

Eilu v'Eilu

Shiur by Rav Herschel Schacter to YU alumni

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I. Introduction

The gemara in Eiruvim 13 notes that there were many disputes between Beis Hillel and Beis Shammai. It then says about their opposing positions that “Eilu v’eilu divrei Elokim chayyim.” As we will see, this means that learning the shitta of Beis Shammai is a kiyyum in mitzvas Talmud Torah. But what does this mean on a basic level? If the halacha is like Beis Hillel, then the shitta of Beis Shammai must be wrong. How can both be right?

The Sefer HaHinuch (and many m’farshim agree with this) says that Beis Shammai were sharper – m’chaddei tfei. In essence Beis Shammai were right. In fact it is not surprising that Beis Shammai were in the minority; this is often the case with the sharper group – genius is rare. But it is not feasible to pasken according to how sharp the people in the group are, since this is difficult to determine objectively. The chachamim said that the halacha is like Beit Hillel, even though aliba d’emes Beit Shammai were right. HKBH was mevater, conceded that the halacha be like Beis Hillel, in order to allow a feasible way of arriving at psak to exist, kdai shelo t’hei haTorah kishte toros, Thus each viewpoint has validity. Eilu v’eilu.

This explanation is not the one usually accepted now. To see another explanation, we will first discuss the concept that a posek gets divine assistance: siyyata d’shmaya.

II Siyatta d’shmaya

Rashi on the Chumash, in the beginning of Parshas Mishpatim, asks what is the connection between the mizbeach, which is mentioned at the end of Yisro, and establishing a Sanhedrin, which is the beginning of Mishpatim? He says that from this juxtaposition chazal learned that the Sanhedrin had to be near the mizbeach in the Beis HaMikdash. The Lishkas HaGazis was in a place with was chetzyo bakodesh v’chetzyo bachol. When seated, the members of the Sanhedrin had to be careful to sit in the chol part (which had k’dushas Har Habayis) because “ein yeshiva b’azara elo l’malchus beis David bilvad”. (Even the Kohen Gadol could not sit in the azara). There was probably a red line which clearly divided the room into two parts. Why was the Sanhedrin set up under such complicated conditions? It would have been much simpler to have the Sanhedrin in a room entirely in Har Habayis. The answer is that the Sanhedrin had to be near the mizbeach. They had to be near the kodesh, as near as possible to the mizbeach, so that they would have siyyata d’shmaya in their psak.

In fact, this applies not only to the beis din hagadol, but to every beis din – they need siyyata d’shmaya to arrive at a correct psak. The gemara in Shabbos explains the posuk “Elokim nitzav b’adas kel...” to mean that Hashem’s presence guides the judges. The Pischei Tshuva in Choshen Mishpat quotes the Shla Hakadosh that there is a halacha that the judges in a beis din be b’atifa, as we are when we daven – with a talis on our heads at shacharis, and a hat at mincha and maariv. Just as we are b’atifa when in Hashem’s presence in davening, so the beis din is b’atifa, since they too are in Hashem’s presence. Thus they will be zocheh to siyyata d’shmaya in their psak. (This clearly applies to a properly constituted beis din of qualified talmidei chachamim; if the “beis din” is comprised of jokers and amaratzim, as we sometimes see today, we don’t assume that they are granted siyyata d’shmaya).

In fact every talmid chacham who issues a psak is assisted by siyyata d’shmaya. “Sod Hashem liyreiov”. A psak is binding because we assume that every qualified posek merits siyyata d’shmaya in rendering his psak.

At one time, Herman Wouk taught English at YU. In R. Schacter’s time, Dr David Fleicher was head of the English department, and talked on occasion about Herman Wouk, whom he knew well. At that time, one of Herman Wouk’s best known and most popular novels was The Caine Mutiny. The theme of this work was the necessity of accepting authority. Dr. Fleicher noted that Herman Wouk’s model for authority which must always be accepted was the comment of Rashi, based on the Sifrei, on what the Torah says regarding listening to the chachamim: “Lo sasur... yamin usmol” Rashi says “Afilu im omrim al yemin shehu smol v’al smol shehu yemin”.

