonides' Political Thought: Studies in Ethics, Law, and the Human Ideal* (Albany: State University of New York Press, 1999).

³ Moses Maimonides, *The Guide of the Perplexed*, trans. Shlomo Pines (Chicago: University of Chicago Press, 1963), 1:2, p. 24.

“that the Law, although it is not natural, enters into what is natural.”⁴ This connection between the intellect, the law, and nature derives from a bond between God and nature: Both are perceived as eternal and universal. Furthermore, divine law, apprehended through revelation, and natural law, acquired by intellection, are interwoven and derive from the same cosmic, intelligent source.⁵ The Torah, or divine law, is also the ideal rational legal system, and Moses, the prophet-legislator, was the greatest philosopher of all. As both natural law and divine law embody eternal truth and apply universally, the law’s two *fundamental components*—the divine-revealed and the philosophical-intellectual—reflect legal rigidity.

Maimonides was well aware that any acknowledgment of the need for a flexible approach to Torah law threatens to undermine its God-given status in the eyes of the people, with detrimental social and political ramifications, and in many places he enforces the rigidity of the law. In the *Guide of the Perplexed*, 3:34, he speaks of the generality and stability of the law, which is also according to nature,⁶ and in his *Mishneh Torah* (Code), he recalls the biblical prohibition against adding to or subtracting from the law, explaining that Torah law is to endure, unchanged, forever.⁷ Maimonides even concedes that some individuals will invariably be hurt by laws inappropriate for them, as both divine law and natural law are God-given and universal, intended for the general good.⁸ He contrasts this with medical treatment, which heeds the unique circumstances

⁴ This is a literal translation of the Hebrew text. Pines’ translation renders the phrase “are appropriate to nature.” See Maimonides, *Guide*, 2:40, p. 382.

⁵ Maimonides, *Guide*, 2:40, pp. 381–385.

⁶ *Ibid.*, 3:34, pp. 534–535.

⁷ Moses Maimonides, *Mishneh Torah: The Book of Knowledge*, trans. Moses Hyamson (Jerusalem: Boys Town, 1962), Laws of the Fundamentals of Torah 9:1, p. 44b.

⁸ There is a lively scholarly debate on this subject. See E.S. Rosenthal, “By Way of Majority,” *Perakim* 1 (1968–1969), pp. 183–224 [Hebrew]; Yitzhak Englard, “By Way of Majority and the Problem of Integrity in Maimonides’ Teachings,” *Annual Jewish Law Review* 14–15 (1988–1989), pp. 31–59 [Hebrew]; Shalom Rosenberg, “By Way of Majority,” *Annual Jewish Law Review* 14–15 (1988–1989), pp. 189–216; Rosenberg, “And Again by Way of Majority,” in Ella Belfer, ed., *Spiritual Leadership in Israel* (Ramat Gan: The Institute of Judaism and Modern Thought, Dvir, 1992), pp. 87–103, 300–303 [Hebrew]; Haim Shein, “By Way of Majority: An Imaginary Debate?” *Daat* 13 (1984), pp. 55–59 [Hebrew]; Yaakov Levinger, “The Halacha and Personal Perfection According to Maimonides,” *Daat* 13 (1984), pp. 61–65 [Hebrew]; Levinger, “On the Oral Law in Maimonides’ Thought,” *Tarbiz* 37 (1968), pp. 282–294 [Hebrew]. See also the collection of articles in Hanina ben Menahem and Berahyahu Lifshitz, eds., *Law and Integrity in Maimonides’ Legal Doctrine: Studies in the ‘Guide of the Perplexed’* (Jerusalem: The Institute for Research into Jewish Law, Hebrew University, 2004) [Hebrew]. The comparison between natural law and divine law is discussed in these and other studies.

of each individual case.⁹ Despite such statements, Maimonides is aware that a rigid approach makes it difficult for leadership to function, due to the gap between the law's content and the demands that arise from new situations. In *Guide*, 3:41, he considers that the law must be adapted to particular circumstances and places the Great Court of Law in charge of this adaptation, emphasizing that the law remains one, and all adaptation is temporary.¹⁰ Maimonides is cautious regarding overattachment to the letter of the law, which potentially harms people and causes injustice.¹¹

This tension between legal rigidity and flexibility is dealt with throughout Maimonides' writings and is a central issue in the talmudic philosophy of law as well.¹² It might be said that the tension and one path to its resolution are reflected in the duality within Maimonides' own activities, as halachist and philosopher.¹³ As a halachist, Maimonides was concerned with the role of law in directing human conduct, correcting it morally, and guiding man toward appropriate modes of social behavior. As a philosopher, he focused on man's ultimate purpose—knowledge and love of God—and his intellectual perfection. He strove to integrate these two planes, and his writings reveal that he conceived there to be a symbiotic relationship between them: fulfillment of the law is directed to the love of God, while love and knowledge of God lead to the observance of

⁹ Maimonides, *Guide*, 3:49, pp. 605–606.

¹⁰ *Ibid.*, 3:41, pp. 562–563.

¹¹ It is possible that a solution to this problem can be found in the Aristotelian concept of equity (*epieikeia*), which expresses the need to actualize the law through a judge in a particular case. Aristotle sees the rigidity of law as a fact of nature that represents not a shortcoming in the law or the legislator, but rather a necessity. See Aristotle, *Rhetoric*, book 1, chs. 13–14.

¹² As will be shown, Maimonides' legal philosophy is founded on the talmudic literature, which itself contains a tension between the rigid approach of *yikov hadin et hahar* ("the law must take its course") and the flexible approach, which includes the principle of equity, embodied by Aaron the priest, *ohav shalom* ("lover of peace"). See *Babylonian Talmud*, Sanhedrin 6b. The Talmud also addresses the need for legislative flexibility over time. This is represented by the distinction between laws explicit in the Torah and those that emerge from scholarly interpretation (including unwritten laws given to Moses at Sinai, interpretations of Torah law that go beyond the letter of the law, laws learned from the thirteen principles of faith, and rabbinic edicts and decrees). The possibility of independent legislation by scholars represents the Talmud's awareness of the need to update and amend the commandments in light of a changing reality, but this legislation is not presented as an addition or amendment to the Torah constitution. See *Babylonian Talmud*, Menahot 29b, 81b, Sanhedrin 6b, Shabbat 10b, Baba Metzia 31b, 39b; *Jerusalem Talmud*, Pe'a 2:4; *Mishna*, Sota 89:49, Kelim 5:10, Eduyot 7:7; Leviticus Rabba 22; Ecclesiastes Rabba 1.

¹³ See David Hartman, *Maimonides: Halacha and Philosophy* (Tel Aviv: Am Oved, 1990) [Hebrew]; and Hartman, *Maimonides: Torah and Philosophic Quest* (Philadelphia: Jewish Publication Society, 1979); Isadore Twersky, *Introduction to the Code of Maimonides (Mishneh Torah)* (New Haven: Yale University Press, 1980); Yaakov Levinger, *Maimonides as Philosopher and Legal Decision Maker* (Jerusalem: Bialik Institute, 1989) [Hebrew].

the law. In fact, Maimonides includes *hochma* (wisdom or philosophy) in his definition of Torah, finding the two to be complementary.¹⁴ Like the Sages, Maimonides characterizes Moses as “father in Torah, father in *hochma*, father in prophecy.”¹⁵

Maimonides views the commandments as tools for man’s fulfillment and denies that laws “have absolutely no cause” or are “purposeless actions.”¹⁶ Accordingly, he rejects the validity of simplistic readings of the law and places limits on magic, sorcery, and the like, in an attempt to rid the human intellect of the superstition that hinders its advancement. In *Guide of the Perplexed*, 3:11, Maimonides claims that “every individual according to the extent of his ignorance does to himself and to others great evils from which the individuals of the species suffer. If there were knowledge,” men would refrain “from doing harm to themselves and to others.”¹⁷ Moreover, a superior polity conducts itself according to the laws of the Torah, which direct men, ethically and intellectually, toward “bodily perfection” (*tikun haguf*) and “intellectual perfection” (*tikun hanefesh*)¹⁸—that is, to their true telos.¹⁹ Maimonides regards creation

¹⁴ Moses Maimonides, *Maimonides’ Introduction to His Commentary on the Mishna*, ed. Fred Rosner (New Jersey: Jason Aronson, 1995), pp. 46–54; Maimonides, *Mishneh Torah*, “Knowledge,” Laws of Moral Dispositions 2:1; Maimonides, *Mishneh Torah*, “Holiness,” Laws of Forbidden Sexual Relations 22:21, etc. In general, when Maimonides writes of “Torah,” he is referring to the written and oral law. “Wisdom” refers to the sciences. In *Mishneh Torah*, the discussion of divine law includes philosophical discourse alongside discussions of physics, metaphysics, theology, the theory of the soul, health, astronomy, the messianic era, the world to come, ethics, and more. See Levinger, *Maimonides as Philosopher*; and Twersky, *Introduction*. See also J. Katz, “Post-Zoharic Relations Between Halakhah and Kabbalah,” in B. Cooperman, ed., *Jewish Thought in the Sixteenth Century* (Cambridge: Harvard University Press, 1983), pp. 283–307; Yaakov (Gerald) Blidstein, “Menachem Meiri’s Attitude Toward Gentiles: Apologetics or Worldview?” *Bina* 3 (1994), pp. 119–133 [Hebrew]; and Moshe Halbertal, *Between Torah and Wisdom: R. Menahem Hameiri and the Maimonidean Halachists of Provence* (Jerusalem: Magnes Press, 2000), pp. 41–42 [Hebrew]. See also Twersky, “Some Non-Halakhic Aspects of the *Mishneh Torah*,” in A. Altmann, ed., *Jewish Medieval and Renaissance Studies* (Cambridge, Mass.: Harvard University Press, 1967), pp. 95–111.

¹⁵ *Babylonian Talmud*, Megilla 13a.

¹⁶ Maimonides, *Guide*, 3:26, pp. 507–509.

¹⁷ Maimonides, *Guide*, 3:11, pp. 440–441.

¹⁸ Warren Zev Harvey has defined this combination in Maimonides’ personality very well in the political context: “Maimonides the halachic jurist [*posek*] functioned as the executive branch of Maimonides the political philosopher. The latter defined what divine law was, the former acted to adapt the law of Moses to this definition. According to Maimonides, it is the role of political philosophy to define the essence of the divine law, and it is the role of halachic science to ensure that the law of Moses will be a divine law.” Warren Zev Harvey, “Political Philosophy and Halacha in Maimonides,” *Iyun* 29 (1980), p. 209 [Hebrew].

¹⁹ Maimonides, *Guide*, 2:40, pp. 382–383.

and God's laws as perfect, and he finds flexibility—cast as compassion or uprightness—anchored in the Torah's legal structure.²⁰ This is expressed in the various punishments attached to the Torah's laws, which aspire to maximal flexibility and, at the same time, maximal justice.²¹ The flexibility inherent in the Torah is partly in its directing man toward moderation and balance.²² In addition, the Torah directive to “build a hedge for the Torah” signifies an internal mechanism for revision.²³ Hence, for Maimonides, the Torah, as written eternal law, is inherently rigid and at the same time is a law that moderates and balances: It contains within it flexibility and aims at ultimate justice.

In light of Maimonides' complex position, which stresses the importance of the law's perpetuity and, at the same time, demands adjustments of individual laws, it is appropriate to examine the reciprocal relationship between law and leadership in his political theory: to determine whether Maimonides allows individuals and institutions to adapt the law to the needs of society; to examine the circumstances in which the leadership can or must change the law, which leaders are authorized to do so, and the limits on such change; and to analyze the connection between the type of law involved (biblical or rabbinic) and the type of change contemplated.

2. MAIMONIDES' POLITY AND THE LAW

Political leadership and a legal system are essential for societal cohesion and stability and are fundamental to any political framework. This truth emerges from Maimonides' understanding of human nature, which forms the foundation of his politics. Adopting the Aristotelian notion, he asserts that “man is political by nature” and that man cannot attain his basic physical needs without a state.²⁴ The political framework, thus, is

²⁰ Maimonides, *Mishneh Torah: The Book of Seasons*, trans. Solomon Gandz and Hyman Klein (New Haven: Yale University Press, 1961), Laws of Shabbat 2:3, p. 11.

²¹ Maimonides, *Guide*, 3:41, p. 559.

²² See, for example, Moses Maimonides, *Eight Chapters*, ch. 4, in Isadore Twersky, ed., *A Maimonides Reader* (New York: Behrman House, 1972), p. 371.

²³ Maimonides, *Guide*, 3:41, p. 563.

²⁴ Maimonides, *Guide*, 2:40, p. 381, and 3:27, pp. 510–511. Maimonides' understanding of the nature of man and its implications for his politics have been extensively discussed in scholarly literature. For example, see Avraham Melamed, “Maimonides on the Political Character of Man: Needs and Obligations,” *Minha L'Sara* (1994), pp. 292–333 [Hebrew]; Hana Kasher, “Focusing on the Individual or on Togetherness: A Comparative Study of R. Yehuda Halevi and Maimonides,” *Iyun* 37:3–4 (1998–1999), pp. 238–247 [Hebrew]; and Ella Belfer, “The State in Maimonides' Teachings: The Covenant, the Redemption, and the Norm,” *Dinei Yisrael* 16 (1992), pp. 203–228 [Hebrew].

necessary for the actualization of man's spiritual, moral, and intellectual purpose.²⁵ However, human heterogeneity, in contrast to the relative homogeneity among animals, makes its establishment difficult.²⁶

Maimonides describes the two goals of the Torah as: (1) perfection of the body, in the sense of "improvement of their [human beings'] ways of living one with another," including "the abolition of their wronging each other," and "the acquisition by every human individual of moral qualities that are useful for life in society, so that the affairs of the city may be ordered";²⁷ (2) perfection of the soul, consisting of "the multitude's acquiring correct opinions corresponding to their respective capacity."²⁸ Maimonides links these goals to the two perfections of man, perfection of the body and perfection of the intellect, the latter of which is the ultimate perfection. Because the first cannot be attained without the second, and because political society is a condition for attaining man's true purpose, the state and its leadership and law serve as means to a higher end.²⁹

Maimonides goes on to create a hierarchy of legal systems based on their ultimate purposes: Divine law aims at supplying genuine knowledge, the realization of man's spiritual purpose, and the direction of man toward human perfection.³⁰ Human law ("the regimens of *nomoi*

²⁵ Maimonides, *Guide*, 3:51, pp. 618–628. Here Maimonides adopts Aristotle's concept: "Hence it is evident that the state is a creation of nature, and that man is by nature a political animal. And he who by nature and not by mere accident is without a state is either a bad man or above humanity.... But he who is unable to live in society, or who has no need because he is sufficient for himself, must either be a beast or [be] a god...." Aristotle, *Politics*, 1.2.1253a, trans. Benjamin Jowett, in Richard McKeon, ed., *The Basic Works of Aristotle* (New York: Random House, 1941), pp. 1129–1130.

²⁶ Maimonides, *Guide*, 2:40, p. 381.

