

# MAHLOKET MATTERS: HOW TO DISAGREE CONSTRUCTIVELY



## UNIT 1: THE SANHEDRIN WAY

### Rabbi's/Educator's Guide

#### Goals of the Session:

1. To learn text and theory about how to disagree constructively by studying the procedures of the ancient Sanhedrin.
2. To practice engaging in constructive disagreement using a mock-Sanhedrin exercise.

#### Preparation:

1. Carefully review this document, noting if and how you would like to use the source sheet. We suggest you have the participants study in *havruta* (pair study) at least the first four-sources. If you would like to enhance the text study, please use the supplementary sources. These additional sources explain how the guidelines encouraged disagreement in the Sanhedrin. Note that some sources contradict the value of arguing (Texts 1.3, 3.4 and 4.3). So, in the spirit of disagreeing, even arguments about whether it is good to hear different arguments are provided!
2. Decide how to use the video. Rabbis and educators are encouraged to watch the video as part of their preparation. In addition, for those that choose not to do the *havruta* study, consider showing the video to the participants and pausing as each text is displayed on the screen. Then, for each text, discuss and answer the corresponding "Guiding Question" given in Step 3 of Part I before proceeding. You may also choose to show the video to the participants at the end of Part I.
3. Select the "Keep or Cancel" dilemma you would like to use and modify it as needed for your particular audience. For example, you may wish to change the name or structure of the organization listed (from board to student leaders or managing partners, etc).
  - For adults, including Hillels, use "Keep or Cancel the Controversial Speaker."
  - For high school students, use "Keep or Cancel the Tikkun Olam Tzedaka Fund Policy."
  - For middle school students, use "Keep or Cancel the Bnai Mitzva Tzedaka Fund Policy."
4. Join the **Mahloket Matters Facebook Group Page** at least 72 hours before your event so that you will be able to post your results and show your participants how others voted.



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The 9Adar Project  
Jewish Week of Constructive Conflict  
[WWW.9ADAR.ORG](http://WWW.9ADAR.ORG)

5. Consider making a copy of the sign in sheet at [www.9Adar.org/signin](http://www.9Adar.org/signin).
6. Make sure to have an area where participants can sit in a semicircle in order to hear and see each other.
7. Make sure to have an area where groups of 4 can sit quietly.
8. Have a flip chart or white-board for groups to write their proposals on.
9. Have a pen for each person.
10. Print out a copy of the source sheet and appropriate “Keep or Cancel” dilemma for each participant. If you are using only the four main sources, print out just the first two pages of the source sheet. If people will not have devices to complete the online Participant Feedback Form at [www.9Adar.org/feedback](http://www.9Adar.org/feedback), print out a copy for each person.

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## Introduction: (5-10min)

1. Sitting in a semicircle, welcome everyone and introduce yourself.
2. If appropriate for the number of participants, ask everyone to go around and introduce themselves briefly.
3. Explain the goals for the session.
  - You may want to emphasize the need today for people to engage in constructive disagreement and that this is a core Jewish value.
  - You may want to open with the story about Benjamin Disraeli (Text 3.5) stating that he learned the value of encouraging disagreement in parliament from his Jewish heritage.

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## Part I:

### Text Study on the Theoretical Guidelines for ‘Constructive Controversy’ in the Ancient Sanhedrin (15-30min)

1. Introduce the texts about the guidelines for encouraging disagreement in the ancient Sanhedrin. You may choose to mention the following:



Eliezer Schnall, Michael J. Greenberg, “Groupthink and the Sanhedrin: An analysis of the ancient court of Israel through the lens of modern social psychology” in *Journal of Management History*, vol. 18, issue 3, 2012, 285.

