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Seventy or Seventy-One?

The *Mishnah* had stated: The Great *Sanhedrin* was of seventy-one, and the small one was of twenty-three. How do we know that the Great *Sanhedrin* is of seventy-one? It is written: *Gather for Me seventy men of the elders of Israel*, and with Moshe over them, this makes seventy-one. Rabbi Yehudah says: The Great *Sanhedrin* was of seventy.

The *Gemara* explains the Rabbis’ opinion: The verse concludes: *And they shall stand there with you. With you* means that you are together with them (*in the Sanhedrin*). Rabbi Yehudah maintains that *with you* was stated on account of the *Shechinah* (*which was inside the Sanctuary, or, it means that they were taken outside in order for the shechinah to rest upon them*).

The *Gemara* cites a different source which explains the Rabbis’ opinion: It is written: *And they shall bear the burden of the people with you. With you* means that you are together with them (*in the Sanhedrin*). Rabbi Yehudah maintains that *with you* was stated to indicate that the elders must be like you (*pure pedigree and free from blemishes*). The Rabbis know this from the verse: *and it will be easier for you, and they shall bear the burden with you. And this law applying to the Great Sanhedrin is derived from the lesser Sanhedrin. (16b4 – 17a1)*

Eldad and Meidad

The *Gemara* cites a *Baraisa*: *And two people were left in the camp. Some say this means that they (Eldad and Meidad) were left behind in the lottery (as will be explained below). When Hashem said to Moshe, “Gather for me seventy people from Bnei Yisroel,” Moshe said, “What should I do? If I chose six people from each tribe (6 x 12 = 72), there will be two leftover (for only seventy will be included in the*

Sanhedrin)! If I pick five from each tribe (5 x 12 = 60), there will be ten more I need to pick! If I pick six from one tribe (10 tribes) and five from another (*two*), I will be promoting jealousy among the tribes!” What did he do? He separated six people from each tribe, and took seventy-two lots. On seventy of them, he wrote “elder,” and two he left blank. He mixed them up and put them in a box. He told them, “Go and choose your lot!” Whoever received a lot saying “elder” was told by Moshe, “You have already been sanctified by Heaven!” Whoever received a blank lot was told, “Hashem does not want you, what can I do?” [*Eldad and Meidad remained in the camp, for they were concerned that they would choose the “blank” lots; ultimately, there were two lots left which said “elder” on them.*]

Similarly, the verse states: *And you will take five shekalim per head. Moshe said, “What should I do regarding the firstborns of Bnei Yisroel? If I ask each firstborn to give me his redemption money and go, he will tell me that he was already redeemed by a Levite.” [There were twenty-two thousand two hundred and seventy-three firstborns who were redeemed by twenty-two thousand Levites. This left two hundred seventy-three firstborns in need of redemption by giving five shekalim.]* What did Moshe do? He wrote on twenty-two thousand lots, “ben Levi” and on two hundred seventy-three lots he wrote “five shekel.” He mixed them up and put them in a box. He told them to each take a lot. A person who picked a lot that said “ben Levi” was told that he had already been redeemed by a Levite. A person who picked a lot that said “five shekel” was told, “Give your redemption money and go.”

Rabbi Shimon argues: They (*Eldad and Meidad*) were left in the camp. When Hashem said to Moshe, “Gather for me seventy people from *Bnei Yisroel*,” Eldad and Meidad feared

that they were not worthy to be an elder. Hashem said: Being that you have made yourself small, I will add greatness to your greatness. What greatness did He add to them? All of the prophets prophesied and stopped, but they prophesied and did not stop. What did they prophesy? They said, “Moshe will die and Yehoshua will lead us into *Eretz Yisroel*.”

Abba Chanin says in the name of Rabbi Eliezer: They prophesied about the *slav* (*birds that came to Bnei Yisrael to be eaten in the desert*). They said, “Come *slav*, come *slav*!”

Rav Nachman says: They prophesied regarding the war of Gog and Magog (*a war that will occur during the Messianic era*). This is as the verse states: *So says Hashem our God: Are you the one about whom I told in the earlier days through my servants, the prophets of Israel, who prophesied in those years to bring you against them?* Do not read it as “*shanim*” -- “years” but rather as “*shenayim*” -- “two.” Who are two people who said the same prophesy at one time? It must be this is referring to Eldad and Meidad.

