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# BEYOND DISPUTE

## DEBATES THAT SHAPE JEWISH LIFE

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### UNIT 1

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## DOES DISPUTE UNITE US OR DIVIDE US? THE COMPLEX LEGACY OF DEBATE IN JEWISH TRADITION

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## I. Two Views of Torah Study

### 1. Sifrei Deuteronomy, Ha'azinu 321

*Halakhic Midrash on Deuteronomy (Land of Israel, 3<sup>rd</sup>–4<sup>th</sup> century CE).*

And Scripture states, “All of them valiant, wagers of war” (II Kings 24:16).<sup>1</sup> Now what valor can people who are going into exile display? And what war can people wage when they are fettered in shackles and bound by chains? Rather, “valiant” refers to those who are valiant in Torah study, as in the verse, “Bless the Lord, O you His angels, valiant and mighty, who do His word...” (Psalm 103:20); and “wagers of war” refers to those who are engaged in dialogue and debate [literally “give and take”] in the war of Torah, as it is said, “Wherefore it is said in the book of the Wars of the Lord” (Numbers 21:14).

וכן הוא אומר “הכל גבורים עושי מלחמה” (מ”ב כד טז). וכי מה גבורה עושים בני אדם ההולכים בגולה? ומה מלחמה עושים בני אדם זקוקים בזיקים והנתונים בשלשלאות? אלא: גבורים — אלו גבורי תורה, כענין שנאמר “ברכו ה’ מלאכיו גבורי כח עושי דברו” (תהלים קג כ). עושי מלחמה — שהיו נושאים ונותנים במלחמתה של תורה, שנאמר “על כן יאמר בספר מלחמות ה’” (במדבר כא יד).

### 2. Arukh Hashulhan, Hoshen Mishpat, preface

*Yehiel Mikhel Epstein was known as the Arukh Hashulhan after his most famous work, a halakhic digest following the order of the Shulhan Arukh (Belorussia, 1829–1908).*

Truly, for one who understands a matter in all its richness, all the controversies among the tanna'im, amora'im, the geonim,<sup>2</sup> and the decisors of Jewish law are the words of the living God, and all are grounded in the law. Indeed, this is the glory of our pure and holy Torah, the whole of which is called a song. And the glory of the song is that the individual voices differ from one another other; this is the essence of its delight. And one who explores the sea of Talmud will experience the diverse delights of all these distinct voices.

וכל מחלוקת התנאים והאמוראים והגאונים והפוסקים, באמת למבין דבר לאשרו, דברי אלהים חיים הם, ולכולם יש פנים בהלכה. ואדרבא, זוהי תפארת תורתנו הקדושה והטהורה. וכל התורה כולה נקראת שירה, ותפארת השיר היא כשהקולות משונים זה מזה, וזהו עיקר הנעימות. ומי שמשוטט בים התלמוד יראה נעימות משונות בכל הקולות המשוניות זה מזה.

<sup>1</sup> The passage from II Kings references the exile of King Jehoiachin and seven thousand of his men, who are referred to as “valiant, wagers of war.”

<sup>2</sup> The tanna'im (lit. “repeaters” i.e. of orally transmitted teachings) were responsible for the traditions included in the Mishnah and other early rabbinic literature. The amora'im (lit. “expounders”) were the rabbinic sages living from the mid 3<sup>rd</sup> to the 6<sup>th</sup> centuries in both the Land of Israel and Babylonia. They appear throughout the Talmud. The Ge'onim (lit. “geniuses”) were the rabbis of the generation following the close of the Talmud.

## II. Arguing for the Sake of Heaven

### 3. Pirkei Avot 5:17

*A collection of ethical maxims found in the Mishnah, the written compilation of orally transmitted teachings covering all aspects of Jewish law. (Land of Israel, c. 200 CE).*

Every dispute that is for the sake of heaven is destined to endure. But if it is not for the sake of heaven, it is not destined to endure. What is [an example of] a dispute for the sake of heaven? The dispute of Hillel and Shammai.<sup>3</sup> What is [an example of] a dispute not for the sake of heaven? The dispute of Korah and all his congregation.<sup>4</sup>

כל מחלוקת שהיא לשם שמים,  
סופה להתקיים. ושאינה לשם  
שמים, אין סופה להתקיים. איזו  
היא מחלוקת שהיא לשם שמים, זו  
מחלוקת הלל ושמואי. ושאינה לשם  
שמים, זו מחלוקת קרח וכל עדתו.