*The Hebrew word “Sanhedrin” is likely derived from “synedrion”, the ancient Greek term for “general assembly” or “judicial body.” In Jewish sources, it refers primarily to the supreme religious court (of 71 members) that met on the Temple Mount in Jerusalem, later relocating around the time of the destruction of the Holy Temple in the year 70 CE. However, there were also smaller local bodies in ancient Israel that were given the same appellation (but had 23 members) and often functioned in similar ways.*

2. Have the participants study Texts 1-4 (pages 1-2 in the Source Sheet) in *havruta* (5-10min).
  - *Havruta* means studying in pairs. *Havruta* study is not only a traditional way Jews study text but is also a critical model for encouraging constructive disagreement by making sure we don't see texts as just a mirror of our own truth. Instead, we arrive at truth through interactive study with another's sharing of perspectives and interpretations.
3. Discuss the following four guidelines:

## Guideline #1

### Sit so everyone can hear and see one another

- Ask how participants understood the text and if they can derive a guideline for disagreeing from it.
- Sitting in a semicircle promotes the idea that the “truth” is not in the front of the room but in the middle where everyone can argue respectfully and equally. Ibn Habib (Text 1.1) mentions that this avoids suspicion amongst the judges, perhaps of bribes, and that sitting in a circle encourages disagreement. Schnall (Text 1.2) emphasizes that all opinions, despite the hierarchy of power, were encouraged to be heard and valued.
- Ask for examples of where ‘truth is in the middle’ (informal education, senate/Knesset in semicircle, other cultural models such as the Jirga in Pakistan, and of course the classrooms at the Pardes Institute of Jewish Studies!).
- Counter-argument: Consider noting that in later versions, such as in the Jerusalem Talmud (Text 1.3), the wording of this guideline was slightly changed to be that everyone has to hear and see the Nasi (prince). Meaning the ‘truth’ is in the front of the room.
- Guiding Question: To what extent do you feel your conversations with others on political or ideological issues are learning conversations where everyone is truly seeing and hearing the other?

## Guideline # 2

### Make sure no one is intimidated about sharing her/his own opinion

- Ask how participants understood the text and if they can derive a guideline for disagreeing from it.
- Beginning from the side is a way of ensuring that no voice is silenced or prevented from stating what they think the truth is. This is especially true in severe cases such as those which involve life and death.
- Some commentaries, like the Rambam (Text 2.2), seem to understand that this procedure was intended to encourage those of lesser status not to be intimidated from stating their opinions. Others, however, understood this as primarily about preventing the more powerful from silencing those less powerful (see Responsa of the Ridbaz, Part I, 308).
- Counter-argument: Note that in monetary cases, the decision starts from the most knowledgeable and not “from the side.” Ask people why they think this is. Later authorities, even in monetary cases, though it wasn’t required, encouraged “start from the side” in order to encourage disagreement. (See Rama, Shulchan Aruch Choseh Mishpat 1/הצד1/התחיל מן הטוב להחיל מן הצד.)
- Ask when should people in general solicit everyone’s opinion in a decision and when should they just ask “the expert.”
- Guiding Question: To what extent have you ever felt intimidated when expressing your opinions? Or have you, even unintentionally, intimidated others when they were expressing theirs?

## Guideline # 3

### Be careful not to be surrounded only by those who agree with you

- Ask participants if they agree with this guideline – are you more confident that you have arrived at the right decision when everyone agrees or when people also disagree? Ask for examples.
- Counter-argument: There was also an opinion amongst the commentaries, the Yad Ramah (Text 3.4), who disagreed with this interpretation of the Talmud. He stated that if all members of the Sanhedrin agree, then the person is killed right away and they don’t even wait for the next day. He translated the words “*potrim oto*” not as they acquit him, but rather they take him out to be killed right away, not waiting for further discussions the next day, since they are certain of the truth.
- Consider sharing the following discussion between Disraeli and Bismarck (Text 3.5) over whether or not it is good or bad to have people disagreeing in parliament. This

story is found in a book about Yeshivat Volozhen in a chapter about how important it is to study in *havruta*.

Note that this story, listed here as Text 3.5, is not included in the participant's source sheet.

