

CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

WHEN MAJORITY RULE BREAKS DOWN

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If the Torah is “not in the Heavens” (*Devarim* 30:12), where is it? In the story of the Oven of Akhnai, the *tanna* Rabbi Yehoshua cites this phrase to reject Rabbi Eliezer’s use of a Heavenly voice (בת קול) as halakhic evidence, but he provides no explicit alternative. The *amora* Rabbi Yirmiyah fills the gap by claiming that at Sinai G-d handed the Torah over to human majority rule. What happens when majority rule breaks down? Does the Torah remain on Earth, or does it return to the Heavens?

Majority rule can break down in at least three ways. First, we can disagree as to whose vote counts, so that each side believes itself to have the true majority. Second, we can deny that the votes of those we disagree with are the result of genuine deliberation, rather than unreflective support of interests or ideologies; majority rule works only when minorities have a plausible hope of becoming majorities. Third, we can deny that the votes of those we disagree with reflect their free choices, rather than the implicit or explicit coercion of the powerful.

It is no secret that majority rule in Modern Orthodox *halakhab* has broken down in each of these ways. So we are left to face the question: Where should Halakhic authority rest?

The possibility that authority returns to Heaven is real. Tosafot point out that while we accept Rabbi Yehoshua’s rejection of Rabbi Eliezer’s Heavenly voice, the *halakhab* also follows Beit Hillel over Beit Shammai *because a Heavenly voice said so*. Tosafot answer that we accept Heavenly voices when they support the majority, but not when they oppose it. This seems trivial; what does the Heavenly voice add? The

answer is that *Talmud Yevamot* tells us that Beit Shammai and Beit Hillel disagreed as to which had the majority, as Beit Shammai thought many of the pro-Beit Hillel voters were unqualified. Heavenly voices can decide the meta-question of who gets to vote.

This solution has potentially broad implications; there are many potential meta-questions. Rabbi Norman Lamm in *Halikbot VaHalakbot* argues, for example, that majority rule does not apply to arguments about jurisdiction or authority. In the first *Mishnah* in Shas, there is a dispute between Rabban Gamliel and the Sages as to how late the evening *Shema* may be said: the Sages say until midnight, whereas Rabban Gamliel permits until dawn. Rabban Gamliel then rules in practice for his sons that they may say it after midnight, despite being fully aware (see *Talmud Berakhot*) that his is the minority position. How can he do this? Rabbi Lamm suggests that the Sages’ position was that a rabbinic decree had limited the acceptable time to midnight, but Rabban Gamliel denied the right of the Sages to make such a decree, and as a result felt free to disregard their majority. It might follow that according to Tosafot, this dispute as well was potentially subject to arbitration by Heavenly voice.

Now Rabban Gamliel and Rabbi Yehoshua are protagonists in *Mishnah Rosh HaShannah* of a different drama about halakhic authority. In that story, Rabban Gamliel crushes Rabbi Yehoshua’s attempted dissent by social force. When Rabbi Yehoshua seeks support afterward, he is told by his colleagues, on various grounds, that Rabban Gamliel’s decision is final, even if it does not accord with the truth,

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and in some versions—which fit well with the story—even if it deliberately fails to accord with the truth.

In this drama it is Rabban Gamliel who stands for social authority, and Rabbi Yehoshua who stands for the right to follow personal truth. In other words, Rabban Gamliel and Rabbi Yehoshua each believed that halakhic majorities do not have unlimited authority, although they disagreed as to what those limits were. The question for us is: did they return authority to the Heavens outside those limits?

The short answer is no. Rabbi Yehoshua ultimately agrees to publicly violate the day he held should really have been Yom Kippur. And in *Talmud Berakhot*, when Rabban Gamliel is temporarily removed from his office as *nasi*, he remains in the *beit midrash* and to the best of our knowledge accepts the outcome when his position on a conversion case is outvoted. Neither Rabbi, no matter how deeply convinced of their own truth, resorts to Heavenly voices or denies human authority when confronted by a majority of their colleagues.

I suggest that each of them understood that “not in Heaven” is not descriptive, but rather prescriptive. In other words: A goal and challenge for every halakhist is to make sure that authority is not ceded to the Heavens.

Why should this be so? Because a resort to the Heavens opens religion up to exploitation by charismatic frauds and sincere lunatics. It enables the worst of decisions to simply evade critical scrutiny, and indeed often to revel in their irrationality. It removes our responsibility to work together to build communities that implement the word of G-d as best we understand it.

All this is worse than almost any system in which human beings remain accountable to one another.

Of course, there are human systems in which human beings are not accountable to one another, and *halakhab* can

fall prey to those as well. When majorities are consistently achieved by intimidation rather than persuasion; when *psak* in crucial cases is wholly predictable on the basis of ideology; or when eligibility to vote is determined by outcomes rather than abilities, nothing is left for dissenters other than secession, and ultimately, the claim that they have Heavenly authority for their spiritual or ethical intuitions.

Yet how long will their leaders remain accountable? Or, how will they be able to build community when real differences of opinion surface?

What kept Rabban Gamliel and Rabbi Yehoshua inside the system was their recognition that even if some things were going terribly wrong, overall there was still human accountability. Rabban Gamliel could rule specific votes with an iron hand, but he could be deposed; Rabbi Yehoshua was willing to submit himself when the alternative was anarchy. Furthermore, Rabbi Yehoshua did not force a confrontation on every issue, but was willing to tolerate Rabban Gamliel’s nonconformity about the time of Shema. Rabban Gamliel was properly deposed when he began seeking a formal ruling every time there was a whisper of dissent.

With its mechanisms of accountability broken, Modern Orthodoxy is more and more vulnerable to claims of direct Divine inspiration and non-accountable certainty (often well-disguised as their opposites). A natural reaction to this risk of anarchy is to double-down on eligibility, ideology, and intimidation; these work in the short run, but lead almost inevitably to schism (and intimidation is a very hard habit to break).

In the coming year, let us bless ourselves, and invite Divine blessing upon us, by working instead to rebuild our willingness to be accountable to each other. *Shabbat Shalom!*

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