

The Beit Din As A Basic Institution Of Jewish Life

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Political and legal institutions shape the societies they serve. Philosophers study these institutions to characterize societies and distinguish them from each other.^[1] Free markets separate capitalist societies from socialist ones. Open elections differentiate democracies from dictatorships. The rule of law and the protection of basic liberties distinguish liberal societies from authoritarian ones.

Jewish communities are also shaped by their institutions. Shuls, yeshivot, *batei din*, tzedakah organizations, along with other institutions, form the basic structure of a Jewish society.^[2] The influence of these institutions on the community they serve is so decisive that the character of a given *kehillah* is often forged by the *weltanschauung* of its institutions. Teaneck, NJ bears the imprint of Yeshiva University, while Lakewood, NJ resembles BMG. Further, the vitality of a community can be gauged by the vibrancy of its shuls and schools. Consider how *yeshivot* and Jewish day schools have transformed American Jewry from a fledgling community of immigrants dependent on the public school system into the juggernaut it is today. A Jewish society is as strong as its basic institutions.

A *beit din* is one of the most important and basic institutions of a Jewish society. The Torah obligates each town, city, and province to appoint a *beit din* to apply and regulate Jewish law within its jurisdiction.^[3] As students of Jewish law can attest, the *beit din* looms larger in Jewish tradition than even the *beit ha-knesset* or the *beit ha-midrash*. Yet it is a poignant fact about American Jewry that while it has built thriving *batei kneset* and *batei midrash*, the community has yet to rally behind the institution of the *beit din*.^[4] The last decade has seen some progress, but plenty of work remains to reinvigorate the institution of the *beit din* and to restore it to its central place in the Jewish community, *le-hachzir 'atarah le-yoshnah*.

A *beit din* is the cornerstone of a Jewish community because it serves three vital roles. First, the *beit din* serves as *shoftim* (judges/arbitrators), preserving concord and social harmony by resolving disputes.^[5] Second, the *beit din* serves as guardian of *mishpatim* (substantive Jewish law), breathing life into the abstract concepts of Jewish civil law and implementing the Torah's blueprint for a just and rightful society.^[6] Third, the *beit din* interprets the *devar ha-mishpat*, engaging in the theoretical exposition of Jewish law to determine how the principles of the Torah apply to the contemporary world around them, and to define and refine the halakhic concepts in light of it.^[7] Let us consider each of these.

1. ***Shoftim*: The Pursuit Civil Harmony (*Shalom*)**

The first and most basic role of a *beit din* is to serve as *shoftim*, impartial judges and arbitrators, to resolve and extinguish disputes. When people live in close proximity and compete over resources, they inevitably will conflict with each other. Conflicts arise even without malice. A tree falls into a neighboring property, causing damage. A partnership is dissolved and its assets must be distributed. Services are rendered but the parties never agreed on a price. A pandemic makes it impossible for a school to provide in-person instruction. No one has acted wrongfully in these cases, yet the interests of the competing parties clash. Because the parties are partial to their own position, it is difficult

for them to resolve the dispute on their own.^[8] It is therefore necessary for an impartial tribunal of judges (*shoftim*) to impose a fair resolution on the conflict.

Why is it important to resolve these conflicts? What benefit is achieved by the *beit din* intervening? Disputes are both intrinsically bad and instrumentally harmful. They are bad in themselves bad because they undercut the Torah's ideal of social unity. Conflicts create rifts and divisions. They sow animosity and ill-will. Thus they undercut the fraternity (*achvah*) and unity (*achdut*) that the Torah envisions for a Jewish community. Conflicts are also instrumentally harmful because they waste resources—economic, psychological, emotional—and thereby prevent people from pursuing the valuable ends the Torah prescribes for them.