## Text 3.5

### Rav Baruch Epstein, *My Uncle the Netziv*, p. 77: (1920's) Two Are Better Than One

*In 1871, following the end of the Franco-Prussian War, an international meeting of the world's most distinguished diplomats convened in Berlin to sort out the grievances of the two warring parties. Although the official host of the Berlin Congress – as it was called – was Otto von Bismarck, chancellor of Germany, everyone knew that the true driving force behind the negotiations was Benjamin Disraeli, Earl of Beaconsfield, the British Empire's representative and one of the most famous diplomats of his day. Disraeli's seat was placed very close to Bismarck's, and whenever there was a break in the official proceedings, the two "neighbors" fell deep into discussion that took them far afield from the diplomatic negotiations. During one of these, the conversation centered around the parliamentary procedures that were used in their respective countries. Bismarck complained that parliamentary sessions in Germany were time-consuming and exhausting, with every inconsequential matter of policy the government placed on the agenda becoming the subject of laborious and time-wasting debate. Everyone seemed to have a private opinion on each and every topic and felt honor-bound to endlessly question, argue and nitpick the most inconsequential matters of state. Bismarck's job required him to respond to these arguments, defend the government's position, and placate everyone – an enervating, Herculean task that cost him dearly in terms of his health. "If I had the power," Bismarck said emotionally, "I would limit each member's speaking time. The freedom to talk endlessly, bringing up every imaginable argument against every tiny piece of legislation is the greatest punishment for running a government." Disraeli, who had been listening closely to Bismarck's words, thought quietly for a moment and then gave his reply: "In my opinion, if there was no one in Parliament to complain about and object to my ideas and suggestions, I would go out and hire them for great sums of money. Without such people bringing the piercing and illuminating light of criticism to bear on all our ideas, we would be unable to discern their true value and never succeed in creating a better, more just society." Bismarck was very moved by this response, which he had never expected to hear from the world's greatest diplomat, a powerful and convincing speaker whose arguments usually swayed everyone around him. "Where did you pick up this concept?" asked Bismarck. "This is an ancient idea," replied the lord, "thousands of years old. I acquired it together with many other remarkable insights into life and human behavior, which also spring from this same source."... Bismarck, well aware that Disraeli was a Jew who took every opportunity to speak about the Jewish people and their Torah, grew pale with rage at Disraeli's allusion to his heritage...*

- Guiding Question: To what extent do you feel you are surrounded (physically and on social media) by people with diverse opinions, in particular pertaining to ideological and political differences?

## Guideline #4

### Know how to argue both sides before voting

- Ask participants – why do they think judges had to be able to prove this strange thing? What guideline for disagreeing may be derived from this? Explain that proving that a reptile is pure from biblical texts sounds absurd since a reptile is the very definition of something impure in the Bible (Leviticus chapter 11, 29-39)! Yet to qualify as a member of the Sanhedrin, one had to be able to prove the nearly impossible to show that they are not confined to a strict interpretation of the texts but are interpreters of the texts, with the ability to make the appropriate ruling for a particular case in front of them. This means arguing against consensus thinking.
- The later Midrash Psalms 12 (Text 4.1) expands further how the famous Rabbi Meir would actually do this. This midrash tells that this great scholar knew how to argue the purity and impurity of a reptile with 49 proofs for each side. In other words, to be a rabbinic scholar of the highest level, worthy of sitting on the Sanhedrin, one had to know how to argue each case 49 ways for and 49 ways against.
- This concept comes from the legend also cited in the Midrash Psalms that when Moses ascended Mount Sinai to receive the Torah, he asked G-d for a 'clear cut Torah' with no ambiguities and complete clarity of the absolute truth. G-d however responds that if He were to give such a Torah 'no foot could stand up,' meaning the tradition would be too rigid. Rather, on each and every law it must be argued 49 ways for and 49 ways against, and only after doing so, they should vote and go according to the majority. In an alternative version of the legend found in the Babylonian Talmud, Moses asked G-d for the 50 gates of wisdom, however G-d only agreed to reveal 49 to him, thus teaching that even Moses could not obtain the complete and absolute Truth.
- This is a powerful theological concept with serious practical implications as well. The legend of the 49 vs 49 explains why it is so important to study in pairs, *havruta*, and not alone. It is mentioned by rabbis as the explanation for how it is possible for two opposite opinions to be correct, referred to in the Talmud as *elu ve'elu divrey Elokhim Chayim* (both are the words of the living G-d), which is one of the ingredients for having a *mahloket l'shem shamayim*, a 'disagreement for the Sake of Heaven.' Legend has it that even young children in the times of King David knew how to study text through the lens of the 49 vs 49. If children are educated with such critical thinking, there is a higher chance that adults and leaders will be able to do so as well.
- Thus the fourth guideline to encourage disagreement in the Sanhedrin was to make sure each member really knew how to argue both sides of an issue before voting. This has very important ramifications for how each of us engages in conflict. Are we investing the necessary efforts to truly understand the other side's point of view? Are we aware of the fact that we may not have all of the facts and the whole truth, and should be humble and curious to learn more about those who disagree with us?

