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Survey of Recent Halakhic Periodical Literature

THE *BET DIN*: AN INSTITUTION WHOSE TIME HAS RETURNED

I.

Contemporary Jewry has witnessed an incredible return to meticulousness in observance of the precepts of Judaism. Widespread laxity, often even among the knowledgeable, in observance of Sabbath laws, in many aspects of the dietary code, in the writing and fashioning of *tefillin*, in the *kashrut* of the four species, etc., has been replaced in ever-widening circles with concerted efforts to observe *mitsvot* in an optimal manner and, to the extent possible, in accordance with the prescriptions of every recognized authority. This single-minded pursuit of stringency rather than leniency among the cognoscenti and the more pious has had a ripple effect that has served to raise standards of religiosity and observance across the entire spectrum of our community.

Yet, collectively and individually, the American Jewish community is guilty of continuous and ongoing violation of one of the six hundred and thirteen commandments. "Judges and court officers shall you place unto yourself in all your gates" (Deuteronomy 16:17) is cited by numerous early authorities, including Rambam, *Sefer ha-Mitsvot, mitsvot aseh*, no. 176 and *Hilkhot Sanhedrin* 1:1; *Sefer Mitsvot Gadol, esin*, no. 87; and *Sefer ha-Hinnukh*, no. 491, as establishing an obligation to institute ecclesiastic courts, or *batei din*, in every locale. Rambam, *Hilkhot Sanhedrin* 1:2, explicitly rules that the commandment is binding, not only in the Land of Israel, but in the Diaspora as well.[1] The sole distinction between the Land of Israel and the Diaspora with regard to the ambit of this commandment is that the obligation to establish *batei din* in each district is limited to the Land of Israel, while the obligation to establish *batei din* in each city is binding in the Diaspora as well. *Kesef Mishneh*, on the basis of the Gemara, *Makkot* 7a, suggests that the Maimonidean text should read that the obligation incumbent in the Diaspora is to appoint judges in every district, but not in each city.[2]

Jewish law does indeed provide that in the event of a financial dispute each litigant may nominate one member of the *bet din* and that the two judges designated in this manner are empowered to choose the third member of the tribunal. That procedure is known as *zablo* (*zeh borer lo ehad ve-zeh borer lo ehad*—this litigant chooses one [judge] and that litigant chooses one [judge]). Since, subsequent to the destruction of the Temple, rabbinic courts are no longer authorized to impose penal sanctions, to what purpose is there an ongoing obligation to establish a standing court? The essential distinction between a communally established *bet din* and an

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ad hoc tribunal selected by the litigants is that an *ad hoc* court derives its authority from the consent of the litigants whereas an established *bet din* has the right to summon any person subject to its jurisdiction and to compel his appearance. The distinction is roughly parallel to that between an agreement to be bound by the decision of an arbitration panel and submission to the jurisdiction of a court. Establishment of a judiciary having the authority in Jewish law to assert jurisdiction and to enforce judgement constitutes the essence of the commandment.

European communities were organized on the basis of a *kehillah* system. In every town, village and hamlet the Jewish community designated individuals to administer communal institutions and to provide for the spiritual as well as the temporal needs of the inhabitants. A rabbinic scholar was designated to serve as chief rabbi of the city and was usually assisted by *dayyanim* who served as associate judges. Their primary responsibility was to rule on matters of religious law relating both to individual observance and to the community as a whole and to sit as a court to adjudicate any financial or interpersonal disputes that might arise. With such a court in place, a litigant could neither plead that he preferred to appear before the court of a neighboring city nor demand the right to designate a judge of his own choice. In many communities it was customary for all householders to affix their signatures to the formal *ketav rabbanut*, or rabbinic contract, presented to a newly appointed rabbi specifically designating him as the presiding judge of the local *bet din*. That practice was instituted in order to assure that no person might refuse to obey a summons issued by the communal rabbi on the plea that he did not recognize the rabbi's judicial authority. Thus was the commandment "Judges and court officers shall you place unto yourself" fulfilled.