Even if there were no substantive halakhic law (*mishpatim*) determining the outcome of a case, a resolution imposed by a panel of impartial judges (*shoftim*) would constitute a fair dispute-resolution procedure. Each time a dispute erupts, the parties would appear before a panel of *dayanim* who would impose a final, binding resolution on the conflict. Thus, the institution of *shoftim* (judges/arbitrators), even without *mishpatim* (substantive law), advances the Torah's vision of a community rooted in *achvah* (fraternity), *shalom* (social harmony) and *re'ut* (civic friendship). The Jewish legal tradition is replete with teachings about the value of social harmony and civic peace—and the role of *batei din* in securing it.^[9]

Appreciating a *beit din's* role in preserving civic peace—*shoftim* independent of *mishpatim*—can illuminate several ideas within the laws of *choshen mishpat*. One example is Judaism's preference for *pesharah* (settlement/compromise) over *din*. The doctrine of *pesharah* charges the *beit din* to seek a settlement rather than to issue a decision on the strict legal merits.^[10] The Talmud characterizes *pesharah* as a form of *mishpat-shalom*, peace-seeking-justice, precisely because it is better suited to achieve social harmony than pure *din*. Some authorities hold that wherever *din* will fail to end the dispute, the *beit din* ought to impose a settlement, since the purpose of adjudication is to achieve *shalom*.^[11] Thus, even if we were to put aside the world of *mishpatim*, *batei din* serve a crucial social function in maintaining a society where *shalom* reigns.^[12]

2. *Mishpatim*: Sustaining The *Nomos* Of Judaism

The second role of a *beit din* is to serve as the guardian of *mishpatim* (substantive Jewish law), to breathe life into the abstract concepts and principles of Jewish law by granting them real-world application and enforcement. Judaism's substantive civil laws are a blueprint for a just and rightful society, one that embodies *din emet* (true justice).^[13] *Batei din* animate this blueprint, and implement it, when they structure the Jewish community's social, civil, and commercial affairs according to the Torah's vision of a righteous society.

Judaism's conception of a rightful system of property, contracts, family law, torts, and bailments are brought to life by *batei din* that regulate society according to the vision and provisions of Jewish law.

Take the *ketubah* for example. Every *chatan* obligates himself to the financial commitment of the *ketubah*, which is a linchpin of the Jewish institution of marriage.^[14] But civil courts don't recognize the *ketubah* as a genuine financial obligation. They dismiss it as an unenforceable document of religious ritual.^[15] So long as Jewish divorces are overseen by civil courts, the *ketubah* loses real-world application. R. Moshe Feinstein noted that most people, including rabbis, have little notion of the *ketubah's* dollar value because they organize their financial affairs by civil law and through civil courts.^[16] What was once the keystone of Jewish marriage has fallen into legal desuetude.

When parties come to *beit din* to dissolve their marriage and divide their marital property, the *ketubah* is brought to life and recognized as having full legal force. *Batei din* must consider how much the *ketubah* is worth, whether it has been forfeited, how it should be evaluated, and whether its valuation satisfies the underlying halakhic consideration *shelo tihei kalah be-einav le-hotzi'ah*.^[17]

The same holds true for other aspects of Jewish law that have no parallel in the Western legal tradition. Consider *dina de-bar metzra*, the law of the abutter, which grants a neighbor the right of first refusal when property is put up for sale.^[18] Or *yored*, whereby someone who confers a benefit is entitled to compensation for providing a valuable service. Or the prohibition against charging interest on loans. Civil courts do not recognize these principles of Jewish law. So long as Jews frequent civil courts, rather than *batei din*, they erode and diminish the normative world of Judaism. Without *batei din* giving legal recognition to these halakhic principles, the *mishpatim* cease to be a meaningful part of our world.^[19]

The Torah's *mishpatim* constitute a comprehensive *nomos*—a normative universe. They create and maintain a world of right and wrong, of lawful and unlawful, of valid and void.^[20] *Batei din* sustain and nurture this normative world. With thriving, centralized *batei din* the *nomos* of *mishpatim* is vibrant, three-dimensional, and vivid. When we abandon our *batei din* and instead organize our commercial affairs under the civil courts, we diminish our *nomos* into a pale, flat and tepid shadow. Without *batei din* to regulate our halakhic *nomos*, we suffocate the concepts of Jewish law and drain them of their life-blood.^[21]

3. *Devar Ha-Mishpat*: Interpreting The Divine Law

The third role of the *beit din* is to interpret the core principles of Jewish law and determine how they apply to the modern marketplace. Here *batei din* contribute to the

enterprise of *talmud Torah*—our understanding and knowledge of Jewish law—the *devar ha-mishpat*. The economies and markets of the United States, Europe, and Israel in the twenty first century differ from those of the Jewish people wandering through the desert. They differ from the economy in Eretz Yisrael during the redaction of the Mishnah under R. Yehudah Ha-Nasi, and they differ from the marketplace in Babylonia under Ravina and Rav Ashi.

