

# DIMENSIONS IN CHUMASH

## Parshas Mishpatim

### Following the Majority – Finding the Halachah

אַחֲרֵי רַבִּים לְהִטֹּת

*Incline the matter after the majority<sup>1</sup>*

#### BACKGROUND

Parshas Mishpatim introduces us to the world of the Torah's laws that pertain between people. At the center of this world is the Beis Din, whose job it is to determine which party is guilty in any given altercation and to oversee the appropriate administration of justice. One of the bedrock principles for deciding Torah law is expressed in our verse. In the event that the judges of the Beis Din are not all in agreement as to what the ruling should be regarding a particular question, the Torah states that they should rule in accordance with majority opinion among the judges.

#### UNDERSTANDING THE CONCEPT

It is worthwhile raising the simple question of why this is so. On the one hand, one has to do something, and it is not practical to hold off from ruling on any case unless and until all judges are in agreement. On the other hand, there is still room to ponder as to the meaning behind this principle and its implications regarding the minority opinion whom are outvoted. After all, it is not impossible that the correct answer lies with them. Indeed, answering this question will lead us to consider the very meaning of the concept that we call halachah – Torah law.

In fact, there are two possible ways to respond to the above question:

1. It is possible that the Torah is simply endorsing the notion that the majority is *more likely* to arrive at the correct conclusion than the minority, and therefore it is to be followed. According to this approach, there does exist the possibility that the actual halachic was arrived at by the minority; nevertheless, as a rule, the truth will more likely rest with the majority and hence, their opinion is to be followed in all cases.
2. However, it is possible that in telling us to follow the majority, the Torah is defining for us what halachah is. Halachah — Torah law — is *by definition* the conclusion of the majority

<sup>1</sup> Shemos 23:2.

of qualified judges on a *beis din*. “Halachah” literally translates as “going.” The way that Hashem wants us to go in life is in accordance with what the *beis din* decides.

### **“NOT IN HEAVEN” – CONTESTED OVENS AND HEATED DEBATES**

This second approach would appear to be corroborated by the fact that we follow the majority even in a case where we are apprised of the correct decision as arrived at in heaven. Indeed, such a situation is famously described in the dispute between R’ Eliezer and the Sages regarding whether a certain oven was susceptible to receiving *tumah* (ritual contamination) or not. Initially, R’ Eliezer advances all the arguments for his position, but these were not accepted by the Sages. At that stage, R’ Eliezer called for all sorts of miracles to demonstrate his opinion was correct, all of which were ignored by the Sages. Finally, the Gemara relates:

*He then said to them, “If the halachah is like me, let them prove it from Heaven.” A heavenly voice (bas kol) issued forth and said, “Why do you take issue with Rabbi Eliezer, whom the halachah follows in all places?”*

*Rabbi Yehoshua stood up on his feet and said, “Lo bashamayim hi — It [the Torah] is not in Heaven!”<sup>2</sup>*

*What is the meaning of, “It is not in Heaven?” Rabbi Yirmiyah said, “For the Torah has already been given from Sinai. We do not pay any attention to a bas kol, for You [God] have already written in the Torah at Mount Sinai, ‘The matter shall be inclined toward the majority.’”<sup>3</sup>*

With these three words, “*lo bashamayim hi*,” Rabbi Yehoshua encapsulated the halachah’s attitude toward heavenly intervention in matters of halachah. The arena of halachic discussion is solely in the *beis din*, and the tools for deciding the halachah are those that were handed down to the judges along with the Torah at Sinai; and when they are in disagreement – we follow the majority.

The Rambam, in his Introduction to his Commentary on the Mishnah, phrases the matter thus:

*And know that prophecy influences neither the explanations of the Torah nor the deriving of the details of its commandments through the principles of exegetical derivation. Rather, the way Yehoshua and Pinchas conducted their investigation and reasoning is the same way Ravina and Rav Ashi performed theirs...God has not allowed us to learn from prophets, rather, only from Chachamim, men of reasoning and knowledge. The Torah does not say, “You shall come to the prophet who will be in those days,” rather, “You shall come to the Kohen and to the judge.”<sup>4</sup>*

Yet we ask: *Why is this so?* To put it in the simplest terms, do we not assume that a *bas kol* — a voice emanating from Heaven — represents the ultimate truth, making it the “right” answer? If that is the case, then how can we ignore it? In the case cited by the Gemara, did the *bas kol* siding with Rabbi Eliezer not indicate that in this case the majority of Sages were in error?

In light of our discussion, we can understand why a heavenly voice is inadmissible in the *beis din*, for even if it represents the theoretical “true answer,” it does not define the halachah as Hashem wishes us to follow it. This is why the Sages ignored the *bas kol* which supported Rabbi Eliezer’s view.<sup>5</sup>

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2 *Devarim* 30:12.

3 *Shemos* 23:2.