- For more about this legend see <https://elmad.pardes.org/49v49>
  - Counter-argument: at the same time the Talmud praises Rabbi Meir for being able to argue contradictory truth (Text 4.3), they also explain that we don't hold according to him in *halakha* (Jewish Law) because it was difficult to be certain what his actual opinion was. So while being able to see both sides is a strength that is celebrated, it can also be a weakness when it is taken to a level that makes it difficult to understand what one's position is.
  - Ask when is it a weakness to be able to argue both sides.
  - Guiding Question: To what extent do you feel you are able to argue both sides of an argument, especially when relating to ideological and political topics?
4. Consider showing them the Mahloket Matters video at this point.
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## Part II:

### Mock-Sanhedrin / Constructive Controversy Exercise (55-70min)

#### 1. Introduce the exercise

- Have your group sit in a semicircle like the Sanhedrin, with the rabbi/educator, now acting as the Nasi (prince) of the Sanhedrin, in the middle facing them. Participants are now members of the Sanhedrin, and a dilemma has come before it.
- Explain that this mock-Sanhedrin is also based on a well known constructive controversy exercise, which is a critical way to arrive at good decisions to dilemmas and is core to strengthening the culture of democracy. (See Appendix for more information.)
- Have someone read the "Keep or Cancel" dilemma. (This can also be done in *havruta* after splitting up.)

#### 2. Split into *batei midrash* (study houses) and *havrutot* (study pairs)

- Split up the larger group (Sanhedrin) into groups of 4. Note that if needed, groups of 5 are better than a group of 2 or 3. Each of these groups is called a *beit midrash*. The Sanhedrin was made up of several *batei midrash* which were not only houses of study but also, in some ways, different political parties.
- Within your *beit midrash* of 4, split into *havrutot* of 2 (referred to as 'advocacy pairs' in constructive controversy).

# MAHLOKET MATTERS: HOW TO DISAGREE CONSTRUCTIVELY



- *Havruta* A is in favor of keeping the speaker, while *havruta* B is for canceling the speaker.
- You may want to ask participants to write down for themselves what their intuitive answer is to the dilemma. You can then ask them to split up into pairs of two based upon their intuitive answer to this question with each pair arguing first what they feel to be the correct response. If necessary, assign the groups as A or B so that there are equal numbers of A and B.
- Explain that the Sanhedrin was divided up into different schools of thought or *batei midrash*. In addition, when there was a particularly difficult decision to make, the Sanhedrin would split into small groups to discuss and argue the matter and then meet back (Mishnah Sanhedrin 5:5).

### 3. Prepare your argument (5 - 7 1/2 min)

- *Havruta* A prepares their argument in favor of keeping the speaker.
- *Havruta* B prepares their argument in favor of canceling the speaker.

### 4. Engage in *mahloket l'shem shamayim* (constructive controversy) (5 - 7 1/2 min)

- Meeting back as a group of four, *havrutot* A and B engage in a respectful and rational disagreement attempting to convince the other of their logic for/against. Remember to listen carefully, communicate clearly, use rational points, be aware of assumptions etc...

### 5. Switch! – Now prepare to argue the opposite side! (5 - 7 1/2 min)

- *Havruta* A prepares their argument in favor of canceling the speaker.
- *Havruta* B prepares their argument in favor of keeping the speaker.

### 6. Engage again in *mahloket l'shem shamayim* (constructive controversy) (5 - 7 1/2 min)

- Meeting back again as a group of four, *havrutot* A and B engage in a respectful and rational disagreement attempting to convince the other of their logic for keeping/canceling the speaker.