²⁷ Maimonides, *Guide*, 3:27, pp. 510–511.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ Maimonides, *Guide*, 2:40, p. 382. Note that the purpose defined by Maimonides for his *Mishneh Torah* is: "to bring the laws closer to the intellect" (*Teshuvot HaRambam* 252, p. 461). Hence his statement that the commandment to blow a *shofar* is intended to call man to attention (*Guide*, 3:43, p. 571). On the other hand, Maimonides is careful not to expose the masses to the actual truth (see *Guide*, 1:33–34, pp. 71–79), and different scholars and schools—most notably Straussian scholars—have seen this through to various conclusions and found different reasons and influences that might have guided Maimonides in this regard. See Leo Strauss, *Persecution and the Art of Writing* (Chicago: Chicago University Press, 1952), pp. 36, 60–61, 65–66; Shlomo Pines, "On Leo Strauss," *Molad* 7:37–38 (1976), p. 455 [Hebrew]; Pines, "Translator's Introduction," in Maimonides, *Guide*, p. lxxvi; Dov Schwartz, *Contradiction and Concealment in Medieval Jewish Philosophy* (Ramat Gan: Bar-Ilan University Press, 2002), pp. 15, 68–111; Sara Klein-Braslavy, *King Solomon and Esotericism in Maimonides* (Jerusalem: Magnes Press, 1997), pp. 28–30, 39–105. Ibn Caspi comments that "the masses cannot tolerate the truth, for they would go crazy and rave and completely lose their minds." Joseph ibn Caspi, *The Guide of the Perplexed* 1, Werbluner edition (Frankfurt, 1848), introduction, p. 8.

that have been laid down") relates to "the ordering of the city and of its circumstances and the abolition in it of injustice and oppression" and concentrates on physical security.³¹ The political leader is responsible for applying the law and realizing its purpose, and the commandments themselves are rational and of social utility, whether or not they are attainable by human reason.

Maimonides rules that the wise man who has reached intellectual perfection should take on a leadership role:³² "It is part of the wisdom of the deity with regard to the permanence of this species of which he has willed the existence, that he put it into its nature that individuals belonging to it should have the faculty of ruling."³³ Each leader is responsible for serving different leadership functions, and these functions require varying degrees of wisdom. The leader's level of wisdom also determines his attitude to the law and his capacity to enact changes. As an elitist thinker, Maimonides regards the masses as the means through which wise individuals reach intellectual heights. The masses are meant "to serve the perfect man, who is composed of wisdom and good deeds."³⁴ This perspective somewhat conflicts with Maimonides' political thought, as when the wise man takes on a leadership role, he effectively serves the advancement of the people rather than the state's serving his own intellectual advancement. This echoes a conflict within Plato's political thought: The parable of the cave describes the philosopher's coming out into the light but needing to risk his life by returning to the cave to liberate the

³¹ See Miriam Galston, "The Purpose of Law According to Maimonides," *Jewish Quarterly Review* 69:1 (1978), pp. 27–51; Josef Stern, "The Idea of a 'Hoq' in Maimonides' Explanation of the Law," in S. Pines and Y. Yovel, eds., *Maimonides and Philosophy* (Dordrecht: M. Nijhoff, 1986), pp. 92–130. Relevant in this context are the law of the beheaded heifer (Maimonides, *Guide*, 3:40, pp. 555–558; Maimonides, *Mishneh Torah*, "Torts," Laws of Murder and Preservation of Life 9:12); the punitive authority of the king (Maimonides, *Guide*, 3:41, pp. 558–568; Maimonides, *Mishneh Torah*, "Judges," Laws of Kings 3:10); the prohibition of prostitution (Maimonides, *Guide*, 3:49, pp. 601–613; Maimonides, *Mishneh Torah*, Laws of Forbidden Sexual Relations 18); the treatment of leprosy (Maimonides, *Guide*, 3:47, pp. 592–597); the commandment to give charity (Maimonides, *Guide*, 3:35, pp. 535–538); the commandment to observe the Sabbath (Maimonides, *Guide*, 2:31, pp. 359–360), etc.

³² Aristotle had already indicated wisdom as the main characteristic of a leader: "For justice exists only between men whose mutual relations are governed by law.... This is why we do not allow a *man* to rule, but *rational principle*, because a man behaves thus in his own interests and becomes a tyrant." Aristotle, *Nicomachean Ethics*, 5.6.1134a, trans. W.D. Ross, in McKeon, *Basic Works of Aristotle*, p. 1013. See Berman, "Maimonides on Political Leadership," pp. 135–144. Cf. Maimonides, *Guide*, 1:15, pp. 40–41; 1:54, pp. 123–128; 3:54, pp. 632–638.

³³ Maimonides, *Guide*, 2:40, pp. 381–385.

³⁴ Maimonides, *Introduction to His Commentary*, p. 105. See also pp. 102–104.

shackled masses from their mistaken beliefs.³⁵ Still, in a superior community, the wise man's comportment fits well with his role as a political leader, as the wise man or sage devotes himself to directing the community to its true *purpose*, and, in turn, the community enables him to fulfill himself.³⁶

According to Maimonides, the leader's ability to legislate or change the law—subject to many restrictions described below and depending on the character of the leader—is but part of the story. The community's consent is another important factor. Hence, the relationship between the community and the law is important to comprehend.

According to tradition, the Torah was accepted and ratified by the people at Sinai. Popular consent is expressed both in the onetime act of accepting Torah law (as part of a covenant between God and his people) and through the ongoing and cumulative consent by which the people ratifies the laws that govern it. The initial act of acceptance at Sinai rendered the law permanent, whereas the second mode of popular consent subjected the law to ongoing review:

Before instituting a decree or enacting an ordinance or introducing a custom which it deems necessary, the court should calmly deliberate [the matter] and make sure that the majority of the community can live up to it. At no time is a decree to be imposed upon the public which the majority thereof cannot endure. If the court issued a decree in the belief that the majority of the community could endure it, and after the enactment thereof the people made light of it, and it was not accepted by the majority, the decree is void and the court is denied the right to coerce the people to abide by it. If after a decree had been promulgated, the court was of [the] opinion that it was universally accepted by Israel and nothing was done about it for years, and after the lapse of a long period a later court investigates the doings of Israel and finds that the decree is not generally accepted, the latter court, even if it be

³⁵ Plato, *Republic*, book 7, pp. 514–517.

³⁶ For example, see Warren Zev Harvey, "Maimonides on Human Perfection, Awe and Politics," in Ira Robinson et al., eds., *The Thought of Moses Maimonides* (Lewiston, N.Y.: E. Mellen, 1990), pp. 1–15; Alfred L. Ivry, "The Problematics of the Ideal of Human Perfection for Maimonides," in Robinson et al., *Thought of Moses Maimonides*, pp. 16–25; Menahem Kellner, *Maimonides on Human Perfection* (Atlanta: Scholars Press, 1990); Kellner, "Politics and Perfection: Gersonides Versus Maimonides," *Jewish Political Studies Review* 6:1–2 (1994), pp. 49–82; Howard Kreisel, "Individual Perfection Versus Communal Welfare and the Problem of Contradictions in Maimonides' Approach to Ethics," *Proceedings of the Academy of Jewish Research* 58 (1992), pp. 107–141; Howard Kreisel, "Intellectual Perfection and the Role of the Law in the Philosophy of Maimonides," *Fox* 3 (1989), pp. 25–46.

inferior to the former in wisdom and number, is authorized to abrogate it.³⁷

Even though this is not democracy, there is a mechanism here by which the people can change certain types of laws imposed upon it. However, it is important to note that the constitution was a key element in the process of melding the Hebrews into a nation after they had left Egypt. Once Jewish sovereignty was lost and the Sanhedrin had disappeared, the importance of devotion to the letter of Torah law increased; in the absence of territory and political independence, the law became the foundation of national unity.

In sum, the leader and the law, or Torah, are essential in order for men to attain wisdom and true opinions. The political leader, who is both learned in the Talmud and wise in the ways of the world, must be aware of the importance of keeping laws current and acceptable to the community of his time. However, he must also be careful not to undermine the status of the Torah as divine law and eternal truth, especially in the eyes of the masses. The tension between rigidity and flexibility is pronounced in Jewish law, where people's consent matters: the law must speak to the people and at the same time must be sufficiently stable to command its ultimate and utmost respect.

3. THE PROPHET AND THE LAW

If, according to Maimonides, man can achieve perfection only when living in a perfected society, ruled by a perfect leader, and subject to a perfect system of laws, it may be said that Maimonides adopts Plato's model of an ideal state led by philosopher-kings, but he exchanges the philosophers' rule for that of the prophets.³⁸ If the leader is ultimately to direct the people to perfection, the king would ideally be a prophet, whose status is rooted in his intellectual knowledge of God. Maimonides indeed subscribes to the theory that Moses was the perfect leader, who, through unmediated intellection, received and subsequently legislated the perfect laws of the Torah.³⁹ We must examine, though, whether

³⁷ Moses Maimonides, *Mishneh Torah: The Book of Judges*, trans. Abraham M. Hershman (New Haven: Yale University Press, 1949), Laws of Rebels 2:5–7, pp. 141–142.

³⁸ On this, see Yona ben Sason, "Maimonides' Doctrine of Prophecy," *Hagut Umikra* (1995), pp. 27–71 [Hebrew]; Miriam Galston, "Philosopher-King Versus Prophet," *Israel Oriental Studies* 8 (1978), pp. 204–218.

³⁹ Maimonides, *Mishneh Torah*, "Knowledge," Laws of the Fundamentals of Torah 7:1; Maimonides, *Eight Chapters*, ch. 4, p. 371; Maimonides, *Guide*, 2:39, pp. 378–381; 3:51, pp. 618–628.

Maimonides allows other prophets to change the law, as could Plato's philosopher-kings.⁴⁰

Moses' status with regard to the laws of the Torah is unique, as expressed in Maimonides' assertion that his prophecy is the foundation of all commandments, whereas later prophets lacked any legislative authority.⁴¹ Maimonides even emphasizes that the people's obligation to obey later prophets stems from the obligation to obey Moses, master of the prophets and source of their prophetic authority.⁴² Whether a prophet is to be obeyed does not depend on any sign he gives but, rather, on the consistency of his order with Moses' command. Moses' instructions are authoritative because they are based on the visual and aural testimony of the entire people.⁴³ In general, though, "intellectual testimony" supersedes the sensory, and the senses do not provide sufficient evidence for prophecy, because false prophets can create convincing illusions and even use these to advocate idolatry.⁴⁴ Just as the obligation to heed the words of the various prophets stems from the obligation to heed Moses, so too, the Sages' authority to interpret the 613 biblical commandments is grounded in the obligation to obey Mosaic law. Moses' position as far as the law is concerned is unequivocally clear: he is the ideal leader, the source of legislation from God,⁴⁵ and Torah law is identified with him.

It is important to further engage the comparison between Mosaic prophecy and that of other prophets when it comes to legislation. Maimonides dwells on this contrast in all of his works. He says that Moses' prophecy, in contrast to that of other prophets, came when he was fully awake, and it was not mediated by an angel. Moses was not gripped by fear and could receive prophecy whenever he desired. Prophets other

⁴⁰ Numerous other biblical passages depict political enemies as cosmic, chaotic monsters. See, for instance, Psalm 89; Isaiah 27:1, 51:9–11; Ezekiel 29:3–6, 32:2–6; Jeremiah 51:34–40. In Isaiah's eschatological vision, a day will come when the Lord with his great, cruel, and mighty sword will "punish the leviathan, the fleeing serpent, the leviathan, the twisting serpent / he will slaughter the sea monster that is in the sea." Here the leviathan (presumably Egypt or some other world power), like the monster of Jeremiah 51 and unlike the leviathan of Psalm 74, is yet to be defeated, reminding the reader that chaos is still lurking out there somewhere.

⁴¹ Moses Maimonides, commentary on *Mishna*, Hulin 7:6.

⁴² Maimonides, *Laws of the Fundamentals of Torah* 8:2, p. 44a.

⁴³ *Ibid.* 8:3, p. 44a.

⁴⁴ Moses Maimonides, "Maimonides' Introduction to *Mishneh Torah*," in Twersky, *Maimonides Reader*, p. 37.

⁴⁵ The people heard only the first two of the Ten Commandments at Sinai. See also Yaakov Levinger, "Moses Our Teacher's Prophecy in Maimonides' Teachings," *Report of the Fourth Jewish Sciences Congress* 4:2 (1999), pp. 335–339 [Hebrew].

than Moses relied on the imaginative faculty that allowed them both to receive prophetic messages and to transmit them, descriptively, to the masses. Moses lacked this capacity. By refraining from attributing imaginative powers to Moses, Maimonides protects the Torah from being understood as a constitution based on approximations of the truth, on the order of parables and metaphors, as opposed to an eternal Torah that expresses intellection.⁴⁶ He sums up by saying that Moses separated himself from the material world (for example, avoiding physical contact with his wife); thereby “his mind was closely attached to the Rock of the Universe; the Divine Glory never departed from him; the skin of his face sent forth rays of light, and he was sanctified like the angels.”⁴⁷ He calls Moses “Sa’id el-Alamein—the master of those who know,”⁴⁸ possibly indicating that he perceived Moses to have been the greatest of all philosophers, who attained the highest knowledge of God attainable by humankind.⁴⁹

In Laws of the Fundamentals of Torah 7:7, Maimonides rules that a prophet can prophesy with two aims: (1) “for him alone, to develop his mind and increase his knowledge,” furthering his own intellectual perfection; and (2) when “the prophet is sent on a special mission to a particular people or to the inhabitants of a certain city or kingdom, to direct them aright, teach them what they are to do, or restrain them from the evil courses they were pursuing.”⁵⁰ In the second case, the prophet fulfills a political role of transmitting a message from God and leading a community.⁵¹ Maimonides apparently sees public prophecy as a normative state of affairs, in which the prophet serves a political function. A number of communal roles are attributed to the prophet: Aside from his educational tasks, which include setting a personal example and rebuking perpetrators of misdeeds, the prophet holds legislative responsibilities ranging in degree and type.⁵² While prophets other than Moses

⁴⁶ See Jeffrey Macy, “Prophecy in Al-Farabi and Maimonides: The Imaginative and Rational Faculties,” in Shlomo Pines and Yirmeyahu Yovel, eds., *Maimonides and Philosophy* (New York: Springer, 1986), pp. 185–201; Daniel S. Breslauer, “Philosophy and Imaginations: The Politics of Prophecy in the View of Moses Maimonides,” *Jewish Quarterly Review* 70:3 (1980), pp. 153–171.

⁴⁷ Maimonides, Laws of the Fundamentals of Torah 7:6, p. 43a. See also Maimonides, commentary on *Mishna*, Sanhedrin 10; Maimonides, *Guide*, 2:35, pp. 367–369.

⁴⁸ Maimonides, *Guide*, 1:54, pp. 123–128.

⁴⁹ *Ibid.*

⁵⁰ Maimonides, Laws of the Fundamentals of Torah 7:7, pp. 43a–b.

⁵¹ Cf. Maimonides, *Guide*, 2:37, pp. 374–375.