### 4. Rabbi Obadia of Bartinoro (“the Bartenura”) on Pirkei Avot 5:17 (section 1).

*Fifteenth century Italian rabbi best known for his commentary on the Mishnah, also known as the Bartenura (1445–1515).*

**“Every dispute that is for the sake of heaven is destined to endure”**....And I heard an explanation of the word *sofah* [“its end,” i.e., the destiny of the dispute]: “its purpose and desired outcome.” The dispute that is for the sake of heaven, the purpose and aim of that dispute is to arrive at the truth, and this endures, as they said “from a disagreement the truth will be revealed,” as was revealed in the disputes between Hillel and Shammai—that the law is in accordance with the position of the House of Hillel. And a controversy which is not for the sake of Heaven, its desired outcome is the attainment of power and the love of victory, and this end will not endure, as we find in the dispute of Korah and his band, whose aim and end-goal was the attainment of honor and power—and their end was the opposite.

כל מחלוקת שהיא לשם שמים, סופה  
להתקיים... ואני שמעתי פירוש  
סופה: תכליתה המבוקש מענינה.  
והמחלוקת שהיא לשם שמים,  
התכלית והסוף המבוקש מאותה  
מחלוקת להשיג האמת, וזה מתקיים,  
כמו שאמרו מתוך הויכוח יתברר  
האמת, וכמו שנתבאר במחלוקת הלל  
ושמואי, שהלכה כבית הלל. ומחלוקת  
שאינה לשם שמים, תכלית הנרצה בה  
היא בקשת השגרה ואהבת הניצוח,  
וזה הסוף אינו מתקיים, כמו שמצינו  
במחלוקת קורח ועדתו, שתכלית וסוף  
כונתם היתה בקשת הכבוד והשגרה,  
והיו להיפך.

<sup>3</sup> Hillel and Shammai were Jewish scholars of the first century BCE who frequently disagreed. Their teachings (and those of their disciples) constitute some of the earliest material in the Mishnah.

<sup>4</sup> In Numbers 16, Korah challenges Moses' leadership. He and his followers perish when the earth opens to swallow them.

## 5. Rabbi Jonah ben Abraham Gerondi (“Rabbeinu Yonah”) on Pirkei Avot 5:17

*Catalan rabbi and commentator, best known for his ethical work Gates of Repentance. (c 1200–c 1264).*

“Every dispute, etc.” This is to say, about that which it said, “Every dispute that is for the sake of heaven is destined to endure”—the meaning is that they will endure in their dispute forever. Today they will argue about one thing and tomorrow about another; and dispute will endure and continue between them all the days of their lives. And not only this, but also length of days and years of life will be added to them.

כָּל מַחְלֻקָּת וכו'. לומר כי מה שאמר  
“כל מחלוקת שהיא לשם שמים, סופה  
להתקיים” הפונה — שלעולם יתקיימו  
במחלוקת, והיום יחלוקו בדבר אחד  
למחר בדבר אחר, ומחלוקת יהיה קים  
ונמשך ביניהם כל ימי חייהם. ולא  
עוד, אלא שאורך ימים ושנות חיים  
יוסיפו להם.

## III. The Model of Hillel and Shammai

### 6. Jerusalem Talmud, Shabbat 1:4

*The central body of rabbinic law, dialectic, and lore, comprising the Mishnah and the Gemara (the latter being an exposition and elaboration of the former in Hebrew and Aramaic). Two separate Talmudic compilations exist: the Babylonian Talmud (c. 500 CE) and the Jerusalem Talmud (also known as the Talmud of the Land of Israel, c. 400 CE).*

Rabbi Yehoshua Onaya taught: The disciples of the House of Shammai took positions down below and killed disciples of the House of Hillel [before they could ascend upstairs]. It has been taught: Six of them ascended, and the rest of them took positions against them with swords and spears.