This means that authority must be accepted without question, even if in error, and this is the theme of The Caine Mutiny. A student pointed out to Dr. Fleicher that this is not correct. The Yerushalmi in the beginning of Horios says that a talmid chacham who knows that the Sanhedrin is in error is forbidden to follow their psak. This is in fact the question of the Ramban, in Sefer HaMitzvos, on the Sifrei.

The Ramban says that the Sifrei means a psak which appears to a *hedyot* to be in error must be followed by that *hedyot*. The logic of the halacha is sometimes different from the logic a layman would use, and the conclusion of the Sanhedrin may well appear paradoxical. (This is true in medicine as well; sometimes the medical advice of a doctor seems nonsensical to a layman. Each discipline, such as medicine, chemistry, or mathematics, has its own logical system, with which a layman will be unfamiliar.)

A layman must accept the authority of the Sanhedrin, even if he doesn’t understand their logic. However, the obligation to follow the chachamim does not apply to an objective error.

Rav Schacter illustrated this by a story about Rav Y. Perlow, now one of the leaders of Agudas Yisrael, who was the rov of the Aguda minyan Rav Schacter attended at one point. Rav Perlow did not have a good voice, and for the most part did not daven for the amud, but the minhag of the shul was that the rov would say bircha hachodesh. Once Rav Perlow said that Rosh Chodesh would be on Wednesday. Everyone said “No, it’s Thursday”, and Rav Perlow quickly corrected himself. Afterwards, someone said that in “the big shul” (ie Breuer’s), if the rov said Rosh Chodesh would be on Wednesday, no

one would correct him, and it would be on Wednesday. This is of course not correct. If a rov or beis din made a mistake, then they made a mistake.

Similarly, there are people who rely in a hashgacha they know to be suspect, claiming that they are allowed to rely on what the mashgiach says, and if it's not kosher, it's the mashgiach's responsibility, not theirs. This is incorrect. Following the mashgiach blindly when one knows the hashgacha is unreliable is improper.

The psak of a posek is binding on one who asks for the psak because we assume that the psak is correct if he is a competent posek, considered the question carefully, and is a yarei shamayim. However, from the din of par heelam davar shel tzibbur we see that the halacha accepts the possibility that a psak may be in error.

There is a story about the Noda B'Yehuda on the siyyata d'shmaya a posek gets. Once, baalei batim who were opposed to the NB being the rov of the city wanted to trip him up. They purposely punctured an organ of an animal after it was shechted, and brought it to the NB for a psak. The puncture was made in a place which is not mentioned in Shulchan Aruch. Normally one can see that a puncture was made after schita, but sometimes if it was done immediately after schita, it is difficult to detect. The NB spent a long time turning the pages of the SA, and then shouted at one of the baalei batim "You made the puncture yourself!" The baalei batim denied the accusation, but when the NB insisted, finally admitted that the NB was right. "How could you possibly know what I did"? the baalei batim asked the NB. "I was turning the pages of the SA just to gain time" the NB said. "Of course I knew immediately that the case was not mentioned in the SA. If so, I wanted to pasken that the animal was kosher. But I was uncomfortable with this psak; the confidence I usually have that my psak is correct was missing. I did not have my usual sense of syatta d'shmaya in this psak. I was turning the pages of the SA trying to determine why this should be so, until I came to the conclusion that the question on the kashrus of the animal was not genuine, but was forged in order to embarrass me, because the asker opposed my being the rov of Prague. One gets siyyata d'shmaya for a real psak, not for a made up case."

A psak is binding not because the posek arrives at his decision because of an oracle, but because he has siyyata d'shmaya in his psak. This applies to Beis Shammai as well; they were granted siyyata d'shmaya in the halachic decisions they made.

