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LEADING A LIFE OF HOLINESS

by *Rabbi Michael Hoenig*

“Enough is enough!” you proudly declare as you commit to a steady and well-balanced diet. A few days pass, and you are feeling very accomplished—you only consume the healthiest foods, and you have just implemented a daily cardiac workout regimen.

A couple more days pass, and you find yourself at work. After a long day spent at the office, you conveniently locate the chocolate doughnuts in the pantry. You feel a deep urge to indulge in one of your favorite treats.

In another scenario, you overhear some brand new gossip. You have a burning desire to share this “valuable” information with everyone in sight.

What is the common theme between these two daily occurrences? Self-control.

In this week’s Parashah, the Jewish people are charged with the lofty and inspiring task of becoming holy. In VaYikra 19:2, the Torah states “*Dabeir El Kol Adat Bnei Yisrael VeAmarta Aleihem, ‘Kedoshim Tiheyu Ki Kadosh Ani Hashem Elokeichem,*” “Speak to the entire congregation of the children of Israel and say to them, ‘You shall be holy, for I, Hashem, your God, am holy.’”

How do we attempt to reach such an exalted level? The Ramban, in his commentary on the above Pasuk, explains that although the Torah permits mankind to consume meat and wine and engage in marital relations, one may still come to perform these actions excessively and inappropriately. He can become a degenerate and vile individual, even when acting completely within the permissible realm of the Torah—a Naval BeReshut HaTorah. Ramban explains that the aforementioned Pasuk teaches Klal Yisrael that in order to lead a life of holiness, it is necessary to live with self-control and balance.

This lesson is also apparent within the Midrash HaGadol’s description of the snake’s conniving ploy to tempt Chavah to indulge in the Eitz HaDa’at (BeReishit Rabbah 3:1). The snake provides Chavah with the following rationalization: “Why would Hashem create these trees if He did not want you to partake in them?” The argument of the snake is the very backbone of today’s hedonistic and self-indulging culture. In order to lead a life of holiness, we must always strive to live with self-restraint and moderation.

The Mishnah in Pirkei Avot (4:1) states, “Eizehu Gibor?”

HaKoveish Et Yitzro,” “Who is the strong one? One who subdues his inclination.” Leading a life of self-control and moderation certainly demands courage and great inner strength. Unfortunately, certain people fall prey to strife and provocations. Tempers often flare, and the results can be disastrous. The Gemara (Chulin 69a) explains that “the world exists only on account of one who muzzles himself at a time of provocation and refrains from reacting.” We must always attempt to use self-control and squash any provocations before damaging outcomes come to fruition.

Throughout the day, it can be very tempting to engage in the current gossip. However, by utilizing the power of self-control, a person has the ability to internalize the terribly damaging effects of slander and gossip. This power can protect the reputation and dignity of another human being.

The trait of self-control is also tested numerous times each and every day in ways that are intimately familiar to all of us. When engaging in a conversation with another person, we often find ourselves feeling the buzzing of our phones. At that moment, we have the choice whether to exercise our power of self-control and ignore the ring, thereby continuing to treat the other person with respect. By refusing to glance at the phone, we can send a clear and strong message of the true importance of the conversation and the other person.

Hashem has commanded us to be a holy nation. Through leading a life of self-control and moderation, we can hopefully aspire to attain such lofty and dignified heights.

THE EXPANSIVE NATURE OF “VEAHAVTA LEREI’ACHA KAMOCHA”

by *Hillel Koslowe (17)*

There is a beautiful and perhaps unexpected Mishnah in this week’s Perek of Pirkei Avot: “Kol SheRu’ach HaBeriyot Nochah Heimenu, Ru’ach HaMakom Nochah Heimenu, VeChol SheEin Ru’ach HaBeriyot Nochah Heimenu, Ein Ru’ach HaMakom Nochah Heimenu,” “If the spirit of one’s fellows is pleased with him, the spirit of Hashem is pleased with him, but if the spirit of one’s fellows is not pleased with him, the spirit of Hashem is not pleased with him” (Pirkei Avot 3:10). While it is not surprising that a well-liked person is more likely to be “well-liked” by Hashem, is it truly a guarantee? In fact, Rav Ovadyah Bartenura (ad loc. s.v. Kol SheRu’ach HaBeriyot Nochah Heimenu) states that “Kol Mi SheAhuv Lematah, BeYadu’a SheHu Ahuv Lema’alah,” “Anyone who is loved on earth, it is certain that he is loved by God.” How are we supposed to understand this sweeping guarantee?