Not so in America. The *kehillah* system has not been replicated in this country. Rabbis are engaged by individual congregations rather than by the community at large. Membership in a synagogue does not *ipso facto* imply binding acceptance of the authority of the synagogue's rabbi, no matter how qualified he may be, with regard to religious or jurisprudential matters that are personal in nature. The result is that no rabbi enjoys the authority to compel a litigant to appear before him and to accept his judicial authority. *Batei din* established by rabbinic organizations or by a group of neighborhood rabbis, rather than by the community as a whole, enjoy no greater authority. To be sure, a plaintiff dare not have recourse to a secular court and a defendant may not simply ignore the summons of a *bet din*, but any litigant may insist upon his right not to appear before the court that has summoned him. Since, in our country, no *bet din* can *compel* appearance, we are in violation of the commandment "Judges and court officers shall you set unto yourself."

This charge is not novel, nor does it originate with this writer. It was leveled over forty years ago by no less a personage than the sainted Rabbi Yosef Eliyahu Henkin, of blessed memory:

> The positive commandment [concerning] appointment of judges is binding also in the Diaspora (at least in every district) even in our era. Even in a locale in which there are scholars, the community is not relieved [of its obligation] to appoint designated persons for that purpose.
>
> Come and let us protest concerning the many cities and large metropolises in America that have many Torah-observant individuals but, nevertheless, they do not appoint judges and decisors. . . .[3]

II.

Lamentably, the absence of formally established *batei din* in our country has given rise to the phenomenon of otherwise scrupulously observant Jews having recourse to civil courts for resolution of disputes involving other members of the Jewish community. Such action entails serious violations of Jewish law.

R. Akiva Eger, in a gloss appended to *Hoshen Mishpat* 26:1, cites *Tashbats*, II, no. 190, in declaring that acceptance of any monetary award of a secular court in excess of that which would have been awarded by a *bet din* in accordance with Jewish law constitutes an act of theft. The same authority rules that one who accepts such funds is disqualified under Jewish law from serving as a witness. Indeed, *Tashbats* comments that "this matter is so simple that it need not be recorded."

More fundamental is the transgression involved in the very act of petitioning a civil court for redress. The standard translation of Exodus 21:1 is "And these are the ordinances (*mishpatim*) which you shall set before them," i.e., before the children of Israel. Rabbinic exegesis endows this passage with an entirely different meaning.

The Hebrew term "*mishpatim*" is a homonym and, depending upon the context, can connote either "ordinances" or "lawsuits." The Gemara, *Gittin* 88b, assigns the second meaning to this term in commenting "'And these are the lawsuits which you shall place before them'—but not before the courts of gentiles." The conventional translation of the biblical text renders the entire passage simply as an introduction to the lengthy list of jurisprudential ordinances that follow. Rabbinic tradition understands the passage as referring to litigation that may be brought on the basis of those statutes and as expressly commanding that such suits be brought before *them, viz.*, the judges designated for that purpose by Moses. The verse thus refers to the judges whose appointment is recorded in a preceding scriptural section, Exodus 18:13-26.[4]

The rationale underlying this prohibition is incorporated in *Shulhan Arukh, Hoshen Mishpat* 26:1, in the words "And whosoever comes before [gentile courts] for judgment is a wicked person and it is as if he has blasphemed and lifted a hand against the Torah of our teacher Moses, may he rest in peace." Every student of Rashi's commentary on the Pentateuch is familiar with Rashi's depiction of such an individual as one who "profanes the Divine Name and ascribes honor to the name of idols." Halakhic sources recorded in *Hoshen Mishpat* 26:1 make it clear that the nature and provenance of the legal code administered by the gentile courts is entirely irrelevant. Recourse to such a forum is prohibited even if the law that is applied is in no way associated with an idolatrous cult and is forbidden even if the secular law applicable to the suit is identical to Jewish law in every respect. The essence of the transgression lies in rejection of the law of Moses in favor of some other legal system; recourse to a gentile forum is tantamount to a declaration by the litigant that he is amenable to allowing an alien code of law to supersede the law of the Torah. Such conduct constitutes renunciation of the law of Moses. Little wonder then that, historically, in Jewish circles, suing a fellow Jew in a secular court has been regarded as ignominious in the extreme.

