

# THERE'S NO COMPROMISE IN COMPROMISE

*by Rabbi Eliyahu Hoffmann*

*"And these are the laws that you shall place before them." (21:1)*

The venerable gaon, Rabbi Shalom Mordechai HaKohen Schwadron of Brezan zt"l, known as the "Maharsham" (an acronym for "Moreinu HaRav Shalom Mordechai"), was renowned for his brilliance in halachic adjudication. His halachic responsa, the nine volumes of She'eilos Ve-Teshuvos Maharsham, are studied to this day.

Normally, one thinks of adjudication as the process of determining who's right, and who's wrong. A dayan (Jewish judge), many assume, is meant to render halachic decisions, not to promote compromise and moderation. Some even go as far as to say that for a judge to encourage compromise is a sign of weakness; he lacks the true knowledge to determine who's right. The following episode, however, demonstrates that to rule in halacha requires great sensitivity to the feelings of both parties.

In the winter of 5668 (1908), the Maharsham's student, Rabbi Chaim Bloch, was in Brezan on business, and happened to be present at an amazing mishpat (halachic trial) that took place in the home of his rebbe.

A shul in Hamburg had sent a committee of its congregants to bring the following case before the Maharsham: The founders of the shul were G-d fearing Ashkenazim of Hungarian, Galician, Russian, and Polish descent. For many decades, they had prayed using nusach Ashkenaz (the version of prayer followed by those of German descent). Lately, however, there had been a large influx of Galician and Polish chassidim into Hamburg, who had quickly become the majority in the shul, and it had not taken long for the newcomers to suggest that the prayers be changed to nusach Sefard, favoured by the chassidim. A fierce disagreement broke out between the long-standing native residents of Hamburg, and the newly arrived chassidim.

When the representatives of the opposing sides had finished presenting their cases, he said: "Baruch Hashem, our brothers in Hamburg have come to judge a matter of nusach! This is a sign that they are G-d fearing." He then related the following story that had happened to the gaon, Rabbi Yosef Shaul Nathanson, author of Shoel U-Meishiv:

One summer, Rav Yosef Shaul visited the town of Skolya. Skolya at that time boasted the residence of several hundred Jewish families and a handful of shuls where prayers were held according to nusach Sefard. During the summer months, however, many residents of Lvov (who davened nusach

Ashkenaz) would come to Skolya to vacation in the scenic town lodged among the majestic Carpathian mountains.

One Friday night, as the chazzan (prayer-leader) began to recite the prayer Ke-Gavna (a kabbalistic prayer said just before Maariv according to nusach Sefard), the visitors from Lvov raised a commotion, and began reciting aloud Ba-Meh Madlikin (the parallel prayer in nusach Ashkenaz). This upset the local residents, who shouted, "We are the residents here - you are only the guests!" To this, the visitors from Lvov countered, "You earn your livelihood for the entire year from our stay here during the summer! We also donate large amounts toward the upkeep of the shul. So we are entitled to pray according to our custom!"

Rav Yosef Shaul was present. All eyes turned to him to render the correct halachic opinion. "Know my dear brothers," he began, "that when you gather to pray, the yetzer hara cannot stand it, so he plots various strategies to undermine your prayers. First, he advises the people of Lvov to say 'Ba-Meh Madlikin - How do we light?' That is, how can we kindle the fire of discord between us? Then, he persuades the people of Skolya to shout: 'Ke-Gavna - this is the way they become unified!' Let us join forces and fight them the way they fight us! Believe me, my brothers, this is not what our Sages had in mind when they composed these beautiful tefilos. <> "When Mashiach will come, he will clarify this matter. If Mashiach will say Ke-Gavna, then we too will say Ke-Gavna, 'This is the way one man joins together with his fellow Jew - in total unity!' If Mashiach will say Ba-Meh Madlikin, then we too will say with great enthusiasm, 'How can we kindle the sparks of love between man and his fellow Jew!'"

All those present, residents and visitors, were taken aback by his words. "Really," they said to one another, "what difference does it make. The main thing is to direct our hearts in prayer to Hashem!"

The gaon then told them, "As far as the strict halacha is concerned, it is as follows: When the residents of Skolya visit Lvov, and daven in the local shul, they may say Ke-Gavna quietly to themselves. And the natives of Lvov, while in Skolya, may whisper Ba-Meh Madlikin to themselves. And if it happens that someone from Skolya says Ba- Meh Madlikin while in Lvov; or if, while vacationing in Skolya, a Lvov native recites Ke-Gavna, then I take their punishment upon myself. The most important thing, my dear brothers, is that there should be peace."

When the Maharsham finished telling his visitors from Hamburg the story, he advised them as follows: "Since the number of mispallelim in Hamburg has, Baruch Hashem, grown, I suggest the following compromise: The "Ashkenazim" shall conclude their prayers by ten o'clock. Afterwards, the "Sefardim" can daven for the rest of the day. As for Mincha, let all congregants conduct themselves with quiet discretion, in the manner suggested by R' Yosef Shaul Nathanson. The main point is that harmony and peace rest among you." [Maharsham, HaPosek HaAcharon p. 15, quoted by Aaron Perlow, HaModia 12 Shevat 5759]

Mefarshim explain that it is for this reason that this week's parshah begins, "And these are the laws

that you shall place before them," and not "before him." A judge, if at all possible, should seek not simply to point a finger at the wrong party, but rather to find a compromise that both sides are happy with, thereby promoting peace and harmony among Klal Yisrael.

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