

THE SYSTEM OF HALACHAH PART VII

The Concept and Dynamics of Machloket – Dispute

The previous class, Rabbinic Authority, discussed the role of the Rabbis as the carriers of the Oral Torah, their ability to interpret and apply Torah law, as well as their function as legislators of new Rabbinic enactments. God taught Moshe the general principles for applying the Torah's laws to both existing and new cases as they would emerge in the coming centuries. He was even taught multiple possible outcomes for many issues. But ultimately, many of the Torah's laws were left in the hands of future Torah Sages to determine through the Divinely-based principles of *derash* (derivation, exposition and logic). For much of Jewish history, this system flowed smoothly. However, beginning in the Second Temple Period, disputes arose – a fact clear from the study of any page of the Talmud.

The existence of these disputes may present two possible pitfalls. First of all, in light of the seeming uncertainty, someone might question the accuracy of the Oral Torah's transmission. Certainly, if the transmission were fully intact – so the argument goes – we would expect to find complete agreement on all subjects. This specific concern is addressed in The System of Halachah IV, presenting evidence for the accuracy of the transmission.

The second concern, which is addressed here, is that the existence of disputes themselves may imply that the system of Jewish law is arbitrary. There are so many opinions on so many issues that it appears as if a person could choose any path he wishes and still call it Judaism. To counter this notion, this class will explore the origin of disputes within the Oral Torah, the nature of Talmudic debates, and under which circumstances we can say that both sides of a dispute are actually correct! Finally, we will understand the nature and legitimacy of conflicting rulings in contemporary halachah and how everyone finds their path.

This class will address the following questions:

- Why do the Sages in the Talmud have so many disputes?
- How did these disputes begin, and what motivated them?
- How can more than one opinion in a dispute be right?
- Are all opinions equally valid?
- How do Torah scholars today decide halachah amongst conflicting opinions?
How is the layperson supposed to do the same?

Class Outline:

- Section I. The Origin of Disputes
 - Part A. Historical Factors
 - Part B. Failure to Serve Teachers
 - Part C. Lack of Adequate Study
- Section II. The Nature of Disputes
 - Part A. The Dispute is in the Details
 - Part B. Subjects of Debate
 - Part C. For Heaven's Sake
- Section III. Both Sides are Right (*Eilu ve'Eilu*)
 - Part A. Talmudic Sources for Eilu ve'Eilu
 - Part B. Procedure vs. Practice
 - Part C. Assembling the Puzzle
 - Part D. Nothing but the Truth
- Section IV. Machloket in Contemporary Rulings
 - Part A. The Framework of Machloket in Contemporary Halachah
 - Part B. *Aseh Lecha Rav* – Finding Your Own Path to Torah

SECTION I. THE ORIGIN OF DISPUTES

The disputes in the Oral Law stemmed from external pressure on Jewish life and the lack of proper study that followed in its wake. The same cultural and social forces that necessitated the writing of the Mishnah and Talmud also had a hand in fomenting the first disputes.

PART A. HISTORICAL FACTORS

1. **Talmud Yerushalmi Chagiga 2:2 – There were no disputes about halachah until the era of the Second Temple, and there were no more than a handful until the time of the students of Hillel and Shammai.**

At first there were no halachic disputes among Yisrael except concerning the mitzvah of *semichah* (pressing one's hands down on the head of an animal just before it is slaughtered as a sacrifice on a festival day). Shammai and Hillel disputed four halachic issues. When many of the students of Shammai and of Hillel failed to invest sufficient energies in their studies, the incidence of halachic disputes grew exponentially, with some ruling, "impure," and others ruling, "pure."

בראשונה לא היתה מחלוקת בישראל אלא על הסמיכה בלבד ועמדו שמאי והלל ועשו אותן ד' משרבו תלמידי בית שמאי ותלמידי בית הלל ולא שימשו את רביהן כל צורכן ורבו המחלוקת בישראל ונחלקו לשתי כתות אלו מטמאין ואלו מטהרין ועוד אינה עתידה לחזור למקומה עד שיבוא בן דוד.

The situation will not be reversed until the descendant of David (the Messiah) will arrive.

2. **Chagiga 16a. The first halachic dispute, about semichah, was debated for several generations.**

Yose ben Yo'ezer said it is forbidden to perform semichah, while Yosef ben Yochanan said it is obligatory. Yehoshua ben Perachyah said it is forbidden to perform semichah, while Nitai of Arbel said it is obligatory. Yehudah ben Tabai said it is forbidden to perform semichah, while Shimon ben Shatach said it is obligatory. Shemaya said it is obligatory to perform semichah, while Avtalyon said it is forbidden. Hillel and Menachem did not dispute this issue. Menachem retired from his position, and Shammai assumed it. Shammai said it is forbidden to perform semichah, while Hillel said it is obligatory. The first of each pair was the president of the Sanhedrin, while the second was the chief justice.

Rashi: This was the first halachic dispute in the history of the Torah Sages.

(יוסי) בן יעזר אומר שלא לסמוך יוסף בן יוחנן אומר לסמוך יהושע בן פרחיה אומר שלא לסמוך ניתאי הארכלי אומר לסמוך יהודה בן טבאי אומר שלא לסמוך שמעון בן שטח אומר לסמוך שמעיה אומר לסמוך אבטליון אומר שלא לסמוך הלל ומנחם לא נחלקו יצא מנחם נכנס שמאי שמאי אומר שלא לסמוך הלל אומר לסמוך הראשונים היו נשיאים ושניים להם אב ב"ד.

רש"י: וזו היא מחלוקת ראשונה שהיתה בחכמי ישראל.

3. **Talmud Bavli, Sanhedrin 88b – halachic disputes became numerous during the time of the disciples of Shammai and Hillel.**

Since Shammai and Hillel's disciples, who had not studied their lessons sufficiently, became numerous, there began to be many disputes in Israel, and the Torah became as if it were two Torahs.

משרבו תלמידי שמאי והלל שלא שמשו כל צרכן רבו מחלוקת בישראל, ונעשית תורה כשתי תורות.

4. **Rashi to Bava Metzia 33b – Persecution led to dispute.**

Disputes became so numerous that it was as if there were two Torahs. This was due to the oppression of the conquering powers and the harsh decrees imposed upon them. As a result, they were not able to concentrate well enough to clarify the disputes until the time of Rebbe (Yehudah HaNasi).

רבו מחלוקות בתורה ונעשית כשתי תורות: מתוך עול שעבוד מלכיות וגזירות שהיו גוזרין עליהן. ומתוך כך, לא היו יכולים לתת לב לברר דברי החולקים עד ימיו של רבי.

5. **Rabbi Berel Wein, "Hillel and Shammai," from www.jewishhistory.org – With the students of Hillel and Shammai, two schools of thought emerge.**

Until the time of Hillel and Shammai, Jewish law was always agreed upon; differences of opinion were settled by the Sanhedrin. Nevertheless, from the time of Hillel and Shammai onward, the strain on the Jewish people and their educational system were so great that new, monumental disputes in many

areas arose among the Jewish intellectual leadership.

Hillel and Shammai had a minimal amount of legal disagreements between themselves; [they added] only three, in fact. However, each founded his own renowned academy of Torah learning and there arose numerous and contentious disagreements (312 to be precise) among the disciples.

The greatness of the Academies of Shammai and Hillel is that despite their serious differences they married each other's daughters, ate with each other and generally behaved as one people. There was a difference in education and outlook, but not in lifestyle. That was the key. Their differences were eventually decided democratically by majority vote and the Talmud concluded that the law follows the opinion of the Academy of Hillel (with few exceptions).

It should be noted that even with the publication of the Mishnah, the Oral Torah remained largely oral, in need of those who had mastered it to teach it to the next generation. It is true that with the compilation of the Mishnah many disputes were clarified and often resolved. The Mishnah records many of these disputes, but it is arranged in such a way that the accepted opinion could be gleaned simply by the structure in which it was presented. However, the correct interpretation of the Mishnah was not always agreed upon. Eventually the Talmud explained disputes in the Mishnah, a process that itself led to more disputes. Talmudic commentators emerged to explain how the halachah was to be concluded from its discussion in the Mishnah and the Talmud. And so the process of dispute and debate continued, and persists to this very day. [We will explore the implications of this process for modern day Rabbis at the end of this class as well as in the next class in this series.]