תנא ר' יהושע אונאיא: תלמידי בית  
שמאי עמדו להן מלמטה והיו הורגין  
בתלמידי בית הלל. תני: ששה מהן  
עלו והשאר עמדו עליהן בחרבנות  
וברמחים.

### 7. Babylonian Talmud, Yevamot 14b

Come and hear: Even though the House of Shammai and the House of Hillel disagreed regarding [the following cases of marital law:] rival wives, sisters, an outdated bill of divorce, a woman whose marital status is uncertain, one who divorces his wife and later she lodged with him at an inn, [betrothal] by money or with the equivalent value of money, and by a *perutah* or with the equivalent value of a *perutah*<sup>5</sup>—Beit

ת"ש: אף על פי שנחלקו בית  
שמאי ובית הלל בצורות,  
ובאחיות, בגט ישן, ובספק  
אשת איש, ובמגרש את אשתו  
ולנה עמו בפונדק, בכסף

<sup>5</sup> The following cases are referenced here: (1) **Rival wives, sisters**: a case where there are four brothers, two of whom were married to two sisters, and those married to the sisters died. What is their status if the surviving brothers

Shammai did not refrain from marrying women from Beit Hillel, nor did Beit Hillel [refrain from marrying women] from Beit Shammai. This teaches that they practiced affection and camaraderie between them, to fulfill that which is stated: “Love truth and peace” (Zechariah 8:19). Rabbi Shimon says: They did refrain in the certain cases [i.e., where according to one side’s opinion a person’s status was definitely problematic], but they did not refrain in the uncertain cases [i.e., where according to one side’s opinion a person’s status was only potentially problematic].

וּבְשׁוּהָ כֶסֶף, בְּפְרוּטָה וּבְשׁוּהָ  
פְרוּטָה — לֹא נִמְנְעוּ בֵּית שְׁמַאי  
מִלְיֵשָׁא נָשִׁים מִבֵּית הַלֵּל וְלֹא  
בֵּית הַלֵּל מִבֵּית שְׁמַאי, לְלַמֶּדְךָ  
שְׁחִיבָה וְרִיעוּת נֹהֲגִים זֶה בְּזֶה,  
לְקַיֵּים מִה שֶׁנֶּאֱמַר: הָאֱמֶת  
וְהַשְּׁלוֹם אֶהְיֶה (זְכַרְיָה ח, יט).  
ר"ש אָמַר: נִמְנְעוּ הֵן מִן הַיִּבּוּם  
וְלֹא נִמְנְעוּ מִן הַסֶּפֶק.

## 8. Rashi's Commentary on Babylonian Talmud, Yevamot 13b

Acronym for “Rabbi Solomon (ben) Isaac”; Bible and Talmud commentator (France, 1040-1105).

“They did not refrain, etc.”—Beit Hillel did not refrain from marrying women from Beit Shammai, for they [Beit Shammai] would notify them which women were children of rival wives [in *yibbum* relationships]<sup>6</sup>, and they [Beit Hillel] would not marry them.

לֹא נִמְנְעוּ כו' - לֹא נִמְנְעוּ בֵּית  
הַלֵּל מִלְיֵשָׁא נָשִׁים מִבֵּית  
שְׁמַאי, לְפִי שֶׁהֵיוּ מוֹדִיעִים  
לָהֶם אוֹתָן הַבָּאוֹת מִן הַצָּרוֹת  
וּפּוֹרְשִׁים.

## 9. Babylonian Talmud, Eruvin 13b

Rabbi Abba said in the name of Shmuel: For three years Beit Shammai and Beit Hillel disagreed. These said: “The halakhah is in accordance with our opinion,” and these said: “The halakhah is in accordance with our opinion.” A divine voice emerged and proclaimed: “Both these and those are the words of the living God; but the halakhah is in accordance with the opinion of Beit Hillel.”