The *Baraisa* had stated: All of the prophets prophesied and stopped, but they prophesied and did not stop. How do we know that the other prophets stopped prophesying? If it is from the verse: *And they prophesied “v’lo yasafu”* -- “and did not continue,” does this mean that the verse, *A great voice “v’lo yasaf,”* means that Hashem’s voice “did not continue”?! Regarding Hashem, it clearly means it did not stop!

Rather, being that the verse here (*regarding the elders*) says: *And they prophesied (past tense regarding the other prophets)*, and the verse (by *Eldad and Meidad*) says: *they were prophesying (present tense)*; this indicates that they continued prophesying.

The *Gemara* asks: This is understandable according to the opinion that they prophesied that Moshe was going to die, as this is why Yehoshua said, “My master, Moshe, destroy them.” However, according to the other two opinions, why did Yehoshua ask Moshe to destroy them?

The *Gemara* answers: This is because it was not normal for them to keep prophesying, as it was akin to a student ruling on laws in front of his teacher.

The *Gemara* asks: The other two opinions are understandable regarding Moshe’s reply, “Who will give (*that all should prophesize*).” However, according to the opinion that they were saying that he was going to die, would he be comfortable if more people would say this?

The *Gemara* answers: They did not tell him what was being said by Eldad and Meidad.

The *Gemara* asks: What did Yehoshua mean when he said, “Destroy them?”

The *Gemara* answers: He meant that Moshe should appoint them as public servants, as this will make them stop prophesying. [*Tosfos explains that this will cause them distress, and thereby, they will be unfit for prophecy, as the Shechinah does not rest upon someone unless he is happy.*] (17a1 – 17a3)

A Difference of Two

The *Mishnah* had stated: How we know another three are necessary? [*By implication, as it is written: You shall not follow a majority to harm (to convict). I infer from here that I may follow the majority to do good (to acquit). If so, why is it written: It shall be decided according to the majority? It teaches us the following: Not like your following (the majority) for good shall be your following for harm; your following for good is by a majority of one, whereas your following for harm is by two; and as a Court may not be an even amount of judges, an additional one is added, which makes twenty-three.*]

The *Gemara* asks: In the end, we never indict someone based on a difference of two judges. If eleven say he is innocent and twelve say he is guilty, there is only a difference of one judge (*and we do not indict if there is only a majority of one*). If there

are ten saying his innocent and thirteen saying he is guilty, there is a difference of three!?

Rabbi Avahu says: The case according to everyone (*by a court of twenty-three*) is where one judge says he doesn't know, and therefore two judges are added (*and from a total of twenty-four, we can convict with a majority of two, when the vote is thirteen to eleven*). Another case is possible according to Rabbi Yehudah who says that there are seventy judges on the Great *Sanhedrin*.

And Rabbi Avahu says: When we have to add judges, we create an even number of judges.

The *Gemara* asks: This is obvious!?

The *Gemara* answers: One might think that the judge who says he does not know is still considered present, and if he says something, we listen to him (*which means that the court is still composed of an odd-numbered of judges*). Rabbi Avahu therefore says this law to teach that it is as if he is removed from the case. We therefore would not listen to him.

Rav Kahana says: If all of the judges on the *Sanhedrin* hold a person is guilty, we exempt him (*there is an argument among the commentaries regarding what this means, with some saying he goes free and some saying that he is killed immediately*). Why? This is because we know that keeping the judgment overnight is in order to find a basis for his innocence, and it is clear that these judges will not find such a reason. (17a3 – 17a4)

Appointing Members of Sanhedrin

Rabbi Yochanan says: The only people who can be appointed to the *Sanhedrin* are men of height, men who are wise, men who have an imposing appearance, men of old age, men who know witchcraft and seventy languages in order that *Beis Din* does not have to hear testimony from an interpreter.

Rav Yehudah says in the name of Rav: One is only appointed on a *Beis Din* if he can argue that a *sheretz* is actually pure

according to Torah law. [*Rabbeinu Tam explains that this means a person who can argue that impurity associated with improperly slaughtered animals does not apply to a sheretz.*]

Rav says: I can do so. If a snake which kills and thereby increases impurity in the world is pure; a *sheretz*, which does not kill, should certainly be pure!

