

Yehudah Levi

HALACHIC DECISIONS

CLASSIC ISSUES WITH MODERN IMPLICATIONS

It Was Not Always Thus

Nowadays, when you ask a learned friend a halacha question, the response is likely to be: “This is subject to disagreement among the authorities.” If you then ask, “So what am I supposed to do?” he will tell you, “Go ask your rabbi.” And when you do that, the answer may well depend on which rabbi you happen to ask. This is the unfortunate situation today.

But it was not always so. Two thousand years ago it was different, as the Talmud teaches us:

At first, there were not many [halachic] disputes in [the nation of] Israel. The [High] Court of seventy-one sat in the Lishkas Hagazis (the High Court room in the Temple precinct)... When a question arose... they put the question before them. If they had a tradition concerning it, they responded accordingly. If not, they [debated the issue and] voted on it [and decided according to the majority]. When the disciples of Shammai and Hillel, who did not study sufficiently, became many, unresolved disputes increased in Israel, and the Torah became like two Toros (*Sanhedrin* 88b).

Elsewhere it explains: “When men of arrogance multiplied, unresolved disputes increased in Israel” (*Sota* 47b). Clearly, the increase in unresolved disputes was due to the unwillingness of the proponents of a particular idea to hear, and duly consider, the opponents’ opinion. Evidently, they were so self-assured that they saw no need to seriously consider the opposing view.

This idea helps us resolve an apparently strange Talmudic statement:

For three years, Beis Shammai and Beis Hillel were disputing; these said the halacha is according to us, and those said the halacha is according to us. Then a Heavenly Voice appeared, and said, “These and those are the words of the living G-d, and the halacha is according to Beis Hillel” (*Eiruvim* 13b).

The Talmud then asks - and answers:

If, indeed, “These and those are the words of the living G-d,” how did Beis Hillel merit that the halacha was fixed according to them? Because they were amiable and forgiving, and [always] presented their ideas together with that of Beis Shammai, and even presented Beis Shammai’s opinion first.

On first sight, this passage is strange - is, then, halacha fixed according to the proponent’s personality merits, rather than according to the merits of his opinion? After all, it is known that Beis Shammai were intellectually superior. This question brings to mind the Mishna, “Who is wise? He who learns from everyone” (*Avos* 4:1). No one - not even the wisest person - can think of every aspect of an issue. Only after hearing other opinions can we arrive at a balanced judgment – “Success comes from the multiplicity of advisors” (*Mishlei*

11,14). This explains why, with all the importance of sharpness of intellect, a willingness to listen is even more important to arriving at the correct decision.

Rabbi Zalman Nechemia Goldberg¹ points out that the above Talmudic statement hints at the fact that Beis Hillel did not finalize their opinion until they had heard that of Beis Shammai. With this concept, he resolves another halachic principle which seems strange on first sight. When the three judges of a rabbinic court are divided, with two in favor of Reuven and one against him, the case is decided in favor of Reuven. If, however, the third judge does not rule against Reuven, but rather is unable to form an opinion, then the case is not decided in favor of Reuven. Instead, two more judges must be added to the court, which must then continue its deliberations. Again, listening to an opposing opinion is more constructive than hearing no opinion.

Thus, the fact that the High Court, from the generation following Hillel and Shammai and onwards, did not convene for halachic decision-making, has given rise to a halachic pluralism. This is certainly undesirable, but we must learn to live with it; that is, we must become tolerant of authorities with different views. This is how the Chazon Ish put it (*Yoreh De'ah* 150):

It seems that the rule “in Torah matters [in contrast to Rabbinic decrees] follow the more stringent opinion” applies only when none of [the ruling sages] is his rabbi, but if one of the authorities is his rabbi, follow him even [if he is] lenient. And he is called his rabbi if he is close to him and constantly studies his teachings in most commandments. ... And this applies both during this authority’s lifetime and after his demise, as long as his decisions and instructions are known from his disciples or his books. They may follow their rabbi even [if he is] lenient in Torah matters - even if the majority disagrees with him, as long as there was no court session, with the authorities discussing the matter face-to-face, deciding the halacha.