Both the nature and severity of the infraction are perhaps illuminated by amplifying a point that, in itself, may appear to be peripheral in nature. R. Chaim Pelaggi, *Hukkat Hayyim*, no. 1, observes that none of the authorities who name and enumerate the six hundred and thirteen commandments of the Torah include this prohibition

in their reckoning of the negative commandments and questions the reason for its omission. It appears to this writer that that problem is entirely dispelled upon examination of the nature of the obligation reflected in the commandment to establish a judiciary.

The commandment "You shall not be afraid of the face of any man" (Deuteronomy 1:17) constitutes a charge to judges trying a case not to recuse themselves because they are in fear of the litigants. This exhortation is amplified in the *Sifrei, ad locum,* with the comment, "Lest you say, 'I am afraid of so and so lest he kill my son or lest he ignite my stack [of corn].' " The injunction cautioning the judge not to be influenced by the possible loss of his harvest is readily understandable. Administration of justice must be made to take precedence over pecuniary loss. The prohibition against withdrawal in face of mortal danger is less comprehensible. The general halakhic principle is that all prohibitions are set aside in face of danger to life. Consistent with that principle, it would follow that a judge who feels intimidated should be permitted to withdraw from the case in order to prevent danger to himself or to others. Some latter-day authorities do indeed believe that conclusion to be correct and offer rather tenuous interpretations of the comments of *Sifrei.*[5]

Nevertheless, it is evident that at least one early authority understood the comment of *Sifrei* literally and accepted the comment as definitive. Rabbenu Yonah of Gerondi, *Sha'arei Teshuvah* 3:188, declares that ". . . one who sits in judgment should not fear that he may die [at the hands] of any man as it is written 'You shall not be afraid of the face of any man.' " Rabbenu Yonah's literal interpretation of *Sifrei* is supported by a narrative recorded by the Gemara, *Sanhedrin* 19a. A slave of King Yanai committed an act of homicide. Shimon ben Shetah summoned Yanai to appear before the Sanhedrin as required by law. When Yanai demurred, Shimon ben Shetah's fellow judges refused to support his demand that the trial proceed. They were obviously afraid of incurring the wrath of Yanai and of suffering punishment at his hands. Shimon ben Shetah called upon God to punish his colleagues with the result that the angel Gabriel cast them to the ground and they died. A similar narrative is recorded by Josephus, *Antiquities* 14:9. King Herod was summoned to appear before the *bet din* on the charge that he had unjustly put people to death. When he appeared, attired in his royal robes and attended by armed warriors, the members of the Sanhedrin fell silent. Thereupon, Shammai chastised the judges of the Sanhedrin and predicted that they would fall by the sword.

Not only is a judge forbidden to decline to sit in judgment in a particular case on the plea that he may thereby endanger his life, but it would appear that a person is also obligated to assume mortal risk in order to assure that qualified judges will be available to administer justice in accordance with Torah law. The Gemara, *Sanhedrin* 13b, relates:

> . . . Rabbi Joshua said in the name of Rab: "May this man be remembered for good—his name is R. Judah ben Baba. Were it not for him the laws of fines would have been forgotten in Israel." Forgotten? But we could have learned them! Rather, the laws of fines would have been abrogated because on one occasion the wicked government decreed that whoever performed an act of ordination should be put to death and whoever was ordained should be put to death, the city in which the ordination took place should be destroyed, and the area within the boundaries within which one may travel on *Shabbat* should be uprooted. What did R. Judah ben Baba do? He went and sat between two great mountains

> [that lay] between two large cities between the Sabbath boundaries of Usha and Shefaram and there he ordained five sages. . . . As soon as their enemies discovered them [R. Joshua ben Baba] said to them, "My sons, flee!" . . . It is said that the enemy did not move from its spot until they had driven three hundred spears into his body and made him like a sieve.