⁵² Moses Maimonides, *Book of the Commandments*, positive commandment 172.

are “forbidden to make innovations in the Torah,”⁵³ Maimonides provides an opening for discussing other types of prophetic legislation. In fact, prophetic authority for ad hoc legislation is the most sensitive issue in Maimonides’ attitude to the law. It would have been understandable had the prophet who transmits the word of God been permitted to change the law; however, Maimonides repeatedly stresses that prophets are very limited and their status is inferior to the laws of the Torah.

In the *Book of the Commandments* (positive commandment 172), he says:

By this injunction we are commanded to hearken to every prophet and to do whatever he bids, even if it be contrary to one or more of the [scriptural] commandments, provided that it is only temporary, and does not involve a permanent addition to or subtraction from [the Law]... the Sifre says: ‘Unto him shall ye hearken: even if he tells you to violate temporarily one of the Commandments enjoined in the Torah, you must hearken unto him.’ Whoever transgresses this Commandment is liable to death by the hand of Heaven....⁵⁴

Here, Maimonides presents one restriction on prophetic legislation, which is that any command to breach Torah laws may only be temporary. In *Laws of the Fundamentals of Torah* 9:3, he gives the example of Elijah, to whom the people were supposed to listen and violate the law on a one-time basis:

[O]bey him in all matters, unless the commandment be to worship idols; this is the rule, however, only when the prophet’s instruction is for a single occasion. Such was the case of Elijah at Mount Carmel. He offered up burnt offerings outside the Temple, while the Sanctuary in Jerusalem was the place appointed for such sacrifices, and anyone who offered them up outside the appointed place incurred the penalty of excision. But because Elijah was a prophet, it was obligatory to heed him, and even in the above case, the rule “Unto him shall ye hearken” (Deut. 18:15) applied. If Elijah’s contemporaries had asked him, “How dare we abrogate the precept ‘Take heed to thyself that thou offer not thy offering in any place...’ (Deut. 12:13)?” the prophet would have replied, “This verse refers only to one who constantly offers up sacrifices outside the Sanctuary; such a person incurs the penalty of excision prescribed by Moses. But *I* propose to offer up sacrifices outside the

⁵³ Maimonides, *Laws of the Fundamentals of Torah* 9:2, p. 44b; *Babylonian Talmud*, Yoma 80a, Temura 16a. Cf. Maimonides, *Laws of the Fundamentals of Torah* 9:1.

⁵⁴ Maimonides, *The Commandments*, trans. Charles B. Chavel (London and New York: Soncino, 1967), p. 181.

Temple, this day only, by the express commandment of God, for the purpose of discrediting the prophets of Baal." And thus, if prophets order the violation of a precept for a set time, it is a duty to obey the direction. But if they declare that the precept is abrogated forever, they incur the penalty of death by strangling, for the Torah said, "Unto us and to our children forever."⁵⁵

Prophetic authority to legislate also finds expression in matters not covered by Torah law (*reshut*), where prophets issue orders on political matters: "For instance, if he says, 'Go to that place,' or 'Do not go to it,' 'Wage war today,' or 'Do not wage war' (II Samuel 15; II Kings 6:22), 'Build this wall,' or 'Do not build it' (Isaiah 22:11)."⁵⁶ A further example of temporary prophetic authority can be found in the matter of appointing a king. As we know, the kingdom of the House of David is depicted in the Bible as the only legal kingdom. Yet the northern kingdom of Israel was also recognized as legitimate, since it was established by a temporary prophetic edict. At the same time, we find that the temporary nature of the change is not so clear-cut, as sometimes temporary situations become permanent. Maimonides attributes significance to the declarative aspects of the change and stresses that it should not be declared a permanent amendment to the Torah.⁵⁷

It thus emerges that the prophet has the authority to order temporary transgressions of Torah laws so long as these are presented as such. The change must also be unavoidable in the face of events endangering the people's spiritual or physical existence. For Maimonides, the distinction between a permanent change and a temporary one is so critical that regarding an identical command, if a prophet says it is temporary, we are obliged to listen to him, and anyone who refuses transgresses Torah law and is liable to death at the hands of heaven, whereas any prophet whose edict expressly and permanently contradicts the Torah is liable to death by strangulation.⁵⁸

⁵⁵ Maimonides, *Laws of the Fundamentals of Torah* 9:3, p. 45a. See also the beginning of Maimonides, *Introduction to His Commentary*, p. 18.

⁵⁶ Maimonides, *Laws of the Fundamentals of Torah* 9:2, p. 44b. Cf. these directions in Maimonides, *Introduction to His Commentary*.

⁵⁷ The importance of the declaration is also expressed, as will be shown below, in the legislative activity of the court.

⁵⁸ Maimonides, *Introduction to His Commentary*, p. 33; Maimonides, *Laws of the Fundamentals of Torah* 9:4. Note that the death penalty imposed on a person refusing to obey the prophet is to be imposed not by man but by heaven and is therefore a less immediate punishment than that imposed on the prophet who violates the limits of his authority regarding the law.

Even the prophets' temporary authority to change laws is limited: "If a prophet bids us worship idols even on a single occasion, we are not to listen to him."⁵⁹ Since man's purpose is recognizing and serving God, nothing justifies deviation from this purpose.

Prophets may also be obliged to cooperate with the court, and while this duty may seem to be a further restriction of their authority, it actually increases their overall capacity to affect the law. Maimonides asserts that "if the court, together with the prophet living at the time, institutes an additional precept as an ordinance, judicial decision, or decree, this is not an addition."⁶⁰ Only joint action by the supreme court, representing wisdom, and the prophet, representing God's revealed word, can effect a change in or a permanent addition to the Torah's laws.

If the word of God is revealed through prophets, why does Maimonides not allow them unlimited legislative authority? Shouldn't a polity prefer nothing more than legislation by the word of God transmitted over time? Are subsequent prophets not Moses' legitimate successors?

Maimonides has different reasons for limiting prophetic authority to change the law, and the restrictions he places on prophets stem from his distinction between sage and prophet.⁶¹ He seems to have been aware of the danger inherent in concentrating power in the hands of one person who draws his authority from a higher power. Maimonides explains that the Torah and the law are earthly, or "not in heaven," so the prophet, for the purpose of addressing the law, should be wrapped not in metaphysical prophecy but in "earthly" wisdom, and he should be of equal standing to the sage.⁶² Moreover, Maimonides considers the law to have

⁵⁹ Maimonides, *Laws of the Fundamentals of Torah* 9:5, p. 45a.

⁶⁰ Maimonides, "Maimonides' Introduction," p. 41.

⁶¹ Haim Kreisel, "The Sage and the Prophet in the Doctrine of Maimonides and His Followers," *Eshel Beer Sheva* 3 (1986), pp. 149–169 [Hebrew]. In a similar way, Maimonides distinguishes between the science of halacha and the science of philosophy. For instance, he states in the *Book of the Commandments*, positive commandment 174, that we must obey the great court of law with regard to "whatever [its judges] command us concerning things forbidden and things permissible" (Maimonides, *The Commandments*, p. 184). In *Mishneh Torah*, "Judges," *Laws of Rebels* 1:1, Maimonides states that there is an obligation to follow these judges regarding religious practice. The use of the word "religion" [*dat*] reflects his conception that halachic scholars possess authority in the field of law but are not authorized to decide on philosophical matters. On the distinction between the sciences of halacha and philosophy, see Maimonides, *Guide*, 3:51, 1:71; Maimonides, *Mishneh Torah*, "Judges," *Laws of Sanhedrin* 2:1, 2:8. Klein-Braslavy, *King Solomon and Esotericism*, pp. 97–100.

⁶² See Deuteronomy 30:12. Hence Maimonides' inference in *Laws of the Fundamentals of Torah* 9:1 that a prophet is forbidden to make innovations in the Torah. "So too, if a prophet attempts to rescind any of the institutions that have come down to us by tradition, or if, in reference to a moot point, he asserts that the Almighty

an inherent system of adaptation and does not find room for any oracular figure to intervene in this process. The stable, conservative, great court, or Sanhedrin, offsets damage that could be done by the prophet. Regarding the prophet, Maimonides remarks:

However, regarding deduction, reasoning, and understanding of Torah commandments, he is as all other sages who have no prophethood. That is to say, if a prophet should offer an opinion, and if a non-prophet should reason [a differing] opinion, and if the prophet should say, "The Holy One Blessed Be He told me that my conclusion is the correct one," one should not listen to him. Even if a thousand prophets, all of the stature of Elijah or Elisha, would hold one opinion, and 1,001 sages would hold the opposite opinion, one must follow the majority, and the final ruling is in accordance with the 1,001 sages.... *Under no circumstances can one add or delete from a Torah precept through prophecy... this is because no Torah was given after the first prophet, and one may not add to or delete from it, as it is written: It is not in heaven....*⁶³

In conclusion, when we come to examine the law-changing capabilities of a prophet, we must distinguish acts of the master of all prophets, Moses, from acts of subsequent prophets. Later prophets have no legislative power of their own, and any deviations they effect may be only temporary, unless they join with the court. The court, to which we will return in section 4, has some distinct advantages: Not only does it act according to earthly "guidelines," but it is also a collective of scholars. Therefore, as Maimonides notes in the introduction to his commentary on the Mishna, the court's concession to a permanent change in the law constitutes a kind of check by collective wisdom that acts again to balance the prophet. Here Maimonides confronts a serious dilemma between the need to physically and spiritually preserve the people in times of emergency—which may demand a breach of the regular law—and the need to protect the people from prophets who may undermine the status of Torah law, which is no less threatening to the nation's survival.

had instructed him as to what was the decision and that the rule was according to the view of a certain teacher, he is a false prophet, and should be strangled, even if he showed a sign, since he proposes to deny the Torah which has laid down the principle 'It is not in Heaven.'" Maimonides, *Laws of the Fundamentals of Torah* 9:4, pp. 44b–45a. See also *Babylonian Talmud*, Berachot 52a, Baba Metzia 59a–b.

⁶³ Maimonides, *Introduction to His Commentary*, pp. 33–34. Emphasis added.

4. THE KING AND THE AMENDMENT OF THE LAW

The king, in Maimonides' writings, is the executive authority in the polity.⁶⁴ His role is to bring society to a state of harmonious functioning. The king must preserve the political framework from a physical point of view, by nurturing the creation of appropriate physical conditions,⁶⁵ which is the first level of social perfection. In such an arena, individuals may reach the ultimate perfection, which is "the soundness of the beliefs and the giving of correct opinions,"⁶⁶ so in a sense, the king is also responsible for directing the people to ultimate perfection. The king's success here depends on his character, as only a perfect leader can achieve this higher end.

The king's performance generally demands uniformity in law enforcement, as social stability is possible only when the law applies to the whole population, however diverse its members may be. Yet the king does encounter exceptional cases for which there may be a need to deviate from established halacha. Is the king allowed to deviate from the Torah's laws when faced with immediate needs? Is he allowed to make changes in Torah laws, or even cancel them outright?

In Maimonides' political thought, the king—as the executive authority, whose role is to ensure social stability—makes decrees and issues edicts, judges, and punishes. Maimonides was aware of the problems that would arise when halacha, which is essentially static, would prevent the king from functioning when confronted with the exigencies of dynamic reality, such as war or an increase in crime. In general, with regard to legislation, the king's authority is limited to that which emerges from his executive role, so he may issue only temporary decrees and rulings.

Still, the king also has a judicial role in special circumstances. Within the category of striving to "perfect the world" (*tikun olam*), he is authorized to issue prohibitions and enactments in a manner that parallels the activity of the Sanhedrin.⁶⁷ At the same time, this expansion of royal

⁶⁴ On kingship in Maimonides' teachings, see Yaakov (Gerald) Blidstein, *Political Principles in Maimonides' Teachings* (Jerusalem: Bar-Ilan University Press, 1983) [Hebrew]; Blidstein, "On the Character of the Presidency in Maimonides' Halachic Teachings," *Annual Jewish Law Review* 20 (1997), pp. 25–48 [Hebrew]; Ariel Ararat, "On the Place of the King as Judge in Maimonides' Political Teachings," *Shaanan* 9 (2004), pp. 161–187 [Hebrew]. On kingship in Jewish thought, see Gershon Garman, *King of Israel* (Bnei Brak: Moreshet, 2003) [Hebrew].

⁶⁵ Maimonides, *Guide*, 3:27, pp. 510–512.

⁶⁶ *Ibid.*, p. 511.

⁶⁷ This is a theme of Moses Maimonides, *Mishneh Torah: The Book of Torts*, trans. Hyman Klein (New Haven: Yale University Press, 1954), Laws of Murder and Preservation of Life, and Laws of Kings.

jurisdiction is directed exclusively at the prevention of bloodshed, and no defined authority would justify the king's deviating from the modes of punishment established by the law, except in the case of murder. In *Laws of Murder and Preservation of Life* 2:1, Maimonides states that "regarding any of these or similar murderers who are not subject to being condemned to die by verdict of the court, if a king of Israel wishes to put them to death by royal decree for the benefit of society, he has a right to do so."⁶⁸ We learn from here that in certain cases, when social stability and order demand it, the king is allowed to judge according to the "law of kingship," and if circumstances demand it, he may even ignore the rules of evidence. Here the social consideration overrides the guidelines of legal justice.⁶⁹ The king is even permitted to order the execution of many criminals in one day and to leave them hanging, against the Torah's judgment, in order to deter evildoers.⁷⁰ In this respect, the king's extraordinary authority is greater than that of the court. Maimonides states that the court is authorized to execute murderers "as an emergency measure... provided that circumstances warrant such action."⁷¹ On the other hand, the king punishes "by royal decree for the benefit of society"⁷² and may order executions even when there is no emergency, justified by the need to repair the world. While the court is permitted to deviate from halacha only during a violent period, and for the sake of society,⁷³ the king has broader extraordinary authority.⁷⁴

⁶⁸ Maimonides, *Laws of Murder and Preservation of Life* 2:1, p. 199.

⁶⁹ Maimonides, *Guide*, 3:20, p. 557. See also the discussion in *Babylonian Talmud*, Sota 47b, regarding the multiplication of murderers, adulterers, and others. Cf. Maimonides, *Laws of Kings* 3:9, p. 214: "If a person kills another and there is no clear evidence, or if no warning has been given him, or there is only one witness, or if one kills accidentally a person whom he hated, the king may, if the exigency of the hour demands it, put him to death in order to insure the stability of the social order. He may put to death many offenders in one day, hang them, and suffer them to be hanging for a long time so as to put fear in the hearts of others and break the power of the wicked."

⁷⁰ Maimonides, *Laws of Sanhedrin* 24:6, *Laws of Rebels* 2:4; Blidstein, *Political Principles*, pp. 146–149; Menachem Lorberbaum, "Tikun Olam According to Maimonides: A Study of the Purposes of Halacha," *Tarbiz* 64 (1995), pp. 65–82 [Hebrew].

⁷¹ Maimonides, *Laws of Murder and Preservation of Life* 2:4, p. 199.