The Ritva in Eruvin says about "eilu v'eilu" that when HKBH gave the Torah to Moshe, he taught him the details of the mitzvos of kol haTorah kula. Moshe asked many questions about cases that may come up, and Hashem said "This is ossur, this muttar, this tahor, this tamei" About some details, however, Hashem said that the case is not clear-cut; there are elements of issur, and elements of heter, and the matter is left to chachmei hador to determine. The chachamim looked at things from different perspectives. When different people look at something from different perspectives, each person's perception of the object is correct *from his perspective*. Similarly, each of the chachamim was looking at the same body of information from a different perspective. We also believe that each of the chachamim had "20-20 vision" in viewing the Torah; their perception was not faulty. Sometimes there is more than one correct answer to a question. In major questions, we follow the rule of the majority in making a decision, but the minority view

has validity. Hashem granted siyyata d'shmaya to all the chachamim in determining their psak.

III. Variety in Avodas Hashem

R. Akiva Eiger explains the gemara at the end of Taanis “Asid HKBH laasos machol l'tzadikkim.” and the tzaddikim will point to HKBH. This is based on the pasuk “Vaamar bayom hahuhinei Elokeynu ze...” (R. Schacter recalled that on Leil Simchas Torah, his father, being the rov of the shul, would always get the first pasuk, “Ata horeisa ladaas...”. R. Schacter himself, as a child, would be given the pasuk “Va'amar bayom hahu, hinei Elokeynu ze...”. R. Schacter realized that this pasuk was given to him because others did not want it, since it was long and complicated and did not fit well in the niggun. R. Schacter complained to his father about the pasuk he was always given. His father said that this is in fact the most important pasuk of all in the “Ata horeisa,” since this pasuk is the basis of the hakafos, as we see in the gemara in Taanis. This satisfied R. Schacter, who subsequently said the pasuk with enthusiasm).

Rabbi Akiva Eiger says that there is significance to the dance the tzaddikim will perform being a mahol, in a circle, although other forms of dancing is possible. All points on a circle are the same distance from the center of the circle. When the tzaddikim dance in a circle with HKBH in the center, each tzaddik is the same distance from HKBH.

(R. Schacter quoted something R. Soloveitchik said about hakafos. R. Soloveitchik said that during the hakafos, the Gra would not let anyone go on the bima, or even on the steps of the bima. This is because the hakafos are like the machol of the tzaddikim, with HKBH in the middle. Thus it is improper to be on the bima, makom haschina, during the hakafos. R. Soloveitchik said that on succos, we circle the bima holding the lulav and esrog, with the Torah in the center. This symbolizes coming close to the Torah through kiyum hamitzvos – one cannot attain greatness in Torah without dikduk b'mitzvos. Circling the bima with the Torah on Simchas Torah symbolizes approaching Hashem through limud Torah).

R. Akiva Eiger himself was a firm misnaggid. However, he did not actively oppose chassidus, and in fact several of his descendents became not only chassidim, but chassidic leaders. Rabbi Akiva Eiger held that both misnagdim and chassidim could be equidistant from HKBH.

When Yitzchak asked Eisav to bring him food before he blessed him, he asked for matamim, whose plural form indicated a variety of food. Why was this variety necessary? One can just eat a steak; why does a meal have to consist of so many courses? It is human nature to enjoy variety in food, and in other things. Similarly, HKBH desires variety in how He is served. Each shevet worshipped HKBH in its own way. The Magen Avraham in hilchos tefilla quotes the Ari, who says that there were 13 gates to Yerushalayim. Twelve of these gates were for the shvatim; each shevet entered Yerushalayim through a different gate. This symbolizes each shevet approaching Hashem in its own way. All these gates were of course valid. The 13th gate, the shaar hakollel, was for gerim, or someone who for some reason did not know which shevet he was from. In addition, anyone could use the 13th gate. The gates also correspond to nusachei hatefilla; there are

various nusachim; each one is valid. The Ari said that just as 13th gate (shaar hakollel) was everyone, Nusach Ari is appropriate for everyone. Although the Ari's position on this last point ("the punch line") was not universally accepted, his previous points are. All nusachim are considered valid.