The narrative concerning R. Judah ben Baba demonstrates that martyrdom is required, or at least is permitted, for purposes of enabling the continued existence of a judiciary authorized to impose judgment in all areas of Jewish law. The admonition addressed to a judge warning him not to withdraw from a trial because of his fear of a litigant demonstrates that the judge must suffer martyrdom rather than allow the law to be abrogated by not being applied in a dispute that comes before him.

Why is this the case? Judaism requires martyrdom only with regard to *force majeure* demanding violation of one of the three cardinal transgressions: idolatry, homicide and certain forms of sexual licentiousness. Neither the negative commandment "You shall not be afraid of the face of any man" nor any positive obligation requiring a qualified scholar to sit in judgment seems to fall within any of these categories. Moreover, although some authorities disagree, Rambam, *Hilkhot Yesodei ha-Torah* 5:4, rules that, when under no normative obligation to do so, a person may not voluntarily accept martyrdom rather than transgress.

In order to explain this matter the rationale underlying the severity of the prohibition concerning idolatry must be brought into focus. Rambam, *Hilkhot Shehitah* 4:11, rules that an animal slaughtered in the biblically prescribed manner by a gentile (*akum*) is forbidden as carrion. In support of that talmudic ruling, Rambam cites the verse " 'and he shall call you and you will eat of his slaughter' (Exodus 34:15). Since [the Torah] admonishes lest you eat of his slaughter you are to infer that his slaughter is forbidden." The verse cited by Rambam occurs in the context of an admonition concerning idolatry. In light of Rambam's citation of a passage describing partaking of the meat of an idolatrous sacrifice, Shakh, *Yoreh De'ah* 2:2, understands Rambam's disqualification of a gentile as limited to a gentile who actually engages in idolatrous practices. That analysis of Rambam's position is substantiated by Rambam's immediately following ruling, *Hilkhot Shehitah* 4:12, in which he declares, "And [the Sages] erected a great fence in this matter [in declaring] that even the slaughter of a gentile who does not serve idols is carrion." Rambam thus indicates that the biblical disqualification is limited to idolatrous gentiles but is extended to all gentiles by virtue of rabbinic decree.

According to Rambam, the Torah does not exclude a gentile *qua* gentile from ritual slaughter, but rather excludes a gentile because he is an idolator. The exclusion of the gentile reflects the Torah's concern "lest you eat of his slaughter," i.e., of an animal that has been sacrificed to a pagan deity. Eating meat that an idol-worshipper has slaughtered for his personal needs is likely to lead to partaking also of flesh of an animal that he has sacrificed to an idol. Accordingly, it is only logical that the exclusion should apply with equal force to a Jewish idol-worshipper as well. The meat of any idolatrous offering is forbidden to a Jew regardless of whether the animal was sacrificed by a Jew or by a non-Jew. Hence, the Torah's concern prompting the disqualification of an idol-worshipper from service as a slaughterer serves to disqualify a Jewish idolator as well. Thus it is not at all surprising to find that Halakhah treats a Jewish idolator as a gentile in disqualifying him from serving as a slaughterer.

Remarkable, however, is Rambam's codification, *Hilkhot Shehitah* 4:14, of the rule that a desecrator of the Sabbath and a heretic are also treated as gentiles for this purpose. Were all gentiles, including those who do not engage in idolatrous practices, to be excluded, the exclusion of Sabbath desecrators and heretics would be entirely comprehensible. Such a classification would be predicated upon a recognition that renunciation of fundamental ideological commitments places a person outside the pale of the Jewish community and relegates him to the status of a gentile. Since, however, for the purpose of ritual slaughter, only an actual idolator is excluded, it is difficult to understand why a heretic or violator of Sabbath regulations who does not serve pagan deities should be equated with a gentile idolator.