אָמַר רַבִּי אֲבָא אָמַר שְׁמוּאֵל: שְׁלוֹשׁ  
שָׁנִים נִחְלְקוּ בֵּית שְׁמַאי וּבֵית הַלֵּל.  
הָלְלוּ אוֹמְרִים “הַלָּכָה כְּמוֹתֵנוּ”  
וְהָלְלוּ אוֹמְרִים “הַלָּכָה כְּמוֹתֵנוּ”.  
יֵצְאָה בֵּת קוֹל וְאָמְרָה: “אֵלֹהִים וְאֵלֹהִים  
דְּבָרֵי אֱלֹהִים חַיִּים הֵן, וְהַלָּכָה  
כְּבֵית הַלֵּל”.

perform *yibbum* (levirate marriage), which is contrary to the law? (2) **An outdated bill of divorce:** when a bill of divorce has been written but not delivered and a couple continues to live together, would the bill still be valid at a later time? (3) **A woman whose marital status is uncertain:** when can a minor who was married, and not merely betrothed, annul her marriage? (4) **One who divorces his wife, etc.:** is lodging together at an inn sufficient grounds to assume that a couple has remarried? (5) **[Betrothal] by money, etc.:** what is the minimum amount of money necessary to effect betrothal?

<sup>6</sup> *Yibbum* refers to levirate marriage, where a man whose brother has died without children is obligated to marry his brother’s widow. Hillel and Shammai disagreed on whether *yibbum* was required if the wife of the deceased brother was the sister of the wife of the living brother (i.e., his sister-in-law). This was not insignificant! While Beit Shammai allows a man to marry his sister-in-law, Beit Hillel would deem the child of such a union a *mamzer*, forbidden to marry all but other *mamzerim* or converts.

## 10. Babylonian Talmud, Eruvin 13b (continued)

Since both these and those are the words of the living God, why were Beit Hillel privileged to have the halakhah established in accordance with their opinion? The reason is that they [i.e., Beit Hillel] were agreeable and forbearing, showing restraint when affronted, and they would teach both their own statements and the statements of Beit Shammai. Moreover, [when they cited a dispute,] they would cite the statements of Beit Shammai before their own.

וכי מאחר שאלו ואלו דברי  
א-להים חיים, מפני מה זכו  
בית הלל לקבוע הלכה  
כמותן? מפני שנוחין  
ועלובין היו, ושונין דבריהן  
ודברי בית שמאי, ולא עוד  
אלא שמקדימין דברי בית  
שמאי לדבריהן.

## IV. Ancient and Modern Perspectives on Dispute

### 11. Tosefta Hagigah 2:4

*A compilation of legal rulings by rabbis of the Mishnaic period that were not included in the Mishnah, or are parallel to statements in the Mishnah; composed c. 300 CE*

Rabbi Yose said: Originally there were no arguments in Israel. Rather, a 71-member court sat in the chamber of hewn stone [in the Temple] and other courts of 23 existed in the cities of the Land of Israel. And two courts of 3 apiece were in Jerusalem, one on the Temple Mount and one in Hayil. When a court was needed, one would go to the court in one's own city. If there was no court [in one's city], one would go to the court near one's city. If [the court] had heard [an oral tradition that would enable them to rule on the matter], they would tell him; if not, he and their most distinguished member would go to the court on the Temple Mount. If they had heard [a tradition on the matter] they would tell him; if not, he and their most distinguished member would go to the court in Hayil. If they had heard [a tradition on the matter], they would tell him; if not, they would all come to the court in the chamber of hewn stone....If they had heard [a tradition on the matter], they would tell them, and if not, they would establish a quorum and take a roll. If the majority said "impure," it is impure. If the majority said "pure," it is pure. From there the halakhah spread widely in Israel. When students of Shammai and Hillel who

