

# PARSHAS SHLACH - TWO HALACHIC HIGHWAYS

*by Rabbi Yitzchok Adlerstein*

## Two Halachic Highways<sup>1</sup>

*Those who found him gathering wood brought him to Moshe and Aharon...*

What were they thinking? With all due respect to Aharon, did anyone believe that if Moshe could not provide an answer, that Aharon would? Note how they are ordered in the pasuk, with Moshe listed first. The plain reading is that they turned to them in sequence.

One approach is given in the Sifri here, and applied by Rashi in a few similar pesukim relating to Pesach Sheni[2] and the request of Tzelafchad's daughters[3]. This reading has Moshe and Aharon already sitting together in the beis medrash. They were not approached serially, which would have been pointless after going to Moshe first. Rather, in each case, those who brought the question for a decision happened to find the brothers engrossed in a frequent activity: Torah study. And, we should add, the questions were addressed to both, because in an open, free-wheeling Torah discussion, there is room for greater and lesser authorities joining in on the discussion.

We are really not where we want to be yet. People who would not be able to team up to give testimony - like the brothers Moshe and Aharon - may still sit together to decide difficult matters of halachah. The gemara states this explicitly[4]. It is perfectly plausible, therefore, to explain in this way some of the other joint references to Moshe and his brother. In those cases, they were asked to rule in the abstract about the halachic definition of some Torah statute. There was plenty of room for both to take part in the deliberations, along with others as well. That was not the case in our pasuk. Here, a person's life hung in the balance. They were asked to determine whether the accused had committed a crime for which he needed to pay with his life. Two relatives, like Moshe and Aharon, will not count as separate voices. Should a father and son both take part in such a discussion, it is only the father's vote that counts, while his son is treated as an assistant. Moreover, Rashi on the gemara cites a Tosefta that two relatives should not even sit together in a capital case - possibly to avoid the appearance of impropriety[5]. One of them should get up and leave. If so, we are no closer to a solution than when we began. Why invoke Aharon here, when he was barred from adding substantively to the discussion?

What we have here is a glimpse of a fundamental distinction in deciding halachic matters. Moshe

and Aharon could not sit together in a single court - and they did not have to. Each headed a court of his own, each seeking to uncover Torah truth, but using different tools.

Parshas Shoftim<sup>[6]</sup> instructs us to resolve doubtful halachic matters by going to higher authorities. Somewhat surprisingly, it speaks of going to the kohanim and to the shofet. We understand the reference to the shofet; deciding the law is his job. But why mention kohanim?

Know that there are two ways in which to arrive at an acceptable halachic answer regarding a matter for which no earlier, accepted approach exists. The first is largely rational. The decisor looks at similar cases and comparable models, and arrives at a position that he finds logically compelling. We would call this hora'ah. It is fully legitimate - but may only be relied upon in the instance that the decision is rendered.

A very different method uses the systematized rules of Torah inference to derive new laws from the ground up. When used properly, its conclusions become part of the corpus of law passed down from generation to generation, i.e. mishnah. Applying these rules of inference is no simple matter, and requires much analysis and comprehension of subtlety and nuance. We call those things "pilpul."

The first method is linked to the kohanim; the second to the shofet. Both can be used, and both are recommended by the pasuk in Shoftim. During the travels of Bnei Yisrael in the wilderness, Aharon headed up a court specializing in the first method, while Moshe was the acknowledged master of the pilpul process.

When the gatherer of wood violated the laws of Shabbos, the community was at a loss as to how to grasp the Torah's command to execute the Shabbos desecrater. People came to both Moshe and Aharon, ready to accept instruction from either of them, each employing his specialty in consultation with his own court.

Those two institutions remain alive and vital to this very day.

