

This past Monday and Tuesday CMTL ran a wonderfully intense and productive professional conference titled “Containing Diversity”. We look forward to sharing some of the presentations and discussions with you over the coming weeks and months, in both video and print form. This week I will briefly share with you part of my shiur at the second session “Unifomity and Diversity: Theory”.

Among the more famous passages in the Talmud is the following from Eruvin 13b.

אמר רבי אבא אמר שמואל:

שלוש שנים נחלקו בית שמאי ובית הלל - הללו אומרים הלכה כמותנו; והללו אומרים הלכה כמותנו.

יצאה בת קול ואמרה: "אלו ואלו דברי אלקים חיים הן, והלכה כבית הלל".

וכי מאחר שאלו ואלו דברי אלקים חיים, מפני מה זכו בית הלל לקבוע הלכה כמותן?

מפני שנחין ועלובין היו, ושונין דבריהן ודברי בית שמאי.

ולא עוד, אלא שמקדימין דברי בית שמאי לדבריהן

Said Rabbi Abba said Shmuel:

For three years Beit Hillel and Beit Shammai disputed – these said “The Law follows us” and these said “The Law follows us”.

A Heavenly Voice emerged and said: “These and those are the living words of G-d (or: the words of the Living G-d), but the law follows Beit Hillel.

But since these and those are the living words of G-d, why did Beit Hillel merit having the Law established as following them?

Because they were pleasant and forbearing, and taught their own words and the words of Beit Shammai.

Not only that, they put the words of Beit Shammai before their own.

This passage can be interpreted as follows: The full truth of G-d’s Torah is beyond human understanding, and therefore positions that appear radically distinct or even polar opposites to our limited comprehension may both be genuine and true interpretations of Torah. However, in the realm of action, opposites cannot be tolerated – the Law must follow somebody, after all – and thus a Heavenly voice emerged to declare that the law followed the House of Hillel.

But that the Halakhah was eventually decided does not mean that it was necessary for it to be decided. In other words - rather than understanding this passage to say that

a) a decision being necessary, Beit Hillel’s position was chosen because Beit Hillel were of superior relevant character, we can understand it to say that

b) no decision was necessary, but when it became clear that Beit Hillel were of superior relevant character, it became possible to choose their position.

One can make a similar point along a different axis. The passage can be interpreted to say that:

a) In general, halakhic disputes involve a right and a wrong position, and psak halakhah, legal decisionmaking, involves choosing the right position over the wrong. In such cases only the right position is truly the living word of G-d, or at least the right position is somehow more the living word of G-d than is the wrong one. The dispute between Beit Shammai and Beit Hillel was unusual in that it involved conflicting positions of precisely equal truth, and thus it took a Heavenly voice to resolve it, and on grounds of character rather than of truth.

I suggest the following alternative:

b) Many, perhaps most, Halakhic disputes involve conflicting positions each of which are genuinely the living word of G-d, although this may not be recognized by the disputants. Ordinarily, there is no reason to resolve such disputes – rather, each person can follow their own reasoning, if they are competent halakhic reasoners, or else follow the psak of their rabbinic authority, or under some circumstances follow the dictates of conscience. The dispute between Hillel and Shammai was unique not because both sides were equally “true”, but rather because G-d found it necessary to Divinely resolve a dispute between sufficiently true positions. (I plan iyH to explain that necessity in a future dvar Torah.)

Each of the readings I propose carries the implication that diversity of halakhic practice is a perfectly acceptable halakhic outcome – there is no need for every Jew to practice exactly the same halakhah. When practical conflicts arise – e.g. when food held to be kosher by one is served to another who holds it nonkosher - we should disclose the issue to each other, as the Talmud suggests Beit Hillel and Beit Shammai did with regard to marriageability when their halakhic positions conflicted. This precedent implies that diversity of psak is possible even with regard to personal status issues, so long as there is genuine trust – and perhaps even when the parties do not recognize each other’s positions as halakhically legitimate.

Now the dispute was likely eventually resolved, according to the Talmud (although not necessarily – one position holds that Beit Shammai followed Rabbi Yehoshua in rejecting the Halakhic authority of Heavenly voices, and so did not accept that the halakhah did not follow them), so I do not wish to suggest that the existence of diverse halakhic communities of practice is a value that should trump issues of social order and the like. But neither is it clear, at least to me, that uniformity of practice (let alone an artificial uniformity achievable only by defining nonconformers out of the community) is important for its own sake, rather than an optional means for achieving religious ends.

This insight may be useful in approaching some of the more divisive issues facing our communities. I suggest that often there is a felt need to create a uniform halakhah, even when that theoretical uniformity as to the practical law may ironically serve to divide rather than unify the Jewish people in practice. An ironic effect of the OU’s phenomenal success, for example, is that kashrut often is a more effective social barriers among Jews, and particularly among observant Jews, than between Jews and non-Jews (nonJews do not resist simply buying off-the-

shelf goods for social events, or even providing separate meals from super-glatt caterers at major events, as they have no personal standard of Jewish observance to thereby symbolically undermine).

The presumption that there can be only one halakhah at a time compels those who resist a current consensus to break off from the homogenizing community. Rather, we should all strive for halakhah to accord with truth, acknowledging that this may at times – not at all times, and not on all issues, and only in an atmosphere of genuine mutual trust - allow us to acknowledge multiple practices as legitimate, or even to live in community with those whose practices we see as badly mistaken.

Shabbat Shalom

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