

# Not in Heaven

## The Influence of Prophecy Within the *Halachic* Process

### 1. The Snake Oven

The classic case that is associated with the issue of prophecy and *halacha* is the well known episode of *tanuro shel achnai* – the snake oven. The background to this case is in the *halachos* of *tumah* and *tahara*, that if a vessel is made of clay, it is susceptible to receive *tumah*; if it is made of dirt, it is not. What if an oven is made of alternate layers of clay and dirt? Can it receive *tumah*? This question was the subject of a fierce debate between R' Eliezer, who maintains that it cannot contract *tumah*, and the Sages, who say that it can...

### 2. Confrontation

“On that day R' Eliezer advanced all the arguments in the world, but they [the Sages] did not accept them from him. He said to them, ‘If the *halacha* is in accordance with me, let the carob tree prove it.’ The carob tree was uprooted one hundred *amos* from its place; and some say four hundred. They said to him, ‘One cannot bring a proof from a carob tree.’

“He then said to them, ‘If the *halacha* is in accordance with me, let the stream of water prove it.’ The stream of water flowed backwards. They said to him, ‘One cannot bring a proof from a stream of water.’

“He then said to them, ‘If the *halacha* is like me, let the walls of the *beis hamedrash* prove it.’ The walls of the *beis hamedrash* inclined inwards, about to fall. R' Yehoshua rebuked them and said to them, ‘If Torah scholars are arguing with one another, what business is it of yours?’...

“He then said to them, ‘If the *halacha* is like me, let them prove it from heaven.’ A heavenly voice (*bas kol*) came forth and said, ‘Why do you take issue with R' Eliezer, whom the *halacha* follows in all places?’

“R' Yehoshua stood up on his feet and said, ‘*Lo bashamayim hi* (it [the Torah] is not in heaven)!’<sup>1</sup>

“What is the meaning of, ‘It is not in heaven?’ R' 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<sup>2</sup> at Mount Sinai, ‘The matter shall be inclined after the majority.’”<sup>3</sup>

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<sup>1</sup> Devarim 30:12.

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

<sup>3</sup> Bava Metzia 59b.

These three words, “*lo bashamayim hi*,” uttered by R’ Yehoshua, encapsulate the *halacha*’s attitude towards heavenly intervention in matters of *psak*. The arena of *halachic* discussion is solely in the *beis din*, and the decision-making tools are those handed down to the judges along with the Torah at Sinai.

### 3. “Until Eliyahu Comes”

There is a basic question regarding this notion, namely, that there can be no heavenly input in a *halachic* question. There are numerous instances in the Talmud where it states that the matter will be resolved by Eliyahu coming and shedding light on the situation at the end of days. As an example from among many, the Mishna<sup>4</sup> discusses a case where two people deposited parcels of money with a guardian, one of which was more valuable than the other. Later, each one claimed to be the one who deposited the more valuable parcel. The Mishna rules that we return the lesser amount to each of them, and the rest remains with the guardian “until Eliyahu comes.” Meaning, we wait for Eliyahu to tell us through prophetic knowledge which of them deposited the larger amount. This idea is echoed in many other places in the Talmud.<sup>5</sup>

Why is this not a violation of the concept of *lo bashamayim hi*?

### 4. Just the Facts – *Halachic* Ruling vs. Physical Reality

Many commentators explain that there is an important qualification to be made regarding the barring of prophecy from the *halachic* process. Prophecy is excluded only from the *formulation* of the *halacha* itself, i.e., where the facts of the case are known, and the *halacha* needs to be determined. But what if *the facts themselves* are unknown? There are numerous mechanisms we employ in order to attain a working knowledge of the case at hand, e.g., witnesses, relying on *rov*, etc. In this respect, receiving prophetic input to clarify the facts of the case is no less acceptable than any other method of clarification.<sup>6</sup>

### 5. “Not in Heaven!” – Ever?

The Gemara above quoted R’ Yehoshua as flatly rejecting the notion that a *bas kol* can influence the *halachic* process. But let us consider one or two statements from elsewhere in the Talmud, and see if this position is held across the board...

The Gemara in Brachos<sup>7</sup> cites a Braisa which discusses a dispute between Beis Hillel and Beis Shammai regarding the order of the *brachos* of *hagafen* and *mekadesh hashabbos* recited during the Friday night *kiddush*. The Braisa concludes, “And the *halacha* is in accordance with Beis

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<sup>4</sup> Bava Metzia 37a.