The *Gemara* answers: This is incorrect, being that the snake is merely doing the same thing as a thorn, which is considered pure despite the fact that it can be deadly. (17a4 – 17b1)

Rav Yehudah says in the name of Rav: Any city that does not have two people who speak seventy languages and one who can hear seventy languages cannot have a *Sanhedrin* (*for the court needs at least three people who are acquainted with all seventy languages*). In Beitar there were three such people, and in Yavneh there were four. Rabbi Eliezer, Rabbi Yehoshua, and Rabbi Akiva judged, and Shimon HaTimni sat before them on the ground.

The *Gemara* asks a question from a *Baraisa*. The *Baraisa* states: Three is a wise *Beis Din*. There is nothing above a *Beis Din* with four such people! [*This implies that three are required to speak seventy languages!*]

The *Gemara* answers: Rav Yehudah holds like the following *Baraisa*. The *Baraisa* states: A *Beis Din* with two such people is considered smart, and if it has three, there is nothing above it. (17b1)

Anonymous References

The *Gemara* now states code names used throughout the Talmud, and who they refer to.

- “Learning before the Sages” refers to Levi learning from Rebbe.
- “Judging before the Sages” refers to Shimon ben Azai, Shimon ben Zoma, Chanan HaMitzri and Chananya ben Chachinai. Rav Nachman bar Yitzchak says: This



refers to five people: Shimon, Shimon, Shimon (*HaTimni*), Chanan, and Chananya.

- “Our Rabbis in Bavel” refer to Rav and Shmuel. “Our Rabbis in *Eretz Yisroel*” refers to Rabbi Abba. “Judges of the Diaspora” refers to Karna.
- “Judges of *Eretz Yisroel*” refer to Rabbi Ami and Rabbi Assi.
- “Judges of Pumbedisa” refers to Rav Pappa bar Shmuel.
- “Judges of Nehardea” refers to Rav Adda bar Minyomi.
- “The elders of Sura” refer to Rav Huna and Rav Chisda.
- “The elders of Pumbedisa” refer to Rav Yehudah and Rav Eina.
- “The sharp ones of Pumbedisa” refer to Eifah and Avdimi, the sons of Rechavah.
- “The *Amoraim* of Pumbedisa” refer to Rabbah and Rav Yosef.
- “The *Amoraim* of Nehardea” refers to Rav Chama. “The Neharbeleans taught” refers to Rami bar Berabi.
- “They said at the academy of Rav” refers to Rav Huna.

The *Gemara* asks: Didn’t Rav Huna himself say: “They said in the academy of Rav?”

Rather, the *Gemara* says: It refers to Rav Hamnuna.

- “They say in *Eretz Yisroel*” refers to Rabbi Yirmiyah.
- “They sent from there” refers to Rabbi Yosi bar Chanina.
- “They made fun of this in *Eretz Yisroel*” refers to Rabbi Elozar.

The *Gemara* asks: Doesn’t the *Gemara* say: “They sent from there that according to the words of Rabbi Yosi bar Chanina etc.” Rather, the *Gemara* answers: It must be the opposite. “They sent from there” refers to Rabbi Elazar. “They made fun of this in *Eretz Yisroel*” refers to Rabbi Yosi bar Chanina. (17b1 – 17b2)

Residents of the Town

The *Mishnah* had stated: How many people should there be in the city that it should be eligible for a *Sanhedrin* (of twenty-three)? One hundred and twenty.

The *Gemara* asks: Why are one hundred and twenty required?

The *Gemara* answers: Twenty-three equal the small *Sanhedrin*. Three rows of students (*plus the Sanhedrin*) equal ninety-two. Add the ten unoccupied men who are always in the synagogue, for a total one hundred and two. Add two scribes (*of the court*), two messengers of *Beis Din*, two litigants, two witnesses, two *zomemim* (*witnesses who can discredit the first pair*), and two *zomemim* for those *zomemim* for a total of one hundred and fourteen. Additionally, the *Baraisa* states: A Torah scholar cannot live in any city that does not have ten things: A *Beis Din* that hits and punishes, a charity collection collected by two and given out by three, a synagogue, bathhouse, outhouse, doctor, a bloodletter, scribe (*of torah items such as tefilin etc.*), and teacher. Rabbi Akiva says: Fruit are also necessary, as different types of fruit light up the eyes. [Evidently, another six residents are necessary: two to collect the charity; another three to distribute it, and another person to be the doctor, bloodletter, scribe and teacher. In total, we have one hundred and twenty.] (17b2)