To understand this Mishnah, we can turn to the prototypical Mitzvah Bein Adam LeChaveiro, the Mitzvah most intrinsically

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tied to being a well-liked person: “VeAhavta LeRei’acha Kamocha,” “you shall love your fellow as yourself” (VaYikra 19:18). Rashi (ad loc. s.v. VeAhavta LeRei’acha Kamocha) quotes Rabi Akiva’s famous statement about this Mitzvah—that loving your fellow as yourself is a Kelal Gadol BaTorah, a fundamental principle of the Torah. Given that the Mitzvah of “VeAhavta LeRei’acha Kamocha,” which is surely connected to our Mishnah’s statement of “Kol SheRu’ach HaBeriyot Nochah Heimenu, Ru’ach HaMakom Nochah Heimenu,” is a Kelal Gadol BaTorah, it is not surprising that we can make such a universal guarantee about it.

Piskei Teshuvot, a collection of Halachot authored by Rav Simcha Rabinowitz according to the order of the Mishnah Berurah, picks up on the connection between our Mishnah and “VeAhavta LeRei’acha Kamocha” (Orach Chayim Siman 156). After describing the many Halachot of the Mitzvah of “VeAhavta LeRei’acha Kamocha”—to be compassionate, to look past others’ wrongdoings, to judge others favorably, to fulfill promises made to others, to greet people with a smile, and to be helpful—Piskei Teshuvot concludes the Mitzvah by quoting many of the ideas touched upon by our Mishnah: “UVaZeh Tihyeh Ru’ach HaBeriyot Nochah Heimenu, VeRu’ach HaMakom Nochah Heimenu, Ahuv Lema’alah VeNechmad Lematah, UMekubal Al HaBeriyot,” “And through fulfilling all the Halachot of this Mitzvah, one will be considered pleasant by man and pleasant by God, loved by God and well-liked on earth, and popular and accepted by people.”

In the final analysis, while our Mishnah may have, at first, seemed exceedingly expansive, once we realize that loving your fellow as yourself is a fundamental principle of the Torah, it is not surprising that observing this Mitzvah comprehensively and properly guarantees that one is considered “well-liked” by God.

LOVE YOUR NEIGHBOR AS YOU LOVE YOURSELF

by Avraham Gellman (‘19)

In Parashat Kedoshim, we see the famous phrase, “VeAhavta LeRei’acha Kamocha,” “love your neighbor as you love yourself” (VaYikra 19:18). It is a very strong and important phrase, one that has enormous relevance to society nowadays. But before this Mitzvah, we are taught many other important Mitzvot.

We are taught about ethical ways for performing agriculture. When harvesting, we should not harvest all the way to the edges, thereby leaving some crops for the poor to eat (19:9). We are taught to refrain from picking up harvested food that falls to the ground, leaving it for the poor and strangers instead (19:10). We are taught “Lo Tignovu,” “do not steal” (19:11). Do not swear falsely (19:12).

The Torah continues: give people their wages immediately and do not hold them overnight (19:13). Do

not insult the deaf (19:14), be sensitive toward people with disabilities, and act as if someone is listening at all times. “Lifnei Iveir Lo Titein Michshol,” “In front of a blind person, do not place a stumbling block” (19:14). This can be interpreted in a literal sense or a figurative sense; do not trick people by putting an unknown obstacle in front of them.

The Torah continues to give us important ideals about life, to treat both poor and rich people fairly and not to let any admiration or contempt cloud judgment (19:15). Do not hate your brothers and sisters (19:17) or hold grudges (19:18).