⁷² *Ibid.*

⁷³ Maimonides, *Laws of Sanhedrin* 24:4; *Babylonian Talmud*, Sanhedrin 46a; *Jerusalem Talmud*, Hagiga 2:2.

⁷⁴ Maimonides gives the biblical examples of Joshua's condemning Achan to death and David's ordering the Amalekite stranger's execution on the latter's admission, whereas a court may not forgo the laws of evidence, even when the witness confesses. Maimonides, *Book of Judges*, *Laws of the Sanhedrin* 18:6, pp. 52–53.

It emerges that the court must abide by the laws of evidence at all times. Indeed, Maimonides, on the authority of Mishna Makot 1:10, prefers to protect the court—an institution that the rabbis define as the mainstay of the oral law—from erroneous rulings that might lead to the killing of an innocent man. The “institution of wisdom” renders judgment strictly according to the laws of evidence and avoids imposing the death penalty because of immediate needs. By way of contrast, the king, the executive branch of government, must confront the physical dangers to political society, and if difficult circumstances mean that innocent people must be harmed, he should be the one to carry this out. Deviation from the rules of evidence, despite the possibility that the innocent might be harmed, is sometimes imperative in light of broader concerns. In some cases, adhering too closely to these laws may even bring destruction upon the people.⁷⁵

Not only does Maimonides bar the king from effecting permanent change in the Torah, he also emphasizes the king’s subservience to its laws, discussing several expressions of this subservience:

1. The king is obligated to write a second Torah scroll and read from it every day of his life, whereas every other Jew is obligated to write a single Torah scroll.⁷⁶

2. The king “shall be occupied day and night with the study of the Law and the needs of Israel, as it is said: ‘And it shall be with him, and he shall read therein all the days of his life’ (Deuteronomy 17:19).”⁷⁷ The king’s obligation to remain close to the Torah scroll, by writing it and perpetually reading it, indicates his obligation to obey the laws of the Torah and his recognition of the Torah as his superior guide and counselor.⁷⁸

⁷⁵ R. Shlomo ben Aderet says: “If you base everything on the laws delineated in the Torah [...] the world will be destroyed.” *Rashba’s Responsa* (Jerusalem: Machon Yerushalayim, 1997–2005), 3:393 [Hebrew]. It is important to emphasize that even though the king is authorized to punish without going through the accepted legal procedures regarding evidence, he is still subject to certain norms and legal boundaries: For instance, he can execute a person on the basis of one witness’ testimony, not two; he is permitted to execute an adversary who killed by accident, assuming there is a basis for suspecting him; and so forth. That is, there is less stringency with respect to the activity of the king, but he is not completely free of all guidelines.

⁷⁶ Moses Maimonides, *Mishneh Torah: The Book of Love*, trans. Menachem Kellner (New Haven and London: Yale University Press, 2004), Laws of Tefillin, Mezuzah, Torah Scroll 7:1–2, p. 95. In Laws of Kings 3:1, he cites Deuteronomy 17 and rules that “as soon as the king ascends the throne, he must write a scroll of the Law for himself, in addition to the one which his ancestors have left him.”

⁷⁷ Maimonides, Laws of Kings 3:5, p. 213.

⁷⁸ Maimonides, Laws of Kings 3:9, p. 213. It is also possible to distinguish Maimonides’ attitude toward the kings of the House of David, who are allowed to judge and be judged, from his attitude toward the kings of Israel, who are distanced from

3. A king's command has no validity if it contradicts a Torah command. In *Laws of Kings* 3:9, Maimonides states that "whoever disobeys a royal decree because he is engaged in the performance of a religious command, even if it be a light command, is not liable."⁷⁹ Furthermore, "it goes without saying that if the king issues an order annulling a religious precept, no heed is paid to it."⁸⁰ A royal command that contradicts the Torah is invalid, just as is a father's demand that his child transgress a Torah command. Thus, "when a wicked king arises like Nebuchadnezzar and his confederates, and issues decrees against Israel, with the purpose of abolishing their religion or one of the precepts, then it is the Israelites' duty to suffer death rather than violate any one, even of the remaining commandments."⁸¹ This increased stringency expressed by the obligation to die rather than transgress a commandment at times of persecution illustrates Maimonides' concern for Torah law. Just as various leaders must be strict during dangerous times, the individual is also required to sacrifice himself rather than break a Torah law when the continued existence of the nation is at stake. In contrast, when the individual is asked to violate a Torah command, and there is no danger of a collective breach and subsequent national tragedy, self-sacrifice is not required.

4. A king who transgresses a Torah command is not exempt from punishment, and in fact he cannot continue to serve as a role model for the people. In *Laws of Kings* 3:2–4, Maimonides cites Deuteronomy 17 and rules that if the king has too many wives, horses, or gold and silver, he is to be whipped. This implies that when it comes to law, the king is above no one; he cannot interpret it at will and has no authority to deviate from it. In fact, the king's punishment for breaching one of the commandments is harsher than that of the average citizen, because he is expected to serve as a role model. In Maimonides' words: "Scripture lays particular stress on [the danger] of his heart being turned away from God, as it is said, 'that his heart turn not away' (Deuteronomy 17:17), for his heart is the heart of the whole congregation of Israel. Therefore, Scripture exhorts him more than any other Israelite to cleave to the Law, as it is said, 'all the days of his life' (Deuteronomy 17:19)."⁸²

judgment. He considers the kings of Israel "arrogant, and (if they be treated as commoners) the cause of religion would suffer" (*Laws of Kings* 3:7, p. 213).

⁷⁹ Maimonides, *Laws of Kings* 3:9, p. 214.

⁸⁰ Ibid. See also Maimonides, *Book of the Commandments*, positive commandment 173.

⁸¹ Maimonides, *Laws of the Fundamentals of Torah* 5:3, p. 40a.

⁸² Maimonides, *Laws of Kings* 3:6, p. 213. This ruling accords with Midrash Hagadol on Genesis 20:9: "The king of a country is like the heart of a person: If the heart is sick,

5. Although ideally, Maimonides, like Plato, would combine kingship and prophecy under the rule of wisdom and have only one branch of government, as was the case with Moses, in reality, since the time of Moses, these are separate branches.⁸³ In the hierarchy between the branches of government, related in Laws of Torah Study 3:1, we find the following:

With three crowns was Israel crowned: with the crown of the Torah, with the crown of the priesthood, and with the crown of sovereignty. *The crown of the priesthood was bestowed upon Aaron*, as it is said, “And it shall be to him and to his seed after him the covenant of an everlasting priesthood” (Numbers 25:13). *The crown of sovereignty was conferred upon David*, as it is said, “His seed shall endure forever, and his throne as the sun before me” (Psalms 89:37). *The crown of the Torah, however, is for all Israel*, as it is said, “Moses commanded us a law, an inheritance of the congregation of Jacob” (Deuteronomy 33:4). Whoever desires it can win it. Do not suppose that the other two crowns are greater than the crown of the Torah, for it is said, “By me, kings reign and princes decree justice. By me, princes rule” (Proverbs 8:15–16). Hence the inference that *the crown of the Torah is greater than the other two crowns*.⁸⁴

Not only are the king and prophet under the law, but the sages are a social elite, and the Sanhedrin—which represents the “crown of Torah” and wisdom—is superior to the other institutions of government, including the king, who is placed under the Torah as well as under those who represent *hochma*.⁸⁵ In fact, “when the members of the Sanhedrin and Sages of Israel visit him [the king], he shall rise before them and seat them at his side.”⁸⁶ Maimonides knew that this attitude could destabilize

the whole body is sick, so if the king sins, the whole country sins, and both they and he must be annihilated.” See M. Margalio, ed., *Midrash Hagadol* (Jerusalem: Mosad Harav Kook, 1947), p. 330 [Hebrew]. Similarly, R. Yehuda Halevi emphasizes the importance of Israel among the nations, that it is “like the heart amidst the organs of the body; it is at one and the same time the most sick and the most healthy of them.” Halevi, *The Kuzari*, trans. Hartwig Hirschfeld (New York: Schocken, 1964), 2:36, p. 109. Cf. *Babylonian Talmud*, Shabbat 56b, Sanhedrin 21b.

⁸³ Maimonides, *Guide*, 2:40, p. 382.

⁸⁴ Translation printed in Twersky, *Maimonides Reader*, p. 66. Emphasis added.

⁸⁵ On the concept of political leadership in Jewish thought, see a series of studies by Stuart Cohen: “Kings, Priests, and Prophets: Patterns of Dialogue and Conflict in Ancient Legislative Government in Israel,” *State, Government, and International Relations* 34 (1991), pp. 37–58 [Hebrew]; “The Three-Crown Concept: Its Place in Jewish Political Thought and Its Ramifications on Researching Jewish Legislative History,” in Elazar, *Am Veda*, pp. 55–75; “Keter as a Jewish Political Symbol: Origins and Implications,” *Jewish Political Studies Review* 1:1–2 (1989), pp. 39–62; *The Three Crowns: Structures of Communal Politics in Early Rabbinic Jewry* (Cambridge: Cambridge University Press, 1990).

⁸⁶ Maimonides, *Laws of Kings* 2:5, p. 211.

society, which depends on the rabbis preserving the king's honor. He states that "the reason for the preference of wise man over king is only in thought, since the wise man's benefit to the nation is greater than the king's, but in reality it is not becoming to place any man before the king's honor, even if he [the king] was an ignoramus."⁸⁷

6. While on an ideal level (presented in the Talmud) there is a connection between the court, which is the judicial (and to a certain extent legislative) authority, and the executive authority, which is the monarchy,⁸⁸ in reality the king is forbidden to sit on the Sanhedrin, regardless of his talents. Legislation is the sole task of the Sanhedrin, which must be independent of the king's influence: "The king of Israel is not given a seat on the Sanhedrin, because it is forbidden to differ with him or to rebel against his word. But the high priest may be given a seat, if he is fit for the office by reason of scholarship."⁸⁹ The distinction between "a Torah judgment" and "the king's judgment"⁹⁰ parallels the difference between the ruling authorities. Still, Maimonides accepts the traditional attribution of certain acts of legislation to ideal kings such as David, Solomon,⁹¹ and even Joshua,⁹² though their legislation is inferior to the laws of the Torah ascribed to outstanding prophetic leaders.⁹³ This position is consistent with Maimonides' assertion that David "was of the lot of the Great Sanhedrin."⁹⁴

7. Although the king inherited the commandment of *hakhel* (gathering all the people), which was one of the roles Moses fulfilled as king of Israel while he was also prophet and legislator, this ceremony does not place the king above the law. During *hakhel*, Maimonides asserts,

⁸⁷ Maimonides, commentary on *Mishna*, Horayot 3:8.

⁸⁸ Deuteronomy Rabba 5:8; *Babylonian Talmud*, Sanhedrin 14b.

⁸⁹ Maimonides, Laws of the Sanhedrin 2:4, p. 8.

⁹⁰ Maimonides, Laws of Murder and Preservation of Life 2:4–5.

⁹¹ For example, Maimonides, *Mishneh Torah*, "Times," Laws of Eruvin 1:4; "Torts," Laws of Robbery and Lost Property 5:4; "Holiness," Laws of Forbidden Sexual Relations 12:23; "Service," Laws of Temple Vessels 3:9. Regarding the twenty-four priestly watches, cf. the commentary of Abraham ibn Ezra on Exodus 12:1 and his treatment there of the statement by Saadya Gaon.

⁹² For example, Maimonides, Laws of Robbery and Lost Property 5:3; "Torts," Laws of Wounding and Damaging 1:6.

⁹³ Maimonides also ascribes legislation to Moses. For example, Maimonides, *Mishneh Torah*, "Love," Laws of Prayer 12:1; "Times," Laws of Sanctification of the New Moon 18:8; Laws of the Sanhedrin 4:1, 12:3; Laws of Shekalim 1:3; Laws of Theft 7:7. This also demonstrates that this legislation differs from the laws of the Torah, given to Moses at Mount Sinai.

⁹⁴ Maimonides, commentary on *Mishna*, Sanhedrin 2:3.

one should “regard himself as though the Law was now laid upon him for the first time and as though he now heard it from the mouth of the Lord, for the king is an ambassador to proclaim the words of God.”⁹⁵ It may therefore seem that the king, substituting for Moses, takes on his prophetic responsibilities too, and the people, in connecting the king to the giving of the Torah at this ceremony, endorse the king’s legislative activities. Still, if the king only replaces Moses as the one who transmits the word of God to the people, there is nothing new or problematic here. Interestingly, Moses is repeatedly referred to as a legislating leader in Maimonides’ different writings but not in *Laws of Kings*, perhaps in order to avoid this confusion and to highlight that the king is under the law.

8. Although “the king is empowered to put to death anyone who rebels against him,”⁹⁶ the rebel against the king is not perceived as rebelling against God, as the king is not God’s representative on earth. The rebel is punished for damaging social stability. This does not imply that the “earthly” king is without holiness. In fact, aside from his coronation, where ideally a prophet is present and the king is anointed, the king is supposed to come from the Davidic dynasty, which was chosen by God,⁹⁷ and the king must also emulate God in his role. Since the prophet best understands the way God works, we find that Maimonides’ ideal king, like that of Averroes, is a prophet such as Moses, and this function would also strengthen his political standing.⁹⁸

In conclusion, Maimonides views the monarchy as essential for physically preserving the people (perfecting the body), and the king should preferably be a prophet. In the realm of enforcement and punishment, even the king who is not a prophet—that is, even a king who is not Moses—has broad authority to deviate from the law, which represents a flexible approach to the law when it comes to executing and administering its application. Still, the king is forbidden to intervene in legislation and interpretation, which are beyond his jurisdiction, and the separation of powers ensures restrictions on the king by law. There is also no question that the king is under the law. It is important to remember that the

⁹⁵ Moses Maimonides, *Mishneh Torah*, “Book of Offerings,” trans. Herbert Danby (New Haven and London: Yale University Press, 1978), *Laws of Festival Offerings* 3:6, p. 59.

⁹⁶ Maimonides, *Laws of Kings* 3:8, pp. 213–214.

⁹⁷ We have already seen that a king of non-Davidic lineage may be installed temporarily. Maimonides, *Laws of Kings* 3:8, pp. 213–214.

⁹⁸ See Warren Zev Harvey, “Averroes, Maimonides, and the Perfect State,” in *Studies in Philosophical Topics* (Jerusalem: The Israeli National Academy of Science, 1992), pp. 19–31 [Hebrew].

king's right to deviate from the law, as well as his right to judge by the "law of kingship," is problematic in its implications for the checks and balances within both the Torah-based and monarchy-based legal systems.⁹⁹

5. THE 'BEIT DIN' (THE COURT) AND THE AMENDMENT OF THE LAW

The supreme court (also referred to as the "great court of law" and the "Great Sanhedrin") of seventy-one judges is the highest judicial and legislative institution. Maimonides states that its members need to be "wise men and understanding, that is, who are experts in the Torah and versed in many other branches of learning."¹⁰⁰ Beneath the supreme court, there are regional courts of twenty-three judges appointed by the supreme court that preside mostly over capital cases. The lowest level of judicature is the local court system; local courts have three judges each and mostly preside over monetary cases.