(This is, of course, among different kehillas, or at least different minyanim; one should not, however, come to "lo tisdoddu" by combining opposing practices in one minyan)

There is a mitzvah to establish a beis din l'chol shevet v'shevet. This is a mitzvah d'oraisa, learned from "shoftim v'shotrim titen lecha bishvatecha" This reflects the idea that each shevet had its own spiritual path. There is in fact a mitzvah to bring cases to the beis din hagadol, but this applies to cases which the beis din of the shevet could not decide ("divrei rivos bisharecha"). There is no mitzvah to bring every single question to the beis din hagadol.

In this context, R. Schacter questioned the practice of asking every shayla of R. Elyashiv. He emphasized that he regards R. Elyashiv as an eminent posek, but does not feel the derech hahalacha is to bypass the local rov and ask all questions of him. The practice in Europe was to ask shaylos of the local rov, even when there was technical possibility of sending telegrams to rabbbonim elsewhere. This is the proper procedure.

In maseches Zvachim, it says that when the Bais HaMikdash was rebuilt, the chachamim made a small change in the procedure of nisuch hayayin. The Sfas Emes asks "If so, all nisuch hayayin that was done during Bayis Rishon was invalid?" The Sfas Emes tries to give a lengthy answer al pi kabbala and al pi chassidus (although he for the most part wrote al pi halacha in his chiddushim on Shas).

This is in fact no kashya. The proper procedure at any point is what the current chachomim say. "Yiftach b'doro k'Shmuel b'doro". Each qualified posek can determine the halacha, even if he comes to a conclusion different from that of previous poskim. R. Moshe Feinstein in his introduction to Igros Moshe makes this point as well. He emphasizes that when he disagrees with a previous posek, he is not saying that he is greater than that posek; he knows that he is not greater than R. Chaim Ozer, for example, who was a super genius in all areas. However, each qualified moreh horaah has the right to reach his own conclusions as to a psak. He has the right, in fact the obligation, to give his honest-to-goodness opinion on the shayla, even if he reaches a conclusion different from that of previous poskim. This is the concept of "Yiftach b'doro k'Shmuel b'doro."

The halacha "Ein beis din mevatel divrei chavero ele im hu gadol mimenu b'chochma ubeminyan", a beis din does not have the right to repeal a takana made by a previous beis din, applies to a takana d'rabbbonon, as the rishonim say, quoting the Yerushalmi.

But in determining a din, we listen to the contemporary chachamim. Thus the chachamim in Bayis Sheni, who understood the psukim differently than the chachamim in Bayis Rishon, could change to procedure for nisuch hayayin. Even if they were convinced that all the chachamim in Bayis Rishon were greater than them, they could establish a different procedure for nisuch hayayin.

IV Halachic Implications of Eilu v'eilu

What are the halachic implications of the concept that minority opinions have validity? There is a difference between the case in which an opinion was put to a vote (“omdu l'minyan”), and other cases. The gemara (Brochos 6) says sharply “Beis Shammai b'makom Bais Hillel eina mishna”. We never follow Beis Shammai’s opinion at all, not b’shaas hadchak, not b’hefsed mruba, etc. There is no midas chassidus to follow Beis Shammai’s opinion, Why is that so? Not because we have anything against Beis Shammai. R. Moshe Feinstein has a tshuva on this question. The Noda B’Yehuda and other meforshim on the bottom of the page in Yoreh Deah all give a similar answer: when there is a hachraa by chazal what the halacha is, the minority opinion is not accepted. When the opposing opinions are expressed at the same time, and one opinion is outvoted, then that opinion carries no halachic weight at all. We totally ignore halacha l’maase the opinion of the minority. The same is true in any machlokes tannaim or amoraim in which there is a hachraa.