The financial and legal instruments we encounter every day—stocks, checks, bank accounts, wire-transfers, credit cards, derivatives, corporate ownership, futures, bilateral executory contracts—present before us a new world. *Batei din* must carefully weigh how the principles of halakhah govern and regulate this new world. With each *din Torah*, *dayanim* interpret, weigh, assess, and determine how halakhah applies to these instruments and how it governs the modern marketplace.^[22]

The *beit din's* role in *talmud Torah*—interpreting and determining the *devar ha-mishpat*—operates at two levels, one centrifugal, the other centripetal. *Batei din* are tasked with extending the halakhah outwards, applying its precepts and statutes to new cases and realities, mapping a *nomos* of goring oxen onto a reality of colliding Teslas. *Batei din* are also tasked with probing inwards: examining, defining, and refining the internal categories of the halakhah in light of the novel phenomena and realities of modern commerce. Just as the discovery of electricity prompted a reexamination of the *melakhot* of Shabbat and Yom Tov, the modern marketplace stimulates fresh analysis of the internal categories of *choshen mishpat* and *even ha-ezer*. Does halakhah recognize the corporate structure and ownership of property by non-persons? Do emails count as a written *shetar*? *Batei din* preside over the halakhic frontier, extending its sovereignty into virgin territory, while buttressing the infrastructure of its internal fortifications.

For generations, Jewish law has been forged in the encounter of the *devar ha-mishpat* with the economic and commercial realities of the contemporary world. Hardly a page of the Shulchan Arukh turns without a legal precedent from the responsa of Maharam of Rutenberg or Rashba or Rivash, each interpreting and applying the *devar ha-mishpat* to the reality of their day. For this reason, the Torah charges “*ein lekha leilekh ela etzel shofet she-beyamav*.”^[23] Each generation requires its *shoftim*, its *batei din*, to interpret the *devar ha-mishpat* and apply it for their generation. *Batei din* continue the multi-generational quest of *talmud Torah*, seeking to interpret and refine our comprehension of the *devar ha-mishpat*, the divine law.

The Beth Din Of America

For over half a century, the Beth Din of America has shaped Jewish life and society in North America, along the three dimensions outlined above. The Beth Din serves as a

critical dispute resolution forum for conflicts that span the gamut of Jewish professional and social life. And it provides these services to a constituency as ideologically and sociologically diverse as American Jewry itself. The Beth Din's intimate familiarity with the institutions and nature of the Jewish community uniquely positions it to resolve disputes beyond the expertise of civil courts and other arbitration forums.

Quietly and consistently, the Beth Din maintains the *nomos* of the *mishpatim*. Each day, when the Beth Din convenes for a *din Torah*, the *dayanim* maintain and nourish, sustain and kindle, the world of the *mishpatim*. Each time the Beth Din deliberates and issues a decision grounded in the concepts of *choshen mishpat* and *even ha-ezer* the Beth Din revitalizes and breathes life into the *mishpatim* that too many Jews choose to neglect. The world of *mishpatim*—*yored, bar metzra, gud o agud, iska*, the prohibition of *ribbit*, the *ketubah, shomrim, chazakos*—is renewed and fortified each day with the Beth Din of America's sacred work.

Equally important, the Beth Din continues to enhance and deepen our knowledge of the *devar ha-mishpat*. Each case that comes before the Beth Din stimulates a rigorous and fresh assessment of the internal principles of *choshen mishpat* and a careful determination how they apply to the case at bar. The articles published on *Jewishprudence* and in our forthcoming *Journal of the Beth Din of America Volume 3* reflect the vibrant intellectual culture at the Beth Din of America, interpreting and applying the *devar ha-mishpat* to the realities of our day. *Tenu kavod la-Torah*—let us give honor to the Torah—that our primordial system of law continues to guide and govern our social and commercial affairs in the twenty-first century, even in the most sophisticated and complex economies.