Maimonides' *Laws of Rebels* opens with a statement on the national status of the supreme court as the highest legislative body,¹⁰¹ and its location in Jerusalem reinforces its national governmental status:¹⁰²

The Great Sanhedrin of Jerusalem is the root of the oral law. The members thereof are the pillars of instruction; out of them go forth statutes and judgments to all Israel. Scripture bids us repose confidence in them, as it is said, "according to the law which they shall teach thee" (Deuteronomy 17:11). This is a positive command. Whoever believes in Moses, our teacher, and his Law is bound to follow their guidance in the practice of religion and to lean upon them. Whoever does not act in accordance with their instruction transgresses a negative command, as it is said: "Thou shalt not turn

⁹⁹ See Menachem Lorberbaum, *Politics and the Limits of Law: Secularizing the Political in Medieval Jewish Thought* (Stanford: Stanford University Press, 2001).

¹⁰⁰ Maimonides, *Laws of the Sanhedrin* 2:1, p. 7.

¹⁰¹ See an extensive interpretation of *Laws of Rebels* 1–4 in Yaakov (Gerald) Blidstein, *Authority and Rebellion in the Halacha of Maimonides* (Tev Aviv: Hakibbutz Hameuhad, 2002) [Hebrew].

¹⁰² On the question of location, see *Sifrei Deuteronomy* 154; *Mishna*, *Sanhedrin* 11:3, *Sota* 1:4; *Babylonian Talmud*, *Sanhedrin* 52b, 87a; *Avoda Zara* 8b. According to *Laws of Rebels*, the supreme court existed from the time of Moses (Deuteronomy 17) until the destruction of the Temple. According to the introduction to the *Mishneh Torah*, it continued until the completion of the Babylonian Talmud. That is, the court existed both after the destruction of the Temple and outside of Jerusalem, and therefore one can understand that the declaration regarding its location in Jerusalem refers to the ideal and describes the situation during the time of the Temple. The location of other courts also plays a significant role in reinforcing their status. See Maimonides, *Laws of Rebels* 3:7; *Laws of Sanhedrin* 14:11–13; *Book of the Commandments*, positive commandment 176.

aside from the sentence which they shall declare unto thee, to the right hand, nor to the left" (ibid.).¹⁰³

In Mishna Sanhedrin 11:2, it is said that from the court in the granite chamber, "Torah goes forth to all Israel." The Mishna refers to the fact that the sages of the court, who received the Torah, are entrusted with passing it on to the people. Certainly the talmudic sages did not mean to say that Torah was legislated by court sages, yet Maimonides does find that "the Great Sanhedrin of Jerusalem is the root of the Oral Law." One can see that Maimonides has effected a change in the mishnaic original: Instead of saying that the oral law *goes forth* from the court, he *identifies* the oral law with the court itself. This must be understood in the greater context of Maimonides' thought.

In Maimonides' writings the term "oral law" has two meanings.¹⁰⁴ In its broad meaning, the oral law is the halacha, spanning the oral tradition received at Sinai as well as the decrees and edicts of the sages.¹⁰⁵ In its narrow meaning, the oral law is only what Moses received at Sinai. Maimonides indicates that these are "matters that they learned by tradition,"¹⁰⁶ and according to this interpretation the oral law does not include the edicts of the sages and is not learned through exegetical principles.¹⁰⁷ Identifying the supreme court with the oral Torah implies that the court has extraordinary power to deal with a broad range of halachic issues. This statement is very important for understanding the potential legislative authority Maimonides grants the supreme court, and the flexible approach this represents.¹⁰⁸

The significance of the interpretive and legislative roles of the supreme court is connected with the prohibition against committing the oral law to writing. Maimonides explains that the prohibition stems from the need to include "all these matters... within the authority of *the Great Court of Law*,"¹⁰⁹ increasing the autonomy of the court. The authority of the sages also finds expression in Maimonides' statement that anyone who rejects the oral law's interpretation of Torah is a heretic against the

¹⁰³ Maimonides, *Laws of Rebels* 1:1–2, p. 138. See also *Tosefta*, Hagiga 2:9.

¹⁰⁴ See Maimonides, "Maimonides' Introduction," p. 35.

¹⁰⁵ See also Maimonides, *Mishneh Torah*, "Book of Knowledge," *Laws of Torah Study* 1; *Laws of Prayer* 7:10; and elsewhere.

¹⁰⁶ Maimonides, *Laws of Rebels* 1:2, p. 138.

¹⁰⁷ Ibid. See also Maimonides, "Maimonides' Introduction."

¹⁰⁸ See Yaakov (Gerald) Blidstein, "Tradition and Moral Authority for the Oral Torah Idea in Maimonides' Teachings," *Daat* 16 (1986), pp. 11–27 [Hebrew].

¹⁰⁹ Maimonides, *Guide*, 1:71, p. 176.

Torah itself.¹¹⁰ Scripture was committed to writing, but the interpretations remained oral, and even disagreements were preserved to prevent dispute among the people and the splintering of Judaism into sects because of some ruling that found its way into writing. According to this approach, God revealed every future innovation to Moses but did not explain them all.¹¹¹

As the court is identified with the oral law, it becomes responsible for passing on the tradition and perpetuating it. According to Maimonides, the court is the exclusive and highest national authority and has the power to legislate decrees and edicts.¹¹² It is important to note that this idea—that the court is exclusively responsible for shaping the oral law—is original to Maimonides, without any proof text from the rabbinic sources.

Maimonides begins his classification of the halachic system with a distinction between the 613 biblical commandments and other laws. He states that things learned via the thirteen principles of faith are “branches from the roots which were told to Moses at Sinai.”¹¹³ By distinguishing the roots (the 613 commandments) from the branches, Maimonides defends the heart of the Torah. While he emphasizes that all the different kinds of laws possess the same obligatory status, his distinctions form the guidelines for the supreme court’s jurisdiction in the legislation and annulment of laws.

In defining the domain of halacha and the powers of the court, Maimonides employs Deuteronomy 17:11, dividing up the verse. He finds the injunction to obey the court “according to the Torah which they will

¹¹⁰ Maimonides, *Mishneh Torah*, “Knowledge,” Laws of Repentance 3:8.

¹¹¹ See Maimonides’ treatment in *Mishneh Torah*, “Times,” Laws of Megilla 2:18; *Babylonian Talmud*, Menahot 29b. Maimonides explains the difference between talmudic halacha and the instruction of the Torah regarding the punishment of one who injures his fellow. Maimonides, *Book of Torts*, Laws of Wounding and Damaging 1:6, p. 161. That is, reality requires a “commentary” on the words of the Torah, as opposed to their plain meaning: “You should not engage in cogitation concerning the fact that in such a case we punish by imposing a fine. For at present my purpose is to give reasons for the [biblical] texts and not for the pronouncements of the legal science.” Maimonides, *Guide*, 3:41, p. 558. See also Shem Tov’s commentary on Maimonides, *Guide of the Perplexed*, ed. Samuel ibn Tibbon (Jerusalem: Barzani, 1939), 3:41 [Hebrew]; Blidstein, *Authority and Rebellion*, pp. 52–54; Levinger, “Oral Law in Maimonides’ Thought,” pp. 282–293; Moses Halbertal, “Maimonides’ *Book of the Commandments*: The Architecture of Halacha and Its Interpretative Theory,” *Tarbiz* 59 (1990), pp. 478–480 [Hebrew]; Kreisel, *Maimonides’ Political Thought*, pp. 19–23.

¹¹² See *Mishna*, Sanhedrin 11:2–4; Sifrei Deuteronomy 152–155; Maimonides, *Book of the Commandments*, positive commandment 174. See also Yaakov (Gerald) Blidstein, “Maimonides’ Structures of Institutional Authority,” *Dinei Yisrael* 17 (1993–1994), pp. 103–126 [Hebrew].

¹¹³ Maimonides, *Book of the Commandments*, second root.

teach you” to constitute an obligation to obey the decrees, edicts, and customs that the court legislates by its authority. He finds the injunction to obey “the decisions which they will give” to imply an obligation to obey the halachic decrees of the court by the authority of the biblical principles from which they are derived. Finally, the imperative to obey “everything which they will tell you” constitutes an obligation to obey all the directives of the sages insofar as they gain acceptance.

In *Laws of Rebels* 1:2, Maimonides presents three kinds of court rulings: (1) “matters that they learned by tradition... deduced by any of the hermeneutical rules by which the Torah is interpreted,” (2) “rulings which they approved,” and (3) “measures devised by them to serve as a fence about the Law... designed to meet the needs of the times.”¹¹⁴ In subsequent chapters, he explains the three elements of halacha that are connected to the powers of the supreme court: (1) tradition—the court is not the creator of laws it has received, but rather it “keeps” them and allows them to guide directives that serve the demands of reality; (2) the exegesis of sages, established according to their judgment and defined in the introduction to the *Mishneh Torah* as “judgments” and “rules”; (3) legislation—laws the court creates, including decrees, edicts, and customs. The court initiates edicts and decrees, while the people initiate customs. Maimonides grants the court the authority to formally ratify norms or to work toward their annulment where they contradict the Torah. Since they originate in the people rather than with the sages, customs are ranked at the bottom of the hierarchy of laws.

Maimonides lays out the ends to which the supreme court’s independent legislation of decrees, edicts, and customs is to be directed. The first end is religious: to make a fence around the Torah and to reinforce religion. This end is served by decrees (*gezerot*), which are intended to prevent violations of biblical commandments, and edicts (*takanot*), or new commandments. The second end is the population of the world and the improvement of society by preserving stability and the socio-political order. These ends are not mutually exclusive, nor are they always distinguishable.

Alongside new legislation, the annulment of laws and their temporary suspension are sometimes necessary in the face of a changing reality.¹¹⁵

¹¹⁴ Maimonides, *Laws of Rebels* 1:2, p. 138. Even though this presentation of the types of commandments contains no innovation on Maimonides’ part, their design as a clear system of laws with a particular distinction for every type is his contribution.

¹¹⁵ Maimonides does not include the subject of the nullification of laws in the first chapter of *Laws of Rebels* (but beginning in chapter 2 he does deal with it) or in the *Introduction to His Commentary*. On this question, see H. Cohen, “Maimonidean Theories of Codification,” *Jewish Law Annual* 1 (1978), p. 34.

It seems that for Maimonides it is possible to nullify halachot that came about through homiletic exegesis, through legislation and even commandments that come directly from the Torah. On the one hand, he considers decrees to be valid and binding, even if the reasons they were decreed in the first place have become irrelevant over time: the supreme court is “denied the right to abrogate the measure adopted by its predecessor, even if the reason which prompted the latter to enact the decree or ordinance has lost all force.”¹¹⁶ Nonetheless, Maimonides allows a formal annulment if the annulling body is superior to the legislating body.¹¹⁷ In Laws of Rebels 2:1–2, he rules:

If the Great Sanhedrin, *by employing one of the hermeneutical principles*, deduced a ruling which in its judgment was in consonance with the Law and rendered a decision to that effect, and a later Supreme Court finds a reason for setting aside the ruling, it *may do so* and act in accordance with its own opinion, as it is said: *and unto the judge that shall be in those days* (Deuteronomy 17:9), that is, we are bound to follow the directions of the court of our generation. If the Supreme Court *instituted a decree, enacted an ordinance, or introduced a custom*, which was universally accepted in Israel, and a later Supreme Court wishes *to rescind* the measure, to abolish the ordinance, decree, or custom, it is not empowered to do so, unless it is superior to the former both in point of wisdom and in point of number.¹¹⁸

In fact, here Maimonides allows a supreme court to contradict the statements of its predecessor when the initial ruling was based on one of the hermeneutical principles, even if the latter court is not superior in wisdom and number. Since interpretation is unlike legislation, in that it is an example of intellectual-halachic discourse, Maimonides permits flexibility and halachic modification and states that the court may proceed “in accordance with its own opinion.” To allow this, Maimonides uses the word “contradict” (*soter*) and not “annul” (*mevatel*). He connects Deuteronomy 17:9—the injunction to appeal to “the judge that shall be in those days”—to allow changes in halacha to keep up with the times. In stating that “we are bound to follow the directions of the court of our generation,” he makes it

¹¹⁶ Maimonides, Laws of Rebels 2:2, pp. 140–141.

¹¹⁷ Maimonides relies on the statement that “everything that requires a *minyan* requires another *minyan* to undo it” (*Babylonian Talmud*, Megilla 5a). He incorporates this statement in the halacha that requires the agreement of a court superior in wisdom and number.

¹¹⁸ Maimonides, Laws of Rebels 2:1–2, p. 140. Emphasis added.

possible for a lesser court to contradict statements of its predecessor and to adapt the halacha to a dynamic reality.¹¹⁹

Further on, Maimonides addresses the powers of the court to annul edicts, decrees, and customs promulgated by its predecessor.¹²⁰ The discussion addresses Mishna Eduyot 1:5, which states that “a court cannot nullify rulings of another court unless it is superior to it in wisdom and in number.”¹²¹ Maimonides restricts the possibility of nullifying legislation by the Sages more than he restricts nullification of *hilchot midrashim*.¹²² The broad dissemination of the law makes it difficult to nullify, on account of the danger of antinomianism.¹²³ When speaking of nullification, Maimonides seeks to preserve the stability of society and the authority of the court, and in looking at the laws that might be nullified, he distinguishes between the nature of the decrees and their purpose. He rules that the independent edicts of sages, like those of Joshua and Ezra,¹²⁴ can be nullified by a court superior to its predecessor in wisdom and in number. On the other hand, laws such as the prohibition of eating milk and poultry, which is intended to protect the prohibition in the Torah against eating the meat of mammals with milk and to make a fence around the Torah, cannot be nullified at all. The law that protects the Torah law is supposedly included in the original biblical commandment.¹²⁵ To support this idea, Maimonides appropriates the talmudic principle that “a court can nullify any statement by another court, except for eighteen things, regarding which even if Elijah were to come, his court would not obey him.”¹²⁶ The talmudic source does not identify the “eighteen things” with decrees that protect the Torah’s laws, yet Maimonides interprets them as

¹¹⁹ *Tosefta*, Rosh Hashana 2:3; *Babylonian Talmud*, Rosh Hashana 25b.

¹²⁰ Maimonides, *Laws of Rebels* 2:2, 3, 8. Note that Maimonides refers implicitly to the supreme court. Blidstein, *Authority and Rebellion*, p. 93.

¹²¹ *Mishna*, Eduyot 1:5; *Babylonian Talmud*, Megilla 2a, Moed Katan 3b, Gitin 36b; *Jerusalem Talmud*, Shabbat 1:4, Avoda Zara 2:8.

¹²² It is not always possible to distinguish between halacha stemming from interpretation and commandments received in the Torah at Mount Sinai. See, for instance, the discussion of “an eye for an eye” above.

¹²³ According to Blidstein, *Authority and Rebellion*, p. 95, “The validity of legislation which has not been accepted by the people—despite the obligation of the people to obey it!—is greatly diminished.” In my opinion, more than expressing the validity of legislation accepted by the people, Maimonides is concerned—because of antinomianism—about the nullification of accepted halachot, even if they serve no purpose.