One more important point. Because of *yeridas hadoros* (decline of generations), it may, at this point, be impossible to eliminate halachic and ideological disagreement between various segments of the Jewish people. However, we should remember: Although the disciples of Shammai and Hillel were unable to settle their disagreements, “they treated each other with love and friendship” (*Yevamos* 14b). We would do well to follow their example. This is especially important today, when Divine Providence is hinting to us that redemption may not be far off – provided we permit it to come, by eliminating unjustified hatred from our midst.²

Beyond the Guidelines

When halacha authorities deviate from these guidelines, the results can be very destructive. The reader, especially if he has spent time in Eretz Yisroel, is likely to be familiar with

¹ Rabbi Goldberg, the son-in-law of Rabbi Shlomo Zalman Auerbach, is Rosh Yeshiva of Machon Lev, Rosh Kollel Zadiguria in Jerusalem, and sits on the Israel Rabbinic High Court. After publishing the above idea in *HaMa'ayan* (45³.68), I received a letter from him, citing the supporting ideas presented in the following.

² As the Rav of Brisk, Rabbi Yitzchak Zev Soloveitchik put it: “When the United Nations agreed to the State’s founding, Divine Providence smiled, but those in power spoiled the smile.” (Quoted by Rabbi Shlomo Wolbe, *Bein Sheishes Le'Asor*, p. 145.) Also, the Sanctuary was destroyed because of unjustified hatred between Jews (*Yoma* 9b), and it stands to reason that it cannot be rebuilt as long as the cause for its destruction still exists (cf. *Sanhedrin* 97b, end).

illustrations, such as huge posters, “signed” by great Torah authorities, plastered all over walls and bulletin boards, attacking actions that were approved by other Torah authorities – and attacking them in the most extreme and virulent terms, without ever having discussed the matter with approving authorities, or even mentioning these – leaving the general public confused, if not worse. Or, on a different plane, I recall talking to an editor of Agudath Israel’s newspaper Hamodia, who mourned the vanishing of Chinuch Atzmai, where children from all circles of Torah Judaism learned together. His complaint: “Now every group opens its own chadarim, the tragic result being that the children of one group develop utter disdain for all other groups.” He sighed: “I have a little nephew who looks upon me as a goy.”

A hundred years ago, the founders of Agudath Israel showed the way by convening the spiritual leaders of almost all factions of European Torah Jewry and establishing a *Moetzes Gedolei HaTorah* representing all of these factions. This could be termed the major accomplishment of twentieth century Judaism. How sad that in the last generation, it was made to fall apart - at least in *Eretz Yisroel*.

Let us remember the beautiful description Chazal give us (end of *Ta’anis*) of the *tzaddikim* in *Gan Eden*: Hashem will place them in a circle around Him, and each *tzaddik* will point at Him with his finger, exclaiming: "This is my G-d; let us rejoice in His salvation." Clearly, each one is pointing in a different direction!

True, when differing ideologies are crowded together in close proximity, showing mutual respect is more of a challenge. But this may be taken as an advantage in the spirit of the Mishna (*Avos* 5, end): “According to the pain (=effort) is the reward (=benefit).” This crowding forces each group to answer questions that their adherents raise, to justify itself to its adherents, and as a result, the issues become clarified. Resorting to labeling, instead, is much, much easier, but also far less constructive - to put it mildly.

Another point: before we disqualify any idea as totally out of bounds, we should first make sure that not one accepted authority supported it.

Whom are we to blame for this sad state of affairs? Our Sages teach: “The [level of the] leader is [determined by] the [level of the] generation” (*Arachin* 17a). The obvious message is: let us become more tolerant of each other, and let us try to understand each other, and not reject any Torah Jew without a sincere effort to clarify the issues that create a chasm between us.

Yehudah (Leo) Levi received *hetteh hora’a* from Rabbi Yoseif Breuer זצ"ל and Rabbi Yitzchok Hutner זצ"ל. He is rector emeritus of the Jerusalem College of Technology, where he founded the Physics and Elector-optics Department in 1970, and is still giving regular courses in Torah thought. In addition to 130-odd articles published in scientific, technical and Judaica journals, Prof. Levi has published a number of books in optics, as well as in halacha, including a new commentary on *Yerushalmi Zeraim* (six tractates have been published so far – four with Rabbi Aryeh Carmell and two with Rabbi Gershon Metzger).