The "Children of Prophets"–Vox Populi as Literal Vox Dei

By: FRANCIS NATAF

> They said to Hillel, "Master, what if a man forgot and did not bring a knife on the eve of the Sabbath?" He answered, "I have heard this law, but have forgotten it. *But leave it to Israel, if they are not prophets, yet they are the children of prophets!*" On the morrow, he whose Passover sacrifice was a lamb stuck it [the knife] in its wool; he whose Passover sacrifice was a goat stuck it between its horns. He saw the incident and recollected the halakhah and said, "Thus have I received the tradition from the mouth[s] of Shemaiah and Abtalyon." (*Pesaḥim* 66a)

When Hillel told his interlocutors to "leave it to Israel," it is not completely clear what he had in mind. Nor does the rest of the passage necessarily remove all its ambiguity. There, we see that the behavior of the local Jews reminded him of the law he had previously been taught. This, however, was not the only possible outcome. What if they had gotten it right and Hillel had still not remembered; would that have been enough? Also, was it not possible that they would get it wrong?

In what follows we will only address those questions tangentially, since what may be of most interest here is something else: Hillel's reference to average Jews as *bnei neviim* (children or sons of prophets) in the context of halakhah. While the notion that the Jewish People's behavior is somehow indicative of normative halakhah is found in other places (as will be discussed later), this particular formulation is only found once in the Talmud.[1] Nevertheless, the resonance this phrase had for subsequent generations who frequently and increasingly cited it[2] arguably shows that

[1] Though it is repeated on the next page, *Pesaḥim* 56b.

[2] This is usually done by just quoting the first few words of the phrase, "Leave it to Israel." However it has been pointed out on more than one occasion (see, for example, *Beit Yosef, Yoreh De'ah* 196, s.v. *ou ma'she ketav she-tachnisehu*) that these words are ambiguous, as they are also the beginning of another relevant phrase

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Hillel's formulation provided a useful summation for something later rabbis recognized in their own religious experience. Accordingly, I propose to examine how the phrase "*bnei neviim*" has been used over the generations, and its implications about the nature of post-revelational halakhah.

In approaching this topic, it is important to remember that Judaism is a system in which God ideally communicates His will through a variety of supernatural mechanisms, most prominently through prophecy. When that is not the case, the system does not function in its ideal form. It is true—as Rabbi Avraham Yitzchak HaKohen Kook points out—that the move from prophecy to rabbinic scholarship during the Second Temple period corrected certain historical imbalances. Yet, as he also writes, such a correction was clearly not the ultimate ideal to which Jews look forward. That ideal can only come when prophecy is restored.[3]

The transition from prophecy to scholarship brought about a double problem for the Jewish religion. For one, there would be no guarantee that the decisions of the human rabbinic court would align with the Torah's Divine authorial intent. Even when the rabbis would correctly refract God's voice, however, the vibrancy of the Torah's call would become highly attenuated. Clearly lacking would be the invigorating power of the prophet's divine inspiration.[4]

In view of the above, I will suggest that the concept of "*bnei neviim*," in its most expansive reading,[5] was used to address both of these issues. In the absence of prophecy, it became a channel to infuse Jewish law with divine inspiration, guidance, and vitality. Such a reading may simultaneously provide us with a uniquely Jewish understanding of the role of the

(*Shabbat* 148b) that has a very different meaning, "Leave it to Israel, it is better that they be transgressing by accident (*shogeg*) than transgressing on purpose (*mezid*)!" That ambiguity makes it difficult to be certain how often our phrase is being referenced.

3 See *Derekh Ha-Teḥiyah*. Translated as "The Road to Renewal" in Ben Zion Bosker, *Abraham Isaac Kook* (New York: Paulist Press, 1978).

4 This is particularly weighty in view of the fact that, with the sealing of the Talmud, many decisions—whether correct or incorrect—were sealed into Jewish law, until the time that a Jewish supreme court can be reestablished. Rabbi Aharon Lichtenstein once told us that Rabbi Shlomo Zalman Auerbach was of the opinion that when a new Sanhedrin is reconstituted, it would overturn many laws that were based on earlier authorities' incomplete knowledge of science.

5 While I will argue that this is the reading more generally adopted by the Jewish tradition as expressed through the many halakhic decisions that incorporated it, it is important to note that the *Talmud Yerushalmi* (*Pesaḥim* 6:1, and see *Korban Ha-Edah*, s.v. *she'ein lo beit av*) may well have sought to limit its application only to cases similar to that of Hillel, where the popular opinion could be subsequently endorsed by an earlier authoritative tradition.

general populace in the determination of conventional religious and legal standards.

While I will not be taking a historicist perspective that external intellectual and social trends gave the phrase a meaning that Hillel never intended, I will be noting the influence of these trends on the phrase's popularity at different times in history. It would be natural if these trends gave the idea greater resonance for Jews living in those time periods when similar ideas were part of contemporary discourse. Of particular interest, we will note the *bnei neviim* idea's particular resonance in the Modern period, at which time related ideas gained particular prominence. In this regard, we will see that this is the period when master Jewish thinkers most clearly took the idea out of the exclusively halakhic realm and also brought it more straightforwardly into the world of Jewish theology and thought.

I

As opposed to some of the other formulations of the role of the Jewish People in determining halakhah, the expression "*bnei neviim*" is tinged with mystical overtones. The term is first found in the Bible, when prophecy was part of the fabric of Jewish life. There, it refers to the students of some of the prophets and not to their literal children.[6] In the Talmud, however, it cannot be speaking about their literal students nor their children, as prophecy had already ended many generations earlier. Hence, the word "children" here would be better understood as descendants—whether to mean that Jews are the Biblical prophets' literal or spiritual descendants, or both. Regardless, the implication is that since Jews are descended from prophets, they will somehow be better equipped to know the correct interpretation of God's Torah.

Yet the suggestion that prophecy has anything to do with halakhah is far from obvious. Granted, the Talmud occasionally uses verses from the prophets as legal proof texts.[7] Nevertheless, an important distinction exists between the completely reasoned formulation of halakhah, on the one hand, and the divine inspiration of prophecy, on the other. Nor was this distinction lost on the Sages. This would seem to be at the center of Rabbi

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6 See the stories connected to Elisha in *II Melakhim*, starting with 2:3 (and see *Targum Yonatan* and Radak on the verse) which is the context in which they are most frequently mentioned. See also *Mishneh Torah, Hilkhot Yesodei Ha-Torah* 7:5.

7 See *Berakhot* 32b, for example, where the law that a priest who has killed may not bless the people is ostensibly derived from *Yeshayahu* 1:15. Usually, however, what such a prooftext indicates is the existence of a pre-existing law, rather than the verse actually being the source of the law.