¹²⁴ *Babylonian Talmud*, Baba Kama 82a.

¹²⁵ Maimonides, commentary on *Mishna*, Shabbat 1:3.

¹²⁶ *Babylonian Talmud*, Avoda Zara 36a.

such.¹²⁷ Still, a supreme court superior in wisdom and number is permitted to nullify other types of edicts and decrees (other than laws “fencing” or protecting the Torah) that are widely accepted but are no longer relevant. It is important to note that Maimonides limits the nullification of laws of this kind only when a court seeks to nullify the legislation of its predecessor permanently.

In Laws of Rebels 2:4, Maimonides addresses the need to nullify laws in times of emergency. He states that “the court, even if it be inferior... is authorized to dispense for a time even with these measures. For these decrees are not to be invested with greater stringency than the commands of the Torah itself, which any court has the right to suspend as an emergency measure.”¹²⁸ It is worth noting again that an emergency measure is understood as an essentially temporary act, and Maimonides again emphasizes the importance of declaring it as such.¹²⁹ Temporary acts of legislation by the court may even suspend Torah laws.¹³⁰ Here, too, sometimes legislation or suspension of laws declared to be temporary in practice amounts to a permanent measure.

The caution and sensitivity needed when updating the legal system and nullifying laws to suit a changing reality come across in Maimonides' statement that “any court that permits two things that have been declared forbidden should hesitate about permitting a third thing.”¹³¹ This concern apparently stems from a perceived threat to the stability of society. Nonetheless, this is not a binding halacha but rather a recommendation that the court restrain itself, and it is another expression of Maimonides' flexible approach. With respect to the court's role in interpreting and transmitting the tradition, there is not even a recommendation of self-restraint, despite the fact that such actions can result in the rescinding of statements by an earlier court. It goes without saying that in matters without precedent, the court acts with complete freedom.

¹²⁷ Maimonides, *Introduction to His Commentary*, p. 52.

¹²⁸ Maimonides, Laws of Rebels 2:4, p. 141.

¹²⁹ In the *Babylonian Talmud*, R. Hisda authorizes scholars to put aside teachings from the Torah indefinitely. Nonetheless, at the end of the discussion, a *baraita* is quoted from Sifrei which makes a connection with the issue of temporary nullification by a prophet. Cf. Maimonides, *Introduction to His Commentary*, p. 28 (and elsewhere), where a prophet's temporary suspension of a law must be declared as such.

¹³⁰ See Maimonides, *Mishneh Torah*, “Seasons,” Laws of Shabbat 2:1, 3; Laws of the Fundamentals of Torah 5:1; *Babylonian Talmud*, Yoma 85a–b, Sanhedrin 74a.

¹³¹ Maimonides, Laws of Rebels 2:8, p. 142. The Talmud calls such a court a *beit dina shariya* (a licentious court). Maimonides avoids this term in *Mishneh Torah* (although he mentions it in his commentary on *Mishna*, Eduyot 8:4).

According to Maimonides, the destruction of the Temple brought with it an increase in legal flexibility. He states in the introduction to the *Mishneh Torah* that “if one of the *Geonim* taught that a certain way of judgment was correct, and it became clear to a court at a later date that this was not in accordance with the view of the Gemara, the earlier authority is not necessarily followed, but that view is adopted which seems more reasonable.”¹³² After the destruction of the Temple, then, every court would exercise its own judgment and obey the halacha according to its own understanding. This is contrary to the talmudic principle that “one who asks a sage who said that something is impure shall not ask another sage who will say that it is pure. If he went to one sage who forbade, he shall not ask another sage who will permit.”¹³³

Maimonides repeatedly stresses that the sages’ ordinances and decrees are not transgressions of the biblical principle, stated in Deuteronomy 4:2 and 13:1, of not adding to or diminishing from the Torah.¹³⁴ He repeats this contention in the introduction to the *Mishneh Torah* and in Laws of Rebels 2:9,¹³⁵ seeking to protect the sages from the (principally Karaite) criticism¹³⁶ that they are violating a biblical prohibition. The talmudic sources do not consider the Deuteronomistic prohibition to apply to the legislation of the court, and neither is this their source for denying the prophet a role in legislation.¹³⁷ Maimonides, however, employs this scriptural prohibition to limit the legislative powers of both the court and the prophet, and even those of the Messiah.¹³⁸ The prophet, as seen above, is prohibited from utilizing his prophetic power to make halachic rulings,

¹³² Maimonides, “Maimonides’ Introduction,” p. 38.

¹³³ *Babylonian Talmud*, Avoda Zara 7a.

¹³⁴ Maimonides, Laws of Prayer 14:12; Maimonides, *Introduction to His Commentary*, p. 17 and elsewhere; Maimonides, commentary on *Mishna*, Sanhedrin 10, 9th principle; Maimonides, *Book of the Commandments*, negative commandments 313–314.

¹³⁵ Maimonides, Laws of Rebels 2:9, p. 142.

¹³⁶ See Maimonides, Laws of Repentance 3:8. See also D. Lasker, “Karaite Influence on Maimonides,” *Sefunot* 5 (1991), pp. 145–161.

¹³⁷ The sages interpret *bal tosif* (the prohibition against addition) with respect to the meaning of Scripture: While performing a commandment, one is prohibited from adding details to its description in the Torah (Sifrei Deuteronomy 82; *Mishna*, Zevachim 8:10). Moreover, this prohibition applied to the prophet stems from the “*Eleh hamitzvot*” homily (at the end of Leviticus). On this see Sifra Megilla 7a; *Jerusalem Talmud*, Megilla 1:5. R. Yehuda Halevi has a different explanation: In his opinion, the sages “have divine assistance,” and therefore their authority to legislate is identical to the legislative authority of the Torah. This also means that their legislation does not constitute a human addition, since it is divine in origin. Halevi, *Kuzari*, 3:41, pp. 173–174.

¹³⁸ Maimonides, Laws of Kings 11:3.

and the sages are limited in the degree to which they may introduce halachic precedent without any foundation. The fact that Maimonides grounds these prohibitions in a biblical imperative of the Torah enhances the validity of the prohibition.

While Maimonides expands the authority of the supreme court to legislate for posterity, he is careful to emphasize the distinction between such laws and Mosaic legislation. Even though reality requires the revision of laws, the core of the Torah remains protected, and nothing may be added to or subtracted from it: The people must perceive Mosaic law to be of divine origin.¹³⁹ The court's ability to change the law depends on the status of the public in legislation and its consent to that of the court.¹⁴⁰ According to Maimonides, one source of the court's authority lies in the divine directive that the people must institute a legal system with interpretative and legislative functions.¹⁴¹ This implies a consensual element, which stems from the concept that the people's faith in Moses and in the Torah is a function of their recognition of the authority of the sages and obedience to the court.¹⁴²

In Laws of Rebels 2:5–7, Maimonides states:

Before instituting a decree or enacting an ordinance or introducing a custom which it deems necessary, the court should calmly deliberate (the matter) and make sure that the majority of the community can live up to it. At no time is a decree to be imposed upon the public which the majority thereof cannot endure. If the court issued a decree in the belief that the majority of the community could endure it, and after the enactment thereof the people made light of it and it

¹³⁹ Maimonides, *Guide*, 3:41, p. 563. Blidstein, *Authority and Rebellion*, p. 164, addresses transparency in presenting an action to the people. In my opinion, this is actually a "transparency" that is intended to conceal, like Plato's night council. For, as we have said, human legislation in different contexts is equivalent to the commandments in the Torah and can even surpass them. Indeed, this same "human legislation" is in many senses the practical application of the commandments in the Torah. This attempt to distinguish between divine and human legislation invites the question discussed above, namely, to what extent is the God of Maimonides "human" or transcendental? How close is the divine, revealed law to human, rational law, since both are part of the cosmic system of reason?

¹⁴⁰ On *Ijma* and Maimonides, see Blidstein, *Authority and Rebellion*, pp. 145–149; Yaakov Levinger, *Maimonides' Techniques of Codification* (Jerusalem: Magnes, 1965), p. 183; Hava Lazarus-Yaffe, "The Treatment of Halachic Sources in Islam and Judaism," *Proceedings of the 8th World Congress of Jewish Studies* (Jerusalem: World Congress of Jewish Studies, 1982), p. 48.

¹⁴¹ Maimonides, *Book of the Commandments*, positive commandment 176.

¹⁴² *Ibid.*, positive commandment 174.

was not accepted by the majority, the decree is void and the court is denied the right to coerce the people to abide by it.¹⁴³

Maimonides here rules that the sages cannot issue a decree that the people cannot fulfill.¹⁴⁴ He finds the court responsible for determining the ability of the people to fulfill a decree before enacting it, meaning that it must be attentive and connected to the people.¹⁴⁵ Maimonides states that if the court inquired, and “imagined” that the public could fulfill a certain decree and then issued it, but it later became clear that the public was not able to fulfill it, the court may not impose the decree by force.

The people’s connection to the legislative process is also expressed in Maimonides’ idea that a decree that has spread widely may be nullified only by a court superior to its predecessor, while a decree not yet widely accepted can be nullified even by a supreme court of lesser status. An even stronger connection between the people and the legislative process is found in the notion that if a decree has been made, and the public has failed to fulfill it, it is automatically nullified, with no need for official confirmation.¹⁴⁶

Nonetheless, it is important to emphasize that, in accord with his elitist approach, Maimonides does not view the masses as a deciding or important factor in legislation. This is expressed in his statement that a “custom” which for practical purposes is “popular legislation” requires the ratification of the supreme court. The centralist concept of a supreme court, as opposed to local courts, also illustrates this point. The fact that Maimonides does not allow the masses decisive legislative authority is more heavily emphasized when compared with his attitude toward the consent of the community of sages. He speaks of “the wise men of the age, who agree”¹⁴⁷—sages who are not part of the court but are relevant

¹⁴³ Maimonides, *Laws of Rebels* 2:5–7, pp. 141–142. Emphasis added.

¹⁴⁴ Thus, for instance, the authority of the Babylonian Talmud is connected to its acceptance by the people: “Whatever is already mentioned in the Babylonian Talmud is binding on all Israel.” Maimonides, “Maimonides’ Introduction,” p. 38. On the subject of popular consent in talmudic literature, see *Tosefta*, Sanhedrin 2:13; *Jerusalem Talmud*, Avoda Zara 2:9; *Babylonian Talmud*, Avoda Zara 36a–b, Horayot 3b, Baba Kama 79b, Baba Batra 60b.

¹⁴⁵ This statement has no basis in the Talmud, which makes do with a general pronouncement that a court should avoid issuing a decree if it knows the public will not be able to fulfill it, as noted above.

¹⁴⁶ Maimonides relies on a *baraita* from the *Jerusalem Talmud*: “Any decree which is issued by the court and not accepted by a majority of the public is not a decree.” *Jerusalem Talmud*, Avoda Zara 2:8.

¹⁴⁷ Maimonides, *Laws of Rebels* 2:2, p. 141.

to the legislative process and the nullification of legislation by the supreme court.

Considering the broad mandate of the Supreme Court and the obligation to heed its words unequivocally, what happens when the court errs in its instructions?¹⁴⁸ According to the sages, “even if they tell you that right is left and left is right, obey them.”¹⁴⁹ In this vein, Maimonides states that one “is bound to follow their guidance.”¹⁵⁰ Still, Maimonides does allow for disputes between scholars and lesser courts. In *Laws of Rebels* 3:8, he discusses the situation in which a court of twenty-three members rules on a halacha it does not know through tradition. In such a situation, a scholar who refuses to accept the ruling of the court goes with the members of the lesser court to the supreme court. If the supreme court rejects the scholar’s opinion, the scholar is forbidden to teach it: “Even if he offers a reason for his decision, no attention is paid to him.”¹⁵¹ Maimonides states that the scholar will be punished if he instructs someone to act according to his opinion or does so himself.¹⁵² Here Maimonides is stricter than the Mishna in that he prohibits the scholar even from instruction, and in that he will be punished even if no one acts according to his advice.

In his discussion of court error, Maimonides distinguishes between scholars and uneducated laymen. If “a court gave a ruling that it was permissible to eat all of the fat of the maw, and one of the congregation knew that the court had erred and that the fat of the maw was forbidden, yet he ate it because of [the court’s] ruling, thinking that it was a duty to obey the court even though [it] had erred, he who eats it is liable to a fixed sin offering because of what he ate.... This applies if he who knew that [the court] had erred was a scholar or a disciple who was competent to render decisions; but if he was an unlearned person, he is not liable.”¹⁵³ That is,

¹⁴⁸ See *Mishna*, Horayot 2:2.

¹⁴⁹ *Sifrei* Deuteronomy 154.

¹⁵⁰ Maimonides, *Laws of Rebels* 1:1, p. 138. Cf. Maimonides, *Laws of the Sanctification of the New Moon* 2:10; *Mishneh Torah*, “Seeds,” *Laws of Shemita and Yovel* 10:5–6.

¹⁵¹ Maimonides, *Laws of Rebels* 3:8, p. 146.

¹⁵² *Ibid.*, 3:6.

¹⁵³ Moses Maimonides, *Mishneh Torah: The Book of Offerings*, trans. Herbert Danby (New Haven and London: Yale University Press, 1978), *Laws of Transgressions Through Error* 13:5, p. 144. Cf. *Babylonian Talmud*, Horayot 2b. See also Yaakov (Gerald) Blidstein, “Even If They Tell You That Right Is Left’: On the Power of Institutional Authority in Halacha and Its Limits,” in Moshe Bar, ed., *Studies in Halacha and Jewish Thought* (Ramat Gan: Bar-Ilan University Press, 1994), pp. 221–242 [Hebrew]; Arye Edrei, “Command or Error: On the Duty to Obey in Halachic Thought,” *Iyunei Mishpat* 24 (2001), pp. 463–517 [Hebrew].

when a learned person sees a clear contradiction of a teaching of Torah, he is forbidden to accept the ruling. Scholars are expected to use their judgment even with respect to the instructions of the court.

After the cessation of the supreme court, or Sanhedrin, Maimonides' approach enables scholars to rely on their own judgment fairly liberally. For instance, he states the talmudic principle that if there are disputes between scholars or courts, "and it is impossible to determine the correct decision, if the controversy is with regard to a scriptural law, the more stringent view is followed; if it is with regard to a rabbinical law, the more lenient view is followed."¹⁵⁴ Maimonides does not prohibit a person who asked a scholar or a court a question and received a response from asking a different scholar. Courts may rule against rulings issued by other courts.¹⁵⁵

Maimonides' discussion of the "rebellious elder" illustrates his attribution of supreme legislative and judicial authority to the court. In *Laws of Rebels* 3:1–2, he defines the rebellious elder as "one of the wise men of Israel who is at home in traditional lore" but who "is in disagreement with the Supreme Court with regard to a question of law, refuses to change his view, persists in differing with [the court], [and] gives a practical ruling which runs counter to that given by [the court]."¹⁵⁶ In his commentary on the Mishna, Maimonides describes him as one who "teaches the opposite of [the sages'] opinion in matters learned from one of the thirteen exegetical principles and the commentaries on them, for which an intentional transgression leads to divine excommunication and an unintentional transgression requires the bringing of a sin offering."¹⁵⁷ For Maimonides, a legal scholar may not independently legislate

¹⁵⁴ Maimonides, *Laws of Rebels* 1:5, p. 140, based on the discussion in *Babylonian Talmud*, Avoda Zara 7a.