However, learning Beis Shammai’s opinion is a kiyyum in mitzvas talmud Torah. (Not everything published gives a kiyyum in talmud Torah to one who learns it. R. Schacter recalled a rabbi in the Bronx who wrote sfarim which contained the most ridiculous nonsense. If the sefer has d’varim b’tailim, if I read the sefer, that’s bittul Torah. I may get an A for effort, but that’s not limud Torah). The gemara many times (such as in Yevamos 31) expends much effort in understanding the shitta of Beis Shammai. It constitutes limud Torah, even though it is absolutely not accepted l’halacha.

When, however, different opinions were expressed in different times and places, such as a machlokes rishonim, the minority opinions may be accepted and relied upon in certain cases, under certain circumstances. For example, sometimes we may rely on a minority opinion b’shaas hadchak (the gemara’s expression “Kdai hu R’Shimon lismoch alav b’shaas hadchak” is used by the poskim regarding minority opinions in various cases).

On the other hand, there are cases when the poskim say that although the halacha is l’kula, a baal nefesh should be machmir like a minority opinion. This is because the minority opinion still carries halachic weight. (It is not midas chassidus to practice like Beis Shammai: “Beis Shammai b’makom Bais Hillel eina mishna”. But in a machlokes which was not “omdu l’minyan”, there is. This applies to a person who is on the level to practice middas chassidus. Someone who barely keeps up to what it says in the Kitzur Shulchan Aruch is not expected to practice middas chassidus. Someone who is of a shiur koma may be).

There are areas of halacha in which lenient opinions are followed l’chatchila. “Halacha k’divrei hamakil b’aveilus” even in a safek kold’hu; we don’t need a safek hashakul to be meikil in hilchos availus (Normally, we follow the majority opinion, even in mitzvos d’rabbanan; a minority opinion is not considered a safek d’rabbanan).

A similar principle applies to orlas chutz laaretz, which is ossur either d’rabbanan, or halacha l’Moshe Misinai: “Kol hamaikil baaretz, halacha k’moso bchutz laaretz.” (The fact that orla applies in chutz laaretz is an exception to the rule in the mishna at the end of the first perek in Kiddushin that “mitzvos hatluyos baaretz einan nohagos ele baaretz”). A

minority opinion, in machlokes hashittos in hilchos orla, is a safek kol d'hu on which we can be somech in orlas chutz laaretz. This is stated explicitly by the Ran in Kiddushin

Similarly, we say "halacha k'mekil b'eiruv". One may go l'kula in hilchos eiruv, based on minority opinions. This is if the one being asked the shayla does not have a personal opinion on the halacha involved, or a tradition from his rebbe as how to pasken in a certain issue. If the posek has a personal opinion or a tradition, he must pasken according to these. But if the person asking the shayla wants to know what the halacha is based on the shittos haposkim, then if there are maykil shittos, halacha k'moson in availus and eiruv. These principles illustrate that the minority opinions have halachic importance, based on "eilu v'eilu divrei Elokim chayyim". So this principle is not a theoretical one, not just philosophy, but one which has nakfa minas halacha l'maase.

A similar principle applies to safek mamzer, as we see in the famous first Shev Shmaatsa, perek aleph shmaatsa aleph – even if there is a rov l'hachmir, there is a gzeras hakosuv of "mamzer vadai amar rachmono velo mamzer safek."

One may ignore the rov in this case, because of a gzeras hakosuv.

In dinei momonos, minority opinions are accepted in the muchzak's favor. We are not motzi mammon from the muchzak if an authoritative opinion supports his claim. (If a beis din paskens, even if there is a split vote, this is a hachraa, as we see from the gemara in Sanhedrin 29- achar rabbim l'hatos. Here we do not say "Ein holchim bmomon achar harov", since there is hachroas beis din, omdu l'minyan, as explained by Tosfos in Baba Kamma. When omdu l'minyan, the miut is k'man dleisei domi. The Ramban and the Meiri say something similar in Sanhedrin lgabei dinnei nfoshos, when we can be mchayyev misa al pi rov). Relying on a minority opinion in dinei mamonos is the principle of "kim li". This is not to be taken literally, that the muchzak has to claim that he holds by the opinion which supports his claim. He may have no idea that such an opinion exists, but beis din gives weight to such an opinion, in order not to be motzi from a muchzak. This is connected to the concept that "Ein holchim b'momon achar harov" – we are not motzi from a muchzak al pi rov poskim. Again, we see that the concept of eilu v'eilu divrei Elokim chayyim is not just a philosophic concept.