4 See also *Hilchos Yesodei HaTorah* 9:1.

5 *Derashos HaRan*, *drush* 7. See also Author’s Introduction to *Ketzos Hachoshen*, and Rav Elchanan Wasserman, *Kuntres Divrei Sofrim*, part 1, §5. See also commentaries *Be’er Yosef* and *Emes le’Yaakov* to our verse.

## DEFINING THE LAW AND PROTECTING THE LAW

The above explanation of why we ignore a *bas kol* fits in very well with the second answer offered above as to why we follow the majority, namely, that it defines the halachah. However, accordance to the first answer, whereby the majority is simply more likely to find the correct answer, why did the Sages ignore it when it was presented to them in the form of a heavenly voice?

The *Chasam Sofer* explains that according to this approach, the principle of “*Lo bashamayim hi*” exists as a means to protect the halachah.<sup>6</sup> If a heavenly voice were admissible as a basis for a halachic ruling, it could lead to a breakdown of effective halachic adjudication, for any person could simply say that his ruling is based on a heavenly voice, thereby placing it beyond any potential investigation or refutation. Therefore, the Torah demands that halachic rulings must be based solely on evidence and arguments that can be demonstrated and authenticated.

An interesting potential difference between these two approaches would arise in a situation where the *beis din* is unable to reach a decision about a certain case. Under those circumstances, would they be allowed to follow the ruling of a *bas kol*? According to the *Chasam Sofer*’s approach, which we could call “Protecting the Halachah”, the medium of a *bas kol* is categorically inadmissible in a halachic discussion and hence would be unacceptable even if there were no other means of determining the halachah. By contrast, according to the second approach, which we could refer to as “Defining Halachah,” lacking the wherewithal to arrive at the halachah on their own, the *beis din* could then be entitled to follow a *bas kol*.<sup>7</sup>

## THE GIVING OF THE TORAH – TOWARD CROWING ACHIEVEMENTS

According to numerous commentators, the shift of authority from heaven to earth in deciding the Halachah represents the full meaning of the term “Matan Torah” – the Giving of the Torah. In other words, not only were the mitzvos of the Torah *transmitted* to us to fulfill, but the ability to determine the halachah in any given situation was *transferred* to us.<sup>8</sup>

Rav Moshe Feinstein, in his Introduction to the first volume of his responsa *Igros Moshe*, discusses this concept of the Torah being “not in Heaven” as it applies throughout the generations which. By definition, this means that there must exist a criterion whereby the Torah scholars of each generation are qualified to rule. Thus, he writes, after having mastered the relevant sources, and accompanied by fear of Heaven, the scholar should engage himself in the question and issue the ruling that he feels is correct. And while it is possible that his ruling is in error, the Torah is “not in Heaven” and he has acted properly in delivering the answer which he believes to be correct.

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6 Responsa, *Orach Chaim* §208.

7 See *Chidah*, *Devash L’Fi*, Os nun §12. It is apparent from numerous sources that the exclusion of heavenly input from a halachic ruling refers specifically to the ruling itself; however, the evidence upon which the ruling is based can be attained through heavenly means. See e.g., *Tosafos*, *Chullin* 4b, s.v. al pi; *Kuntres Divrei Sofrim* sec. 5; and at length in *Maharatz Chajes*, *Toras Nevi'im*, chap. 2. It is interesting to consider this distinction in terms of the two approaches we have presented to the principle of “*Lo bashamayim hi*.” According to the second approach (“Defining Halachah”), although gathering correct information is crucial as the basis for the correct ruling, it is only the ruling itself that is actually “Torah,” about which we say that it is no longer in Heaven. In terms of the first approach (“Protecting the Halachah”), seemingly, one could argue that the proceedings in the *beis din* could break down as much through claims of Heavenly voices regarding evidence as with regard to the rulings themselves, so that both should be inadmissible! However, apparently the worry over a breakdown applies specifically to the ruling, perhaps because that would have implications for all such cases, as opposed to the question of evidence, which relates only to that particular case.

8 Commentary of Vilna Gaon to Shir Hashirim 3:11; R’ Yaakov of Lissa, Introduction to Commentary Nachalas Yaakov on the Torah; R’ Yisrael Salanter, *Ohr Yisrael*, footnote to sec. 30 part 3; *Beis Halevi*, Parshas Shemos s.v. *lehavin*.

With this in mind, Rav Moshe refers to the Gemara in *Maseches Menachos*<sup>9</sup> which relates that when Moshe ascended on high to receive the Torah, he found Hashem attaching “crowns” to the letters, referring to the vertical lines attached to the top of certain letters. When Moshe inquired as to the purpose of these crowns, Hashem responded that in the future, Rabbi Akiva would expound halachos from them.

Why are the lines above the letters called “crowns”?

Rav Moshe explains that part of the process of Hashem giving the Torah to the Jewish People is that He also grants them the authority to derive halachic rulings based on their understanding of the words written therein. As such, the “crown,” which represents that authority, has passed to the words and letters themselves, for it is the Sages’ understanding of those words and letters which will henceforth determine the halachah!

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9 29b.