



SHALOM HARTMAN INSTITUTE מכון
OF NORTH AMERICA שלום הרטמן

מחלוקת לשם שמים
Arguing for the Sake of Heaven:
A Vision for Modern Orthodoxy?

Elana Stein Hain
February 21, 2017

פרקי אבות ה:יז

כל מחלוקת שהיא לשם שמים, סופה להתקיים. ושאִינָה לשם שמים, אין סופה להתקיים. איזו היא מחלוקת שהיא לשם שמים, זו מחלוקת הלל ושמאי. ושאִינָה לשם שמים, זו מחלוקת קרח וכל עדתו:

Ethics of the Ancestors 5:17

Every argument that is for [the sake of] heaven's name, it is destined to endure. But if it is not for [the sake of] heaven's name -- it is not destined to endure. What is [an example of an argument] for [the sake of] heaven's name? The argument of Hillel and Shammai. What is [an example of an argument] not for [the sake of] heaven's name? The argument of Korach and all of his congregation.

משנה עדויות א:ד

ולמה מזכירין את דברי שמאי והלל לבטלה ללמד לדורות הבאים שלא יהא אדם עומד על דבריו. שהרי אבות העולם לא עמדו על דבריהם:

Mishnah Eduyyot 1:4

Why are the opinions of Hillel and Shammai recorded [only] to be nullified? To teach the generations that one should not be insistent on their opinions, for the fathers of the world were not insistent on their opinions.

Decentralization and Recentralization

1. Devarim (Deuteronomy) 17:11-13

יֵאָדָע לְפִי הַתּוֹרָה אֲשֶׁר יוֹרוּךְ, וְעַל-הַמִּשְׁפָּט
אֲשֶׁר-יֹאמְרוּ לָךְ--תַּעֲשֶׂה: לֹא תִסּוּר, מִן-
הַדָּבָר אֲשֶׁר-יִגִּידוּ לָךְ--יָמִין וּשְׂמָאל.

11 According to the law which they shall teach you, and according to the judgment which they shall tell you, thou shalt do; you shall not turn aside from the sentence which they shall declare unto you, to the right hand, nor to the left.

יְבַרְכֶּנּוּ אֲשֶׁר-יַעֲשֶׂה בְּדוֹן, לְבַלְתִּי שָׁמַע
אֶל-הַכֹּהֵן הָעֹמֵד לְשָׁרֵת שָׁם אֶת-ה' אֱלֹהֶיךָ,
אוֹ, אֶל-הַשֹּׁפֵט--וַיָּמָת הָאִישׁ הַהוּא, וּבְעֶרְתָּ
הָרַע מִיִּשְׂרָאֵל.

12 And the man who does presumptuously, in not obeying the priest who stands to minister there before the LORD your God, or the judge, that man shall die; and you shall exterminate the evil from Israel.

יִגְדָּל וְיִרְאֶה, וְיִסְמְעוּ וְיִרְאוּ; וְלֹא יִזְדוֹן, עוֹד.
{ ס }

13 And all the people shall hear and shall fear, and do no more presumptuously. {S}

2. Mishnah Horayot 1:1

...הורו בית דין, וידע אחד מהן שטעו או
תלמיד והוא ראוי להוראה, והלך ועשה על
פיהן--בין שעשו ועשה עימהן, ובין שעשו
ועשה אחריהן, בין שלא עשו ועשה--הרי זה
חייב. מפני שלא תלה בבית דין. זה הכלל--
התולה בעצמו, חייב; והתולה בבית דין,
פטור

...If the court rules, and one of them knew that they erred, or a disciple who was worthy of teaching, and he acted according to their ruling, whether they acted and he acted with them, or they acted, and he acted after them, or they did not act, and he did, he is liable. After all, he must not have really been relying on the court. This is the rule: one who relies upon himself is obligated, but one who relies upon the court is exempt.

3. Jerusalem Talmud Horayot 1:1, 2b

יכול אם יאמרו לך על ימין שהיא שמאל ועל
שמאל שהיא ימין תשמע להם תלמוד לומר
ללכת ימין ושמאל שיאמרו לך על ימין שהוא
ימין ועל שמאל שהיא שמאל

Perhaps even if they tell you that right is left
and that left is right, you must listen to
them? Therefore, it says, "to go right and
left," only when they tell you that right is
right and that left is left.

4. Sifri Shofetim 154

וְעָשִׂיתָ עַל פִּי הַדָּבָר, עַל הוֹרֵית בֵּית דִּין
הַגָּדוֹל שֶׁבִירוּשָׁלַם חַיִּיבִים מִיָּתָהּ וְאֵין חַיִּיבִים
מִיָּתָהּ עַל הוֹרֵית בֵּית דִּין שְׁבִיבָנָה

And you shall do according to the word –
regarding a ruling of the Great Court in
Jerusalem people can be put to death, but
not regarding a ruling of the Beit Din at
Yavneh.