Yehoshua's famous declaration that we do not give any halakhic weight to a divine oracle but must rather come to halakhic decisions exclusively from rational analysis and debate. Hence, he scolded the walls of the study hall that were prophetically indicating that the halakhah should follow the minority opinion of Rabbi Eliezer, telling them, "If Torah scholars are contending with each other regarding halakhah, what is the nature of your [involvement in this dispute]?"[8]

In the context of the actual story in *Pesaḥim*—and were we to ignore Hillel's formulation—one would have thought that the role of the people had nothing to do with any prophetic insight. Rather, Hillel was simply crowdsourcing the memory of practice: Since the question at hand was almost certainly one that had been relevant in previous years,[9] there was no reason that the memory of a rabbi or sage would have been any better than that of anyone else in the crowd. Hence, there was little to be gained by limiting this part of the process exclusively to Hillel's rabbinic colleagues. The more memories brought in, the better. Even if the general populace would not necessarily have known or remembered the reasons for the law, they would still have remembered its actual practice.[10]

If, however, the latter was all that Hillel meant, why did he need to say that they were children of prophets? All we would have been interested in is their memory, something which presumably has nothing to do

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8 *Bava Batra* 59b. See also the generally negative reception given to the medieval halakhic work, *Sheilot u-Teshuvot min ha-Shamayim*, which purported to be based on the author's prophetic encounter—as found in *Yeḥaveh Da'at* 1:68. Though much of the issue there was its lack of any contemporary precedent, nevertheless the whole reaction of *lo ba-shamayim he* (it is not in Heaven) is one that has more general application, indicating that prophecy has no room in halakhah at any time and in any way. See, however, Ephraim Kanarfogel, "Dreams as a Determinant of Jewish Law and Practice in Northern Europe During the High Middle Ages," in David Engel et al., eds., *Studies in Medieval Jewish Intellectual and Social History: Festschrift in Honor of Robert Chazan* (Leiden: Brill, 2012), pp. 111-143.

9 This occurred at a time when months were based on actual sightings of the new moon, which is why this is only an extremely likely assumption and not something we can take for granted.

10 The rejection of such a position is also implied in the words of R. Yehudah Rosanes (*Parashat Derakhim* 15:24): "That which Israel does is an indication of the matter's truth." Were it only a question of memory, why should this always be the case? Hence, if Hillel meant—as it appears that he did—that Israel could always be relied upon, why was he so confident about their remembering the right practice and not the wrong practice? After all—as we will relate to in Section III—there is a vast literature of responsa in which rabbis address popular practices which were clearly incorrect from a halakhic perspective.

with their being descended from prophets. Had gentiles been present and mindful of Jewish practice, they could have easily played the same role. While it is not impossible to say that Hillel was merely waxing poetic, such is not the way words recorded in the Talmud are generally understood in the Jewish tradition. Rather—as would be amplified by later generations[11]—the use of the phrase "*bnei neviim*" would seem to imply some divinely aided intuition that qualified the Jewish populace to weigh in on the determination of halakhah.

II

The first fairly clear use of *bnei neviim* in halakhah seems to be found in the responsa of Rashba (Shlomo ben Aderet, 1235-1310).[12] This usage is then cited by Rivash (Isaac ben Sheshet, 1326-1408) who, himself, uses it independently on at least one other occasion (*Shu"t Rivash* 249, 349 respectively); and subsequently found in the responsa of Shimon ben Tzemaḥ Duran (1361-1444, *Tashbatz* 2:73, 2:109, 4:3). Before too long, it became used more widely, partly due to its numerous mentions in R. Yosef Karo's (1488-1575) influential *Beit Yosef*.[13]

A good example of its early use can be found in *Tashbatz* 2:73. The question he answers is about a letter *hey* in a *Sefer Torah* that is completely connected and therefore looks like a *chet*. Since Duran finds sources in both directions, he ultimately decides to let the current practice of using such a *Sefer Torah* stand, since Jews are like "the children of prophets." It is true that he points out that the cost is not too great here, since there is an opinion that one can make a blessing even upon an invalid *Sefer Torah*.[14] Nevertheless, his decision between two compelling arguments is ostensibly still determined by those he calls "the children of prophets." For had the authority of *bnei neviim* not been in place, the general rules of halakhic decision-making would have suggested a decision in the opposite direction: When there is a question that cannot be resolved, the prescribed response is *shev ve'al ta'aseh adif* (passivity)—meaning to refrain from the act in question. The invocation of *bnei neviim* here then is that which allows

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11 See sections II and VII below.

12 4:296 and 5:234. Though he does not use the full phrase, such that it can be interpreted otherwise—see note 2—this would seem to be his meaning and that is how he is understood by Rivash. Rosh (1250-1327) also uses this phrase (*Teshuvot Ha-Rosh* 2:8), but it is more open to being interpreted otherwise.

13 *Orach Ḥayyim* 9, 253, 629; *Yoreh De'ah* 64, 110, 196 (cited earlier), 228; *Even Ha-Ezer* 96.

14 *Tosafot* on *Megillah* 9a, s.v. *bishlama*. *Shu"t Rambam* 294 would presumably be a clear precedent as well.

us to continue reading from, and pronouncing blessings over, such a *Sefer Torah*.

By the time the concept reaches Radbaz (David ben Solomon ibn Zimra, 1479-1573), *bnei neviim* takes on an even more robust form. Here it is no longer used to just rule between two possible established rabbinic positions. Rather, it makes the prevailing popular response to a new situation the litmus test for how that case should be decided. So, for example, when the contemporary technology of burning incense was noted to be different from that used in the time of the Talmud (at which time it had been permissible to set it up before Shabbat for use on Shabbat), Radbaz first (and, presumably, foremost) advises his questioner to "leave it to Israel."[15] The questioner's preface that nothing had previously been written about this new technology is significant, since we might have thought that the first thing Radbaz would do was to analyze the situation according to whatever parallels could be found in the classical sources. That is not to say that this is not done at all, as Radbaz in fact does proceed to muster sources defending the contemporary practice. But the structure of the responsum suggests that this reasoning is ex post facto and that the concept of *bnei neviim* is what gives the reasoning its ultimate justification.

The above is the way more recent *poskim* have used the concept as well. For example—contra R. Ovadiah Hadayah, who explicitly writes that we should ignore the common practice of "*charedi*" doctors who treat gentile patients on Shabbat, R. Ovadiah Yosef tells us that we should look at their practice as something which reveals the halakhah.[16] Just as in the case of Radbaz's new incense, the institutionalization of medicine—such that Jewish doctors now are expected to treat critically ill non-Jewish patients on Shabbat—was not something commonly found in Talmudic or medieval times. Moreover, it appears to be clear from both Rabbis Ovadiah that they understand the practice of Jewish doctors as having emerged without clear rabbinic consultation (though it should perhaps be noted there had been earlier decisors who had ruled permissively[17]). Nevertheless, according to R. Yosef, the intuition of *bnei neviim* has a real place in the determination of this halakhah.

The rationale behind this is best—and perhaps most radically—formulated by Rabbi Eliyahu Rogler (1794-1849), one of the leading students of R. Chaim of Volozhin:

> That which the practice is agreed upon among all of Israel (*Klal Yisrael*), it is according to the holy intuition (*ruaḥ ha-kodesh*). [It is] such

15 *Teshuvot Ha-Radbaz* 2:637.