Rambam's rulings become entirely cogent if it is recognized that the ignominy associated with idolatry is not based upon the act of idolatry *per se*, or upon acknowledgment of a pagan deity, but upon the fact that such an act entails renunciation of belief in the one God. Thus heresy is equated with idolatry because heresy reflects the essence of idolatry, *viz.*, renunciation of belief in the Deity. Public desecration of the Sabbath falls within the same category, not because of the particular severity of the transgression itself, but because desecration of the Sabbath was viewed by the Sages as renunciation of God's role as Creator. That, too, is tantamount to idolatry since the essence of idolatry involves the denial of God's unique nature, including God's role as sole Creator of the universe.

This analysis of the nature of the singular repugnance associated with idolatry and of the sanctions imposed against idolators is also reflected in Rambam's comments, *Hilkhot Teshuvah* 3:7. Rambam enumerates proponents of various erroneous doctrines and categorizes them as "*minin*," or sectarians. Listed among these is one "who serves a star or constellation or something else so that it be an intermediary between him and the Master of the universe." That comment is problematic since Rambam, *Hilkhot Avodah Zarah* 2:1, declares that worship of any such body, even as a mere intermediary, constitutes idolatry which, ostensibly, constitutes a category distinct from that of "*minin*." It appears, then, that in *Hilkhot Teshuvah* 3:7 Rambam seeks to underscore that fundamental ideological deviation and idolatry are essentially one and the same. Idolatry itself is treated with great severity, not because of the physical act involved in the transgression, but because of the false belief reflected in the act.[6]

If it is recognized that the stringency of the halakhic proscriptions associated with idolatry derives from the ideological deviation inherent in the act rather than from the act itself, it then follows that the obligation to accept martyrdom rather than transgress the prohibition against idolatry is not limited to acts of idolatry but to any act reflecting acceptance of heretical beliefs. That conclusion is clearly evident from the comments of R. Ya'akov Emden, *Migdal Oz, Even Bohen* 1:35. R. Ya'akov Emden, citing *Teshuvot Radbaz*, rules that one must suffer martyrdom rather than deny the veracity of the Law of Moses. R. Ya'akov Emden adds that the same principle applies to denial of the Oral Law and the words of the Sages.

The obligation not to recuse oneself from serving as a judge even in face of danger and the obligation to endanger oneself in order to preserve the institution of *semikhah*, and through it a judiciary authorized to impose the laws of the Torah in their entirety, may then be understood as additional facets of the obligation to suffer martyrdom rather than renounce the Torah. Allowing the Law of Moses to be forgotten or to fall into disuse is the functional equivalent of its denial. Denial

of Torah is a form of heresy which, in turn, is the essence of idolatry. Accordingly, the obligation to accept martyrdom in face of idolatry, *mutatis mutandis*, extends to situations in which the Torah itself is threatened, including situations in which enforcement of its judgments is threatened.[7]

The question raised by R. Hayyim Pelaggi with regard to why the prohibition against recourse to secular courts is not enumerated among the negative commandments is thus readily resolved. Such action is categorized as both idolatrous and as tantamount to renunciation of the Law of Moses. In actuality, as has been shown, those two concepts are reflective of a common element. Fundamentally, idolatry is renunciation of God and His Torah. Hence recourse to non-Jewish courts, even when the law administered by such courts is not derived from idolatrous cults, does not involve a novel prohibition but constitutes a form of idolatry, i.e., the heresy of denying the applicability of the Law of Moses to adjudication of the matter in dispute. The prohibition against supplanting the Law of the Torah by another legal code is subsumed under the prohibition against idolatry and does not constitute an independent transgression.

III.