However, we are not choshesh for a shitta of a tanna which was rejected by the chachamim. This is considered omdu l'minyan, in which the minority opinion carries no halachic weight. R. Schacter told of a chassuna in which R. Moshe Feinstein and R. Eliezer Silver participated. R. Moshe filled out the ksuva, which was as is customary a printed form with blanks where the relevant information could be filled in. R. Eliezer Silver claimed that one should be choshesh for the shitta of the tanna R.Yehuda, in the mishna in Gittin, who held that a ksuva must be written in its entirety, like a get (A get, kiddushei shtar, and a get shihrur have to be written lishma. There is no din lishma in shitrei mammon. But R. Yehuda in the mishna in Gittin holds that there is a gzreira d'rabbanan. shaar shtaros atu get, that all shtaros have to be written from beginning to end). R. Eliezer Silver tore up the ksuva R. Moshe filled in, and wrote another one. R. Moshe did not object. Later, R. Moshe wrote a tshuva in which he wrote that we are under no obligation to follow a minority opinion of a tanna. He quotes all the poskim that being machmir like a minority opinion does not apply when omdu l'minyan. Although R.

Moshe did not mention the incident with R. Eliezer Silver, to those familiar with the incident it was clear that he had that case in mind when writing the tshuva.

There are several other cases in which minority opinions carry halachic weight.

“Tartei l’reusa” in hichos treifos. If there are two shaylos with treifos in one organ of an particular animal, even though each one separately would be decided l’hakel, poskim hold we should be machmir when the shaylos come together, since we combine the minority opinions of the two cases. (Based on the shitta of the Rayvad in Nidda 3). (The poskim discuss at length the rules and regulations of when something constitutes a tartei lreiusa. There are whole sfarim on when something is considered tartei lreusa)

These days, this principle is not much used, since we are machmir on hilchos treifor anyway, since it doesn’t pay to get involved in shaylos of treifos.

What does come up is the opposite principle of “tzeiruf hashittos”, which the classical poskim discuss and rely upon. This principle allows a posek occasionally to be meikil by combining minority opinions when there are several shaylos involved in a case; this is like a sfei sfei. The classical poskim write about and use the principle of tzeiruf hashittos.

However, the previous principles are not universally accepted. Shaalos U’Tshuvos Chut HaMeshulash contains tshuvos by R. Chaim MiVolozhin and two succeeding rabbonim of Volozhin. (R. Chaim MiVolozhin was considered the talmid of the Vilna Gaon. What does this mean? The Vilna Gaon didn’t give shiurim. R. Chaim himself felt uncomfortable being called the talmid of the Vilna Gaon. R. Chaim used to go to Vilna twice a year, and ask shaylos of the Vilna Gaon. That was the extent to which he was a talmid). The Sefer Chut HaMeshulash is not used widely by the poskim, but historians found interesting material in it. In this sefer, R. Chaim wrote that the Gra opposed the principles of tartei l’reusa and tzeiruf hashittos. The Gra held that the halacha had reached a hachraa, a final decision, similar to omdu l’minyana, and minority opinions were not to be accepted. The Gra held that he had raayos machrichos shein alayhen tshuva that the halacha was such and such. The minority opinions were simply wrong, and were not to be accepted to use in tartei lreusa and tzeiruf hashittos. Most poskim did not accept the Gra’s opinion in this matter. Halacha l’maysa these principles are used by the poskim today.