אמר רבי יוסי: בתחילה לא היתה  
מחלוקת בישראל. אלא בית דין של  
שבעים ואחד [היה] בלשכת הגזית  
[ושאר] בתי דינים של עשרים ושלושה  
היו בעיירות ארץ ישראל, ושני בתי  
דינים של שלושה היו בירושלים אחד  
בהר הבית ואחד בחיל. נצרך אחד  
מהם, הולך אצל בית דין שבעירו. אין  
בית דין, הולך אצל בית דין הסמוך  
לעירו. [אם] שמעו אמרו להם, אם לא  
הוא ומופלג שבהן באין לבית דין  
שבהר הבית. [אם] שמעו אמרו להם,  
ואם לא הוא ומופלג שבהן באין  
לבית דין [שבחיל]. אם שמעו אמרו  
להם, אם לא אלו ואלו באין לבית דין  
שבלשכת הגזית.... נשאלה הלכה אם  
שמעו אמרו להם, אם לא עומדין  
במנין. אם רבו המטמאין טימאו, אם  
רבו המטהרין טיהרו. משם הלכה יוצא  
רווחת בישראל. משרבו תלמידי שמאי  
והלל שלא שמשו כל צרכן, [הרבו]



did not properly apprentice became great in number, dispute increased in Israel, and it became as though there were two Torahs.

מחלוקת בישראל [ונעשו כשתי תורות].

## 12. Maimonides, Commentary on the Mishnah, Introduction to Zeraim

*Also known as Rambam (acronym for “Rabbi Moses ben Maimon”); halakhic codifier (Mishneh Torah), philosopher (Guide of the Perplexed), and communal leader (Spain and Egypt, 1135–1204).*

Whenever two people are equal in their wisdom, knowledge, and understanding of the established rules of inference [a finite set of methods of textual interpretation officially sanctioned by the Rabbis], a dispute will not arise between them when they apply those rules. If it does, it will be minor—just as there was no dispute between Shammai and Hillel except regarding specific, isolated halakhot. This was because their views were close to one another in how they applied logical reasoning to the text, and both made their inferences by correctly applying the same hermeneutical rules. But when their disciples became less diligent in their learning, and their powers of reasoning were weak in comparison to the reasoning of Shammai and Hillel, disputes arose among them...as each one issued legal rulings according to one's own wisdom and one's own limited understanding of the rules of inference. Yet they should not be blamed for this, for we cannot compel two scholars involved in an argument to do so with the wisdom of Joshua and Pinehas.<sup>7</sup>

שְׁכָל ב' אֲנָשִׁים בְּהִיּוֹתָם שְׁוִים בְּשִׁכְלָם  
וּבְעִיּוֹן וּבִידֵיעַת הָעִיּוֹקְרִים שִׁיּוּצִיאוֹ  
מֵהֶם הַסְּבָרוֹת, לֹא תִפּוֹל בִּינֵיהֶם  
מַחְלֹקֶת בְּסִבְרָתָם בְּשׁוּם פְּנִים, וְאִם  
נִפְלָה תִהְיֶה מֵעוּטָא. כְּמוֹ שֶׁלֹּא נִמְצָא  
שֶׁנִּחְלְקוּ שְׁמַאי וְהִלֵּל אֶלָּא בְּהִלְכוֹת  
יְחִידוֹת. וְזֶה מִפְּנֵי שְׁדַּעוֹת שְׁנֵיהֶם הָיוּ  
קְרוֹבוֹת זֶה לָזֶה בְּכָל מָה שִׁיּוּצִיאוֹ  
בְּדֶרֶךְ סִבְרָא, וְהָעִיּוֹקְרִים כְּמוֹ כֵּן  
הִנָּתוּנִים לָזֶה כְּמוֹ הָעִיּוֹקְרִים הִנָּתוּנִים  
לָזֶה. אֲבָל כְּאֲשֶׁר רָפְתָה שְׁקִידַת  
הַתְּלָמִידִים עַל הַחֻקִּים וְנִחְלְשָׁה  
סִבְרָתָם נִגְדַּ סִבְרַת הִלֵּל וְשְׁמַאי וּבָם  
נִפְלָה מַחְלֹקֶת בִּינֵיהֶם....כָּל אֶחָד  
וְאֶחָד מֵהֶם הִיָּתָה לְפִי שִׁכְלוֹ וּמָה שִׁישׁ  
בְּיָדוֹ מִן הָעִיּוֹקְרִים. וְאִין לְהַאֲשִׁימָם  
בְּכָל זֹאת. שֶׁלֹּא נִכְרִיחַ אֲנַחְנוּ לְשִׁנִּי  
חֻקִּים מִתּוֹכָהֶם בְּעִיּוֹן לְהַתּוֹכַח  
כְּשִׁכְלָם יְהוּשֻׁעַ וּפִנְחָס.