¹⁵⁵ Maimonides, *Laws of Rebels* 1:5, p. 140. Cf. *Mishna*, Eduyot 1:5; Maimonides, *Laws of Rebels* 2:1.

¹⁵⁶ Maimonides, *Laws of Rebels* 3:4, p. 144. First of all, it should be noted that "He who repudiates the Oral Law is not to be identified with the rebellious elder spoken of in Scripture but is classed with the epicureans [whom any person has a right to put to death]." Maimonides, *Laws of Rebels* 3:1, p. 143. Maimonides defines an "epicurean" (*min*) as one who differs with the court on a "received interpretation which has not been learned by means of one of the exegetical principles" (commentary on *Mishna*, Sanhedrin 11:12). See also Maimonides' commentary on *Mishna*, Sanhedrin 11:3, 10:1; Maimonides, *Laws of Repentance* 3:8, *Laws of Murder and Preservation of Life* 4:10, *Laws of Ritual Slaughter* 4:16. Maimonides sometimes distinguishes between the heretic who denies the Torah and Moses, who is considered a Gentile, and the heretic who rejects the oral law, such as a member of the Karaites (Sadducees and Boethusians). Despite this distinction, their respective punishments are identical.

¹⁵⁷ Maimonides, commentary on *Mishna*, Sanhedrin 11:2; see also Maimonides, *Laws of Rebels* 4:1.

edicts and decrees, since this is the exclusive prerogative of the supreme court,¹⁵⁸ but such a scholar “does not possess the status of a *rebellious elder* unless he has been qualified and his instruction has been obeyed.”¹⁵⁹ The threat posed by the rebellious elder, then, is unrelated to whether his instruction was objectively right or wrong; it has to do with the threat he poses to political stability. The court serves to protect against situations in which “the Commandments and prohibitions of the Torah shall... be dependent on the will of the individual.”¹⁶⁰ Maimonides states that “the Torah condemns him [the rebellious elder] to death, and if he confesses before his execution he has a portion in the world to come.”¹⁶¹ One can see that the severe punishment is uncompromising: “Even if [the sages] are willing to forgo the honor due to them and let him go unpunished, it is not within their competence to do so, in order that strife may not increase in Israel.”¹⁶² In other words, his scholarly colleagues are not permitted to let personal considerations influence them, nor may they pity him. From Maimonides’ statement that the rebellious elder who confesses has a part in the world to come, we learn that the teaching of that elder, which contradicts the supreme court, does not actually constitute heresy and is not necessarily false, but the strict way he must be dealt with is due to social and political considerations.

Maimonides views the authority to legislate and annul laws through analogies to health and illness. In his *Eight Chapters*, he explains that there are cases in physical or mental treatment in which the wise men dealing with them must deviate from standard treatment methods.¹⁶³ In *Laws of Rebels* 2:4, he posits that

even as a physician will amputate the hand or the foot of a patient in order to save his life, so the court may advocate, when an emergency arises, the temporary disregard of some of the commandments, that the commandments as a whole may be preserved.

¹⁵⁸ Maimonides, *Guide*, 3:41, pp. 558–568, and 1:71, pp. 175–184.

¹⁵⁹ Maimonides, commentary on *Mishna*, Sanhedrin 11:2. Cf. Maimonides, *Laws of Rebels* 3:4; *Mishna*, Sanhedrin 11:2–3; *Babylonian Talmud*, Sanhedrin 88b; Sifrei Deuteronomy 154. While the *baraita* stipulates he is to be declared a “rebellious elder” only if others have acted as he instructed, Maimonides requires only the instruction itself. For a grammatical and linguistic explanation, see A. Ben-David, *The Language of Scripture and the Language of the Sages*, vol. 1 (Tel Aviv: Dvir, 1967), p. 210; Blidstein, *Authority and Rebellion*, p. 222.

¹⁶⁰ Maimonides, *Book of the Commandments*, positive commandment 176; Maimonides, *The Commandments*, p. 188.

¹⁶¹ Maimonides, *Laws of Rebels* 3:4, p. 144.

¹⁶² *Ibid.*

¹⁶³ Maimonides, *Eight Chapters*, p. 369.

This is in keeping with what the early Sages said: “Desecrate on his account one Sabbath that he be able to observe many Sabbaths.”¹⁶⁴

In connecting medical treatment to legislation, Maimonides emphasizes the high level of precaution, intelligence, and care required by the halachic sage. He must consider his responsibility as great as that of a doctor amputating a limb, or disregarding a biblical commandment, in order to save life. It is also clear that the nullification of a commandment is not *optional* for the legal scholar, but it is a commandment that he is *obligated* to fulfill at critical times.¹⁶⁵

Like kings, courts have access to punitive methods that deviate from the laws of the Torah when the social situation so demands.¹⁶⁶ Still, we can distinguish the type of deviation permitted to a court under special circumstances from that permitted to a king under similar circumstances. The court’s authority to administer abnormal punishment depends on a situation in which “the people have become lax and made a breach in a certain matter.” In contrast, the king’s punitive authority is much broader when it comes to punishing murderers and in decreeing the death penalty. As explained above, this is based on the different character of each of the ruling authorities: Torah and wisdom versus power.¹⁶⁷

To understand the court’s broad legislative authority, which includes a mandate to interpret the laws of the Torah, we must step aside and examine its infrastructure, dwelling on the distinction between the character of the court and the characters of the king and the prophet. As we have seen, Maimonides creates a hierarchy amongst the three ruling bodies:

The court, identified as the “crown of Torah,” is characterized by wisdom. It is an institution open to all, and “whoever desires it can win it.”¹⁶⁸ This is very different from the institution of monarchy, which relies on family dynasty and is characterized by the centralization of authority. The

¹⁶⁴ Maimonides, *Laws of Rebels* 2:4, p. 141.

¹⁶⁵ This comparison of the leadership role to medicine already appears in the writings of Plato, Aristotle, Al-Farabi, Averroes, and others. Al-Farabi describes two skills essential for a leader: a rational ability to understand general principles, and an ability to understand a specific situation, which is a medical skill acquired with experience. Al-Farabi, *Ihsa al-Alum*, cited in Shlomo Pines, “Comparisons Between Religious Legislation and Medicine in Al-Farabi and in Maimonides,” *Annual Jewish Law Review* 14–16 (1988–1989), p. 173 [Hebrew]; Izhak Englard, “The Example of Medicine in Law and Equity: On a Methodological Analogy in Classical and Jewish Thought,” *Oxford Journal of Legal Studies* 5 (1985), pp. 238, 244–245.

¹⁶⁶ Maimonides, *Laws of the Sanhedrin* 24:4, 7, pp. 73–74.

¹⁶⁷ See the discussion above regarding the king’s authority. Cf. Maimonides, *Laws of the Sanhedrin* 18:6; *Laws of Kings* 3:10.

¹⁶⁸ Maimonides, *Book of Knowledge*, *Laws of Torah Study* 3:1, p. 59a.

king is bound “to give honor to students of the Torah. When the members of the Sanhedrin and Sages of Israel visit him, he shall rise before them and seat them at his side.”¹⁶⁹ As we have said, Maimonides rejects a situation in which the king sits at the head of the Sanhedrin. Although wisdom characterizes the court, Maimonides rules it is an obligation to teach the king wisdom.¹⁷⁰ He also stresses the importance of wisdom for the functioning of the monarchy, similar to its importance in the roles of the prophet and the Messiah. The sage, the member of the court, is the ruling party with the greatest law-changing capabilities. This is because the wise man makes legal rulings and updates laws by virtue of the power of his intellect, and it is his personality that determines his status. The sage embodies independence, creativity, and at least some degree of “earthliness,” while the prophet expresses subservience and passivity. That said, only the prophet is independent in the sense of being free of having to take into account other human factors and being isolated from a collective framework.

The wise man represents institutional continuity, a link in the chain of acceptance. Maimonides explains that “there has not been one generation in which there were no speculations and innovations. Every generation would master the teachings of [its] predecessors, and from them learn and innovate.”¹⁷¹ He bases the authority of the sages on the command to obey them in the Torah and on the institutional guidelines for halachic ruling.¹⁷² The prophet, who lacks these characteristics and acts as a type of oracle, is distanced from legislation, for fear that he will undermine the entire system. Nonetheless, as we have seen, the prophet may join forces with the court to affect legislation. This partnership imprints a seal of approval on the prophet’s words, emphasizing that his change comes “from the rabbis” rather than from the Torah. This distinguishes later prophets from Moses, who could legislate and make halachic rulings through his prophetic attainment. It also relates to the prohibition of the prophet’s presenting his explanations as prophetic; he may present them as words of wisdom, like the rabbis.

Although the court represents wisdom and is the mainstay of the oral law, the Great Sanhedrin does not have absolute flexibility, nor is it a sovereign and independent legislative authority. It is neither Plato’s night

¹⁶⁹ Maimonides, *Laws of Kings* 2:5, p. 211.

¹⁷⁰ R. Abraham ibn Ezra, in his commentary on Psalms 27:4, had already stated that the priests must teach the king.

¹⁷¹ Maimonides, *Introduction to His Commentary*.

¹⁷² Yaakov (Gerald) Blidstein, “Tradition and Institutional Authority: Toward the Idea of Oral Law in the Doctrine of Maimonides,” *Daat* 16 (1986), pp. 11–29 [Hebrew].

council, which is free to legislate solely on the basis of its members' logic, nor the legislative parliament we know today. We have shown that there are severe limitations on the court's authority to amend Torah laws: The court does not comprise individual wise men restricted by their colleagues, nor is it a body of scholars restricted by precedents and by the rules of negotiation and halachic legislation. The idea of the "dignity of Torah" grounds the restriction imposed on the court when it seeks to change, annul, or enact innovations through legislative acts. In his commentary on Mishna Avot 4:7, Maimonides identifies respect for the Torah with respect for Torah scholars. In *Laws of the Sanhedrin* 24:10, he explains that "to honor the Torah means to follow its statutes and laws."¹⁷³ Any deviation from Torah law and any change in any commandment serves to damage the Torah's integrity. Any deviation, then, must be considered with the greatest care and implemented in the most minimal and modest fashion possible, so the Torah's honor is preserved.

So far we have focused on the court's authority to deviate from the law in its legislative-interpretive role when confronted with the needs of the time. We now turn to the court's authority to adapt the law through its judicial role when confronted by individual situations.

In his commentary on the first mishna in *Avot*, effectively a guide for training judges, Maimonides describes the judge as acting according to tradition. In the introduction to his commentary on the Mishna, he says:

Therefore, it is proper to revere a most learned Sage and to place him in an honorable position because he bears the tradition. He is to his generation what these earlier Sages were to their generation[....] From this we derive a great moral teaching. People should not say: "Why should we accept the judgment of so and so, or how can we follow the decree of so and so?" But that is not the case, since the judgment does not belong to the judge but to the Holy One Blessed Be He, who so commanded us, as it is written: "for the judgment is God's" [Deuteronomy 1:17]. Indeed it is all one judgment that was transmitted from one individual to another throughout the generations.¹⁷⁴

This statement seems to indicate that the judge is restrained by tradition. His authority—not based on his logic or wisdom—seems depersonalized. Does the judge have any authority to deviate from the law in order to adapt it to an extraordinary, individual case? Is he allowed to

¹⁷³ Maimonides, *Laws of the Sanhedrin* 24:10, p. 75.

¹⁷⁴ Maimonides, *Introduction to His Commentary*, pp. 69–70.

deviate from the laws of evidence in a legal discussion? After all, the laws of evidence are considered Torah laws. Nonetheless, adhering strictly to the letter of the law will impede justice toward individuals in some cases. In *Laws of the Sanhedrin*, Maimonides begins to resolve this issue:

In monetary matters, the judge should act in accordance with what he is inclined to believe is the truth when he feels strongly that his belief is justified, though he has no actual proof of it.... *Matters of this kind are matters committed to the heart of the judge, who in pronouncing judgment is to be guided by what appears to him to be a true judgment.* If this is so, why does the Torah require two witnesses? The answer is: when two witnesses give testimony, the judge is bound to decide on their evidence, although he does not know whether the evidence submitted by them is true or false.... What has been said before constitutes a fundamental of [Jewish] law. But with the increase of courts whose members are lacking the requisite moral qualifications, and when even those whose conduct entitles them to the office do not possess adequate knowledge and understanding, most courts have decided not to transfer an oath [from the defendant to the plaintiff], unless there is clear evidence [to warrant such a procedure].... Nevertheless, if a trustworthy person testifies concerning any of these matters, and the judge feels that he speaks the truth, he will deliberate before giving his opinion, [and] will not disregard the evidence, but will discuss the matter with the litigants until they acknowledge the truth of the statement made by the informant, or will have the suit arbitrated; else he will withdraw from the case.¹⁷⁵

One can see that Maimonides finds a fitting legal system to rest on the understanding and integrity of the judges. In *Eight Chapters 2*, Maimonides relates to a person's level of character and intellect and explains that a judge may ignore the laws of evidence and rule according to his own wisdom when he knows truth will be undermined if he adheres too closely to the laws. In a culture where the courts are not particularly honest or wise, however, judges must rely on the laws of evidence as uncompromisingly as possible. Maimonides repeatedly says that even in this sorry state, the judge may nonetheless stray from the laws of evidence when he fears a distortion of justice. This position is reminiscent of the words of Plato in his *Book of Laws*, where he makes the freedom of court rulings conditional on the wisdom of the courts and asserts that the legislator must restrict courts that are less wise.¹⁷⁶ We can understand that

¹⁷⁵ Maimonides, *Laws of the Sanhedrin* 24:1–2, pp. 71–72. Emphasis added.

¹⁷⁶ Plato, *Laws*, 876, in Plato, *Complete Works*, ed. John M. Cooper (Indianapolis: Hackett, 1997), pp. 1534–1535.

Maimonides, like Plato, would prefer to extend the judges' jurisdiction to judging according to their wisdom, thus overcoming the rigidity of the law and the distortion that could often be caused by adhering to the laws of evidence too closely. Wisdom is therefore superior to the letter of the law, and the judge has significant judicial autonomy to arrive at the truth of the matter, even when there is insufficient objective proof. Maimonides even warns the judge not to deny his wisdom and evade responsibility by imposing it on the witnesses.

Where the judge is doubtful, he "is forbidden to render a decision. He should withdraw from the case and let another judge, who can without qualms of conscience pronounce judgment, handle it."¹⁷⁷ The judge cannot clear his conscience by relying on the laws of evidence. If, through his wisdom, he concludes that the truth will not be revealed by relying on these laws, he should preferably disqualify himself from judging.