Three times a day we pray for the restoration of Jewish courts: *hashivah shofetenu ke-va-rishonah*. Let us restore the *beit din* to its rightful and prideful place as the keystone of Jewish society, *le-hachzir 'atarah le-yoshnah*. Together, we can achieve the vision of our prayers, *u-melokh alenu atah Hashem levadekha*, as a community unified under the sovereignty of the *melekh ha-mishpat*.

NOTES

[1] For the importance of institutions shaping the basic structure of society, see John Rawls, *Justice as Fairness* p. 55, "The... reason for taking the basic structure as the primary subject derives from its profound and pervasive influence on the persons who live under its institutions."

See also Wenar, Leif, "John Rawls", *The Stanford Encyclopedia of Philosophy* (Summer 2021 Edition), Edward N. Zalta (ed.):

“The basic structure is the location of justice because these institutions distribute the main benefits and burdens of social life: who will receive social recognition, who will have which basic rights, who will have opportunities to get what kind of work, what the distribution of income and wealth will be, and so on. The form of a society’s basic structure will have profound effects on the lives of citizens. The basic structure will influence not only citizens’ life prospects, but more deeply their goals, their attitudes, their relationships, and their characters.”

[2] See Tosefta Bava Metzia 11:23, Shulchan Arukh Choshen Mishpat 163, Rambam Tefillah 11:1, Rambam Matnot Aniyim 9:1.

[3] Devarim 16:18, Rambam Mitzvat Aseh 176, Rambam Sanhedrin 1:1–2; Talmud Bavli Sanhedrin 16b, 56b.

[4] See Rabbi J.D. Bleich, “The Bet Din: An Institution Whose Time Has Returned,” in *Contemporary Halakhic Problems IV* (1995), p. 4:

“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)’... 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 actions entail serious violations of Jewish law.”

See also Rabbi Yosef Eliyahu Henkin, “Madur ha-Halakhah,” in *Edut be-Yisra’el*, ed. Rabbi Asher Rand (cited in Bleich *op cite*, p. 6):

“The positive commandment concerning appointment of judges is binding also in the Diaspora 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.”

[5] For the concept of *shoftim*, see Devarim 16:18.

[6] For the concept of *mishpatim*, see Shemot 21:1. Note the Rambam’s distinction between *Mishpatim* and *Shoftim* as separate books in *Mishneh Torah*.

[7] For *devar ha-mishpat*, see Devarim 17:9.

[8] See John Locke, *Two Treatises of Government*, II:13. After describing each person’s natural right to protect their property and redress wrongs committed against them, Locke notes that “it is unreasonable for men to be judges in their own cases... self-love will make men partial to themselves... and... ill nature, passion, and revenge will carry them too far in punishing others.” Locke sees this as the basis for entering political society. See *Two Treatises of Government*, II:87: “There only is political society, where every one of the members hath quitted this natural power, resigned it up into the hands of the community... thus all private judgement of every particular member being excluded, the community comes

to be umpire... indifferent, and the same to all parties.”

See also II:124: “Though the law of nature be plain and intelligible to all rational creatures, yet men being biased by their interest... are not apt to allow of it as a law binding to them in the application of it to their particular cases.”

^[9] See Shemot 18:21–23. The verses suggest that the appointment of judges secures a peaceful society. See Ibn Ezra Shemot 18:23, Alshikh Shemot 18:23, and Harchev Davar Shemot 18:23. See also Avot 1:18 and Tur Choshen Mishpat 1.

For the centrality of *shalom*, see Talmud Bavli Gittin 59b, Mishlei 3:17, Rambam Chanukah 4:14, and Rambam Melachim 10:12.

^[10] See R. Itamar Rosensweig, “[Pesharah vs. Din](#)”, *Jewishprudence* (April 2020).

^[11] See Netziv, Responsa Meshiv Davar Vol. 3 no. 10.