Establishment of communal *batei din* serves a purpose beyond prevention of recourse to gentile courts by assuring a forum endowed with authority to impose Torah law. In discussing the functions of the *bet din*, *Sefer ha-Hinnukh* declares, *inter alia*, that judges must be appointed so that "they may compel those who stray from the path of truth to return [to that path]; to command with regard to what it is proper to do; and to prevent disdainful matters. . . ." The *bet din* is charged, not merely with redressing grievances, but also with issuing declaratory judgments, providing injunctive relief and with using all the powers at its command to prevent transgression. By their very nature, such functions cannot be discharged other than by a body whose authority is recognized and accepted by the entire community.

The need for a *bet din* upon which such duties would be incumbent should not be minimized. Several brief personal anecdotes may serve to illustrate the need for the exercise of such functions and why it is impossible for such functions to be exercised under currently prevailing conditions.

The Gemara, *Pesahim* 108b, establishes an obligation to distribute parched corn and nuts to children on the eve of Passover so that the children remain awake and alert in order to ask questions. Nuts are readily available but parched corn is not.[8] Even if available, children today would probably find the taste of parched corn alien to the palate. Therefore it has been my practice to offer chocolates instead. A number of years ago, before *Pesah*, I went to a grocery store and purchased a rather large box of chocolates for that purpose. The price was exorbitant, to put it mildly. The box was rectangular in shape, small in length and width, but standing almost a full foot high. At the *seder*, before recitation of the *mah nishtanah*, I brought the box of candy to the table. I carefully removed the cellophane wrapper, lifted the cover and removed several pieces of chocolate. To my chagrin, I discovered that the box contained only one layer of chocolates. Underneath, the container was filled with styrofoam! I was shocked, not so much by the blatant dishonesty, but by the fact that it was carried out under the imprimatur of rabbinic certification

reflecting a platinum standard of scrupulousness in observance of Passover restrictions.

Some time later, when I expressed a critical view of a rabbinic authority who would lend his name to so obvious a case of consumer fraud, a colleague shrugged off my censure with the remark: "If he would not have given the *hekhsher*, someone less scrupulous with regard to *kashrut* would have done so. We may be able to control *kashrut*, but there is simply no way that we can control business practices." That observation is probably correct. But it is correct only because we have no institutional method of censuring an improper grant of a *hekhsher*, much less a communal method of applying economic sanctions against purveyors who defraud their customers. Supervision of weights and measures is one of the prerogatives, nay duties, expressly assigned to a communal *bet din*.[9]

Shortly thereafter, a student solicited my help with regard to a family matter. His mother, a widow who had remarried, had recently been divorced. However, her husband refused to execute a religious divorce. The student asked for my help in dealing with the recalcitrant husband. I asked for the name of the synagogue frequented by the husband and discovered that the rabbi of the synagogue was an honored and respected colleague. Without delay, I telephoned the rabbi, described the problem and asked him to intervene either by having a word with the husband himself or by arranging an appointment for us to confront the gentleman together. His response was short and cut off other any further conversation: "I don't get involved in such matters." It would have been superfluous to ask why he refuses to involve himself in such matters. There are four other synagogues and conventicles within a two-block radius of the synagogue in which he serves as rabbi. There was certainly reason to be apprehensive lest the recalcitrant husband respond to rabbinic pressure by abandoning his synagogue for another synagogue around the corner. Who would assure that the congregant would be made equally uncomfortable, not to speak of unwelcome, in a new venue? The rabbi was not prepared to publicize the matter among neighboring congregations lest he appear to be engaged in a personal vendetta.

A communal *bet din* accepted by all sectors of the community would have had no difficulty dealing with the situation. The rabbi would only have had to report to the *bet din* that the gentleman withdrew from his congregation because he sought to avoid moral pressure to perform a religious duty. Upon determining that such was indeed the case, the *bet din*, which could not be suspected of acting out of self-interest, would be in a position to insist that the recalcitrant congregant not be welcomed by any other congregation.

IV.