PART B. FAILURE TO ATTEND TEACHERS

The first reason offered by the Talmud for the instance of dispute is that of Hillel's and Shammai's students' failure to adequately study under their Torah mentors and "to serve them" – meaning to shadow their teachers, assist them and fully absorb their personal example. Rabbi Yitzchak Berkowitz (Jerusalem Kollel) explains that tending to Torah scholars requires an on-going dynamic of questioning and answering to uncover the truth.

1. Rabbi Shmuel Eidels, Chiddushei Maharsha to Sanhedrin 88b – Attending Torah scholars is the basis for clarity in one's studies.

Serving Torah scholars is the root and source for studying Torah with clarity. Someone who does not serve Torah scholars... might know the entire text of the Mishnah but not understand what he has said. *The Torah becomes two Torahs*, for one scholar rules that an object is pure and another rules that it is impure, one permits a particular act and another prohibits it, and each one supports his position with sound logic. Each one feels confident that his opinion is the correct interpretation of the Torah.

שימוש ת"ח הוא שורש ומקור ללימוד התורה על בוריה. מי שלא שימש ת"ח כו' תני תנא ולא ידע מאי אמר כו' ונעשה תורה כב' תורות שזה מטהר וזה מטמא זה מתיר וזה אוסר וכל אחד מהם נותן טעם להחזיק דבריו ודעת כל אחד מהם נראית כתורת אמת.

2. Rabbi Shlomo Wolbe, Alei Shor, Volume I, Introduction – We still struggle to achieve the level of understanding Torah that can only come by way of attending scholars.

A thick partition separates the world of Torah from the world outside. One who stands outside

מחיצה עבה מבדלת בין עולם התורה לבין העולם אשר מבחוץ. העומד בחוץ, אף אם הוא שומר תורה ומצוות,

it, even one who happens to observe the Torah and mitzvot, has no picture or concept of the wonders taking place within. There are even those who sit within the walls of the study hall yet resemble those who do not understand Torah. They stand outside for they have not attended Torah scholars. And even though, thank God, the number of people engaged in learning Torah has multiplied in our days, nevertheless, few are those who have merited attending Torah scholars.

Few are the Rabbis who are like angels of God, from whom one can seek Torah, for so many Rabbis and students were offered upon the fire (murdered by the Nazis) during the Holocaust (may God avenge their blood). Only a meager number remains, and they are considered like the remnant of the Great Assembly. The Torah students of today have grown so accustomed to learning without also serving Torah scholars that it does not even occur to them as a possibility. And they still stand outside, regardless of the vast amount of Torah knowledge they have acquired! They stand outside, having reached neither the inner core of the Torah nor of themselves.

אין לו ציור ומושג מהפלא המתחולל בפנים. ויש אשר גם היושב בין כותלי בית המדרש דומה כמי שנעלמו ממנו טעמי תורה ועדין בחוץ עומד - כשלא שימש תלמידי חכמים. בדורינו זה הולכים ומתרבים ב"ה לומדי תורה, אך מועטים המה הזוכים לשמש תלמידי חכמים.

ספורים הם הרבנים הדומים למלאך ה' צב' שיש לבקש תורה מפיהם כי עליו על המוקד המה ותלמידיהם נ"ע הי"ד, ורק שרידים נשארו לפליטה אשר הם בבחינת שירי כנסת הגדולה. ובני התורה אשר בדורנו כה התרגלו בלימוד תורה בלי שימוש ת"ח, עד שאינו עולה על דעתם כלל כי יתכן ועדיין בחוץ הם עומדים, על אף הידיעות הרבות שרכשו להם בתורה! "בחוץ" הם עומדים - זאת אומרת שלא הגיעו לפנימיות התורה ולפנימיות עצמם.

PART C. LACK OF ADEQUATE STUDY

Rambam places the blame on the lack of study itself rather than the lack of serving one's teachers.

1. **Rambam, Introduction to Commentary on the Mishnah – The students of Hillel and Shammai were not on the same level as their teachers.**

Our Sage's statement, "The growing number of disciples of Shammai and Hillel who did not receive [their teacher's tradition] sufficiently, resulted in increased disputes in Israel" is quite logical. Any two people with equal intelligence, discipline and background knowledge will not dispute the interpretations of the Torah using the Sinaitic principles. Even if a dispute would arise, it would be minimal, just as we find that Shammai and Hillel disputed only a few Halachot. That is because their approach to everything they studied and everything they interpreted by way of those principles was uniform, and because they both had received the principles properly.

אמרם משרבו תלמידי שמאי והלל שלא שמשו כל צרכן רבתה מחלוקת בישראל, ענין דבר זה ברור מאד, כי שני אנשים שהם בהבנה ובעיון ובידיעת הכללים שלומדים מהם לא תהיה ביניהם מחלוקת במה שלומדים באחת המדות בשום פנים, ואם תהיה, תהיה מועטת, כמו שלא מצאנו מחלוקת בין שמאי והלל אלא בהלכות אחדות, לפי שדרכי למודם בכל מה שהיו לומדים אותו באחת המדות היו קרובים זה לזה, וגם הכללים הנכונים שהיו אצל זה היו אצל השני.

But when their students' level of studying diminished, and they had a weaker grasp of the halachah compared to their teachers, Shammai and Hillel, their discussions of many Halachot turned into disputes. Each one interpreted according to his own level of understanding and in line with the principles known to him.

וכאשר נתמעט למוד תלמידיהם ונחלשו אצלם דרכי הדין בהשואה לשמאי והלל רבותיהם נפלה מחלוקת ביניהם בשעת המשא ומתן בהרבה ענינים, לפי שכל אחד מהם דן לפי כח שכלו ולפי הכללים הידועים לו.

KEY THEMES OF SECTION I.

- ≈ For many centuries, halachic disputes were decided through a hierarchical system of courts. But when the Jews were subjected to enormous persecution, the students of Shammai and Hillel were either unable to devote themselves to study as was necessary and/or they were not able to serve their teachers sufficiently. At that time, halachic disputes became numerous.

SECTION II. THE NATURE OF DISPUTES

We have established that halachic disputes arose due to the enormous persecution that arose during and after the Second Temple. The difficulty of the times prevented the scholars from studying Torah properly, as well as serving their teachers sufficiently. But what kind of disputes are we talking about here? Did the Talmudic scholars debate the fundamentals of Jewish belief and practice?

PART A. THE DISPUTE IS IN THE DETAILS

Any Talmud student knows that the Sages did not disagree over the fundamentals of Jewish belief and practice. All the disputes concern details of the mitzvot, not the identity of the mitzvot nor the fundamentals of the Jewish religion. On all major issues, there was complete consensus.

1. **Rambam, Introduction to Commentary on the Mishnah – Disputes concerned the details of the laws only.**

The Sages never disputed the basic identity of any mitzvah, only its details. They received the tradition of the basic mitzvot from their teachers, but since they did not attend their teachers sufficiently they failed to ask them to explain all the details. For example, no one ever argued whether or not it is obligatory to kindle a light in honor of Shabbat. They argued only about what materials may or may not be used for this light. No one ever argued whether or not there is an obligation to recite the Shema every evening and morning. About what did they argue? They argued about what the earliest time in the morning is that one may fulfill this mitzvah. The same pattern applies to all their discussions.

ושלא נחלקו רז"ל לעולם בעיקר מצוה אלא בתולדותיה ששמעו עיקרה מרבותיהם ולא שאלום על תולדותיה מפני שלא שמשו כל צרכן. כיוצא בו לא נחלקו אם מדליקין נר בשבת או לא ועל מה נחלקו במה מדליקין ובמה אין מדליקין ולא נחלקו אם חובה לקרוא קריאת שמע ערבית או לא ועל מה נחלקו ומאימתי קורין את שמע בשחרית וכן לכל דבריהם.

2. **Aish HaTorah's Discovery Seminar, "The Process of Transmission" from www.aish.com – The dispute is in the details.**

The Talmud (Kiddushin) discusses the wedding ceremony. The groom must give something of value to the bride. The Talmud then debates about the minimum value of this gift

Translated into modern terms, the students of Shammai said that it must be at least a dollar. The students of Hillel say it can be as little as a penny. For the next few pages of Talmud, the Sages jockey back and forth: it's a dollar, a penny, a dollar, a penny.