### 7. Prepare *beit midrash* proposal (8 min)

- Each member of the *beit midrash* (group of four) now represents his/her own personal opinion and works collaboratively and persuasively with each other to develop a *beit midrash* proposal and reasoning that best addresses the conflicting needs and values.
- Each *beit midrash* writes down in a few lines the basic outline of their proposal/reasoning on a flipchart and appoints a representative to present it to the whole Sanhedrin (the other groups).



- Each *beit midrash* decides on a creative name for their *beit midrash*.

## 8. Present proposals (10 min)

- All members of the Sanhedrin gather back into a semicircle.
- A representative of each *beit midrash* briefly presents their written proposal and reasoning to the rest of the Sanhedrin.
- Make sure to take a picture of the proposals and the group of participants next to each.

## 9. Vote, Capture and Report (15 min)

- After hearing from all of the *batei midrash*, the Nasi of the Sanhedrin explains it is time to vote if we should “keep but...” or “cancel and ...” the controversial speaker, just as the Sanhedrin would do after gathering back together (Mishnah Sanhedrin 5:5).
- Starting from the side (like the Sanhedrin) ask each individual to go around the circle and say how they vote (either “keep but...” or “cancel and...”).
- As each member votes, ask them to also share in a sentence why they are voting this way, and a comment about the experience of going through this process. You may want to ask if they shifted at all from the intuitive response they wrote down in the beginning.
- After voting, just like in the Sanhedrin, members can change their vote if persuaded by the rationale of a fellow member. Ask if anyone would like to change their vote.
- Record the tally of the vote (number for “keeping but...” and number for “cancelling and...”).
- Post your photos of the participants and their proposals on the **Mahloket Matters Facebook Group Page**.
- Show the group how other communities have voted by viewing the **Mahloket Matters Facebook Group Page**.
- Time permitting, compare and contrast your group with the others that have participated.
- Ask participants to complete the **Participant Feedback Form ([www.9Adar.org/feedback](http://www.9Adar.org/feedback))** You may have them fill it out online on their own devices. Or, you can print it out and have them fill it out by hand.
- Submit the voting information using the form: [www.9Adar.org/vote](http://www.9Adar.org/vote). Note, if participants completed the feedback form on paper, please scan them and include the file with your vote.
- Thank everyone for their participation.

## Appendix:

### Constructive Controversy

Constructive Controversy is a tool to engage people in hearing and presenting differing ideas and perspectives before solving a problem or making a decision. Through deliberately structured examination and advocacy of clashing ideas or perspectives, the aim is to arrive at better solutions and make decisions with increased reasoning and understanding. The Constructive Controversy process is very similar to that of the guidelines of encouraging *mahloket l'shem shamayim* (disagreement for the sake of Heaven) in the ancient Sanhedrin. It is a problem-solving approach introduced by David W. Johnson and Roger T. Johnson in 1979, and since then the approach has been researched and validated as a model for developing robust and creative solutions to problems. It is a critical exercise for strengthening the democratic culture of constructive conflict.

#### The technique draws on five key assumptions:

1. We adopt an initial perspective towards a problem based on our personal experiences and perceptions.
2. The process of persuading others to agree with us strengthens our belief that we are right.
3. When confronted with competing viewpoints, we begin to doubt our rationale.
4. This doubt causes us to seek more information and build a better perspective, because we want to be confident with our choice.
5. This search for a fuller perspective leads to better overall decision-making.

The more times you go through the cycle (of these key assumptions), the closer you come to the "truth" or the "right" solution.

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**"Source: Mind Tools: Constructive Controversy: Improving Solutions by Arguing For and Against Your Options"** [http://www.mindtools.com/pages/article/newTMC\\_71.htm](http://www.mindtools.com/pages/article/newTMC_71.htm)

For further reading: David W. Johnson and Roger T. Johnson (2000), "Civil Political Discourse In A Democracy: The Contribution of Psychology," *Peace & Conflict: Journal of Peace Psychology*, 6(4), 291-317.