16 *Yabia Omer* 8:38.

17 For example, *Piṯhei Teshuvah* 154:2, based on *Ḥatam Sofer* 131.

> that God, may He be blessed, appears among them; and they actually practice as from the mouth of a prophet. As, on account of [their] will and action for the sake of Heaven, God gives all of Israel the holy intuition [as to] how to practice. And there is a proof about this from *Pesaḥim* (66a), "leave it to Israel, if they are not prophets, yet they are the children of prophets!"[18]

This noticeably gives the phrase a more expansive meaning than if it was only applied to cases exactly like that of Hillel, in which the crowd was being used to help locate the correct position already determined by the rabbis. Rather it was understood to allow the decisor to rely upon popular practice to make a decision, even when it is ostensibly against the position he recognizes as technically correct according to the sources. True, a decisor's mention of popular practice seems to almost always be accompanied by some legal rationale that seeks to explain the popular position. That rationale, however, is still often presented as something which could not have stood on its own merits and would have otherwise seemingly been discarded.

III

Though not our main focus, we should briefly note the relationship of *bnei neviim* to the role that custom takes in the formulation of halakhah more generally. This is a topic that has already been discussed at length by towering scholars such as Jacob Katz, Haym Soloveitchik and others. Here we will only summarize some of their conclusions and note the surprising contrast with what we have seen so far:

As opposed to financial matters, which is an area of law in which the Talmud already allots ipso facto legitimacy to local custom, ritual law is theoretically more immune. Indeed, this was the general rule and would seem to have left little room for the authority of custom. The well-known exception is its treatment by the early sages of Ashkenaz, who elevated the status of custom even in matters of ritual law to the point that it became almost as authoritative as the Talmud itself. That is to say, that for many of the Tosafists, an apparent contradiction between the Talmud and local custom was just as much in need of a resolution as an apparent internal contradiction in the Talmud.[19] (Though this tradition would weaken over time, its influence carries on to this day, especially among these sages' spiritual descendants in the Ashkenazi world.)

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[18] *Yad Eliyahu* 1:25. As we will see in section VII, this clear association with mystical inspiration dovetails its subsequent development in Jewish thought.

[19] Haym Soloveitchik, "Religious Law and Change," *AJS Review* 12:2 (Fall 1987), p. 212.

The novelty of this approach is better appreciated when contrasted to the more normative approach prevalent in Sefarad, Provence, and Babylonia, which did not give custom such weight, especially when those customs seemed to be in clear opposition to Talmudic law. The understanding about such customs in those regions was that the community had developed a mistaken or illegal practice. The local rabbis would then have to either fight or work around them, depending on the seriousness of the problem and how entrenched the custom was.

As Soloveitchik puts it:

> [While] the Franco-German community… could not imagine any sharp difference between its practices and the law which its members studied and observed with such devotion… the Provencal … and Spanish ones had no such self-image, and it never occurred to the scholars of those communities … to seek to align their people's practices with the written word.[20]

For our purposes, what is most significant is that it was precisely in the latter communities—dismissive of custom as they were—that *bnei neviim* was first used and developed. Of course, *bnei neviim* was not being invoked to legitimate communal practices that seemed clearly mistaken, but rather more judiciously to decide cases in which there were two or more justifiably possible conclusions. Still—taken at face value—it was used to see what popular intuition had determined to be the right practice.

It should, however, perhaps be said that although custom held more weight in Ashkenaz, its theoretical underpinnings were actually more modest. As formulated by Isaac Lifshitz, the approach in Ashkenaz was based on an "assumption that the community always consulted with the rabbis," such "that customs were constituted by the decisions of local [rabbis]."[21] This assumption would, of course, distinguish it from the cases we have been discussing in previous sections, in which the decisions were looking to the people's intuition, and not just to their memory. Seen in this light, the assumptions of Ashkenaz only saw the actual case of Hillel as a precedent; whereas the rabbis of Sefarad gave Hillel's teaching broader application—at least, theoretically.

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20 Soloveitchik, p. 211-12.

21 "Custom in Ashkenaz in the Middle Ages," Joseph Isaac Lifshitz, Naomi Feuchtwanger-Sarig, Simha Goldin, Jean Baumgarten, Hasia Dine, eds., *Minhagim, Custom and Practice in Jewish Life* (DeGruyter, 2019), pp. 78-9. See also Jacob Katz, "Alterations in the Time of the Evening Service," in *Divine Law in Human Hands* (Varda Books, 2009), pp. 88-127.

This distinction brings into relief that *bnei neviim* is going in a very different direction than the more common use of popular precedent. Restated, the classical and more common justification of common practice was that it reflected the forgotten halakhic decision of a qualified rabbinic authority. Though Hillel's original case may or may not have been based on such an assumption, the principle he invoked was eventually taken to mean something much more radical—that the authority of such a decision came not from the original decisor, but from its popular acceptance—something which, as we discussed earlier, was already latent in his words. The important corollary was that the same holy intuition that gave a decision its authority could function to give authority to a practice even when a formal rabbinic decision had never occurred. In other words, the use of the *bnei neviim* concept went beyond what most rabbis would have been willing to consider simply because a practice had become customary. Rather, it was seen as having a role in the present determination of the halakhah, weighing in as an additional voice among the various opinions, a voice the nature of which would not only make it distinct but sometimes even decisive.

IV

There are at least two other relevant Talmudic constructs that should be touched upon before we go further. The first is the principle that a decree that most of the community is not able to follow is automatically repealed;[22] the second is the idea of *puk hazi mai amma davar* (go and see what the people are doing)—the idea that rabbis sometimes explicitly seek to observe popular behavior to gain clarity about a law.[23]

Regarding the first construct, the dismissal of a decree that is not upheld by the community can be seen in more than one way. From both a pragmatic and positivist perspective, a law that is on the books but only partially observed undermines the legal system as a whole. Since one law is treated as optional, there is rarely such a clear distinction between that law and others that would prevent people from extending how they treat it to how they will eventually treat other laws as well. According to this formulation, the ideal would be for the community to have observed the decree. However, once it has become clear that this is not happening, the law is expunged *ex post facto*. Not only does this approach not show the popular wisdom associated with the concept of *bnei neviim*, it could be understood to show just the opposite—that even though the experts have

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22 *Bava Kamma* 79b; *Bava Batra* 60b; *Avodah Zarah* 36a.

23 *Berakhot* 45a; *Eruvin* 14b. (See also *Yerushalmi Pe'ah* 7:5 for a similar but more complete formulation of this idea.)

determined that a certain law would benefit the community, the community's laziness or recalcitrance sometimes gets in the way.