All the Sages agreed that there has to be a wedding ceremony. They agreed that there has to be a *chuppah* (a canopy). They agreed there has to be a *Ketuba* (a marriage contract). They agreed that there must be two witnesses, and they agree on the qualifications for witnesses. But we don't read about the 99 percent upon which they agree. The one thing we do read about is the debate over how much the groom is supposed to give the bride.

The Rabbis were so careful and meticulous that even when it came to the slightest point of difference, they wouldn't let it pass. "No! Let's get this right. If we have a difference of opinion, we have to iron it out." The big issues are all points of agreement.

Of course, for those who relate to the Torah as God's word, every issue is big. The idea we mean to present here is that the fundamentals of Judaism – belief in God, the Divinity of the Torah, trust in the Oral Tradition, etc. – were all unanimously agreed upon.

PART B. SUBJECTS OF DEBATE

As we saw in the previous class in this series, there are basically three kinds of laws in the Oral Torah: Biblical laws passed down from Moshe, Biblical laws created by the Sages by means of exegesis or Talmudic reasoning, and Rabbinic laws instituted by the Sages to strengthen the observance of the Torah and to benefit society.

For our purposes here we can further simplify the Oral Law into two components: the Divine and the human. By "Divine," we mean those laws taught to Moshe by God and then passed down through the generations from teacher to student. By "human," we mean any law that has a human creative element to it, whether that be by way of exegesis, reasoning, or Rabbinic legislative power.

Anything received by Moshe transmitted as Oral Torah was never subject to dispute, which was not always the case regarding those laws with a human element to them. Nevertheless, disputes in these matters were usually resolved by a majority vote in the Sanhedrin. When the Sanhedrin ceased to operate, disputes in these matters persisted, that is, until the completion of the Talmud.

1. **Rambam, Hilchot Mamrim 1:3-4 – Accepted traditions were never disputed; only laws based on analysis were. Lacking a central legal body, disputes over these kinds of laws proliferated.**

There can never be any difference of opinion with regard to matters received through the Oral Tradition. Whenever there arises a difference of opinion over a certain matter, we know that it was not received in the tradition from Moshe our teacher.

The following principles apply with regard to

דברי קבלה אין בהן מחלוקת לעולם וכל דבר שתמצא
בו מחלוקת בידוע שאינו קבלה ממושה רבינו.

ודברים שלמדו מן הדין אם הסכימו עליהן בית דין

matters derived through application of interpretive rules: If the entire body of the Supreme *Sanhedrin* agrees with regard to them, their consent is binding. If there is a difference of opinion, we follow the majority and decide the matter according to the majority. Similarly, with regard to the decrees, edicts, and customs, if a portion of the judges perceived that it was necessary to issue a decree, institute an edict, or establish a custom for the people, and a portion perceived that it is not appropriate to issue this decree, institute this edict, or establish this custom, the judges should debate the matter back and forth. Afterwards, a vote is called, and we follow the majority and execute the matter according to the decision of the majority.

After the Supreme *Sanhedrin* was nullified, differences of opinion multiplied among the Jewish people. One would rule an article is impure and support his ruling with logic and another would rule that it is pure and support his ruling with logic. This one would rule an article is forbidden and that would rule that it is permitted.

הגדול כולן, הרי הסכימו. ואם נחלקו בהן הולכין אחר הרוב ומוציאין הדין אחר הרבים, וכן הגזרות והתקנות והמנהגות אם ראו מקצתן שראוי לגזור גזירה או לתקן תקנה או שיניחו העם המנהג הזה, וראו מקצתן שאין ראוי לגזור גזירה זו ולא לתקן תקנה זו ולא להניח מנהג זה נושאין ונותנין אלו כנגד אלו והולכין אחר רובן ומוציאין הדבר אחר הרבים.

משבטל בית דין הגדול רבתה מחלוקת בישראל זה מטמא ונותן טעם לדבריו וזה מטהר ונותן טעם לדבריו זה אוסר וזה מתיר.

Matters of tradition were not subject to dispute. This refers to received explanations of Biblical verses as well as to halachah LeMoshe MiSinai (laws given straight from God to Moshe at Mount Sinai). But any law that relied on reasoning, whether in the application of interpretive rules or in Talmudic logic, was potentially subject to debate. This basic rule does not mean, however, that there are no disputes that have revealed law at their core. It is just that disputes in these areas focused on their details, and were not over the fundamental law.

2. H. Chaim Schimmel, *The Oral Law*, pg. 15 – Laws that originated at Sinai were never subject to dispute.

[A]ccording to Rambam, laws of Sinaitic origin are not subject to controversy; yet there are a number of controversies in the Talmud concerning Halachah LeMoshe MiSinai...It seems, however, that disputes in Halachah LeMoshe MiSinai concern only the details which do not go to the root of the law. There is no case of Halachah LeMoshe MiSinai where one Sage declares an object kosher or an act permitted and another declares the identical object or act prohibited.

Taking the examples we discussed in the previous class, we can say that no one ever argued over a received tradition like the definition of *pri etz hadar* (the fruit of a beautiful tree) as etrog. On the other hand, the obligation to mention the Exodus from Egypt at night is an example of a derived law that was the subject of a dispute.

PART C. FOR HEAVEN'S SAKE

The relatively-speaking narrow scope of Talmudic and Rabbinic disputes is better understood in light of the driving force behind them. As we learned in the class on Rabbinic Authority, the Sages strove for and achieved exemplary character. These debates were not motivated by self interest or the desire to assimilate, nor for the glory of having one's voice heard. There was only one motivation – to get to the truth.

1. **Avot (Ethics of the Fathers) 5:17 (20) The disputes between Hillel and Shammai were “for the sake of Heaven.”**

Any dispute argued for the sake of Heaven is destined to endure; one that is argued for a purpose other than the sake of Heaven is not destined to endure. What is the prime example of a dispute argued for the sake of Heaven? A dispute between Hillel and Shammai.

כל מחלוקת שהיא לשם שמים סופה להתקיים ושאינה
לשם שמים אין סופה להתקיים איזו היא מחלוקת
שהיא לשם שמים זו מחלוקת הלל ושמאי...

The term “for the sake of Heaven” does not mean some kind of jihad-like drive for religious supremacy. Rather, it refers to the desire to establish the truth and clarify God's will independent of personal objectives. Neither Hillel nor Shammai nor their students after them were motivated by pride, contentiousness, or any other ulterior motive; their sole aim was to know the truth and to do God's Will. We can see this principle illustrated in the Talmud Eduyot (Mishnah 1:3), when Hillel and Shammai's positions in a debate are rejected in favor of a third party, to whom they themselves ultimately agreed. This case begs an explanation. If the Mishnah rejects the opinions of Hillel and Shammai, why are their positions mentioned at all?

2. **Eduyot 1:4 – Hillel and Shammai did not persist in their views once an opposing position had been adopted.**

Why are the opinions of Hillel and Shammai mentioned (in the previous Mishnah in this tractate of Eduyot) and then rejected? To teach future generations that a person should not stubbornly persist in his views, just as these towering Sages did not persist in their views.

ולמה מזכירין את דברי שמאי והלל לבטלה ללמד
לדורות הבאים שלא יהא אדם עומד על דבריו שהרי
אבות העולם לא עמדו על דבריהם.

Another example of a Sage retracting his position in recognition of a truthful opposing view is Rabbi Akiva in the Mishnah, Talmud Bavli, Chulin 32a.

KEY THEMES OF SECTION II.

- ⌘ The Talmudic disputes invariably concerned the minutia of Jewish law, but on all the big issues they agreed.
- ⌘ Disputes never centered on the fundamental basis of a law received from Sinai. Most disputes concerned laws with a human component, such as those based on exegesis or of Rabbinic origin.
- ⌘ Furthermore, the Sages argued these disputes for the sake of Heaven; they were not driven by ulterior motives of pride or glory.