INSIGHTS TO THE DAF

How a *Beis Din* Arrives at Majority Decisions

A *dayan* who says he doesn’t know is regarded as absent. Our *Mishnah* and *Gemara* explain that the decision of a *beis din* is determined according to the majority opinion of the *dayanim*. The initiator of the method of study practiced in yeshivos, HaGaon Rav Chaim Soloveichik of Brisk zt”l, offered a logical explanation as to why a majority opinion suffices to rule a decision. As stated in the first *Mishnah* in Sanhedrin, financial or property cases are judged by a *beis din* of three and cases involving a death penalty require a *beis din* of 23. How, then, can a *beis din* rule a decision according to the majority opinion



if the minority of *dayanim* objects? In such an instance, the *beis din* lacks the needed number of *dayanim* to judge the case! Moreover, we may ask an even more serious question: We have the rule that “the majority is not a determining factor in financial and property cases” so how could they ever be ruled according to a majority of *dayanim*? (Tosefos, Bava Kamma 27b, s.v. *Ka mashma lan*).

Rav Chaim then explains that the term *majority* has two definitions. Sometimes we follow the majority to decide a doubtful case. On the other hand, we sometimes have the definition of “the majority is like all.” A *shochet*, for example, must cut through certain parts in an animal for the *shechitah* to be kosher, but if he cuts through most of them, his *shechitah* is kosher as, in this case, “the majority is like all” and the minor part is also considered as “*shechted*.” Similarly, when the Torah says, “Decide according to the majority (of *dayanim*)” (Shemos 23:2), it means we should regard the minority as actually becoming part of the majority and arriving at the same decision and we then have an entire *beis din* – of three or 23 – with one ruling. (*Chidushei HaGaon Rav Chayim al HaShas*, p. 127 – see there that this applies to the verdict; the assumption that they reached a **correct** decision is based on the rule to follow the majority in a case of doubt.)

The concept of “the majority is like all” is constantly expressed in daily life. We must, for instance, choose myrtle branches (*hadasim*) with clusters of three leaves but if a *hadas* is **mostly** covered with such clusters it is kosher for the *mitzvah* as “the majority is like all.” By the same reasoning, *sechach* does not have to entirely prevent the penetration of sunlight in a *sukkah*: it suffices if the *sechach* creates more shade than sunlight. In his *Kehilos Ya’akov* (1:2), the Steipler Gaon, HaRav Yaakov Kanievski explains that this *halachah* stems from the aforesaid rule and, indeed, such a *sukkah* is regarded as entirely shaded by kosher *sechach*.

DAILY MASHAL

Why don’t the Jews follow the majority of the world?

We conclude with the reply of Rabbi Yehonasan Eibschitz zt”l to a priest who asked why the Jews don’t follow the majority of the world even though the Torah commands us to “decide

according to the majority.” Rabbi Eibschitz explained that the command applies only in the case of a doubt. As to their faith, however, Jews have no doubts and in such matters have no reason to follow the majority.

HALACHAH ON THE DAF

Adding More Dayanim to a Beis Din

After *Beis Din* listens to all the claims from the litigants, and any testimony from the witnesses, they send everyone out of the room and precede to deliberate the case. If they all agree as what the *halachah* should be, well and good, but if they don’t then they follow the majority opinion (Choshen Mishpat 18:1).

In instances where either; a) one *dayan* says *chayav* and another says *zakkai*, while the third abstains from stating an opinion because he doesn’t know, or b) even if both *dayanim* agree what the ruling should be, but the third does not know what to rule, then two more *dayanim* are added. Now that there are five *dayanim* they deliberate once again, and if there is a majority opinion either way, then that is what the ruling would be. If however the same scenario repeats itself that there is an equally divided opinion and the fifth does not know, then an additional two are added (*ibid*).

It is interesting to note that if there would be a similar case as example b above, where three *dayanim* rule one way while the fourth disagrees and the fifth abstains, or if four *dayanim* rule one way and the fifth abstains, then we follow the majority opinion. Even though earlier such an instance would cause us to add more *dayanim*, here it is different. The difference is because in order to follow the majority opinion of a *Beis Din*, there obviously needs to be a *Beis Din* in the first place, and that can only happen when there are at least three opinions. Therefore in the case of three alone, then more *dayanim* need to be added in order to follow the majority, while in the instance where more were already added, then there are already three that gave an opinion, so we may follow the majority (*S’ma ibid*).