R. Shachter told the following story about R. Z. Shussheim z”l, later a rosh yeshiva, when he was in the Rov’s shiur. At that time (the 1940’s) it was mkubal for smicha students to take a shteller for the Yomin Noraim to make a few dollars. R. Shussheim came from a poor family, and was in need of funds, and asked the Rov to help find him a shteller for the Yamim Noraim. The Rov asked him with a straight face if he was interested in a shteller in a shul with a mechitza, or without a mechitza; jobs in shuls without a mechitza were easier to find, and one could make a lot more money. Flustered, R. Shussheim asked how the Rov could think he would want such a shteller. The Rov said “As far as I’m concerned, and I’m saying this with full awareness of the consequences of what I’m saying, davening in a shul without a mechitza is like davening in a church. However, not everyone holds like that. There are rabbonim in America who have positions in shuls with mixed seating, or without a mechitza. If you want to be somech on other opinions bshaas hadchak, I’ll help get you such a position”. Needless to say, R. Shussheim, on

hearing that the Rov considered davening in a shul without a mechitza to be like davening in a church, declined the Rov's offer to get him such a position.

R. Schacter noted that R. Soloveitchik often gave different psakim to different people. because he was very much into "eilu v'eilu divrei Elokim chayyim" You don't have to pasken to everyone the same way.

There are such stories about R. Shlomo Zalman Auerbach in a fascinating sefer "Aleihu Lo Yibol". Someone asked him a shaylo in trumos umaasros, and he was posek lhakel. The shoel, who was a talmid chacham, said that R. Shlomo Zalman himself had a tshuva in which he was inclined to be machmir. R. Shlomo Zalman said that the shoel is not obligated to accept his personal machmir opinion.

R. Z. Charlop once asked R. Soloveitchik about using grape juice for kiddush and havdala because of a medical condition he had (Many poskim, particularly many years ago in America, held that grape juice is shehakol, and can't be used for kiddush and havdala. Grape juice is treated chemically, and cannot ferment and become wine) The Rov said "If you would ask my father or grandfather, they would say there is nothing to talk about, you can't use it, yikov hadin es hahar (Like the Gra told R. Chaim MiVolozhin, as we said before). However, that's not my attitude. We have the priciple of "eilu v'eilu", we consider a minority opinion a valid shitta, which we usually do not hold by, but on which we may rely on to be meikil bshaas hadchak."

R. Schacter recalled that his father once asked the Rov a shayla in hilchos availus (regarding attending the wedding of a relative during aveilus by acting briefly as a waiter). The Rov responded that he thought the case was ossur. The talmidim present were very surprised, because shortly before someone came to the Rov with a similar question, and the Rov told him "Many poskim are meikil". The Rov said that both statements were correct. The first person was angling for a heter, and in fact many poskim are meikil. Once the person heard this, he went away. R. Schacter's father wanted to know what the Rov personally thought the halacha was, and the Rov himself felt that the poskim kameikilim are wrong. This did not prevent him from citing them when he felt this was appropriate.

Harav Kook has a very interesting essay on this subject, on tolerance in psak halacha. He noted that talmidei chachamim who engage in michamta shel Torah are called "baalei trissin". A tris is a shield; wouldn't it be more appropriate to refer to a warrior as using a sword or a spear, rather than a shield? In learning, unlike other conflicts, one's goal is not to eliminate his opponent. Eilu v'eilu, the opposing opinion has validity. I'm interested in supporting my opinion, in demonstrating that my position has validity, not in demolishing the opposing one. For this I need a shield, but my goal is not to wipe out my opponent. This is because of the fundamental respect a talmid chacham has for other opinions.

V. Eilu v'eilu in Hashkafa

Rav Kook further says that there are some areas in which we are not allowed to be tolerant. Eilu v'eilu doesn't always apply. We don't say about movements such as Reform which don't believe in Torah min hashamayim, which don't believe in the ikkarei

haemina, that you can change all the dinim, that “eilu v’eilu”. There is no room for tolerance in such cases – tolerance heint, tolerance morgen.