SECTION III. BOTH SIDES ARE RIGHT (EILU VE'EILU)

Aside from the historical and intellectual basis of Talmudic debate, there is another aspect that reveals something of the supernatural nature of the Torah itself. The Divine nature of the Torah allows for the possibility that both sides of a dispute could be included as genuine Torah wisdom. When we study the Torah and discuss a dispute in the halachah, every word of our discussion is considered an act of the mitzvah of studying Torah – both the discussion of the opinion that is ultimately deemed “correct,” as well as the opposing position. The Talmud calls this concept, *אלו ואלו דברי אלקים חיים* – *Both this opinion and that one are the words of the living God*.

PART A. TALMUDIC SOURCES FOR EILU VE'EILU

1. Chagigah 3b – Both opposing halachic rulings come from God and should both be honored as such.

Rebbe Elazar ben Azaria prefaced his lesson with the following: “The words of the wise are like goads and the members of assemblies are like nails firmly wedged in place. They [all] were given by one Shepherd” (Kohelet 12:11).

[He explained that] “members of assemblies” refer to Torah scholars who sit assembled in groups and study Torah. Some rule that an item is spiritually impure while others rule that it is pure. Some rule that a particular thing is prohibited and others rule that it is permitted. Some rule that an item is halachically disqualified while others rule that it is qualified.

One might ask: How can I study Torah if this is the case? That is why the verse teaches: “They [all] were given by one Shepherd.” They were given by the One God; they were spoken by one leader [who received them] as the words of the Master of all creation, may He be blessed. This is what is written [Shemot 20]: “And God spoke all these words.” Therefore, use your ears like a funnel and acquire a perceptive heart to gain an understanding of the words of those who rule it is impure and the words of those who rule it is pure, the words of those who prohibit and the words of those who permit, the words of those who disqualify and the words of those who rule it is qualified.

ואף הוא פתח ודרש: (קהלת י"ב) דברי חכמים
כדרבנות וכמסמרות נטועים בעלי אסופות נתנו מרועה
אחד...

בעלי אסופות - אלו תלמידי חכמים שיושבין אסופות
אסופות ועוסקין בתורה, הללו מטמאין והללו מטהרין,
הללו אוסרין והללו מתירין, הללו פוסלין והללו
מכשירין.

שמה יאמר אדם: היאך אני למד תורה מעתה? תלמוד
לומר: כולם נתנו מרועה אחד - אל אחד נתנו, פרנס
אחד אמרן, מפי אדון כל המעשים ברוך הוא, דכתיב
(שמות כ') וידבר אלהים את כל הדברים האלה. אף
אתה עשה אזניך כאפרכסת, וקנה לך לב מבין לשמוע
את דברי מטמאים ואת דברי מטהרים, את דברי
אוסרין ואת דברי מתירין, את דברי פוסלין ואת דברי
מכשירין.

Another Talmudic passage brings home the point even more strongly.

2. Eruvin 13b – God Himself asserted that opposing views are both His Word.

Rabbi Abba stated in the name of Shmuel: For three years Beit Shammai and Beit Hillel were in dispute, with each claiming that the halachah is as they posited. Then a Heavenly Voice announced, “Both opinions are the Words of the Living God, but in practice the halachah follows the opinion of Beit Hillel.”

אמר רבי אבא אמר שמואל: שלש שנים נחלקו בית שמאי ובית הלל, הללו אומרים הלכה כמותנו והללו אומרים הלכה כמותנו. יצאה בת קול ואמרה: אלו ואלו דברי אלהים חיים הן, והלכה כבית הלל.

PART B. PROCEDURE VS. PRACTICE

How is it possible that two opposing opinions are both right? If they really are both right, why, in practice, do we follow one?

We are dealing with two different entities here. One is the legal procedure of halachah by which halachic rulings are made. As far as that is concerned, both Beit Hillel and Beit Shammai had completely sound methodology, based on the principles taught by their teachers and originating at Sinai. Therefore, their motives were utterly selfless; their common goal was to find the absolute truth and identify God's Will. This being the case, whatever conclusions they reached were worthy and noble – they are God's Word.

The other entity discussed here is practical law (*halachah lema'aseh*). When it comes to deciding how the Jewish people should observe a certain law, uniformity of practice is of utmost importance, and therefore only one side of the dispute can be accepted.

The complexity of the Torah always allowed for the possibility of opposing, even contradictory, views. To be sure, everything had been taught to Moshe at Sinai, but certain details were left for scholars of later generations to determine the actual practice. Where multiple outcomes are possible, the prospect of dispute is inherent in the system.

1. Rabbi Yom Tov Asevilli, Chiddushei HaRitva to Eruvin 13b – Both sides of every future dispute were told to Moshe at Sinai.

The French Rabbis asked, “How could both opinions be ‘the words of the living God,’ when one permits the same thing that the other prohibits?” They answered that when Moshe ascended to Heaven to receive the Torah, God showed him, regarding every matter, forty-nine ways to conclude that the halachah prohibits and forty-nine ways to conclude that the halachah permits. Moshe asked God about this, and He answered that the Sages of Israel in each generation would be authorized to decide, and their ruling would be binding.

שאלו רבני צרפת ז"ל היאך אפשר שיהיו שניהם דברי אלהים חיים וזה אוסר וזה מתיר, ותירצו כי כשעלה משה למרום לקבל תורה הראו לו על כל דבר ודבר מ"ט פנים לאיסור ומ"ט פנים להיתר, ושאל להקב"ה על זה, ואמר שיהא זה מסור לחכמי ישראל שבכל דור ודור ויהיה הכרעה כמותם.

2. Rabbeinu Nissim, Derashot HaRan #7 – Moshe was taught all future legal opinions, including both sides of every authentic Torah dispute.

This matter needs to be examined; for how is it possible that Moshe was told by God both sides

וזה הענין צריך עיון, איך נאמר ששתי כתות המחלוקת נאמרו למשה מפי הגבורה, הרי שמאי והלל נחלקו,

of a halachic dispute? We know that Shammai and Hillel disagreed, with Shammai saying that the minimum amount of flour that necessitates separating challah is one *kav* while Hillel said it is two *kavs* (Eiduyot 1:2). Obviously, if one of these two opinions is correct, the other must be the opposite! How dare we suggest that God spoke something that is not true?

What this concept means is that the entire Written Torah and the Oral Torah were transmitted to Moshe as stated in Megillah (19b), “Rabbi Chiya bar Abba said in the name of Rabbi Yochanan: What is meant by the verse, ‘Upon them (the tablets) were *all* the words...’ (Devarim/Deuteronomy 9:10)? This teaches us that God showed Moshe what is to be derived from any extra words in the [Written] Torah and what is to be derived from the words of the Mishnah, and even those things that the Sages would institute in the future, such as the reading of the Megillah.” The term “what is to be derived from the words of the Mishnah” refers to the disputes [among the Sages] and the opposing lines of reason maintained by the wise men of Israel. Moshe learned the details of each dispute from God but not the final decision. Instead, He taught him the principle by which to determine the truth, which is, “the majority opinion prevails,” (Shemot 23:2) and, “do not veer from the ruling they tell you” (Devarim 17:11).

When disputes later arose among the Sages, and it was one person against many, they would decide the halachah according to the majority opinion. When one group disputed another group, or one individual disputed another, the matter was decided by the Sages of that generation. This authority was bestowed upon them, as the verse states, “You shall go to the *kohen* from the tribe of Levi or the judge who will preside in those days... Do not veer...” (Ibid. 17:9-11). We see that the Sages of the generations have been authorized to render a decision whenever some dispute the halachah, according to what is correct in their eyes ...

שמאי אומר מקב חלה והלל אומר מקביים (עדויות פ"א מ"ב). באמת שאחד משני הדעות אמיתי והשני הפכו, ואיך נאמר שיצא מפי השם דבר בלתי אמיתי.

אבל הענין כן הוא, שדבר ידוע שכל התורה שבכתב ובעל פה נמסרה למשה, כמו שאמר במגילה (י"ב) אמר רבי חייא בר אבא אמר ר' יוחנן מאי דכתיב (דברים ט') ועליהם ככל הדברים, מלמד שהראהו הקב"ה למשה דקדוקי תורה ודקדוקי סופרים ומה שסופרים עתידים לחדש ומאי ניהו מקרא מגילה, דקדוקי סופרים הם המחלוקות וחילוקי הסברות שבין חכמי ישראל, וכולן למדם משה מפי הגבורה בלא הכרעה כל מחלוקת ומחלוקת בפרט. אבל מסר לו כל[ל] אשר בו יודע האמת, והוא (שמות כג ב) אחרי רבים להטות, וכן (דברים יז יא) לא תסור מן הדבר אשר יגידו לך.