5. Shaye Cohen, "The Significance of Yavneh: Pharisees, Rabbis, and the End of Jewish Sectarianism," *Hebrew Union College Annual*, Vol. 55 (1984), 28-29

According to the usual view, sectarianism ceased when the Pharisees, gathered at Yavneh, ejected all those who were not members of their own party. Christians were excommunicated, the biblical canon was purged of works written in Greek and apocalyptic in style, and the gates were closed on the outside world, both Jewish and non-Jewish. Functioning in a "crisis" atmosphere, the rabbis of Yavneh were motivated by an exclusivistic ethics; their goal was to define orthodoxy and to rid Judaism of all those who would not conform to it....This view is flawed on several counts...most important, the standard view obscures the major contribution of Yavneh to Jewish history: the creation of a society which tolerates disputes without producing sects. For the first time Jews "agreed to disagree." The major literary monument created by the Yavneans and their successors testifies to this innovation. No previous Jewish work looks like the Mishnah because no previous Jewish work, neither biblical nor post-biblical, neither Hebrew nor Greek, neither Palestinian nor diasporic, attributes conflicting legal and exegetical opinions to named individuals who, in spite of their differences, belong to the same fraternity. The dominant ethic here is not exclusivity but elasticity. The goal was not the triumph over other sects but the elimination of the need for sectarianism itself.

6. Devarim (Deuteronomy) 14:1

א בָּנִים אַתֶּם, לַיהוָה אֱלֹהֵיכֶם: לֹא תִתְגַּדְּדוּ,
וְלֹא-תַשְׂימוּ קַרְחָה בֵּין עֵינֵיכֶם--לְמֵת.
1 Ye are the children of the LORD your God:
ye shall not cut yourselves, nor make any
baldness between your eyes for the dead.

7. Sifri Re'eh 96

לֹא תִתְגַּדְּדוּ – לֹא תַעֲשׂוּ אֲגוּדוֹת אֶלָּא הֵיוּ
כֻּלְכֶם אֲגוּדָה אַחַת...
Lo Titgodedu – Do not become factions
(*agudot*); rather, be one unified group
(*agudah*)...

8. Jerusalem Talmud Pesahim 4:1, 24b-26b

משנה מקום שנהגו לעשות מלאכה בערבי
פסחים עד חצות עושין...
Mishnah: In a place where the people were
accustomed to perform labor on the day
before Passover until midday, one may do so
on that day. In a place where the people
were accustomed not to perform labor, one
may not do so...

גמרא... ר"ש בן לקיש שאל לר' יוחנן ואינו
אסור משום בל תתגודדו? א"ל בשעה שאלו
עושין כב"ש ואלו עושין כב"ה. ב"ש וב"ה אין
הלכה כב"ה. א"ל בשעה שאלו עושין כר"מ
ואלו עושין כר' יוסה. ר"מ ור' יוסי אין הלכה
כר' יוסי. א"ל תרי תניין אינון על דר"מ ותריין
תניין אינון על דר' יוסי. א"ל הרי ר"ה ור"ה
ביהודה נהגו כר"ע
Gemara: R. Shimon ben Laqish asked R.
Yohanan: Is this is not forbidden out of
concerns of *lo titgodedu*? He answered: *Lo
titgodedu* applies when some practice like
Beit Shammai while others practice like Beit
Hillel (i.e., not in the case of mere custom).
But does not the law follow Beit Hillel where
there is argument between them? He
answered: So it applies when some practice
like Rabbi Meir while others practice like
Rabbi Yose. But does not the law follow
Rabbi Yose where there is argument between
them? He answered: So it applies when there
are two versions of Rabbi Meir's opinion and
two versions of Rabbi Yose's opinion. He said
to him: What about *lo titgodedu* in the case
of *Rosh HaShanah* and *Yom Kippur*: in
Yehuda, they performed *shofar* blowing per
R. Akiva,

ובגליל נהגו כר' יוחנן בן נורי. אמר רביאליה
שנייה הוא שאם עבר ועשה ביהודה בגליל
whereas in the Galilee, they performed
shofar blowing per R. Yohanan ben Nuri? He

ובגליל ביהודה יצא. הרי פורים הרי אלו קורין בי"ד ואלו קורין בט"ו. א"ל מי שסידר את המשנה סמכה למקרא משפחה ומשפחה מדינה ומדינה ועיר ועיר...

responded: That is a different situation, for if one had transgressed the norms of each town in that very town, one would still have fulfilled the obligation *post facto*. What about *lo titgodedu* in the case of Purim, where some read *megillah* on the 14th [of Adar], while these read on *megillah* on the 15th? He answered: The one who arranged that teaching based it on Scripture: "family by family," "province by province," and "city by city." ...

Maintaining Community

9. Mishnah Yevamot 1:4

בית שמאי מתירין את הצרות לאחין, ובית הלל אוסרין. חלצו--בית שמאי פוסלין מן הכהונה, ובית הלל מכשירין; נתייבמו--בית שמאי מכשירין, ובית הלל פוסלין. אף על פי שאלו פוסלין ואלו מכשירין, אלו אוסרין ואלו מתירין--לא נמנעו בית שמאי מלישא נשים מבית הלל, ולא בית הלל מבית שמאי. וכל הטהרות והטומאות שהיו אלו מטהרין ואלו מטמאין, לא נמנעו עושין טהרות אלו על גב אלו.