<sup>5</sup> See e.g., Pesachim 13a, Chagiga 26a, Yevamos 35b and Gittin 42a.

<sup>6</sup> Maharatz Chayos, Toras Hanevi'im chap. 2.

<sup>7</sup> 51b-52a.

Hillel [that *hagafen* is recited first and then *mekadesh hashabbos*].” On this the Gemara asks: The *halacha* is *always* like Beis Hillel! Why was it necessary for the Braisa to tell us this explicitly in this case? In response, the Gemara gives two answers, each of which will demand our close attention:

1. It was necessary to state this according to the *Chachamim*, for the Braisa was taught “before the *bas kol*.”
2. It is possible that the Braisa was taught “after the *bas kol*,” but it still needed to state that the *halacha* is like Beis Hillel, because it follows the opinion of R’ Yehoshua who does not pay attention to a *bas kol*.

## 6. Beis Hillel’s *Bas Kol*

The *bas kol* that the above Gemara is referring to is mentioned in *Maseches Eiruvim*:<sup>8</sup>

“For three years Beis Shammai and Beis Hillel argued with each other; these said the *halacha* is like us, and these said the *halacha* is like us. A *bas kol* came out and said, ‘Both these and these are the words of the Living God, and the *halacha* is like Beis Hillel.’”

This, then, is the *bas kol* referred to as the basis for our ruling like Beis Hillel. The *Chachamim* may have been initially uncertain about who to rule like, but after the *bas kol* there was no longer any doubt – the *halacha* follows Beis Hillel as a matter of course.

And of course, we have a problem.

## 7. Are all *Bas Kols* Equal?

The Tosafos<sup>9</sup> holds up these two seemingly contradictory *sugyos* before us. On the one hand, in the case of the snake oven, we do not rule like R’ Eliezer, even though a *bas kol* came out to support him. On the other hand, we have a rule that the *halacha* is always like Beis Hillel, a rule which is based on a *bas kol*! Do we or do we not take a *bas kol* into account?

The Tosafos answers: In the case of R’ Eliezer, we ignore the *bas kol* because the majority of the Sages ruled against him. In the case of the disputes between Beis Hillel and Beis Shammai, Beis Hillel was the majority opinion! Beis Shammai originally disputed Beis Hillel because they [Beis Shammai] were sharper than Beis Hillel.<sup>10</sup> Therefore, when a *bas kol* came out to support Beis Hillel, we follow it.

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<sup>8</sup> 13b.

<sup>9</sup> Brachos 52a s.v. *verabi*.

<sup>10</sup> See Yevamos 14a.

## 8. Beis Shammai and the Majority

These words of the Tosafos need to be considered carefully. Firstly, they refer to a most astonishing statement made by the Gemara regarding Beis Shammai, namely, that they did not follow the majority because they were sharper. How can this be? The Torah explicitly mandates that in matters of dispute the majority must be followed!

Moreover, once we are informed that Beis Hillel was in fact the majority, why is ruling like them considered to be “listening to a *bas kol*” at all? It would seem to be simply a matter of following the majority, as prescribed in the Torah!

In other words, had the *bas kol* opposed the majority, we would have ignored it; now that it concurs with the majority, we don’t need it!

In understanding the position of Beis Shammai, the Chasam Sofer<sup>11</sup> explains that they did not see themselves as being at odds with the Torah’s mandate to follow the majority. Rather, they understood that the majority to be followed was the majority in wisdom, not numbers. Hence, although they were fewer in number, the “majority of wisdom” was on their side.

With this in mind, we can understand that the *bas kol* on that occasion was indeed a decisive force in ruling like Beis Hillel, for it served to define the concept of majority, which was itself the subject of dispute between these two schools!

## 9. Why Do We Ignore a *Bas Kol*?

At this point, we must ask a basic question regarding our relationship with a *bas kol*: Why do we ignore it? To put it in the simplest terms, do we not assume that a *bas kol* – emanating from heaven – represents the ultimate truth? If that is the case, then how can we ignore it? Does the *bas kol* siding with R’ Eliezer not indicate that in this case the majority of Sages were in error?

In order to answer this question, we need to examine what *halacha* is and how it is defined. The Torah charges the *beis din* with establishing the *halacha* in any matter of doubt. If the members of the *beis din* are in disagreement, the *halacha* follows the majority.