וכשרבו המחלוקת בין החכמים, אם היה יחיד אצל רבים היו קובעים הלכה כדברי המרובים, ואם רבים אצל רבים או יחיד אצל יחיד, כפי הנראה לחכמי הדור ההוא. שכבר נמסרה ההכרעה להם, כאמרו (שם ט - יא) ובאת אל הכהנים הלויים ואל השופט אשר יהיה בימים ההם וכו' לא תסור וגו', הרי שניתן רשות לחכמי הדורות להכריע במחלוקת החכמים הנראה להם...

God taught Moshe the principles of the Oral Torah, but He knew that disputes would arise in the future when the Sages would use this authentic Torah methodology to arrive at their opinions. When Moshe went to receive the Torah, God prophetically showed him all the Torah opinions that the Sages would one day put forward. To be sure, this information was not part of the Oral Torah that Moshe passed on to his own

generation. He simply was *shown* the future historical implications of what God had taught him. However, the various lines of reasoning and their halachic conclusions were left for future generations to explore and determine for themselves [see Rabbi Yom-Tov Lipmann Heller, Introduction to Tosfot Yom Tov]. We can learn from this that God consecrated each of these viewpoints with the sanctity of Sinai, making them part of genuine Torah study – regardless of the fact that only one view would be accepted as the final halachah.

3. **Rabbi Yitzchak Berkowitz, Classes on Klalei Hora'ah from www.jerusalemkollel.com – While both sides of a dispute express truth and have potential to be established as halachah, the God-given guidelines for establishing the halachah trump the “higher” level truth of Heaven.**

This approach of the Ran, that whatever decision ultimately chosen by the majority of the sages is the truth, only holds to a certain degree. There is truth as far as what relates to halachah in this world. Majority decides *that* truth. But there is a far greater truth that relates to an ultimate level of Torah – a truth that exists in “higher” worlds that may not be the one that the majority chooses – but that truth ultimately has little bearing on practical halachah.

All honest, learned, and well thought-out legal opinions – such as we find in the Mishnah, Talmud, Codes, and Responsa literature of Jewish Sages throughout the years – has the stamp of Torah truth on it, whether or not it is accepted as the final halachah. The determining factor as to which will be established as halachah follows the rules and regulations of the halachic decision-making process and cannot be interfered with by revelations from Heaven.

The Talmud makes this very point in relating the story of the Oven of *Aknai*. The Majority of Sages at the time concluded one way with regard to the status of the oven; Rabbi Eliezer alone held differently. Even when a heavenly voice confirmed Rabbi Eliezer's view, the Sages rejected on account that the halachah follows the majority rule!

4. **Talmud Bavli, Bava Metzia 59b – The rules of halachah override a Heavenly voice.**

It has been taught: On that day Rabbi Eliezer brought forward every imaginable argument, but they did not accept them. Said he to them: “If the halachah agrees with me, let this carob-tree prove it!” Thereupon the carob-tree was torn a hundred cubits out of its place — others affirm, four hundred cubits. “No proof can be brought from a carob-tree,” they [the Sages] retorted. Again he said to them: “If the halachah agrees with me, let the stream of water prove it!” Whereupon the stream of water flowed backwards — “No proof can be brought from a stream of water,” they rejoined.

Again he urged: “If the halachah agrees with me, let the walls of the schoolhouse prove it,” whereupon the walls inclined to fall. But Rabbi Yehoshua rebuked them, saying: “When scholars are engaged in a halachic dispute, what have you to interfere?” Hence they did not fall, in honor of Rabbi Yehoshua, nor did they stand upright, in honor of Rabbi Eliezer; and they are still standing

תנא: באותו היום השיב רבי אליעזר כל תשובות שבעולם ולא קיבלו הימנו. אמר להם: אם הלכה כמותי - חרוב זה יוכיח. נעקר חרוב ממקומו מאה אמה, ואמר לה: ארבע מאות אמה: אמרו לו: אין מביאין ראיה מן החרוב. חזר ואמר להם: אם הלכה כמותי - אמת המים יוכיחו. חזרו אמת המים לאחוריהם. אמרו לו: אין מביאין ראיה מאמת המים.

חזר ואמר להם: אם הלכה כמותי - כותלי בית המדרש יוכיחו. הטו כותלי בית המדרש ליפול. גער בהם רבי יהושע, אמר להם: אם תלמידי חכמים מנצחים זה את זה בהלכה - אתם מה טיבכם? לא נפלו מפני כבודו של רבי יהושע, ולא זקפו מפני כבודו של רבי אליעזר, ועדיין מטין ועומדין. חזר ואמר להם: אם הלכה כמותי - מן השמים יוכיחו. יצאתה בת קול ואמרה: מה לכם אצל רבי אליעזר שהלכה כמותו בכל מקום!

inclined. Again he said to them: "If the halachah agrees with me, let it be proved from Heaven!" Whereupon a Heavenly Voice cried out: "Why do you dispute with Rabbi Eliezer, seeing that in all matters the halachah agrees with him!" But Rabbi Yehoshua arose and exclaimed: (Devarim 30:12) "[The Torah] is not in heaven." What did he mean by this? — Said Rabbi Yirmiah: That the Torah had already been given at Mount Sinai; we pay no attention to a Heavenly Voice, because You have long since written in the Torah at Mount Sinai, (Shemot 23:2) "A case must be decided on the basis of the majority."

Rabbi Nathan met Elijah (the Prophet) and asked him: "What did the Holy One, Blessed be He, do in that hour?" — He replied, "He laughed [with joy], saying, 'My sons have defeated Me, My sons have defeated Me'."

עמד רבי יהושע על רגליו ואמר: לא בשמים היא. - מאי (דברים ל:יב) לא בשמים היא? - אמר רבי ירמיה: שכבר נתנה תורה מזה סיני. אין אנו משגיחין בבת קול, שכבר כתבת בהר סיני בתורה (שמות כג:ב) אחרי רבים להטות.

אשכחיה רבי נתן לאלהיו, אמר ליה: מאי עבד קודשא בריך הוא בההיא שעתא? - אמר ליה: קא חייך ואמר נצחוני בני, נצחוני בני.

Varying and even contradictory opinions in a dispute remain viable halachic alternatives only as long as the halachah has not been determined conclusively in accordance with one side. At that point, the "losing" side is relegated to a minority position that has only limited usage in halachah. (For an understanding of the role of minority or rejected views see further, Rabbi Yitzchak Berkowitz, Classes on Klalei Hora'ah from www.jerusalemkollel.com, English source sheets pp. 8-9 and Hebrew source sheets pp. 21-28.)

5. **Rabbi Moshe Feinstein, Igrot Moshe, Orach Chaim, Volume 1, Introduction – Each side of a dispute is legitimate as long as a universal ruling has not been determined.**

This is the nature of all disputes of the Rishonim and Acharonim concerning what is permitted and what is prohibited. As long as a universal ruling has not been determined, then each Rabbi can make decisions for his followers according to that which he thinks is correct – even though the objective halachah is only in accord with one of them. Both will also receive reward for their rulings. Because of this we find much dispute in even the most severe prohibitions – with variations between places that rule like the Rambam and Beit Yosef and those that rule like Tosfot and Remah. Both of the opposing views are "the words of the living God" even though the actual truth as revealed in Heaven is only like one of them.

וזהו ענין כל מחלוקות רבותינו הראשונים והאחרונים שזה אוסר וזה מתיר שכל זמן שלא נפסק כחד יכול כל אחד להורות במקומו כמו שסובר אף שהדין האמתי הוא רק כאחד מהן ושני החכמים מקבלים שכר על הוראתם. ומטעם זה מצינו הרבה חלוקים גם באיסורים חמורים בין מקומות הנוהגים להורות כהרמב"ם והב"י ובין המקומות הנוהגים להורות כחכמי התוס' וכהרמ"א ושניהם הם דברי אלוקים חיים אף שהאמת האמיתי גליא כלפי שמים שהוא רק כאחד מהם.