Rav Soloveitchik said several times, and wrote this as well, that it is not true that halacha and hashkafa as to separate domains. Hashkafa is the halacha of the mind.

Just as there are things it is forbidden to do, so there are things it is forbidden to believe. Eilu v’eilu applies to hashkafa as well, but there are boundaries, just as there are in halacha. We say eilu v’eilu in halacha about those who are entitled to an opinion, who are knowledgeable and who operate in the framework of halacha.

We don’t say eilu v’eilu about those who deny the validity of halacha, who say that we can do whatever we want, everything is negotiable. We say eilu v’eilu only about those who play by the rules.

R. Schachter gave an example of a disaster which resulted from not allowing a dissenting opinion. The Rambam held that Hashem has no guf. However, some Rishonim held that one must believe that Hashem has a guf, as is stated explicitly countless times in Tanach, and in many midrashim, and one who holds that Hashem has no guf is a kofer. The works of the Rambam were burnt publicly by his opponents. Subsequently, as the story goes, in the very same squares in Paris where the Rambam was burnt, the church burnt the Talmud. Rabbenu Yona, who had authorized the burning of the sifrei haRambam, saw this as a punishment for the Jews’ error in burning the works of the Rambam. He blamed himself, felt that the Jews showed the church the way by burning works they considered heretical. He intended to go to the kever of the Rambam to beg forgiveness of him, although he did not reach the Rambam’s kever. The sefer Shaarei Tshuva was written by Rabbenu Yona in response to this incident. Rabbeinu Yona felt that even if the Rambam was wrong, his books shouldn’t have been put in cherem, and certainly not burnt.

There are people nowadays who also take an extreme position against hashkofos they disagree with. If a person’s opinion is the same as some rishonim, how can you consider such a person an apikorus, asser his books and fire him from his job?

If such an opinion exists in the rishonim, eilu v’eilu divrei Elokim chayyim applies.

You can certainly teach your children differently, you can follow a different opinion, but that doesn’t give you a right to asser someone’s books, to put him in cherem.

There is another aspect to eilu v’eilu – one may accept minority opinions of one’s rebbe muvhak, and a community may continue its traditions and follow its rov even if other opinions reject their minhag or his psak. An example in the gemara of this is R. Eliezar ben Hurkonus, who held machshirei milah dochim es ha-Shabbos. According to his opinion, you can sharpen a knife ion Shabbos in order to perform mitzvas mila. According to the chachomim, being mechallel Shabbos for machshirei milah is chillul Shabbos mamash, a chiyyuv skila. However, in the community of R. Eliezer ben Horkonus, they followed his psak, and this was deemed legitimate. Not only were they not punished, but they were rewarded: when the malchus har’shaa ossered milah, the g’zeira didn’t apply to the community of R. Eliezer ben Hurkenos, because of the great kavod they gave him in following his psak consistently, even after his death, and the kavod that they gave to mitzvas mila.

Similarly, the gemara on Shabbos says that R. Yossi haGlili held that there is no Gzeira of cooking chicken in milk; he held doesn't make any sense to consider cooking chicken in milk similar to chlev imo. In R. Yossi haGlili's community, even years after he died, people ate chicken with milk. One follows the moreh d'asro.

This illustrates that a qualified posek may pasken for his own community. Not every shayla has to be decided by the gadol hador (as was mentioned before).

We must be sufficiently tolerant to respect other opinions. If one group has a massores through generations, other groups should respect this massores. The gemara states in the first perek of Yevamos that Beis Shamami and Beis Hillel loved each other. They had gefelach mashlokesin, and Beis Shammai said about the children of those who followed Beis Hillel that some were mamzerim, and vise versa, but they got along very well. The gemara says that the pasuk "Haemes v'hashalom ohovu" applied to them. We should get along with those with whom we disagree, both in halacha, and in hashkafa. This is the principle of eilu v'eilu divrei Elokim chayyim.