- Why does the Torah tell us to rely on the majority in cases of doubt?

Let us consider two approaches to this question:

1. One may understand that the Torah is simply allowing for the fact that the majority is *more likely* to arrive at the correct conclusion than the minority, and therefore it is to be followed. This is so even though there does exist the possibility that the actual *halacha* is in accordance with the minority.

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<sup>11</sup> Teshuvos Even Ha’ezer sec. 1.

2. However, it is possible that something else entirely is taking place. The Torah is telling us what *halacha* is. *Halacha* – Torah law – is *by definition* the conclusion of the majority of qualified judges on a *beis din*. “*Halacha*” literally translates as “going.” The way that God wants us to go in life is in accordance with what the *beis din* decides. If this is true, then we can understand that a *bas kol* will be ignored if it contradicts the majority. Though it may represent the “true answer,” it does not define the *halacha* God wishes us to follow. *This* is why the Sages ignored the *bas kol* which supported R’ Eliezer’s view.<sup>12</sup>
  - But what if there is no majority decision?

According to the above analysis, we understand that the basis of ignoring a *bas kol*, even though it may represent the “right answer,” is that the *halacha* has already been defined by the majority. That being the case, if there is no majority, e.g., if the *beis din* is completely undecided about a certain matter, it should be perfectly acceptable to take recourse to a *bas kol* for guidance. This was the case in the dispute between Beis Hillel and Beis Shammai, where the *rov* was incapable of providing direction (since the definition of *rov* itself was under dispute).<sup>13</sup>

## 10. The Outvoted Judge

This understanding of the Tosafos’s position will be born out by a statement the Tosafos makes elsewhere<sup>14</sup> in response to a most interesting question. We have a rule regarding monetary affairs, “*ain holchin be’mamon achar harov*” (when it comes to matters of money, we do not follow the majority). That is to say, in a case where it is questionable whether or not someone needs to pay, even though the majority of parallel cases would require him to do so, he doesn’t need to pay in the absence of proof regarding his particular case. This being so, the Tosafos asks a question: Every monetary case is decided by a *beis din* of three judges. In the event of a dispute among the judges, the *halacha* is decided in accordance with the majority. How can this be? This contradicts the rule that we do not follow the majority in matters of money!

The Tosafos responds: There, with regard to the judges, it is different, for the minority is considered as if it doesn’t exist.

As if it doesn’t exist? Where did the outvoted judge go? Any minority opinion has a *chance* of being true, it is just less likely to be true than the majority. How is the minority opinion of this judge different than a minority possibility in any other case?

- How would we explain these words of the Tosafos based on their position regarding a *bas kol*?

According to the Tosafos, when the *beis din* is disputing a certain case, the *halacha* is *by definition* the conclusion of the majority. That being the case, to say that “maybe the *halacha* is like the minority opinion” would be a contradiction in terms. This is in contrast to the notion of

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<sup>12</sup> Drashos Haran *drush* 7.

<sup>13</sup> Kuntres Divrei Sofrim sec. 5.

<sup>14</sup> Bava Kama 27b s.v. *ka mashma lan*.

following the majority regarding situations, where the minority scenarios still remain part of the equation.

## 11. Rambam's View

Thus far, we have considered the Tosafos's view, which does not reject a *bas kol* categorically, but only when it is at odds with the majority.

The Rambam, however, seems to view our relationship with a *bas kol* – or the lack thereof – quite differently.

In his introduction to his commentary on the Mishna, the Rambam writes:

“And know that prophecy does not influence the explanations of the Torah, nor the deriving of the details of its commandments through the principles of *drash*. 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 *kohein* and to the judge.’”<sup>15</sup>

With these words, the Rambam clearly seems to be excluding prophecy from *any involvement* in deciding *halacha*, not just in a case where the majority has already spoken.

What emerges is a difference of opinion between the Rambam and the Tosafos as to the reason for excluding a *bas kol*; this reason will determine whether or not that exclusion is categorical and absolute.<sup>16</sup>

But here we have a question:

- The position of the Rambam seems to be contradicted by the fact that – as the Tosafos pointed out – we *do* accept the *bas kol* which supported Beis Hillel!