^[12] Beyond *pesharah*, other principles in *choshen mishpat* may reflect the independent significance of *shoftim*, separate from *mishpatim*. If we look to cases where the halakhah endorses dispute-resolution procedures that diverge from the substantive provisions of Jewish civil law (*mishpatim*) as the criterion, the following examples may point to the dispute-resolution role of *shoftim*:

a) A *beit din*'s authorization to decide some cases “beyond the letter of the law”, *lifnim mi-shurat ha-din*, which, by definition, diverges from the substantive prescription of the See the discussion in Shulchan Arukh Choshen Mishpat 12:2.

b) A *beit din*'s power extra-legal power to punish and fine to preserve social order, “*makn ve-'onshin shelo min ha-din*”. See Shulchan Arukh Choshen Mishpat 2:1.

c) Halakhah's recognition of the prevailing commercial norms (*minhag ha-sochrim*) as halachically binding. See R. Itamar Rosensweig, “[Minhag Ha-Sochrim: Jewish Law's Incorporation of Mercantile Custom and Marketplace Norms](#)”, *Jewishprudence* (November 2022). This category may also include halakhah's incorporation of the law of the jurisdiction, *dina de-malkhuta*, to fill halakhic lacunae. See my suggestion at note 112 therein.

d) Permitting a litigant whose adversary refuses to appear before a *beit din* to seek recourse in a secular court that will decide the case contrary to Jewish law. See Shulchan Arukh Choshen Mishpat 26:2. See also R. Yaacov Feit, “The Prohibition Against Going to Secular Court,” *Journal of the Beth Din of America* 1 (2012) pp. 31–32.

e) Allowing Jewish parties to resolve a dispute through a non-Jewish arbitrator. See Shakh Choshen Mishpat 22:16 and R. Yaacov Feit “The Prohibition Against Going to Secular Court”, p. 42.

f) Other examples might include *munach 'ad she-yavo Eliyahu*, where the *beit din* is charged to end the conflict by confiscating the disputed object rather than rendering a substantive decision. See the entry on *munach 'ad she-yavo*

eliyahu in *Encyclopedia Talmudit*, 22. Other *kelalei ha-sefeikot*—e.g., splitting losses (*yachluku*), court recusal (*kol de-alim gevar*), an arbitrary decision imposed by the court (*shuda de-dayni*), *ha-motzi mei-chaveiro 'alav ha-ra'ayah*—may be understood as mechanisms for ending disputes rather than principles of right.

[13] Ran (Derashot no. 11) carefully distinguishes between the role of the *beit din* as peacekeepers and their role in enforcing true justice. Ran notes that every society requires judges to preserve civil order. Without judges, individuals will devour each other. The Jewish people are no exception. But the Jewish people need judges also “*le-ha-'amid chukei ha-Torah al tilam... kefi mishpat tzodek amiti.*”

Ran proceeds to explain that the *mishpatim* are the DNA for a society worthy of the divine presence: “*mitzad she-hem tzodkim be-'atzman, retzoni lomar, mishpetai ha-torah,... yimshakh she-yidabek ve-yachul ha-shefa ha-eloki ba-nu.*” See also Talmud Bavli Sanhedrin 7a.

[14] For the idea of the Ketubah as the linchpin of Jewish marriage, see R. Itamar Rosensweig, “Mitzvat Gerushin” in *Beit Yitzchak* 50, 5783 (forthcoming) notes 10–12 and the accompanying text therein.

[15] See *In Re Estate of White*, 356 N.Y.S.2d 208, at 210 (NY Sup. Ct, 1974): “Even for the observant and Orthodox, the ketubah has become more a matter of form and a ceremonial document than a legal obligation.” See also R. Yonah Reiss and R. Michael Broyde, “The Value and Significance of the Ketubah,” *Journal of Halacha and Contemporary Society* Vol. 47 (2004).

[16] See Iggerot Moshe, Even Ha-Ezer 4:91.

[17] See R. Yonah Reiss and R. Michael Broyde, “The Value and Significance of the Ketubah,” *Journal of Halacha and Contemporary Society* Vol. 47 (2004).

[18] See R. Itamar Rosensweig, “[When has a Neighbor Waived his Right to First Refusal](#)”, *Jewishprudence* (July 2022).