There is ample precedent for the establishment of a central *bet din* even in communities composed of disparate groups stemming from diverse backgrounds and differing orientations. Jews flocked to the nascent *yishuv* in *Erets Yisra'el* from various European communities, but in Jerusalem all combined in establishing a *bet din* that to this very day is universally held in the highest regard, the *Bet Din Tsedek le-Khol Mikhalot ha-Ashkenazim*—the *Bet Din Zedek* of all Ashkenazic communities. Ideally, an American national *bet din* should be even more inclusive, a *Bet Din*

Tsedek le-Khol Mikhalot Yisra'el. That *bet din* would be empowered to designate local *batei din,* where appropriate, and to have its members "ride circuit" in areas in which it is not feasible, or not wise, to delegate authority.

Understandably, existing *kehillot* do not wish to relinquish autonomy and existing *batei din* may not wish to be dissolved. But establishment of such a national *bet din* need not constitute a threat to the prerogatives or power of any individual or group. Existing communities may continue to have recourse to their own rabbinic authorities in exactly the same manner as at present. Their authority depends upon voluntary acceptance of their jurisdiction. Halakhah recognizes the right of individuals to appear before any judges of their choice, so long as the parties are in agreement with regard to such appearance. The *bet din* established by a particular congregation or locale may have no difficulty imposing its authority upon its own members. However, even the most observant and most tightly knit community frequently experiences difficulty when a dispute arises between one of its adherents and a member of another community. Even those communities experience a very real need for a *bet din* enjoying "diversity jurisdiction" since frequently, each litigant seeks to prevail upon his adversary to accept the jurisdiction of the *bet din* of his own community. It is to be presumed that, at least initially, members of the national *bet din* would be drawn, to a large extent, from the membership of existing *batei din.*

Such a *bet din* cannot be established unless it is acceptable to all sectors of the community. Acceptance would require broad representation of each of those sectors. Its success would require that litigants feel compatibility with the *dayyanim* before whom they appear. Those goals are probably best attained by establishing a fairly large roster of *dayyanim* and permitting litigants to use a limited form of the *zablo* system, i.e., the system under which each litigant chooses one member of the tribunal. Litigants might be permitted to designate the members of the *bet din* that would hear their case but would be limited in being able to select a panel of *dayyanim* only from among the designated list of members of the national *bet din.*[10] Such a model would preserve the best aspects of both the voluntary, *ad hoc* system and the communal system. Universal acceptance of a national *bet din* as a communal entity would assure its binding judicial power and its status as a repository of religious and moral authority, while the ability of the litigants to exercise at least limited choice in naming the members of the tribunal that would hear their dispute would serve to satisfy the need for ethnic and cultural compatibility.

The American Jewish community has grown in maturity. It now possesses the spiritual and institutional resources needed to revitalize the *bet din* and to incorporate it as an integral aspect of Jewish life. Establishment of *batei din* can do much to enhance Jewish awareness, identity and commitment. The *bet din* is an institution which has been neglected for too long and whose time has come.

NOTES

1. There is no suggestion in Rambam's statement indicating that the commandment is not binding in our day. See *Kiryat Sefer, Hilkhot Sanhedrin,* chap. 5. See also *Revid ha-Zahav,* Exodus 22:7 and *Netivot ha-Mishpat* 1:1.

   A somewhat different view is expressed by Ramban in his *Commentary on the Bible,* Deuteronomy 16:18. Ramban asserts that the biblical command applies only to the appointment of judges who have been ordained, i.e., the recipients of the unbroken chain of *semikhah,* or ordination, originating in Moses'

conferral of ordination upon the judges appointed by him in the wilderness. Subsequent to the abrogation of *semikhah* during the period of Roman persecution, rabbinic courts enjoy limited authority as the "agents" of the judges of antiquity. Their authority, asserts Ramban, in rooted in rabbinic edict. Since such courts lack authority in biblical law, their establishment cannot be mandated by biblical law and, accordingly, Ramban concludes, "we are not at all *biblically* obligated with regard to the commandment concerning appointment of judges" (emphasis added). The implication is that the obligation continues in our day by virtue of rabbinic decree as a concomitant of the rabbinic legislation establishing the authority of non-ordained judges. Rabbenu Yeruham, *Sefer Meisharim* 1:4, explicitly declares that, in the absence of ordained judges, the obligation to establish *batei din* is rabbinic in nature.