The above, however, is not the only way to look at the repeal of such decrees. It would be equally plausible to understand popular rejection of a decree as a correction of a mistake made by the rabbis who originally enacted the decree. According to this way of looking at it, observance of the decree was never the ideal; but the only way to ascertain that this was the case was to first decree it and then see whether the people's semi-prophetic intuition would go along with it or not. Here popular compliance is seen as an affirmation that serves to refine rabbinic legislation. The rabbis make their decrees without final clarity as to whether it is appropriate for the Jewish People—at least in this particular formulation at this particular time. The ratification of their decrees can only be finalized by how the Jewish People respond to them in practice. When they refuse to comply, it is not because of their baser natures, but rather due to their spiritual sensitivity and intuition as to what is appropriate and what is an unnecessary hardship.

Ostensibly, *puk ḥazi* should be more easily aligned with the concept of *bnei neviim*. For that reason, it is often mentioned in tandem with it in some responsa. Yet even here, it should not be seen as identical, as there is nothing in *puk ḥazi* that automatically leads us to the radical implications of *bnei neviim*, which turns popular intuition into a source of authority. Instead, *puk ḥazi* could well be rooted in the more conservative understanding of Hillel's case, in which Hillel's identification of the local Jews as *bnei neviim* would ultimately just be poetic. This would align with the aforementioned Tosafist assumptions that the people were only doing what they had learned to do from the rabbis of earlier generations. Understood in this way, we are only interested in popular memory and not in popular intuition.

Hence, while both concepts just discussed could be aligned with the more expansive understanding of *bnei neviim* at the center of this article, it is not clear that this is the case about either. That which is found in *bnei neviim*, but lacking in these two concepts, is a linguistic formulation that suggests a connection between the people and something beyond themselves, i.e., the idea of being children of prophets. While these two concepts could have been formulated with this in mind, their neutral language leaves much room to argue otherwise.

V

There is another interesting—though admittedly post-Talmudic—phrase found in the halakhic discourse which is actually much closer to the notion of *bnei neviim* than the other phrases just discussed. First found in the early Renaissance (late Rishonim), that phrase is "*kol hamon ke-kol Shaddai*"—literally, "the voice of the masses is like the voice of the Omnipotent."[24]

This formulation was apparently adapted from Western parlance of the time: We find the similar Latin phrase "*vox populi, vox Dei* (the voice of the people is the voice of God)" in use from at least 800.[25] Among its more famous usages is when the Archbishop of Canterbury, Walter Reynolds, brought charges against King Edward II in a 1327 sermon; and the famous Whig tract that used the phrase as its name (1709-10).

The Hebrew phrase seems to be found first in Yitzḥak Abarbanel's *Naḥalat Avot* commentary on *Avot* (3:9). Abarbanel explains that a very large group of people are always able to get to the truth of a matter and cannot be fooled. Abarbanel took this idea and reasonably used it to understand the mishnah that tells us, "Anyone from whom the spirit of men finds pleasure, from him the spirit of God finds pleasure" (*Avot* 3:10). Though its adaptation to the mishnah puts it into a more Jewish framework, Abarbanel seems to understand the mishnah as something that applies to people more generally and not just to Jews (something we noted Hillel might have meant as well, had he not used the phrase "*bnei neviim*"). This is made clear by his invocation of the generally positive impression made by Avraham on the gentiles that surrounded him—"since the truth is always with the aggregate of people (*bnei ha-adam*)." The idea here is that since so many people had this impression, Avraham must have truly been a fine individual.[26]

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24 Based on wordplay from *Yeḥezkel* 1:24, which has nothing to do with this idea.

25 The Saxon scholar and teacher Alcuin of York (735-804), then Master of the Palace School at Aachen, refers to this phrase in a letter to Emperor Charlemagne in 800. He wrote, "And those people should not be listened to who keep saying the voice of the people is the voice of God, since the riotousness of the crowd is always close to insanity."

26 In our own day, a variation of this understanding of *vox populi*—the notion of crowd wisdom—has become the subject of greater attention. See James Surowiecki, *The Wisdom of Crowds: Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies and Nations* (New York: Doubleday, 2004), who shows how crowds are often more likely to reach the best understanding of something, even when contrasted with experts. It should be

It appears, however, that it took R. Shmuel Uzida (1545-1604) to make Abarbanel's application of *vox populi* dovetail with the notion of *bnei neviim* and take it from the rationally observable to the mystically understood.[27] For not only does Uzida omit Abarbanel's example of Avraham and his gentile neighbors, he brings a prooftext that relates to the Jewish People's prophetic aptitudes—"And I will put My spirit into you" (*Yeḥezkel* 36:27). Given that this phrase had previously been understood as referring to the prophetic spirit that will be the future lot of the Jewish People as a whole, Uzida was clearly invoking a more literal understanding of *vox populi* when the *vox* in question comes from Jews.[28]

Without using the phrase "*kol hamon*," Maharal (ca. 1515-1609) also cites the verse in *Yeḥezkel* to explain the mishnah in question, explicitly describing it as referring to a prophetic spirit. Almost certainly limiting himself to the Jewish People, Maharal further explains that the accuracy of the masses is something spiritual and intrinsically connected to God, such that the voice of the aggregate (*klal*) is literally equivalent to the voice of God.[29]

That the concept of the voice of the people is the voice of God would become further integrated into Jewish consciousness is shown by its inclusion in R. David Shlomo Eybeschutz' (1755-1813) *Arvei Naḥal*,[30] in which it is mistakenly identified as a verse in Tanakh! Yet—perhaps due to its far-reaching implications as perceptively spelled out by Maharal—it is not something that would be frequently accessed. While aligned with the idea of *bnei neviim*, the implications of *kol hamon* went even further, into a realm that most normative Jewish thinkers were perhaps not prepared

noted that critics of Surowiecki were quick to point out that this cannot be applied universally and that there are types of cases where crowds are less correct than experts. But since the latter has generally been assumed to be the default, it is of less interest to us here than Surowiecki's old/new claim that crowds somehow frequently come up with a more correct conclusion than experts. Israeli judge, Avraham Tannenbaum, has further noted the application of this idea to the role of the public in halakhah, "*Al Ḥokhmat Ha-Tzibbur ve-Keviat Ha-Halakhah*" (Hebrew), *Da'at*, Jan. 2009 (https://daat.ac.il/mishpat-ivri/skirot/338-2.htm).

27 Another interesting contribution to the discussion is Uzida's assertion that the concept is not referring only to unanimity, but more simply and usefully to a large consensus.

28 Abarbanel on *Yeḥezkel* 36:27. It is true that Uzida brings this prooftext in the name of R. Yosef Nachmias as an additional idea; but its relation and immediate proximity to the previous idea makes it appear that Uzida perceived them to be complementing one another.

29 *Derekh Ḥayyim* 3:10.

30 *Arvei Naḥal*, *Bo* 3.

to enter. For while the first seems to be limited to the responsive (i.e., the crowd weighing in only when consulted by the rabbis), the latter could well be self-initiated. In other words, Hillel chose to consult with the people—something modeled on what was presumably the preordinate mechanism of prophetic oracles as well. He could just as equally have ignored them. The concept of *kol hamon*, however, seems to free the people from this requirement of having to wait until they are consulted. Since they were only children of prophets, and not actual prophets, giving this prerogative over to the masses would have detrimentally undermined rabbinic authority. Hence, the Talmudic formulation of *bnei neviim* remained the preferable—because more limited—expression of the Jewish People's divinely rooted intuition about the right thing to do in any given situation.