<sup>7</sup> Joshua succeeded Moses as leader of the Israelites and Pinehas, grandson of Aaron, became the high priest. Both were understood to be intellectually gifted.

### 13. Babylonian Talmud, Bava Metzia 84a

Reish Lakish died, and Rabbi Yohanan was plunged into deep grief. The Rabbis said, “Who shall go to ease his mind? Let Rabbi Elazar ben Pedat go, for he is sharp in his learning.” So he went and sat before him; and in response to every teaching that Rabbi Yohanan said, he said: “There is a baraita that supports you!”

“Are you like the son of Lakisha?” he said. “For each teaching that I said, the son of Lakisha would raise twenty-four objections against me, to which I gave twenty-four answers, and from this the learning expanded. And you say, ‘There is a baraita that supports you’—do I not already know that what I said is right?!”

So he went on tearing his garments and weeping, “Where are you, son of Lakisha? Where are you, son of Lakisha?” and he cried thus until he lost his mind. The Rabbis prayed for mercy upon him, and he died.

נח נפשיה דרבי שמעון בן לקיש, והוה קא מצטער רבי יוחנן בתריה טובא. אמרו רבנן: מאן ליזיל ליתביה לדעתיה? ניזיל רבי אלעזר בן פדת, דמחדדין שמעתיה. אזל יתיב קמיה. כל מילתא דהוה אמר רבי יוחנן אמר ליה: תניא דמסייעא לך.

אמר: את כבר לקישא? בר לקישא, כי הוה אמינא מילתא, הוה מקשי לי עשרין וארבע קושיותא, ומפרקינא ליה עשרין וארבעה פרוקי, וממילא רווחא שמעתא. ואת אמרת תניא דמסייעא לך, אטו לא ידענא דשפיר קאמינא?!

הוה קא אזיל וקרע מאניה, וקא בכי ואמר: היכא את בר לקישא, היכא את בר לקישא? והוה קא צוח עד דשף דעתיה [מיניה]. בעו רבנן רחמי עליה ונח נפשיה.

### 14. Rashi's Commentary on Babylonian Talmud, Hagigah 3b

One does not find either party in the dispute bringing proof from the Torah of another god, but only from the Torah of our God.

אין לך מבני המחלוקת מביא ראיה מתורת אלוה אחר, אלא מתורת אלהינו.

### 15. Rabbi Abraham Isaac Kook, Olat Re'iyah<sup>8</sup>

*First Ashkenazi chief rabbi in pre-state Israel; considered one of the fathers of religious Zionism (Israel, 1865–1935).*

For the building is constructed from various parts, and the truth of the light of the world will be built from various dimensions, from various approaches, for these and those are the words of the living God....It is precisely the multiplicity of opinions which derive from variegated souls and

כי הבנין יבנה מחלקים שונים, והאמת של אור העולם תבנה מצדדים שונים ומישטות שונות, שאלו ואלו דברי אלהים חיים....ורבוי הדעות שבא על ידי השתנת הנפשות והחנוכים, דוקא

<sup>8</sup> In his *Seder tefilah: im perush Olat Re'iyah*, Vol. 1 (Jerusalem, 1939), 330.



backgrounds that enriches wisdom and brings about its enlargement. In the end, all matters will be properly understood, and it will be recognized that it was impossible for the structure of peace to be built without those orientations which appeared to be in conflict.

הוא הוא המעשיר את החכמה והגורם  
הרחבתה, שלסוף יובנו כל הדברים  
כראוי ויופר שאי אפשר היה לבנות  
השלום שיבנה כ"א ע"י כל אותן  
ההשפעות הנראות כמנצחות זה את זה.

## SUGGESTIONS FOR FURTHER STUDY

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