Ramban's assertion that appointment of judges is no longer biblically mandated is predicated upon his formulation of the antecedent premise that the "agency" of present-day rabbinic courts is rooted in rabbinic legislation. That view is also espoused by Ran, *Sanhedrin* 23a; Ramah, *Sanhedrin* 23a; Rashba, *Gittin* 88b; Ramban himself, *Sanhedrin* 23a; and *Tur Shulhan Arukh, Hoshen Mishpat* 1:3. However, elsewhere, *Yevamot* 46b, s.v. *shemat minah*, Ramban concludes his comments with the remark that "it is possible" that the authority of non-ordained judges to act as "agents" of the ordained judges of an earlier era is biblical in nature. Cf. also the comments of Me'iri, *Bet ha-Behirah, Baba Kamma* 84b, also cited in *Shitah Mekubetset, ad locum*, to the effect that, absent such a rule, all biblical laws regarding jurisprudence would be abrogated and the world would be destroyed. If, even in our day, authority to sit in judgment continues to be rooted in biblical law, it then follows that establishment of *batei din* remains a biblical obligation. Cf., *Imrei Binah, Hoshen Mishpat*, chap. 1 and *Encyclopedia Talmudit*, III, 2nd ed. (Jerusalem, 5715), p. 162, note 366a.

2. For citation of sources regarding the role and function of regional *batei din* see *Encyclopedia Talmudit*, III, 151.
3. Rabbi Yosef Eliyahu Henkin, *"Madur ha-Halakhah," Edut be-Yisra'el*, ed. Rabbi Asher Rand (New York, n.d.), p. 167.
5. Cf., R. Isaac Elhanan Spektor, *Be'er Yizhak*, no. 10, sec. 3, s.v. *gam*.
5. See R. Jacob Reischer, *Teshuvot Shevut Ya'akov*, I, no. 143; R. Moses Schick, *Teshuvot Maharam Shik, Orah Hayyim*, no. 303; *idem, Maharam Shik al Taryag Mitsvot*, no. 416; and R. Abraham I. Kook, *Mishpat Kohen*, no. 143. Cf. sources cited in *Kovets ha-Poskim, Hoshen Mishpat* 12:1. See also this writer's comments regarding the views of those authorities, *Contemporary Halakhic Problems*, II (New York, 1983), pp. 134-138.
6. For further exposition of these theses see this writer's article *"Be-Bi'ur Shitat ha-Rambam be-Shehitat Akum u-Mumar," Bet Yitshak*, no. 21 (5749), pp. 279-284.
7. For a discussion of an obligation to accept martyrdom rather than to issue an erroneous decision or to falsify a matter of Halakhah see *Contemporary Halakhic Problems*, II, 134-138.
8. The *kelaiyot*, or parched corn, described in the Gemara are a form of grain and not among the *kitniyot* later prohibited in the Geonic period.
9. See *Baba Batra* 89a; Rambam, *Hilkhot Geneivah* 8:20; and *Shulhan Arukh, Hoshen Mishpat* 331:2.
10. This approach was suggested to me by the late Rabbi Ya'akov Kaminetsky, of blessed memory, in a somewhat different context. Some years ago, in urging adoption of the antenuptial agreement later published in *Or ha-Mizrah*, Tishri 5750, and in *Torah she-be-al Peh*, vol. 31 (5750), he suggested one modification of my draft. In order to avoid the procrastination that unfortunately develops in selecting the members of a *bet din* when the parties have recourse to *zablo*, and in order to establish a single *bet din* acceptable to all of the community, Rabbi Kaminetsky suggested that the document provide a list of names and specify that each of the parties may select one of the *dayyanim* from among the named individuals.