PART C. ASSEMBLING THE PUZZLE

The Talmudic method of Halachic decision making is a complicated process involving many pieces of

information, competing lines of logic, interpretive rules to be followed, and legal precedents to be adhered to or accounted for. With all these variables it is not surprising that different scholars would put the pieces together in different ways.

The following source is part of the Ramban's introduction to *Milchemot Hashem*, a work he composed to defend the Talmudic decisions and interpretations of Rabbeinu Yitzchak Alfasi (Rif) from the challenges posed to it by Rabbi Zerachya Halevi in his work, *Sefer HaMaor*. Here we find a candid discussion of the nature of halachic debate.

1. Ramban, Introduction to *Milchemot HaShem* – Talmudic debates are not mathematical equations; the opinions offered represent comprehensive theorizing to explain the given data.

When you examine my work, do not allow yourself to think that all my refutations of Rabbi Zerachya's opinions are absolutely correct in my eyes and that they force you to agree despite your refusal... This is not the case, for anyone who studies our Talmud is aware that when the commentators dispute its interpretation there are no absolute proofs or unanswerable challenges. Indeed, this discipline does not allow for concrete, axiomatic facts as there are in mathematics or geometry.

We apply all our faculties to demonstrate, through sound logic and by showing its difficulties in the existing Talmudic texts, that one of the opinions is unlikely to be correct. We then support the opposing opinion by showing that it fits in well with the text of the Talmud's passages and that it is valid. This is as much as we are capable of.

ואתה המסתכל בספרי אל תאמר בלבבך כי כל תשובתי על הרב רבי זרחיה ז"ל כולן בעיני תשובות נצחות ומכריחות אותך להודות בהם על פני עקשותך... אין הדבר כן כי יודע כל לומד תלמודנו שאין במחלוקת מפרשיו ראיות גמורות ולא ברוב קושיות חלוטות שאין בחכמה הזאת מופת ברור כגון חשבונני התשבורות וניסיוני התכונה:

אבל נשים כל מאדנו ודיינו מכל מחלוקת בהרחיק אחת מן הדעות בסברות מכריעות ונדחוק עליה השמועות ונשים יתרון הכשר לבעל דינה מפשטי ההלכות והוגן הסוגיות עם הסכמת השכל הנכון וזאת תכלית יכלתנו.

We can perhaps appreciate this concept of multiple views of the truth by way of analogy:

A jigsaw puzzle is a picture broken up into irregularly shaped pieces. Even without being told how the pieces are supposed to be arranged, or without having seen the original picture, any skilled expert will ably arrange the pieces to reproduce it. So too with determining the original will of God. Proceeding with this analogy we can understand why machloket, differences of opinion, were possible:

*Imagine that several experts, besides not having seen the original picture, are given pieces which, by being arranged in various ways, are capable of producing variant, though all fairly coherent, images. Complicate this further with the suggestions that some pieces may be missing and that some pieces, regardless of their arrangement, may interlock only with difficulty. The assemblers of the diagram-less puzzle may be forced to create some new pieces to complete the picture, and may be forced to settle for some less than perfect fits – some edges may overlap, some pieces may need to be slightly bent, some cracks may have to remain. The experts' only guide is that the picture with the least objectionable faults would probably be the closest to the original one. Now, even in such circumstances, all the experts may finally assemble the same picture. But then again, they may not. In the latter case, each expert will feel that all in all, the total picture that he has assembled, despite any forced structuring, is the most coherent one that can be produced and most accurately reflects the original intent of the puzzle's designer. (from Rabbi Tzvi Lampel, *The Dynamics of Dispute*, Judaica Press, pp. 13-14)*

PART D. NOTHING BUT THE TRUTH

Since absolute proof is rare when dealing with halachah, the possibility for different opinions is almost inevitable. But this does not mean that just anyone can decide his own interpretation and consider it a valid choice. The Sages of the Talmud were individuals chosen and authorized for their positions by their mentors. They maintained the utmost integrity in formulating their halachic rulings. Therefore, their conclusions are included as words of “Torah,” i.e. the words of the living God.

As long as the Sanhedrin existed, such debates were usually resolved swiftly. In the case of Beit Hillel and Beit Shammai, though, they continued to debate their differences for a full three years. The Heavenly Voice declared the validity of both sides only to allay any fears that might have been raised due to the length of their protracted debate.

1. Rabbi Yisroel Salanter, Ohr Yisroel, Siman 30 – The Heavenly Voice confirmed both sides to show that the debate had been carried on with pure intentions.

The dispute between Beit Hillel and Beit Shammai was about measuring the superiority of each other's proofs, for each side understood well all the proofs offered regarding their points of dispute. A super-dispute then arose regarding how to decide their disagreements, whether according to the majority of voices or according to the side with greater intellectual capacity... Their three-year argument was not because they were stubbornly refusing to give in. Rather, they argued for the sake of justice and truth, with pure intentions and without a trace of ulterior motive. It turned out that they argued for three years, with Beit Shammai assuming that they had the superior position, while Beit Hillel assuming that they did.

This might be why the Heavenly Voice called out saying, “Both opinions are the words of the living God.” The idea that even the rejected opinion is also called Torah was not new. The idea that “The Torah is no longer in Heaven” was definitely taught to Moshe from Sinai; it had not been forgotten. The purpose of the appearance of this Heavenly Voice was to give encouragement to the people after seeing the unprecedented three-year dispute. They might have entertained the thought that the scholars no longer had pure intentions and that they were standing up for their own honor. If so, their opinions would not be the kind that God desires to be transmitted as Torah and called “God's Torah” even when rejected in practice.

Therefore, the Heavenly Voice reassured the people that each side genuinely searched for

ובדבר משקל הראיות היתה המחלוקת של בית שמאי ובית הלל. כי כל אחד מהצדדים ידעו כל הראיות הנדרשות לדבר מחלוקתם, באר היטב. ומזה נולדה ביניהם מחלוקת כללית על המחלוקת בענין משקל הראיות, אם לילך אחר הכמות או אחר האיכות... לא למען החזיק דעתם נחלקו שלש שנים, כ”א למען הצדק והאמת בטהרת המחשבה בלי נגיעת הדעת כלל. לא בבחינת כונת הדעת, רק בבחינת מקרה נהיתה הדבר, אשר ב”ש סברו כי להם היתרון, וב”ה סברו להיפך.

ואולי לזה יצאה הבת קול ואמרה, אלו ואלו דברי אלהים חיים הם, ולא דבר חדש הודיעה הבת קול (כי גם דעה הנדחית בכלל תורה היא), כי התורה לא בשמים היא, ובודאי מסורה היתה למושה מסיני ולא שכחיה, אלא שישוד הבת קול היתה, למען לא יפול לב העם, בראותם כי זה שלש שנים שב”ש מחזיקים לאמר הלכה כדבריהם כי להם היתרון, וב”ה להיפך), פן ואולי ח”ו נטו אשוריהם מעט מטהרת המחשבה, ובאו ח”ו לקצת נגיעת הדעת. אשר לא בכמו אלה בחר ה’ למסור תורתו, להקרא תורת ה’ גם בדעה הנדחית.

לזאת הודיעה הבת קול, כי מחשבותיהם רצויים, ובבחינת מקרה היה הדבר, שהחזיקה כל אחת

the truth even though they carried on the dispute for so long. Therefore, even the rejected words of Beit Shammai were still the words of the living God, and someone studying them is studying God's Torah.

מהחבורות בכל עוז, כי לדעתם היתרון. ולזאת גם דברי ב"ש הנדחית דברי אלהים חיים הן, וההוגה בדבריהם הוגה בתורת ה' ית"ש.

2. **Rabbi Eliyahu E. Dessler, Michtav Mei'Eliyahu, Volume 5 pg. 215 – The words of the living God will endure whether or not they are applicable to all people at all times.**

Both this [opinion] and that one are the words of the living God: This means that when a great Torah scholar needs to rule on something not clarified by the classic determiners of halachah, he strives to arrive at the pure truth of the Torah to the best of his ability... His decision reveals one aspect of the truth inherent in the Holy Torah, and this is the meaning of "Both this [opinion] and that one are the words of the living God," and "every dispute for the sake of Heaven shall endure."