[19] Some halakhic constructs are coherent only under the jurisdiction of *batei din*. Take the *heter iska* which structures an equity investment, between an investor and a manager, to imitate features of a loan. The *iska* imposes an artificially difficult burden of proof on the manager to establish losses, and it incentivizes the manager not to rebut a presumption of fixed annual profits. Thus the parties create an equity relationship that carries the benefits of debt. The investor has secured his right to the principal and has generated a difficult to rebut entitlement to a fixed annual return, while the manager can keep additional profits. For an overview of the *heter iska*, see R. Yisroel Reisman, *The Laws of Ribbis* (1995), Chapter 22.

The *heter iska* works because the Torah permits profiting from an equity investment. The prohibition against charging interest is limited to loans. The *heter iska* is valid only if it succeeds in creating a genuine relationship of equity. If the *iska* is a sham, the *heter* fails. Now, the *heter iska* preserves the integrity of the equity relationship because it remains possible, even if difficult, for the manager to prove losses. It is also possible, though costly, for the manager to rebut the

presumption of fixed annual returns.

But civil courts generally do not recognize the *heter iska* as a genuine equity relationship. They dismiss the document as a religious ritual required to conform with Jewish law. One New York court recently held “A *Heter Iska* constitutes merely a compliance in form with Hebraic law, and does not create a partnership, joint venture, or profit sharing agreement.” See *Kirzner v. Plasticware, LLC*, 16 N.Y.S.3d 792 (N.Y. Sup. Ct. 2015). If Jews rely on civil courts, the *heter iska* is of dubious worth. It’s questionable whether the *heter iska* succeeds in structuring the relationship as equity if both parties are relying on the civil court to enforce what it characterizes as an interest-bearing loan.

However, when Jews submit their commercial disputes to *batei din*, the integrity of the *heter iska* is upheld as an equity relationship under its true halakhic description, and the *beit din* will have to determine whether the manager has met his evidentiary burden to demonstrate losses and whether he can provide an accounting of profits to rebut the presumption of fixed annual returns. It follows that the validity of a *heter iska*—whether it succeeds in avoiding the prohibition of charging interest—depends on parties enforcing it through *batei din*.

[20] In Robert Cover’s apt words: “law [is] not merely a system of rules to be observed, but a world in which we live. This *nomos* is as much “our world” as is the physical universe of mass, energy, and momentum... our apprehension of the structure of the normative world is no less fundamental than our appreciation of the structure of the physical world.”

Cover also notes that “a great legal civilization is marked by the richness of the *nomos* in which it is located and which it helps to constitute. The varied and complex materials of that *nomos* establish paradigms for dedication, acquiescence, contradiction, and resistance. These materials present not only bodies of rules or doctrine to be understood, but also worlds to be inhabited.”

See Robert Cover, “The Supreme Court, 1982 Term—Foreword: *Nomos* and Narrative,” 97 *Harvard Law Review* (1983), pp. 4–6.

The idea of halakhah as a *nomos*, a normative world, sustained by applying the principles and concepts of Jewish law to the reality around us is a central theme in R. Soloveitchik’s writings. See *Halakhic Man* (1983), p. 19: “The essence of the Halakhah, which was received from God, consists in creating an ideal world and cognizing the relationship between the ideal world and our concrete environment.”

And p. 23: “Halakhic man orients himself to the entire cosmos and tries to understand it by utilizing an ideal world which he bears in his halakhic consciousness. All halakhic concepts are a priori, and it is through them that halakhic man looks at the world.”

See also p. 72: “Halakhic man does not enter a strange, alien, mysterious world, but a world with which he is already familiar through the a priori which he carries within his consciousness. He enters the real world via the ideal creation which in the end will be actualized—in whole or in part—in concrete reality.”

And p. 94: "According to the outlook of Halakhah, the service of God can be carried out only through the implementation, the actualization of its principles in the real world... Halakhic man's most fervent desire is the perfection of the world under the dominion of righteousness and loving-kindness—the realization of the a priori, ideal creation, whose name is Torah (or Halkahah), in the realm of concrete life."

[21] See Talmud Bavli Shabbat 10a for the connection between *mishpatim* and "world building". See also Avot 1:18, which Robert Cover discusses in "Nomos and Narrative", pp. 11-13.

[22] Examples include bankruptcy, copyright, intellectual property, and antitrust laws.

[23] "You ought to go only to the judge of your generation." See Devarim 17:9 and Rosh Hashanah 25b.