After all these commandments, we reach VeAhavta LeRei’acha Kamocha. An interesting Chasidic teaching relates that Hashem created people because he needed a neighbor, a people with whom to share a special relationship. The only reason we exist is that Hashem wanted to extend His love to others.

If so, we must do the same. We must extend our love to others, loving them as we love ourselves. The way we do this is by feeding the hungry, acting with justice and fairness, and treating those who are blind and deaf with respect and admiration. We must let go of our anger, grudges, and hatred toward others.

By doing these things, we emulate Hashem, conducting ourselves the way Hashem conducts Himself and wants us to conduct ourselves. Our test in life is to love our neighbors, no matter the difficulty of the circumstances.¹ Good Shabbos.

Kol Torah proudly presents highlights from an amicus curiae (friend of the court) brief submitted by Chaim Kagedan (‘99) to the United States Supreme Court. In Chaim’s second involvement with the Supreme Court, he seeks to convince the Court to overturn a decision of the Michigan Supreme Court that limited the authority of Beit Din.

UNITED STATES SUPREME COURT *AMICUS CURIAE* BRIEF ON THE IMPORTANCE OF BEIT DIN by Chaim Kagedan (‘99)

I. THE ORIGINS AND PROCEDURES OF THE *BETH DIN*

The Jewish institution known as “*Beth Din*,” or rabbinic court, dates back to the time of Moses, who established a system of courts to “judge the people” while leading them through the wilderness toward the Promised Land. Exodus 18:21. Since that time, the *Beth Din* has been a fixture of Jewish communities throughout history and around the world. The United States is no exception. *Batei Din* (the plural of *Beth Din*) are found in most of the country’s major metropolitan centers, as well as in many smaller towns and villages that boast substantial Orthodox Jewish populations.

A *Beth Din* applies *Halakha*, or Jewish law, to reach determinations on substantive matters. The procedural rules vary somewhat from panel to panel, much like the variation seen in the local rules of federal courts. However, in all instances parties who come before a *Beth Din* are afforded due process, as well as the opportunity to present argument and evidence to the panel.

¹ This article was inspired by an article on the website congregationbethisrael.wordpress.com.

As is true for any judicial system, the amount of time necessary for a *Beth Din* to adjudicate a matter to finality is dependent upon a variety of factors, including the complexity of the legal issues, logistical hurdles relating to the parties, witnesses, or other evidence, and whether the initial determination is appealed. While most matters are disposed of within a year or two, there are some disputes that require far more time to resolve. In addition to the *Beth Din* adjudication that gave rise to this case, which began in 1995 and did not conclude until 2009, another prominent example is the protracted succession dispute between the two heirs-apparent to the Bobover Hasidic dynasty. In that matter, *Beth Din* proceedings began in 2005 and did not conclude until 2014.²

II. THE MANDATORY NATURE OF BETH DIN PROCEEDINGS

It is hornbook Jewish law that all civil disputes between Jewish individuals and/or organizations must in the first instance be submitted to a *Beth Din* for adjudication. This principle is derived from Exodus 21, wherein the Torah introduces a series of civil laws with the prefatory phrase “[a]nd these are the laws that you shall place before *them*.” Exodus 21:1 (emphasis added). The Talmud interprets the word “them” in this verse as referring to rabbinic courts, and applies the canon of *expressio unius est exclusio alterius* to construe the verse as specifically excluding secular courts as an option for the resolution of intra-Jewish disputes. Babylonian Talmud, *Gittin* 88b. The obligation for Jews (and Jewish organizations) to seek adjudication from a *Beth Din*, and the concomitant prohibition against filing suit in secular court, has been thoroughly codified in the major codes of Jewish law. See Maimonides, *Mishneh Torah*, *Sanhedrin* 26:7; Shulchan Aruch, *Choshen Mishpat* 26.