VI

Before we get to the development of the idea of *bnei neviim* by more recent rabbinic writers, it will be instructive to take one more slight detour. The reason for this is that modern Jewish writers may well have also been influenced by another related idea current in the 19th century, the notion of national spirit or genius (*Volksgeist*). This concept, which comes close to being a type of national intuition, found important expression in the writings of Johann Gottfried Herder (1744-1803) and, more famously, in those of Georg Wilhelm Friedrich Hegel (1770-1831). As a result of Hegel's great influence on many writers of the day—including Jewish ones—the inspiration for the use of related traditional Jewish concepts such as *bnei neviim*, becomes somewhat blurred.

To be sure, both Herder and Hegel offered a more secular—if not completely unmystical—understanding of this spirit, explaining it as something formed over time as a result of a common language, land, and culture. Nevertheless, some religious Jewish thinkers of the time found the idea to have particular resonance with the Jewish experience. The most important figure in this regard was Nachman Krochmal (1785-1840). Perhaps best described as a philosopher of Jewish history, Krochmal sought to explain the genius of the Jewish nation as it was reflected through its history.

On the one hand, Krochmal's *Moreh Nevukhei Ha-Zeman* accepts Hegelian philosophy and Hegel's approach to nations as a given. In that sense, Krochmal's reading of Jewish history can be read as a primarily secular one. On the other hand, he also wrote—as will be immediately explained—that the Jewish national spirit was something that transcended normative Hegelian parameters, thereby allowing it to be understood in

the more metaphysical light by which Jews had traditionally seen themselves:

According to Hegel, all nations were particularistic expressions of a universal Spirit that all were advancing. Hence, each one would naturally come into existence, flourish, and die in the same way as individual human beings. Yet even Hegel recognized that the Jewish nation seemed to defy this paradigm, surviving way past its normal life span and the conclusion of its function. Krochmal explained this by claiming that the Jewish national spirit was unique and represented something more universal than that of all the other nations. While other nations express the advancement of universal Spirit, only the Jews had already come to embody it.[31] What is important here is that Krochmal proposed that the Jewish national spirit was uniquely elevated. Hence, even were one to view this in purely secular terms, the Jewish People embodied qualities that demanded respect. While not the same as the *bnei neviim* concept, Krochmal's understanding of the Jewish People could also lead to the conclusion that rabbinic leaders would be well advised to take the Jewish popular voice into consideration.

Somewhat more famous, Solomon Schechter's writings about "Catholic Israel" should be read against this background. Whether or not Schechter intended it to become the guiding principle of Conservative Judaism it subsequently became, he used the term to stake out the position that the practice of the body of loyal Jews played a decisive role in determining Jewish law. While this sounds very much like Hillel's teaching of *bnei neviim*, it was more likely rooted in Krochmal's adaptation of Hegel than in Jewish tradition per se.

Krochmal's influence on Schechter appears to be beyond a doubt. He could not have been excluding himself when he noted that every page of Krochmal's *Moreh* led to a variety of subsequent writings, pointing out that one might miss this since these writings frequently failed to mention him by name.[32] This is all the more likely since Schechter writes[33] of him as one of the great heroes who saved Judaism from mortal threat. To give an idea of the importance with which this endows Krochmal, the other

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31 See Shlomo Avineri, "The Fossil and the Phoenix" in Robert L. Perkins, ed., *History and System: Hegel's Philosophy of History* (Albany: SUNY University Press, 1984), pp. 47-63; Jay Harris, *Nachman Krochmal: Guiding the Perplexed of the Modern Age* (New York: NYU Press, 1991), pp. 126-136; and Yehuda Mirsky, *Rav Kook: Mystic in a Time of Revolution* (New Haven: Yale University Press, 2014), pp. 79-81.

32 Harris, p. 321.

33 Solomon Schechter, "Rabbi Nachman Krochmal and the Perplexities of the Time," *London Jewish Chronicle* (February 4, 1887), p. 11.

figures listed are Rabbi Yochanan ben Zakkai, Saadiah Gaon, and Maimonides. It should further be noted that Schechter writes with the awareness of Krochmal's indebtedness to Hegel, even as he himself admits his own unfamiliarity with this source of Krochmal's inspiration.

Another candidate for such an influence would be Rav Kook. More generally, Rav Kook's understanding of the dialectics of Jewish history strongly dovetails Hegel's historical dialectics. But more than Schechter or even Krochmal, Rav Kook invests the Jewish national spirit that moves through time with divinity.[34] In this way, it can be suggested that Rav Kook only adopts the Hegelian prism to illustrate the pre-existing idea of *bnei neviim*.[35] Hence, for Rav Kook, the Jewish *Volksgeist* would not simply be coming from a culture marked by its involvement with God, but rather from God Himself.

Given its currency at that time, however, it is not only those who had read Krochmal (and/or Hegel and Herder) who would have been influenced by the idea of *Volksgeist*. While it is true that some of the other rabbis we will mention in the next section were more isolated from the currents of Western thought, it is unlikely that anyone who had any significant contact with the wider public (even the wider Jewish public) would not have encountered this idea on a popular level.

VII

At this point, it seems clear that Krochmal's adaptation of the *Volksgeist* idea was partially responsible for the subsequent frequency with which one finds the related concept of *bnei neviim* among traditional Jewish thinkers. It was not, however, the only factor. Indeed, it is no coincidence that many of the writers who speak about *bnei neviim* came disproportionately from the world of Chassidut. While Krochmal may have in one way or another been an influence on them as well, the main inspiration was likely to be found in Chassidut itself. This should be no surprise, given that Chassidut was a populist movement that sought to dignify the status of the common Jew. Looking to root this project in traditional sources, it is certainly no wonder that many of the Chassidic teachers brought new focus to the idea of *bnei neviim*.

Accordingly, we find several Chassidic masters reinforcing the authority of ostensibly non-binding customs by telling us that these customs

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34 See Mirsky, *Rav Kook*, pp. 77-81.

35 This would be very much in keeping with my description of Rav Kook's modus operandi with non-Jewish sources in "Rav Kook, Nietzsche and Jewish Intellectual Pluralism," *Tradition* 54:3 (Summer 2022), p. 66.

must have proper roots, given their practice by the Jews, who are *bnei neviim*.[36] The trust given to the Jews by these masters, however, is not limited to the Jewish People as a whole, but rather applied to the individual Jew as well. R. Tzadok Ha-Kohen expresses this as follows:

> All of Israel are the children of prophets; as they are the children of Avraham, Yitzchak, and Ya'akov, who were prophets. And as a result of this, every Jew has holy intuition (*ruaḥ ha-kodesh*) to direct the acts that he does.[37]

That is to say that while it is certainly possible for a Jew to ignore the semi-prophetic internal voice within, his actions, nevertheless, are commonly informed by that voice.