If a dispute is later decided, and that decision is agreed upon by all Rabbinical authorities, it becomes the truth for everyone, because then the halachah has been ruled for everyone. But even still, the other opinion or line of reasoning remains extant. That is how it is with every dispute for the sake of Heaven. The rejected opinion is also an aspect of the truth; and if it is not relevant in this situation it might very well be relevant in another, slightly different situation... and as such it "will endure."

אלו ואלו דברי אלקים חיים: והפירוש הוא שמי שהוא גדול בתורה והוא צריך להכריע בדבר שלא נפסק בפוסקים, הוא מתאמץ בכל יכולתו להגיע אל האמת לאמיתה של תורה. אבל ברור שהוא יכריע את האמת לפי כחות הנפש שלו... וההכרעה שלו מגלה צד אחד באמיתת התורה, והיינו "אלו ואלו דברי אלקים חיים", ו"כל מחלוקת שהיא לשם שמים סופה להתקיים".

רק אחר שנפסק הדין בהכרעת כל הפוסקים אז הכרעה זו אמת היא לכל, כי כבר נפסק הדין לכל. [אבל גם אז, הצד ההוא והסברה ההיא נשארים קיימים. וכן הוא בכל מחלוקת לשם שמים. כי הצד שהוא מגלה, לפי האמת שבחלקו, אמת הוא ואם הטעם לא שייך בנידון זה יתכן שיהא שייך בנידון אחר שישונה במקצת מהענין הראשון]... והיינו "סופה להתקיים".

KEY THEMES OF SECTION III.

- ∞ The Torah was given to us in a manner that necessitates the Sages to interpret it according to the principles they have received. Therefore, the system must allow for opposing opinions to arise. The Sanhedrin was equipped to deal with these disputes and to determine Torah law.
- ∞ But although each opinion in these disputes can be considered "the words of the living God," for the sake of unity and uniformity of practice only one opinion can be adopted as the actual halachah. The rejected opinion is not considered null and void; rather, it becomes part of legitimate Torah study.

SECTION IV. MACHLOKET IN CONTEMPORARY RULINGS

PART A. THE FRAMEWORK OF MACHLOKET IN CONTEMPORARY HALACHAH

Disputes did not stop with Beit Hillel and Beit Shammai. Throughout the halachic literature we find major authorities disputing the ruling of their predecessors. While this is always done with great respect for the genius and authority of those that came before, nevertheless “a judge can only rule based on what his own eyes see.” As such, every *Posek*, or halachic decision-maker, will rule with the utmost integrity according to the way the sources appear to him.

1. Rabbi Yeshaya of Trani, Responsa Ha-Rid #62 – The Posek must apply his own erudition to the “words of the living God” to determine the law correctly.

...rather, the reason that I can argue with the early authorities is because of the rationale provided by philosophers. I heard that a group of philosophers asked the greatest amongst them, “We acknowledge that the early scholars were wiser and more intelligent than us. But at the same time we acknowledge that we argue with their ideas and refute them in many issues, and in fact our criticisms of them are correct. How could that be?” He replied to them, “Who can see farther – a midget or a giant? It is obviously a giant, because his eyes are much higher than a midget. However if a midget stands on the shoulder of a giant – who can see farther? Obviously it is the midget because his eyes are now higher than the eyes of the giant.”

So it is with us. We are midgets riding on the shoulders of giants, because we know that it is their wisdom that elevates us. Meaning, our wisdom is based on their wisdom. Thus what we say is not because we are greater than them. We can comment regarding the early scholars in a situation where we see that they disagree with each other – one permitting and the other prohibiting. So which authority should we rely on? We cannot “weigh mountains with a scale and hills with a balance,” (Yeshayahu/Isaiah 40:12) simply to say that one is greater and therefore the words of the others are refuted.

Rather we must analyze all their words because both “these and these are the words of the living God” [Eiruvim 13b]. We need to debate and investigate their words to determine the direction of the law.

אלא אני דן בעצמי משל הפילוסופים. שמעתי מחכמי הפילוסופים שאלו לגדול שבהם ואמרו לו הלא אנחנו מודים שהראשונים חכמו והשכילו יותר ממנו והלא אנחנו מודים שאנו מדברים עליהם וסותרים דבריהם בהרבה מקומות והאמת אתנו היאך יכון הדבר הזה, השיבם אמר להם מי צופה למרחוק הננס או הענק הוי אומר הענק שענינו עומדות במקום גבוה יותר מן הננס, ואם תרכיב הננס על צוארי הענק מי צופה יותר למרחוק הוי אומר הננס שענינו גבוהות עכשיו יותר מעיני הענק.

כך אנחנו ננסים רוכבים על צוארי הענקים מפני שראינו חכמתם ואנו מעניקי עליה ומכח חכמתם חכמנו לומר כל מה שאנו אומרים ולא שאנו גדולים מהם, ואם זה באנו לומר שלא נדבר על דברי רבותינו הראשונים אם כן במקום שאנו רואים שזה חולק על זה וזה אוסר וזה מתיר אנו על מי נסמוך הנוכל לשקול בפלס הרים וגבעות במאזנים (ישעי' מ"ב) ולומר שזה גדול מזה שנבטל דברי זה מפני זה.

הא אין לנו אלא לחקור אחרי דבריהם שאילו ואילו דברי אלהים חיים הן (עירובין יג:), ולפלפל ולהעמיק מכח דבריהם להיכן הדין נוטה.

The contemporary Torah scholar may be a midget in comparison to the Sages of earlier generations, but he stands on their shoulders, nevertheless. In doing so he searches for precedents in the works of earlier *Poskim* (halachic decision-makers) whenever he needs to issue a ruling, much as a lawyer or a judge searches for precedents for a legal decision. In order to be able to render a ruling on something new, the scholar must be eminently familiar with the Talmud, its commentaries, the Arba'ah Turim, the Beit Yosef and Shulchan Aruch and its commentaries, besides the enormous volume of Halachic responsa that grows larger with each passing generation.

2. **Rabbi Moshe Feinstein, Igrot Moshe, Orach Chaim, Volume I, Introduction – Contemporary Rabbis must decide halachic questions, even if their rulings are seemingly not in accord with the “view of Heaven.”**

It is correct and obligatory for the Sages of the latter generations to decide halachah - even if they are not qualified according to the standards of the Talmudic Sages. Therefore, it is valid to be concerned that their halachic determinations are not in accord with the view of Heaven.

However, in truth we are guided by the principle that Torah is not in Heaven. Rather, it is determined according to what appears correct to the Rabbi after proper study of the issue to clarify the halachah according to the Talmud, and the writings of the Poskim. He is to use his full abilities, his serious deliberation and his fear of Heaven – in order to determine what appears to be the correct halachah. Such a ruling is viewed as true, and he is obligated to issue his conclusion. This obligation exists even if in fact his ruling is contrary to the halachah in Heaven. His ruling is also considered the “word of the living God,” as long as he is convinced he is correct and his reasoning is internally consistent.

שהיו רשאים ומחוייבין חכמי דורות האחרונים להורות
אף שלא היו נחשבים הגיע להוראה בדורות חכמי הגמ'
שיש ודאי לחוש אולי לא כיוונו אמיתות הדין כפי
שהוא האמת כלפי שמיא,

אבל האמת להוראה כבר נאמר לא בשמים היא
אלא כפי שנראה להחכם אחרי שעיין כראוי לברר
ההלכה בש"ס ובפוסקים כפי כחו בכובד ראש וביראה
מהש"ית ונראה לו שכן הוא פסק הדין הוא האמת
להוראה ומחוייב להורות כן אף אם בעצם גליא כלפי
שמיא שאינו כן הפירוש, ועל כזה נאמר שגם דבריו
דברי אלקים חיים מאחר שלו נראה הפירוש כמו
שפסק ולא היה סתירה לדבריו.

3. **Rabbi Aryeh Kaplan, Handbook of Jewish Thought, Volume 1, pp. 241-247 – In each generation there are accepted Rabbinic authorities who issue rulings.**

The opinions found in any generally accepted code or responsum is considered a binding precedent. Nevertheless, a recognized Torah scholar may dispute such a decision if he has ample Talmudic proof or an unequivocal tradition that a particular decision was not generally accepted. In such cases, it is preferable to follow the rulings of a living authority, as it is written, “You shall come...to the Judge who shall be in those days” (Devarim 17:9).