We can learn about Maimonides' stance on the subject of judicial flexibility in specific cases from his comments on the different punishments meted out to a respectable person and a commoner. "A common person who remains indifferent to these and similar insults may receive only an amount commensurate with his status, as the court might deem proper for him to take."¹⁷⁸ In other words, punishments are to be meted out to each individual according to his own personal profile. Deviation from the law in the form of setting a more or less severe punishment is absolutely necessary, and the judge must consider the defendant's unique profile.

In sum, Maimonides allows, and even obligates, the judge to make use of his own wisdom in extraordinary cases. He believes, like Aristotle, that the overall picture should be taken into account, and justice done according to the spirit of the law. The legislator's intention should not be thwarted by overattachment to the written word.¹⁷⁹

Nonetheless, deviation on the part of the judge stems from the public interest and the good of the people and not from the desire to mete out individual justice or to favor the individual, even in emergency measures.¹⁸⁰ Despite the deviations needed, "sometimes, with regard to some people," the judge should rule with an eye to "the great benefit that many

¹⁷⁷ Maimonides, *Laws of the Sanhedrin* 24:3, p. 73.

¹⁷⁸ Maimonides, *Laws of Wounding and Damaging* 3:11, p. 171.

¹⁷⁹ Aristotle, *Nicomachean Ethics*, 5.10.1137b–1138a; *Politics* 3.11.1282b3–6; *Rhetoric* 1.13.1374a27–b1, 1374b10–14; 16–22.

¹⁸⁰ Blidstein, *Authority and Rebellion*, p. 126; Englard, "By Way of Majority and the Problem of Integrity in Maimonides' Teachings," pp. 31–60. See a different position in Rosenberg, "And Again by Way of Majority," pp. 87–103; Rosenberg, "By Way of Majority," pp. 189–216.

people will derive from the accomplishment of the action in question.”¹⁸¹ In a similar vein, Maimonides says the court can “inflict flagellation and other punishments, even in cases where such penalties are not warranted by the law” in emergencies, so “religion will thereby be strengthened and safeguarded and the people will be restrained from disregarding the words of the Torah.”¹⁸²

Maimonides' concept of flexibility extends to differences in location, time, and particulars. It is true that with respect to the ideal period of national sovereignty, he prefers reinforcing the legislative monopoly of the supreme court. He prevents legislative pluralism in order to preclude renewed “divisions between people,” which generate sects (*Guide*, 1:71).¹⁸³ Nonetheless, an analysis of his writings reveals that even the lower local courts have a role in the legislative process.¹⁸⁴ While the activities of the lower courts may be mostly judicial, they are also authorized to issue halachot, in that they are entitled to convey information learned by tradition to individuals who refer questions to them.¹⁸⁵ Clearly lower courts lack the halachic authority of the supreme court, which may also convey innovations of its own scholars based on their thinking or on exegetical principles. Similarly, only the supreme court is authorized to deliberate when a ruling is unclear.¹⁸⁶ This deliberation is the foundation of halachic innovation, which is accepted either unanimously or by a majority opinion, and which becomes part of the “tradition” employed by the lower courts.¹⁸⁷

Maimonides' centralist tendency with respect to the ruling of the supreme court gives way with the disappearance of that body after the fall of the Second Temple. This is expressed in the autonomy he gives to regional courts. In his introduction to the *Mishneh Torah*, he writes:

If a court established in any country after the time of the Talmud made decrees and ordinances or introduced customs for those re-

¹⁸¹ Maimonides, *Guide*, 1:54, p. 126.

¹⁸² Maimonides, *Laws of Rebels* 2:4, p. 141.

¹⁸³ Maimonides, *Guide*, p. 176. See also *Book of the Commandments*, positive commandment 176.

¹⁸⁴ Maimonides, commentary on *Mishna*, Sanhedrin 11:2; *Babylonian Talmud*, Sanhedrin 88b, the *baraita* of R. Yose; *Tosefta*, Sanhedrin 7:1.

¹⁸⁵ Maimonides, commentary on *Mishna*, Sanhedrin 11:2.

¹⁸⁶ On the other hand, Maimonides speaks of a legal scholar who is qualified and permitted to teach, “basing [his teaching] either on reason or on tradition” (*Book of Judges*, *Laws of Rebels* 3:8, p. 145), despite what is said in the *Guide*, 1:71. It is possible that in this case we are not speaking of an authoritative institution that is potentially destructive in socio-political terms.

¹⁸⁷ See Maimonides, *Laws of Rebels* 1:4, as well as *Tosefta*, Sanhedrin 7:1, Hagiga 2:9; *Jerusalem Talmud*, Sanhedrin 1:14; *Babylonian Talmud*, Sanhedrin 88b.

siding in its particular country or for residents of other countries, its enactments did not obtain the acceptance of all Israel because of the remoteness of the Jewish settlements and the difficulties of travel. And as the court of any particular country consisted of individuals (whose authority was not universally recognized), while the Supreme Court of seventy-one members had, several years before the compilation of the Talmud, ceased to exist, *no compulsion is exercised on those living in one country to observe the customs of another country*; nor is any court directed to issue a decree that had been issued by another court; in the same country.... But whatever is already mentioned in the Babylonian Talmud is binding on all Israel. And every city and country is bound to observe all the customs observed by the sages of the Gemara, promulgate their decrees, and uphold their institutions, on the ground that all the customs, decrees, and institutions mentioned in the Talmud received the assent of all Israel.¹⁸⁸

Maimonides' flexibility is extended here, as he allows different communities certain independence and the opportunity to adapt the law to their needs and character, all within a defined framework. He even allows community courts to issue edicts for their local constituencies. In addition, in *Laws of Neighbors* 6:1, he explains that a local community body, or the majority of the people, has a mandate in community issues. According to Maimonides, after the destruction of the Temple there is no central body for making halachic rulings.¹⁸⁹

As shown above, in *Laws of Rebels* 2:5–7, Maimonides' conception of the ratification process for supreme court legislation also indicates the importance of local authority. In issuing edicts, the supreme court needs to take into account the view of the community, and local governmental bodies play a role in the shaping of pan-national legislation. With the loss of sovereignty and the disappearance of the supreme court, communal autonomy with respect to the issuing of edicts increased even more. This change stemmed from the necessities of reality, that is, because the Jewish diaspora had reached "remote parts and distant isles" and because "the prevalence of wars and the march of armies made travel insecure."¹⁹⁰ We thus find different communities in the same period characterized by uniqueness and diversity with regard to the character of their religion,

¹⁸⁸ Maimonides, "Maimonides' Introduction," p. 38. Emphasis added.

¹⁸⁹ It is generally assumed that these statements of Maimonides are directed against the arrogance of Babylonian *geonim* of his time who imposed their own hegemony over the entire Jewish world. This comes across in his conception of the exilarchate as a central political body but not as a supreme halachic body. One is led to the conclusion that there was a flexibility within the homogeneous, inclusive, and obligatory framework which was the Gemara, even within a given historical period.

¹⁹⁰ Maimonides, "Maimonides' Introduction," p. 37.

even though “multiplicity of opinion and the subdivisions of doctrines” threaten the survival of the people (*Guide*, 3:41).¹⁹¹

In conclusion, the supreme court’s authority can be construed as legislative, yet Maimonides does not explicitly grant it such power. That it has a mandate to issue edicts and decrees indicates its ability to shape Torah law and even to change it dramatically over time.¹⁹² On a declarative level, the change effected by the court is temporary, while in practice the change may represent a new law valid forever. The Sanhedrin is described as a stable and conservative body within the framework of which wise men can criticize their peers. These characteristics guarantee both the most careful treatment of the law in relation to necessary changes and their being viewed, in the eyes of the masses, as “new interpretations.” Apart from its legislative authority, the court has the power to decree emergency measures deviating from the normative halachic framework, with the aim of preserving the people physically or spiritually. In its judicial roles too, the court can and must deviate from the law when not doing so will distort justice toward the individual and endanger the benefits to society.

Relative to the two types of leadership considered above—the king and the prophet—the court, representing collective wisdom, has the broadest authority to effect changes in law through interpretation, legislation, judgment, enforcement, and punishment.

6. THE MESSIAH AND THE LAW

Maimonides’ discussion of the Messiah’s authority to make changes in Torah laws exaggeratedly reflects the problematic nature of the prophet’s ability to do so. From Maimonides’ realistic perspective,¹⁹³ we cannot talk of any messianic, mystic-apocalyptic vision connected to antinomian and heretical trends. He is aware of the danger of individuals’ rising up, hoping for a shortcut to redemption, and declaring themselves to be the Messiah. This is a threat to the Torah’s status and to its laws and judgments, because the Messiah represents an ideal state in which the

¹⁹¹ Maimonides, *Guide*, p. 563. See Aharon Nahlon, “Local Legislation and Independent Local Leadership According to Maimonides,” *Maimonides as Codifier of Jewish Law* (Jerusalem: Library of Jewish Law, 1987), pp. 165–174.

¹⁹² See *Babylonian Talmud*, Menahot 29a.

¹⁹³ See Amos Funkenstein, *Nature, History and Messianism in Maimonides* (Tel Aviv: Ministry of Defense, 1983) [Hebrew]; Funkenstein, “Maimonides’ Political Theory and Realistic Messianism,” *Miscellanea Medievalia* 1 (1977), pp. 81–103 [Hebrew]; Aviezer Ravitzky, “According to a Person’s Strength: Messianic Times in Maimonides’ Teachings,” in Tzvi Baras, ed. *Messianism and Eschatology* (1994), pp. 191–220 [Hebrew].

commandments may or may not retain their validity. While this threat explains the lacuna in Jewish thought on the issue of the Messiah, the increasing yearning for redemption and messianic fervor in Maimonides' time led him to make some clear rulings regarding the Messiah's status.

Maimonides unequivocally asserts that an alleged messiah who calls for changes in the Torah is false. The Messiah is depicted as a person who will appear in the land of Israel and come from those who know the Torah and its laws. Maimonides states:

If there will arise a king from the House of David who meditates on the Torah, occupies himself with the commandments, as did his ancestor David, observes the precepts prescribed in the Written and the Oral Law, prevails upon Israel to walk in the way of the Torah and to repair its breaches, and fights the battles of the Lord, it may be assumed that he is the Messiah.¹⁹⁴

The Messiah's knowledge of Torah laws ensures that he will honor and preserve them. After disqualifying miracles as a benchmark for accepting someone as the Messiah, Maimonides adds, "the general principle is: this Law of ours with its statutes and ordinances [is not subject to change]. It is for ever and all eternity; it is not to be added to or to be taken away from."¹⁹⁵ In his "Letter to Yemen," Maimonides defines the Messiah as "a very great prophet, more illustrious than all the prophets after Moses." He similarly demands that the person presenting himself as the Messiah be famously wise.¹⁹⁶

The focus on the eternal nature of the Torah is independent of the rest of the passage dealing with the Messiah's characteristics. In this way, in the clearest possible terms, Maimonides clarifies the crux of the issue. The Torah is eternal and will never become null and void. This addresses the main threat that the Messiah—a leader with the potential to undermine the status of the Torah's laws and annul or change them—was perceived to pose to society. In fact, Maimonides' Messiah is not only conversant in both the written and oral laws, he acts to reinforce the Torah's status and ensure the people's adherence to it. In the messianic period, wisdom will dominate society. The Torah's standing will not be weakened, but it will become even stronger and central to life. In messianic times, Israel will be able to fulfill its purpose and "be free to devote itself to the Law

¹⁹⁴ Maimonides, *Laws of Kings* 11:4, p. 240.

¹⁹⁵ *Ibid.*, 11:3, pp. 239–240.

¹⁹⁶ Hartman, *Maimonides*, p. 123, translated by Abraham Halkin in *Crisis and Leadership: Epistles of Maimonides* (Philadelphia: Jewish Publication Society, 1985), p. 123. See also Maimonides, *Laws of Repentance* 9:2.

and its wisdom, with no one to oppress or disturb it, and thus be worthy of life in the world to come.”¹⁹⁷

Reaching the messianic period means creating a comfortable earthly infrastructure. “In that era there will be neither famine nor war, neither jealousy nor strife. Blessings will be abundant, comforts within reach of all.”¹⁹⁸ Comfortable physical conditions from a political and economic perspective will allow man to achieve his true purpose and realize his intellectual potential. Only then, “the one preoccupation of the whole world will be to know the Lord.”¹⁹⁹ The Messiah becomes a means to moral and intellectual fulfillment through the Torah and life in the world to come.

Maimonides' stance on the legislative status of the Messiah is extreme and uncompromising. He is clearly aware of the need for extra restrictions limiting the Messiah, as opposed to the prophet: The Messiah serves the political function of the king too, and under him, political and religious power are united. Maimonides' position here is in line with his position on law and leadership prior to the messianic age.

7. SUMMARY AND CONCLUSIONS

This article has laid out Maimonides' approach to the possibility of political leadership's changing the law and adapting it to dynamic reality and individual cases without compromising its integrity.

While Maimonides supports some forms of flexibility with regard to the law, he does not recommend that government consistently bring elements into the system from without. He expands the authority of institutions to deviate from traditional law for the sake of proper political and social administration, and he provides guidelines specific to each institution that allow the law to be adapted and that strengthen the specific role of each institution in upkeeping the law. The king, as the executive, has extensive authority in the realms of enforcement and punishment. The Sanhedrin, as the interpretive-legislative-judicial institution, has a broad mandate to issue edicts and decrees. The separation of powers here prefigures that of the modern state.

The figure of the prophet works within a somewhat gray area. His executive authority is inferior to that of the king, just as his interpretive-legislative authority is inferior to that of the courts. He has a mandate

¹⁹⁷ Maimonides, *Laws of Kings* 12:4, p. 242.

¹⁹⁸ *Ibid.* 12:5, p. 242.

¹⁹⁹ *Ibid.*

to issue emergency rulings but cannot participate in updating the law through interpretation, unless he does so in the name of wisdom and not prophecy, in which case he is not superior to any other court sage.

The issue of the authority of leadership to change the law relates to the question of the ideal regime, where in Maimonides' writings the tension between the ideal and reality is pronounced. We can compare this tension to that in Plato's writings: In the *Republic*, Plato presents the rule of philosopher-kings as the ideal government, whereas in the *Statesman* and *Laws*, he regards one-man rule with superlegal authority as a dangerous form of government. Plato's government by philosopher-kings would be equivalent to prophetic rule in Maimonides' terms, yet Maimonides decentralizes authority and refrains from giving prophets interpretive-legislative jurisdiction. A permanent change in the law is possible only when the prophet joins forces with the court. The obvious difference between Maimonides and Plato here is that Maimonides does not release the prophet from his subservience to the law, even on an ideal level. In effect, for Maimonides, only Moses could ever be a prophet equivalent to a philosopher-king.

Maimonides' theory of political leadership is very realistic. He recognizes that ideal legislation is impossible, in that no written law—not even divine law—can be equipped to address every period, place, and individual. His acknowledgment of this is the foundation of a political theory that can only be characterized as admirably flexible.

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