## 12. An Older Dispute?

To answer this question, let us remind ourselves: The distinction that the Tosafos made was in order to explain the position of the *Chachamim*, who rejected the *bas kol* in the case of R' Eliezer but accepted it in the case of Beis Hillel.

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<sup>15</sup> See also Hilchos Yesodei Hatorah 9:1.

<sup>16</sup> We should note that once the Rambam does not differentiate between cases where the *rov* has decided or not, but rather excludes prophecy from any and all *halachic* discussion, we have no reason to conclude that he would concur in defining *halacha* as the decision of the majority. Rather, he may in fact understand the Torah's directive to follow the *rov* as an expression of the fact that they are more likely to arrive at the correct conclusion, i.e., approach 1 in sec. 9 above (Kuntres Divrei Sofrim *ibid.*).

- Look again at the Gemara Brachos quoted above (section 5). Is there anyone among the *Tannaim* who has a different opinion on this matter?

The second answer offered by the Gemara is that the Braisa felt it necessary to state that the *halacha* is like Beis Hillel, for it follows the approach of R' Yehoshua who does not pay any attention to a *bas kol*. In other words, the Gemara is saying that R' Yehoshua would not accept *any bas kol*, even the one which supported Beis Hillel!

It turns out that the dispute between the Tosafos and the Rambam regarding the scope of our rejection of a *bas kol* actually reflects a dispute of the *Tannaim*, namely, between the *Chachamim* and R' Yehoshua.

### 13. Who is R' Yehoshua?

Now, if we have paid attention to what has been said so far, we will actually find ourselves in a difficult situation relating to the position the Gemara has presented on behalf of R' Yehoshua:

- Consider the *bas kol* that R' Yehoshua rejected, and then note the *bas kol* that the Gemara says he *would* reject. Does rejecting the one necessitate rejecting the other?

The Gemara says that R' Yehoshua rejects any *bas kol*, even the one supporting Beis Hillel. But when have we ever heard him talking about this matter? The only occasion was during his dispute with R' Eliezer. Yet we have already seen ample grounds for rejecting R' Eliezer's *bas kol* while still accepting Beis Hillel's! How, then, do we know that R' Yehoshua would reject Beis Hillel's *bas kol* as well?

The Tosafos<sup>17</sup> explains that although we only heard R' Yehoshua rejecting the *bas kol* of R' Eliezer, the categorical way in which he rejected it leads us to understand that he would similarly reject *any bas kol*, even if it was not opposed by a majority.

Based on these words of the Tosafos, perhaps we can understand the ensuing question and answer in the story of *tanuro shel achnai* quoted above. "What is the meaning of, 'It is not in heaven?'... The Torah has already been given... [and it is] written in the Torah... [to follow] after the majority." This final exchange notes that although R' Yehoshua cited the *pasuk* of *lo bashamayim hi* in an unqualified manner which would exclude *any bas kol*, the consensus of the other *Chachamim* is to agree with him only to the extent that the decision of the majority would contradict the *bas kol*.

### 14. The Rambam and Beis Hillel

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<sup>17</sup> Yevamos 14a s.v. R' Yehoshua.

A most interesting question surfaces at this point, which is raised by the Kesef Mishneh.<sup>18</sup> The Rambam most certainly concurs with the rule that we follow Beis Hillel in all cases that they dispute Beis Shammai. The question is – why? So far, the only basis for siding with Beis Hillel is the *bas kol* that supported them. If so, the Rambam, who states that we do not heed any *bas kol*, should have no reason to rule like Beis Hillel – and yet he does!

Actually, a similar question was raised by the Tosafos Harosh,<sup>19</sup> who notes that R' Yehoshua himself accepts the rule that the *halacha* follows Beis Hillel. The question is, on what grounds does R' Yehoshua accept this rule, if, as the Gemara stated on his behalf, he did not accept the *bas kol* that determined this rule? The Tosafos Harosh answers that it may be that R' Yehoshua understood axiomatically that the Torah's directive to follow the majority refers to the majority of *Chachamim*, even if the minority is sharper. If this is the case, the *halacha* would be established in accordance with Beis Hillel even without the assistance of a *bas kol*. It may be that the Rambam also accepts this approach.<sup>20</sup>

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<sup>18</sup> Hilchos Yesodei Hatorah 9:3.

<sup>19</sup> Niddah 7a.

<sup>20</sup> Kuntres Divrei Sofrim 5:10.