In every generation, there are certain Rabbis who, because of their great scholarship and piety, are generally accepted as religious leaders and authorities, as it is written, “You must observe all that they decide for you” (Deut. 17:10). Although this commandment relates specifically to the Sanhedrin, it also applies to the religious leaders of each generation...

4. **Rabbi Avraham Edelstein, The Oral Law, www.nerleef.com/books/orallaw.pdf , p 29 – A contemporary Sage understands the unique conditions and variables of his generation.**

A similar explanation is given for the *Chidushei Torah* (novel Torah insights) and *Pesak Halachah* (halachic decisions) which are established in every generation. A living Sage has the authority to decide a halachah against previous authorities, as only the contemporary Sage can understand all the unique variables relevant to his situation, as the Talmud Rosh HaShanah 25b, states, “Yiftach could judge in his generation as Shmuel could judge in his time (The Prophet Shmuel lived and issued law 100 years after Yiftach). Furthermore, each generation of Torah scholars makes a contribution to the Torah, bringing more of the Torah into the world. The number of generations that have passed will determine the number of Divrei Torah (Torah thoughts) which have been revealed in the world. So, although the later generations may be of reduced stature than the earlier ones, the continuous revelation of Torah means that these later generations are like dwarves sitting on the shoulders of giants, building on all the Torah already revealed. Similarly, later generations have all *kedusha* (sanctity) revelation of the previous generations.

Nevertheless, there are clear rules guiding the ability of authorities in later generations to issues rulings contrary to earlier authorities (See Rosh, Talmud Sanhedrin, Chapter 4, Halachah 6).

PART B. ASEH LECHA RAV – FINDING YOUR OWN PATH TO TORAH

With so many valid opinions on both sides of so many issues, how are we supposed to know what to do? If both these and those are the words of the living God, on what basis do we decide? The answer: ask your local Rabbi. Everyone should have their own personal connection to the Torah through their own personal Rabbi.

1. **Mishnah, Avot 1:6 – One must find a personal Rabbi.**

Rabbi Yehoshua ben Perachya said: Make a Rabbi for yourself...

יהושע בן פרחיה אומר עשה לך רב...

“Rabbi” in this context means much more than someone who can officiate at our lifecycle events. It refers to someone who has the knowledge, integrity, and refinement of character we discussed above, someone who embodies the Torah and can speak authoritatively in its name.

2. **Rabbi Moshe Schapiro, “What is a Rabbi?” from [www. Aish.com](http://www.Aish.com) – Your Rabbi will show you how to bring more spirituality into your life and answer your questions in Jewish law and beyond.**

While well-educated in Torah and Jewish law, a Rabbi is also a spiritual Jack-of-all-trades. Many of us think of a Rabbi as someone who conducts wedding ceremonies and funerals, and delivers a sermon or two during the High Holidays.

While a Rabbi does all of those things, in reality he does – and is – so much more. The ideal Rabbi is a Torah scholar who guides the members of the Jewish community he serves. How does he know how to guide them correctly? He turns to the Torah and Judaism for answers.

The designation of Rabbi is given when one receives Rabbinical ordination, earned by passing extensive examinations on the Torah and Talmud. Most Rabbis must study for a number of years in a yeshiva, a Jewish institute of higher learning, before they have the knowledge needed to even understand the material they have to study to pass the exams.

Receiving ordination, however, is not the end of the Rabbi's career as a student of the Torah. On the contrary – it's just the beginning. A community Rabbi will continue his search for knowledge and truth for the rest of his life, in the hopes of attaining greater clarity and comprehension of God and the Torah.

A Rabbi differs from clergymen in other religions in a number of ways. First, the Rabbi does not sport the outer trappings of religiosity. He is not required to wear a particular uniform, and he can dress just like any other Jew. Jewish practice is not something reserved for the clergy, but is available for *every* Jew. The Rabbi, then, doesn't need distinctive clothing or other religious trappings to set him apart from the people, because he is one of them. A little more educated in the ways of Judaism, perhaps, but still one of them.

Second, the Rabbi is not required to take upon himself the restrictions some other clergymen do, such as abstinence. He marries, has children and experiences all the ups and downs of life that are part of the human condition.

One of the Rabbi's primary goals is to show the members of his community how to bring more spirituality into their lives. This means that his goal is not to emphasize what they cannot do, but instead to instruct them in how to take everything that they can do and infuse it with a spiritual purpose.

The Rabbi sees Judaism as a living, breathing force. It is not something that once was, but something that *is*.

One of the Rabbi's primary roles is to answer questions that members of his community may have about everyday behavior so that it is in accordance with Jewish Law (halachah).

The Rabbi, additionally, serves as a counselor, giving members of the community advice and guidance on every subject under the sun – from marriage and raising children, to business ethics, to dealing with neighbors, to care of elderly relatives, utilizing the Torah's advice for living as a guide.

Finally, the Rabbi's job is to inspire community members to become better people. He does this both through individual example and by sharing the knowledge he has obtained by becoming a Torah scholar.

To sum it up, having a personal Rabbi is crucial to living Judaism.

3. Irving M. Bunim, *Ethics from Sinai, Volume 1*, pg. 78, Feldheim Publishers – Having a personal Rabbi helps you to clarify your questions and deepen your commitment.

There exist different paths in Judaism itself. There are Chassidim and Mitnagdim (Lithuanians), mystics and rationalists. Soon after you become aware of the differences, it is important that you adopt a specific approach and proceed to deepen your commitment in a consistent and systematic way. Directionless dilettantism in Judaism might lead to confusion and perplexity. Therefore, advises Rabbi Yehoshua ben Perachya, "provide yourself with a teacher." Select a Rabbi and follow his path, his approach. In the realm of practical Judaism this will also lead to clarity and certainty.

KEY THEMES OF SECTION IV.

- ∞ The dynamics of dispute did not end with the closing of the Talmud; they carry on – alive and well – to this day. Any competent halachic authority must approach his subject matter with his own eye, knowing all the while that he is a midget standing on the shoulders of giants.

- ∞ The way a Jew decides on issues that have valid arguments on both sides is to have a personal Rabbi. Doing so deepens one's commitment to the Torah and helps to resolve the ambiguities inherent in the system.

CLASS SUMMARY:

WHY DO THE SAGES IN THE TALMUD HAVE SO MANY DISPUTES?

The Sages of the Talmud have many disputes partly due to lack of clarity that arose in their times because of external pressures and partly because that is simply the nature of the Torah. There is more than one valid path to a right answer.

HOW DID THESE DISPUTES BEGIN, AND WHAT MOTIVATED THEM?

These disputes began because the students of Hillel and Shammai either did not serve their teachers well enough to understand all their teachings or because they could not muster up as much intellectual prowess as them. These flaws came about due to the external pressure exerted by the decrees of hostile Roman governments.

The Talmudic debates were motivated by a drive for the truth, to know and perform God's will. The scope of these disputes was very narrow, focusing on minute details.

HOW CAN MORE THAN ONE OPINION IN A DISPUTE BE RIGHT?

Even when two sides of a Talmudic debate are mutually exclusive, both can be "right" in the sense that both conclusions were drawn using the correct methodology. God taught Moshe more than one possible outcome on many halachic issues and left it to future generations to determine how to decide these issues, thus including even the halachically rejected and minority opinions as part of Torah. For practical reasons, only one side can be adopted as halachah, but the rejected opinion remains the words of the living God.

ARE ALL OPINIONS EQUALLY VALID?

This does not mean that just anyone's opinions are valid in the Torah framework. The scope of halachic debates is very narrow, focusing on minute details of the application of Torah laws, and valid opinions can be offered only by those recognized as carriers of the tradition, masters of the Word whose knowledge and character give them such authority.

HOW DO TORAH SCHOLARS TODAY DECIDE AMONGST COMPETING OPINIONS? HOW IS THE LAYPERSON SUPPOSED TO DO THE SAME?

Any competent halachic authority must approach his subject matter with his own eyes. At the same time he must have the humility of knowing he is a midgen standing on the shoulders of giants.

The way a Jew charts a course through issues that have valid arguments on both sides is to have a personal Rabbi. Doing so deepens one's commitment to the Torah and helps to resolve questions.

ADDITIONAL SOURCES:

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