It was not only among the Chassidim, however, that this concept received broader and more sustained attention in the Modern period. Several non-chassidic rabbis, who endorsed some of the changes driven by laymen at the time, found their intuition about the wisdom of the masses reinforced by this concept. This was most pronounced among the rabbis supporting the Zionist movement, who saw *bnei neviim* as an important bulwark for their position. Rav Kook would certainly be near the top of a list of such rabbis. Of course, it may well also have been his sympathetic exposure to Chassidic thought that brought him to the concept of *bnei neviim*, as well as his exposure to Western thought and the Jewish thinkers who had been interacting with it. But perhaps more than anything else, it was a result of his need to root his support of the lay-driven Zionist movement (as well as his sympathy for other lay-led Jewish movements of the time) firmly in Jewish tradition.

The above notwithstanding—and as with the case of the Chassidic masters—the concept of *bnei neviim* fit quite organically with Rav Kook's general *Weltanschauung*. In other words, it was not an isolated position but something that melded seamlessly into a worldview that did not see human value as a monopoly of the learned elite. Although Rav Kook only mentions the term "*bnei neviim*" a few times, his thought is permeated by a mystical trust of the Jewish People more generally. Hence, *bnei neviim* was not the only reason for this controversial praise and admiration of those Jews who had defected from normative Jewish tradition, finding the holy nucleus in what drove them to defect (and also viewing it as a possible corrective to the shortcomings of the Orthodox Judaism of his time).

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36 See for example, *Sefat Emet* on *Deuteronomy* 16, *Sukkot* 14; and *Pri Tzaddik*, Tu Be-Shevat 2.

37 *Pri Tzaddik*, *Va-era* 7.

Given the Jewish tradition's contention that prophecy usually only happens in the Land of Israel, the return of Zion was a cause for the intensification of prophecy's stepchild. Accordingly, Rav Kook writes that he could already hear the stirrings of his generation in the Land of Israel, describing them as the children of prophets.[38] Lest one think that this was simply a poetic description of the messianic process—in which case it could be dismissed as seemingly premature—Rav Kook mentions the concept of *bnei neviim* in his more prosaic legal writings as well.[39] This leads us to the conclusion that Rav Kook saw Hillel's insight as a pillar of the Jewish worldview as he understood it. He was not, however, the only one.

Further removed from Chassidut and from the *avant garde*, R. Moshe Avigdor Amiel (1883-1946) was another Zionist rabbinic leader who invested the idea of *bnei neviim* with great importance. In particular, he observed the changes brought about by the success of the Zionist movement and took positive note of the popular response. Regarding the resultantly heightened celebration of Chanukah, for example, he writes, "If they are not prophets, they are the children of prophets and they sometimes feel with an instinctive feeling more than that which it is possible for the sages to grasp through their wisdom."[40]

However, like Rav Kook and the Chassidim, R. Amiel—who perhaps used the term "*bnei neviim*" more frequently than anyone else—found this idea helpful in many different contexts. In fact, for R. Amiel, this was a description of the definitive quality of the Jewish People more generally. Hence, even something that could be seen as negative, such as fanaticism, could be traced to the Jewish People's connection to the prophets.[41] Yet in the main, R. Amiel used the idea to elevate our evaluation of the Jewish People even when it might have otherwise appeared that they had strayed.[42]

While we have already discussed some of the factors that led to the greater use of the *bnei neviim* concept in the Modern period, there can be no doubt that it was also influenced and aided by the increasingly democratic *zeitgeist* making inroads throughout the world. Hence, even without reference to Hegel and Krochmal, the rabbinic thinkers discussed in this section were writing at a time when the popular voice was certainly being treated with more respect than in the past. As part of the ascendency of political liberalism, many decisions were newly being put to popular vote

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38 *Shmoneh Kevatzim* 4:17.
39 *Shu"t Da'at Kohen* 66.
40 *Derashot El Ami* 4:104.
41 *Le-Nevukhei HaTekufah* 3:4:16.
42 *Derashot El Ami, Yamim Noraim* 26:16.

(whether directly or through their chosen representatives). It stands to reason that this not only inspired religious thinkers to appropriate the idea of *bnei neviim* at this time, but it also made more and more Jewish audiences receptive to it.

Nevertheless, the move to democratic structures could not be adopted wholesale to Orthodox Judaism. There were many reasons why there would need to be limits on the use of the *bnei neviim* concept. In the next section, we will look at some of the reasons for these required limits and the problematic thereby engendered.

VIII

No matter how much power one is prepared to give to the popular voice, it is hard to ignore the fact that crowds are not always right; and that, in at least some cases, experts do know better. While based on the sources we have seen so far, one may be inclined to grant a particular accuracy to the Jewish People, historical experience clearly shows that they too are sometimes mistaken. Accordingly, James Surowiecki,[43] the writer most widely associated with crowd wisdom, predicates the correctness of crowds upon certain variables being in place. Among them are the basic control of emotions by the individuals who make up the crowd and their trust in the fairness of others. Otherwise—as per Alucin— "the riotousness of the crowd is [...] close to insanity."[44]

The above distinction may best be understood by differentiating between a crowd and a mob. The latter is what we call a crowd when it gets carried away by its emotions or is manipulated by skillful demagogues and the like. Up until that point, a crowd is ultimately no more than the grouping of many individuals, which is the whole basis of crowdsourcing—that the aggregation of many different perspectives will enhance our understanding.

It stands to reason that rabbinic thinkers of all stripes and at all times were keenly aware of something akin to Surowiecki's stipulations. Indeed,

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43 See Note 26 above.

44 See Note 25 above. While the literature about crowd wisdom details many more stipulations and even questions whether the nature of contemporary communication has resultantly put it out of reach, none of that alters the fact that crowds have sometimes shown greater wisdom than experts in certain situations. Nor does it change the fact that there are some fairly obvious factors, such as those mentioned here, that mitigate it.

the Torah itself gives us many examples of the Jewish masses being detrimentally swept up by their emotions, the story of the golden calf[45] and Korach's rebellion[46] being only the most outstanding.

It should also be noted that effective crowdsourcing is generally dependent upon the good faith of those involved, meaning that participants will not—consciously or unconsciously—seek to distort the process and advance their own agendas. Accordingly, the assimilationist Jewish public could be dismissed as erring in its judgment, since it is likely that they will be coming to their decisions about Jewish practice with too much of an agenda for them to use their best efforts and productively contribute to the communal decision.[47] That is perhaps the best-case scenario. In the worst-case scenario, they would consciously come in bad faith and attempt to manipulate the process to advance their agenda.

Indeed, one criterion often used in evaluating the Jewish public is their commitment to observance. For example—though the term has evolved over time—both Rav Kook[48] and R. Yosef (the latter quoting R. Hadayah)[49] saw proof of the correctness of a certain practice by the fact that it was common specifically among *charedim*. In line with what we have just said, looking for a high level of commitment is a way to dismiss suspicions about a given crowd's subversive agenda or bad faith.