Beit Shammai permit brothers to marry [by levirate marriage] the rivals of women [who are in forbidden degrees of relationship to them]; but Beit Hillel forbid it. If such women did *chalitsah*, they are disqualified per Beit Shammai to marry a *kohen*; but Beit Hillel declare them still qualified. If such women did levirate marriage, Beit Shammai permit them, in case they had again become widows, to marry a *kohen*; but Beit Hillel prohibit it.

Although one school prohibits what the other permits, and one declares as an invalid marriage that which by the other is considered a valid one, yet the disciples of both schools did not refrain from marrying with each other.

Likewise with regard to the disputes concerning the laws of ritual purity and impurity, where Beit Hillel rule an article ritually pure and Beit Shammai rule it ritually impure, they did not refrain from handling ritually pure objects with each other.

10. Babylonian Talmud Yevamot 14a-14b

מי סברת עשו ב"ש כדבריהם? לא עשו ב"ש
כדבריהם! ור' יוחנן אמר עשו ועשו...מאן
דאמר עשו קרינן כאן לא תתגודדו לא תעשו
אגודות אגודות!

[Resh Laqish said to him]: Do you hold that Beit Shammai actually acted in accordance with their own statement? Beit Shammai did not in fact act in accordance with their own statement – the dispute was merely theoretical. And Rabbi Yohanan said: Beit Shammai certainly did act in accordance with their opinion...According to the one who said that Beit Shammai acted in accordance with their opinion we should apply *lo titgodedu*, you should not become numerous factions!

אמר אביי כי אמרינן לא תתגודדו כגון שתי
בתי דינים בעיר אחת הללו מורים כדברי
ב"ש והללו מורים כדברי ב"ה אבל שתי בתי
דינים בשתי עיירות לית לן בה אמר ליה רבא
והא ב"ש וב"ה כשתי בתי דינים בעיר אחת
דמי אלא אמר רבא כי אמרינן לא תתגודדו
כגון ב"ד בעיר אחת פלג מורין כדברי ב"ש
ופלג מורין כדברי ב"ה אבל שתי בתי דינן
בעיר אחת לית לן בה...

Abaye said: When we say, '*lo titgodedu*,' we refer to a situation such as having two courts in one city, one which rules like the House of Shammai and the other like the house of Hillel, but two courts in two different cities is not problematic. Rava said to him: But was not the dispute between Beit Shammai and Beit Hillel itself not similar to having two courts in one city? Rather, Rava said: When we say, '*lo titgodedu*,' we refer to a situation such as having one court in a city, where one section of the decisors rule like the Beit Shammai and the other section rules like the Beit Hillel. But having two courts [which rule differently] in a single city is not problematic...

ת"ש אע"פ שאלו אוסרים ואלו מתירים לא
נמנעו ב"ש מלישא נשים מב"ה ולא ב"ה
מב"ש אי אמרת בשלמא לא עשו משום הכי
לא נמנעו אלא אי אמרת עשו אמאי לא
נמנעו? דמודעי להו ופרשי.

Come and hear: Though these forbade what those permitted Beit Shammai did not refrain from marrying women from Beit Hillel, nor did Beit Hillel refrain from marrying women from Beit Shammai. Granted, if you say that Beiti Shammai did not act in accordance with their own opinion, one can well understand why they did not refrain. If, however, they did act in accordance with their own opinion, why did they not refrain?...[Because] they would inform Beit Hillel of any such cases,

והכי נמי מסתברא דקתני סיפא כל הטהרות
וכל הטמאות שהיו אלו מטהרין ואלו
מטמאין לא נמנעו עושים טהרות אלו על גבי
אלו. אי אמרת בשלמא דמודעי להו, משום
הכי לא נמנעו. אלא אי אמרת דלא מודעי
להו, בשלמא ב"ש מב"ה לא נמנעו דטמאות
דב"ה לב"ש טהרות ניהו, אלא ב"ה מב"ש
למה לא נמנעו – טהרות דב"ש לב"ה טמאות
ניהו! אלא לאו דמודעי להו שמע מינה. ומאי
אוליה דהך מהך? מהו דתימא צרה קלא אית
לה קמ"ל.

and Beit Hillel would withdraw from the match.

And this is reasonable, as the Mishnah teaches: With regard to the disputes concerning the laws of ritual purity and impurity, where Beit Hillel rule an article ritually pure and Beit Shammai rule it ritually impure, they did not refrain from handling ritually pure objects with each other. If you say they notified them, that is why they did not refrain from using their objects. But if they did not notify them, while Beit Shammai need not refrain from handling items belonging to Beit Hillel, as Beit Hillel was stricter, Beit Hillel should certainly refrain from handling items considered pure by Beit Shammai: according to Beit Hillel those items were impure?! Rather, is it not the case that Beit Shammai notified Beit Hillel of such cases? Conclude from here that this is correct. Why is the example of purities any more conclusive than the case about marriage? Lest you think that a marriage to a rival wife is so public that no special notification is required about the offspring, we are taught that even in such cases, special notification is required.