The mandate that intra-Jewish disputes be heard by a *Beth Din* rather than a secular court remains in force even in instances where the law that would be applied by the secular court is substantively indistinguishable from the relevant Jewish law. This is so because the “legislative intent” behind the rule is not focused solely upon the results of the adjudication, but also upon the socio-religious implications of voluntarily opting to be bound by a legal system not derived from the Torah. Thus, Maimonides writes that “[w]hoever submits a suit for adjudication to [a secular court] . . . is a wicked man. It is as though he reviled, blasphemed, and rebelled against the Torah of Moses.” Maimonides, *supra*, at 26:7. Apropos of the communal nature of the obligation, the punishment for violating this rule is exclusion from the social and religious community – i.e., the same group that the violator implicitly shunned by engaging a judicial system outside of the faith.

If the parties to a dispute have fully exhausted the *Beth Din* process, and the prevailing party finds itself unable to collect its

award due to the recalcitrance of the losing party, the prevailing party may at that juncture petition for rabbinic permission to file suit in secular court to vindicate its rights. Maimonides, *supra*, at 26:7. This is precisely what happened below. The dispute between Petitioner and Respondents was adjudicated by an escalating series of *Beth Din* panels, culminating with a determination in favor of Petitioner from the highest judicial body within the Chabad-Lubavitch *Beth Din* system. Following the conclusion of the appellate process and the issuance of a final judgment, Petitioner demanded satisfaction of the award and Respondents refused. At that point, having exhausted all available options within the *Beth Din* system, Petitioner was permitted under Jewish law to seek rabbinic permission to file suit in secular court. Petitioner did so, and permission was granted. This case followed.

III. THE BENEFITS OF A VIABLE BETH DIN SYSTEM IN THE UNITED STATES

The existence of a viable *Beth Din* system in the United States is beneficial not only to the country’s Orthodox Jewish population, but also to society as a whole.

First, from a pragmatic perspective, having a viable *Beth Din* system is of vital importance to Orthodox Jews because it provides a forum for the resolution of disputes that turn, in whole or in part, on issues of Judaic doctrine or faith. Whereas a state or federal court may well find itself unable to reach the merits of such a dispute due to constitutional entanglement concerns, a *Beth Din* panel composed of learned rabbis is perfectly suited to such a task. The availability of a viable *Beth Din* system is therefore crucial to ensure that parties are not denied access to justice simply because one element of an otherwise-justiciable dispute happens to implicate an issue of Jewish law or faith.

Second, the *Beth Din* system serves a function for the Orthodox Jewish community beyond pure adjudication. In reaching a determination on a disputed matter, a *Beth Din* not only applies Jewish law, but also takes into account Jewish values and ethics, compliance with which is viewed as of equal or greater importance than compliance with the letter of the *Halakha*. In this way, the *Beth Din* is “not simply serving a judicial function, but rather is also serving a religious function, leveraging the shared religious worldview of the parties,” to arrive at a resolution that is not only in accordance with the law, but is also in full harmony with all aspects of the parties’ faith.

Third, the availability of a viable *Beth Din* system plays a role in alleviating the burden upon the nation’s state and federal courts. Although definitive statistics are not readily available due to the absence of a centralized administrative body, anecdotal evidence indicates that *Batei Din* in the United States adjudicate thousands of matters annually, and also shows a strong upward trend in that number over recent years, portending continued growth in the future. While not every dispute submitted to a *Beth Din* would have otherwise been filed in secular court, the proportion of

² Editor’s Note: this length of time is not the norm at all Batei Din. The Beth Din of America’s rules and procedures (available at <http://s589827416.onlinehome.us/wp-content/uploads/2015/07/Rules.pdf>) state that “the Beth Din shall make its award promptly and shall strive to issue every award not later than three months after the date on which the proceedings are closed.” In a case adjudicated this past summer by the Beth Din of Elizabeth in which Rabbi Jachter served as one of the three Dayanim, a decision was reached within a week, to the satisfaction of the disputants.



matters that are diverted from secular court by virtue of the availability of a viable *Beth Din* system is undoubtedly significant enough to make a material difference to judicial caseloads – particularly in jurisdictions with high concentrations of Orthodox Jews.