If, as with the case of assimilation mentioned above, it is certainly difficult to trust the intuition of people not completely committed to observance,[50] it may be equally difficult to know where to draw the line. Meaning, at what level of commitment to observance does one get to "vote." Moreover, cannot the lack of observance in a particular area of Halakhah not be seen as coming from the semi-prophetic intuition under discussion? As a result, the determination of who is counted and who is not is far from black and white.

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45 *Exodus* 32:1-14.

46 *Numbers* 16.

47 Though the argument could be made that rabbis will tend to follow a group supporting the status quo rather than one opposed to it, even though the former might also be coming with an agenda.

48 *Shu"t Da'at Kohen* 66.

49 *Yabia Omer* OC 8:38. See Note 17 above.

50 Loyal to Solomon Schechter's notion of Catholic Israel, the Conservative movement has also grappled with this issue, coming to the conclusion that it only relates to committed Jews. See Marshall Sklare, *Conservative Judaism: An American Religious Movement* (New York: Free Press, 1955), pp. 233-34; Sidney H. Schwarz, "Catholic Israel and Halakhic Change," in Ronald A. Brauner, ed., *Jewish Civilization: Essays and Studies*, Vol. 2 (Philadelphia: Reconstructionist Rabbinical Society, 1981); and Sidney H. Schwarz, "Conservative Judaism's 'Ideology' Problem." *American Jewish History* 74:2 (1984), p. 155.

Although we have just noted a consideration that prevents the voice of the *bnei neviim* from being fully maximized, it has already been made clear that it would be even more problematic to simply accept all popular practices and opinions. Based on all the reasons why crowdsourcing might go wrong, no rabbi was ever prepared to ascribe the voice of the *bnei neviim* to anything and everything expressed by the Jewish masses. From the beginning, the Jewish *vox populi* has therefore always needed ratification by rabbinic leaders. Accordingly, in the case of Hillel, the popular practice was not formally ratified as law until Hillel approved it. Likewise, with every other case mentioned here. In cases where it was clear to the rabbis that the popular practice was in error, they did not ratify it and it did not become formally accepted. This served as a necessary corrective to the possible malfunctions generic to crowdsourcing.

Of course, the corrective is also not uncomplicated: Once the principle of *bnei neviim* can be overruled by accusing people of bad faith or even of more benevolent errors, what prevents the rabbis from doing so wholesale whenever they disagree with popular sentiment? Apparently, the answer is that the rabbis must not only guard against bad faith among the people, but also among themselves.

IX

We have just seen that it was necessary to establish safeguards against the reckless application of Hillel's principle to cases where it does not belong. We have also seen that these safeguards complicate our understanding of how it is to be used. Foremost among these complications is defining the exact contours of the "serious" Jewish community. Yet, despite the lack of clarity about the contours of that group, its tendencies are fortunately clearer. We will now turn our attention to these contours.

In most cases, the community works more like a republic than a direct democracy. Accordingly—in spite of the fact that most of the discussion so far has been about crowds weighing in on a specific issue—the impact of communities on specific issues is usually not very pronounced. Much more common is the community's impact on the selection of which rabbis will be making the decisions for them. That the community has such a prerogative is not obvious, and presumably another aspect of their power as *bnei neviim*.

In general, today's rabbinic decisors are chosen in an informal manner that is only loosely connected to any specific office or qualification. Although this was not always the case when communities were more cen-

tralized, even in those communities—and in the more centralized communities that still remain—the selection of decisors was rarely made by purely rabbinic bodies in which lay leaders had no say.

Nevertheless, the clearest expression of the popular voice in choosing its leaders is found in the selection of rabbis whose influence and authority extends beyond specific communities but rather to larger sectors of the Jewish world. This informal process through which almost all the great decisors rose was once succinctly described by Rabbi Moshe Feinstein as, "If people see that one answer is good, and another answer is good, gradually you will be accepted."[51]

Of course, the question is what "good" means here. Presumably, since we are dealing with laymen who are coming to an expert about something they do not see themselves as qualified to determine, "good" cannot mean correct in a technical sense. It is true that some rabbis are discounted as a result of mistakes due to lack of knowledge or experience. But this is not the reason so many people chose to approach R. Feinstein over many other eminently qualified decisors. Rather, it would seem to have been out of a concern that certain values be applied in good measure.[52] One such value is concern for, and understanding of, others. In other words, one thing that the community is often looking for is that the decisor be truly sensitive to the legitimate needs and wants of people on various levels. Though beyond the scope of this article, it is well known that R. Feinstein's responsa—like those of many other great *poskim*—are replete with this type of sensitivity.

Yet since the above will not always be discernible from any given responsum, the Jewish community has historically been more interested in a rabbi's character than the specifics of his answers. Since knowledge is usually a given, the community has focused its attention on a few prominent personality traits they associate with the making of "good" decisions. At the top of the list is *yirat Shamayim*—that the rabbi be God-fearing. Presumably, this is to avoid intentional misreading and manipulation of halakhah. Humility is another key trait that the Jewish community has sought in its decisors. This has the benefit of making the decisor more easily accessible and more pleasant to deal with. It also brings the practical

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51 Israel L. Shenker, "Responsa: The Law as Seen by Rabbis for 1,000 Years," *New York Times*, May 5, 1975.

52 See Gidon Rothstein's *The Judaism of the Poskim: Responsa and Nature of Orthodox Judaism* (Jerusalem: Mosaica Press, 2022) for a description of how various responsa express different values.

advantage of his not being overly hasty or impetuous in coming to decisions.

The latter is actually a good example of how the Jewish community's intuition can be seen as something beyond generic crowd wisdom, and actually rooted in God's will—thereby confirming their unique designation as *bnei neviim*. In the famous standoff between Beit Hillel and Beit Shammai, the Talmud explains that the *heavenly voice* sided with Beit Hillel because its rabbis were more humble.[53] There the Talmud makes clear the divine preference for humility even when the opposing sides are equally correct.[54] The Jewish People have then followed the lead of this voice to look to this trait as an important determinant in who will be more "qualified" to make halakhic decisions.

There is another important virtue expressed by the popular voice and that is moderation. Though this is also true about the types of leaders that are chosen, it is even more clearly shown by the times that the popular voice makes decisions on specific issues. As, while the semi-prophetic popular voice has—as has just been discussed—mostly been used to choose decisors rather than decisions, this is nevertheless not universally the case. As with electoral propositions in American states and plebiscites more generally, there are cases in which the public will go against their favorite rabbis and choose to follow other opinions, thereby using their status as *bnei neviim* to actually determine the halakhah.