## **Individual Choice In Avodas Hashem<sup>7</sup>**

*You shall not seek out after your heart and after your eyes after which you stray<sup>[8]</sup>.*

What the Torah really means to say is that we should not follow the dictates of our hearts. Strangely, it doesn't employ the expected verb, but instead takes us back to the very beginning of our parshah. There<sup>[9]</sup>, we find the verb form lasur/ to spy out the land, joining that pasuk to the lo sasuru/ you shall not seek out, of our pasuk.

The Torah hints at something remarkable about individual choice in the way we live our lives. There is nothing more important to us than how we serve Hashem. Yet, this is nothing that can be

standardized. The general outlines of avodas Hashem vary from person to person. One person toils constantly in his Torah learning. Another throws himself into the performance of practical mitzvos, while yet another tries to maximize his output of chesed. All of them act in devotion to Heaven.

We see that even within these three broad choices there is much room for difference. Among those who immerse themselves entirely in their learning, we still find very different styles of and approaches to that learning. Even those who devote themselves to rigorous performance of the mitzvos find room for individual choice. The gemara<sup>[10]</sup> speaks approvingly of great people who devote themselves to some mitzvah with great tenacity; the Yerushalmi<sup>[11]</sup> sees special bracha accruing to a person who chooses a single mitzvah which he never compromises, regardless of circumstances.

Were a person to ask how he should choose between the three major options, and from the choices within each group, we would answer simply: Follow where your heart leads you. It is certain that even if you cannot articulate to yourself why you should pick one option over another, your heart will not fail you. It will take you to the place most suitable to the powers of your soul.

With so much leeway granted to individual choice, we might come to think that Hashem is interested only in that a person act for the sake of Heaven. If one's inclination and fervor orient him to explore new ways of serving Hashem, that might be fine as well. It isn't. And it is for this reason that our pasuk uses a verb that connotes spying, searching for something previously unknown. Creativity and individuality have their limits. When they tell a person to seek out new forms of avodah, they become illegitimate. Choices are available and desirable within the orbits of Torah study and mitzvah performance - but not in the creation of new forms of service.

We note that our pasuk is located in the wake of the story of the gatherer of wood. Tosafos<sup>[12]</sup> claim that he acted as he did for the sake of Heaven. He saw a generation demoralized by the sentence imposed upon them of wandering for forty years. They thought that all their activities had become irrelevant, as G-d simply did not care any longer what they did. The wood-gatherer sought to demonstrate that Hashem cared very much. By drawing a death sentence upon himself for desecrating Shabbos, he hoped to prove that their mitzvos and sins were still important, even if he had to sacrifice his life to make his point.

He, too, was "spying out" the landscape, using his individuality to tell himself that he could serve Hashem by breaking His law. The Torah emphasizes in our pasuk that a person who acts in such a manner has overstepped his authority. One cannot transgress for the sake of Heaven. (Although the gemara<sup>[13]</sup> states that a transgression for the sake of Heaven is on par with a mitzvah performed not entirely for the sake of Heaven, this has no bearing on our discussion. When the gemara creates this identity, it speaks specifically about a person trapped in a predicament not of his choosing, and dealing with it through an aveirah with good intentions. It does not license transgression in other circumstances.)

Similarly, we are barred from creatively inventing new ways of serving G-d, even when they do not involve transgression. Hashem understands quite well our need for individuality. He is the One, after all, Who made it part of us. He also assigned us our individual strengths and talents. And He left ample room for our individual choices within the great task He gave us at birth.

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1. *Based on Ha'amek Davar and Harchev Davar, Bamidbar 15:33*
  2. Bamidbar 9:6
  3. Bamidbar 27:20
  4. Sanhedrin 36A
  5. So in the Cooperman ed. Netziv
  6. Devarim 17:8
  7. Based on Ha'amek Davar, Bamidbar 15:41
  8. Bamidbar 15:41
  9. Bamidbar 13:2
  10. Shabbos 118B
  11. Kiddushin 1:
  12. Bava Basra 119B
  13. Nazir 23B
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