IV. THE DECISION BY THE MICHIGAN SUPREME COURT BELOW REPRESENTS A GRAVE SYSTEMIC THREAT TO THE VIABILITY OF *BATEI DIN* IN THE UNITED STATES

In Deuteronomy 16:18, the Torah commands: “Judges and officers shall you appoint for yourself in all of your towns. . . .” This verse is understood as mandating the establishment of not only a rabbinic court system, but also a police force to uphold the law as articulated by the rabbinic courts. Indeed, the former cannot meaningfully exist without the latter because “a Jewish law judge (operating within the framework of a [*Beth Din*]) cannot be effective unless there are ‘police officers’ capable of enforcing his decisions.” For the Orthodox Jewish community in America, which lacks the authority to establish a police force of its own to compel compliance with *Beth Din* rulings, “the secular courts in the United States serve the police function of the [*Beth Din*] by being the enforcement arm of the [*Beth Din*]’s decisions.”

This is precisely why the decision of the Michigan Supreme Court below could have disastrous consequences for America’s *Beth Din* system. If that decision is permitted to stand, it will effectively rob the *Beth Din* system of its *de facto* enforcement mechanism. Any unscrupulous respondent in a *Beth Din* proceeding could simply engage in dilatory tactics to postpone the exhaustion of the adjudication process until after the relevant statute of limitations has run. Then, even if the petitioner ultimately prevails, the respondent can refuse to abide by the *Beth Din*’s decision and instead force the prevailing party to seek permission to proceed in secular court. By the time the prevailing party initiates suit in secular court, the statute of limitations will have long since run. Under the precedent established by the Michigan Supreme Court, the respondent could simply put forward an affirmative defense of untimeliness and have the lawsuit dismissed, thereby escaping the *Beth Din*’s judgment, and in the process undermining the entirety of the system.

Lest one dismiss this parade of horrors as improbable or unrealistic, it bears noting that an approximation of this very scenario played out in the *Beth Din* proceedings and litigation below. While there is no indication that Respondents in this case maliciously delayed the conclusion of the *Beth Din* proceedings, the fact is that Respondents – by willingly agreeing to engage in *Beth Din* adjudication, and then appealing the decision of the initial panel up through several intermediate panels and ultimately to the highest ecclesiastic-adjudicative body of that *Beth Din* – were directly responsible for extending the proceedings past the expiration of the relevant statute of limitations. This, in turn, put Respondents in a position to assert the untimeliness defense that resulted in a dismissal of the action, and left Petitioner without any means to enforce a judgment against Respondent that was issued by an adjudicative body to whose jurisdiction Respondent willingly submitted. Given that “proof of concept,” it is not a stretch to imagine a world in which

respondents in American *Beth Din* proceedings routinely adopt a strategy of delay so as to proactively provide themselves with a means of evading a potentially unfavorable rabbinic judgment.

The negative ramifications of this scenario are significant. First, the defanging of the *Beth Din* system will inevitably have a deterrent effect, incentivizing parties involved in intra-Jewish disputes to ignore their religious obligation to seek rabbinic adjudication to instead file suit in state or federal court. Such a result is strongly in tension with First Amendment values that seek to promote, or at least protect – but in any event, not *hinder* – the free exercise of one’s faith.

In addition to having the unfortunate and un-American consequence of chilling the free exercise of religion, an impotent *Beth Din* system will result in a needless increase of the burden upon the nationwide judiciary, and force judges to struggle with cases that implicate complex and potentially unconstitutional entanglement issues. Even worse, Orthodox Jewish organizations such as Petitioner – whose by-laws require strict adherence to Jewish law – will have no choice but to seek justice in the *Beth Din* system, leaving them vulnerable to any respondent willing to take advantage of the loophole created by the Michigan Supreme Court’s decision below. The *Amici* do not mean to suggest that these concerns – serious and impactful though they are to both the country’s Orthodox Jewish population and, to a lesser extent, the nation as a whole – alone merit review by this Court. However, given the gravity of the issues enumerated herein, and the fact that, as set forth in the Petition, the Michigan Supreme Court’s opinion below appears to squarely conflict with the precedent of this Court and that of many state courts of last resort (including that of Michigan), the *Amici* respectfully submit that the scale tips decidedly in favor of granting the Petition.

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