A highly illustrative example is found in the contemporary Sepharadic world. There is no doubting the vast influence of R. Ovadiah Yosef in the determination of contemporary practice in that sector of the Jewish world. As a whole, his decisions are widely followed. Yet there were specific decisions that just did not resonate with the vast majority of his following. So, for example, his position that girls and unmarried young women should cover their heads while studying Torah[55] has been largely ignored. Likewise unpopular—though not as overwhelmingly so—were his ruling against smoking,[56] his insistence on observing Shabbat until the time prescribed by Rabbenu Tam,[57] and his prohibition against married women wearing wigs.[58]

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53 *Eruvin* 13b.

54 See Nataf, "Rav Kook, Nietzsche and Jewish Intellectual Pluralism."

55 *Yabia Omer, EH* 4:3; 5:5:2.

56 *Yeḥaveh Da'at* 5:39, see especially note 2. Though he admittedly falls short of a decision saying it is forbidden under all circumstances, this may well have been in anticipation of the lack of popular compliance with such a ruling.

57 *Yabia Omer, OC* 2:21.

58 *Yabia Omer, EH* 5:5.

In the examples above, the people chose to be more lenient than their favored decisor. This, however, is not always the case. Though there is a general tendency to resist impractical or "wild" stringencies, communities will sometimes also choose to be stricter than their rabbis. The widespread adoption of the Ḥazon Ish's (Avraham Yeshayah Karelitz, 1878-1953) calculation of the size of a *ke-zayit* serves as a good example of the latter.[59] Though this calculation is generally only adopted for some commandments that are more weighty—like the eating of matzah on Pesach—that it was adopted altogether should surprise us.[60] It should surprise us since most other decisions of the Ḥazon Ish were never accepted outside of very small circles.

Yet even the above does not show the fullest expression of the community's power as *bnei neviim*. That is only seen in situations where the community takes on a practice before it is the opinion of any scholar. In spite of Tosafot's assumption that there are invisible scholars who originally permitted such a practice and that later scholars simply must rediscover their reasoning and sources, it is much more likely that what we see is an intuitive leap of serious Jews before more technical *poskim* come and ratify it.[61] The consumption of non-Chalav Yisrael milk in the United States before the famous decisions of R. Moshe Feinstein (*Iggerot Moshe, YD* I:47 and 49 and *YD* III:17) seems to be a case in point.

True, there had been an opinion long before R. Feinstein, permitting it.[62] Yet most rabbinic authorities dealing with the topic had either rejected it or simply ignored it. It is likely, however, that the Jewish community had nevertheless intuited that the Talmudic decree against drinking such milk simply no longer applied, even whilst acknowledging that a technically compelling case had still not been presented by any rabbi. Hence, when R. Feinstein wrote his responsa, he was simply formalizing this reasoning and finally giving it rabbinic approbation. Indeed, this seems to be how he himself understood the situation: "Most observant Jews and also many rabbis are lenient regarding this matter and God forbid that one declare that they are acting improperly."[63] Hence, for these "observant Jews and rabbis," who would presumably be considered *bnei*

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59 *Kuntress Ha-Shiurim* (*Ḥazon Ish, OC* 39).

60 For an example of its casual adoption in many circles, see https://dinonline.org/2011/04/17/shiur-for-matzah/

61 See Moshe Koppel, *Judaism Straight Up, Why Real Religion Endures* (Jerusalem: Maggid Books, 2020), pp. 70, 73-76.

62 *Pri Ḥadash* on *YD* 115:15.

63 *Iggerot Moshe, YD* 1:47. Translation based on that of R. Chaim Jachter, "*Chalav Yisrael*—Part I, Rav Soloveitchik's View," *Kol Torah* 13 (2003).

neviim, they were not actually following R. Feinstein. Rather, R. Feinstein was following them.

Likewise, as alluded earlier, when R. Ovadiah Hadayah wrote about *charedi* doctors treating non-Jewish patients on Shabbat, he could have just assumed they were following earlier lenient rabbinic opinions.[64] However—like in the above case—by ignoring such positions, he was indicating his sense that such opinions had already been rejected. Hence what the doctors were doing was based on their own sense of the issue; on their own religious intuition that the prohibition of violating the Shabbat to treat gentiles did not apply to their circumstances.

Whatever the specifics, however, what these examples show is that the popular voice will sometimes veto outlandish stringencies that may not accurately reflect contemporary reality, but that nevertheless may not appear so outlandish to the more reclusive scholarly decisor.[65] Yet, as we saw regarding the *ke-zayit*, there are a few cases in which the popular intuition is to endorse something that may in fact seem outlandish when it responds to something perceived as particularly important. In the case of matzah, there is a sense of a centrality that is rooted in its Biblical presentation as well.[66] While the technical halakhah does not convey a difference between a *ke-zayit* of matzah and the *ke-zayit* of bread required to necessitate Grace after Meals, the Jewish People intuited a difference that led them to seek out an otherwise outlandish stringency.

What we see here is that, when properly formed and articulated, the popular voice can be an important force in watching over the alignment of Jewish law with the Jewish People's values. That this happens with discernment and nuance and is not simply a populism of the lowest common denominator makes us wonder about how this comes about. It is perhaps for this reason that Hillel associated this voice with something related to prophecy.

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64 See Note 17 above.

65 On some level, this function was also assigned to the ruling of *gezerah she-ein rov ha-am yakhol l'amod bo,* that any rabbinic decree that most of the people cannot abide by, is automatically annulled (see Section IV above). Like the popular voice more generally, it is the rabbis themselves that instituted this principle, showing their awareness of the positive role that can be played by the people in safeguarding the moderation of halakhah.

66 See Francis Nataf, *Redeeming Relevance on Exodus* (Jerusalem: Urim Publications, 2010), Chapter 7.

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From all the above, we have seen that, at least since the time of Hillel, Jewish decisors have ascribed special understanding to the Jewish People. Moreover, that understanding has been largely associated with the term "children of prophets," carrying certain overtones of something that approaches prophecy. That is to say, it is knowledge that cannot necessarily be rationally explained but knowledge of the highest order, nevertheless. As a result, rabbinic decisions have keenly observed popular practice and opinion, often ratifying them when there was no obvious reason not to do so.

In the Modern period, when a variety of intellectual currents within and without the Jewish world added to this idea's resonance, the concept of *bnei neviim* proliferated even more. It was used more frequently, and in new ways. For one, the Jewish People's wisdom was not only sought about correct practice but also about correct ideology. It would be sought from individual Jewish laymen and not only from the group—whereas in the past, it had been more limited to practices of the group. Though this proliferation is of more recent vintage, Hillel's original formulation lent itself to the broader application that has come about among later authorities.

While various studies such as those about crowdsourcing have given the principle of *bnei neviim* a modern basis, that could only be a generic and partial one, since an important dimension of the formulation of *bnei neviim* is that its basis is specific to the spiritual intuition particular to the Jewish People.

While there is an important difference between the concept of *bnei neviim* and prophecy, what we have seen is that the respect afforded by many rabbinic leaders to the Jewish popular voice suggests the appreciation of something we could describe as supernatural. Having played a crucial role in helping the rabbis align their book learning with God's will, the Jewish *vox populi* has largely played the role of a literal *vox Dei*. ☙