



**HOW AMERICAN
BANKRUPTCY
LAW REFLECTS
THE VALUES OF
TESHUVAH**

AAH BANKRUPT

BY BINYOMIN WOLF

CHAIM* AND HIS WIFE RIVKY* enjoyed custom-decorating cookies for friends' *shalom zachars* and *brisos* for several years. They were so encouraged by people's compliments that they took the big leap and borrowed a significant amount of money to purchase equipment, rent a small warehouse, and hire workers to turn their side business into a full-time endeavor. They began marketing themselves, advertising, and networking with stores that they hoped would stock their cookies.

Unfortunately, they made their big move just before a downturn in the economy — and, as the saying goes, when it rains, it pours. One of their sons was diagnosed with a form of cancer for which the most promising treatment was not covered by insurance because it was still technically in the testing stage. The cost of the treatment regimen grew

to over \$100,000. While they tried to ride out the economic downturn by putting personal and business expenses on their credit cards, the situation did not get better fast enough.

The bank initiated a foreclosure action and repossessed their bakery equipment. Their warehouse landlord started eviction proceedings, and they were getting numerous collection letters from their son's doctors and the hospital. No matter how much they tried to pay their creditors, they knew they would never be able to get out from under this debt, much less rebuild their credit to try their hand at another business in the future. They thought about filing for bankruptcy, but they also believed that people should pay their debts whenever possible. What could they do?

Now imagine the following scenario: Dovid* has been struggling with what is euphemistically called "internet addiction" since he was 12 years old. He always knew it was wrong, so every few months, when he became overwhelmed with shame, he would try to stop. He even attempted studying *mussar* or augmenting his learning schedule to inspire change. But eventually, whether it was a few days or a few weeks later, he always reverted to his old habit. He thought that when he got married, it would become easier, but a few months after his *chasunah*, he found himself

following his old pattern. He felt that his sins were piling higher and higher, and he saw no way out. Would he ever succeed in crawling out from under his mounting spiritual debts to start a new life?

The escape hatches in both of these scenarios share a surprising connection. Few are aware of the reasoning behind secular bankruptcy law or the way it dovetails with one of *Yiddishkeit's* most fundamental principles — *teshuvah*.¹

The Origin of Bankruptcy In American Law

What is bankruptcy in the United States, and when did it originate? The power to create bankruptcy law was in fact one of the few specific powers granted to Congress in the Constitution itself, which says (Article 1, Section 8, Clause 4), “The Congress shall have Power to ... establish ... uniform Laws on the subject of Bankruptcies throughout the United States...”

One major reason for bankruptcy law is to give the bankrupt debtor something called a “discharge” after he has paid his creditors as much as he can in accordance with their rights. This means that when he emerges from bankruptcy, most types of debt are “discharged,” or forgiven forever. This is known as the “fresh start” policy. The idea is that as long as he paid whatever he was able to while he was bankrupt, he should be free to go into business afterward unencumbered by his old debts.

Thinking people will have several questions about this. Why should creditors pay the price for a debtor's failed business or personal expenses? The debtor is the only one who would have profited if his business had been successful, so why should his creditors be the ones to suffer if the debtor's venture fails? And why is bankruptcy law so fundamental that it was one of the few areas of law specifically incorporated into America's founding document — the Constitution?

The Debit of Debtors' Prison

To understand the basis for bankruptcy law, it would be helpful to imagine what life would be like for people like Chaim and Rivky if discharge and a fresh start were not available to them. Their debts would follow them forever. They would never have any extra money to invest in starting a new business or expanding an existing one, so they would stagnate, unable to function as productive members of society. They would likely be a burden on others as well because they or their families would be forced to accept public benefits at taxpayers' expense.

In some places in the distant past, they could also be sent to debtors' prison, where they would neither be able to pay their creditors nor support their family. Consider, too, that the eternal need to pay back old debts creates a perverse incentive for debtors not to work at all because they would not enjoy the fruit of their efforts, which would always go to their former creditors.

Early commentaries on American bankruptcy law explain that the “fresh start” policy creates additional jobs, puts money into the economy and creates tax revenue created by incentivizing people to reenter economic life after a prior failed business attempt. It even generally benefits creditors because they have more healthy borrowers to whom they can lend. These reasons, among others, were so fundamental to the success of the nation that the founding fathers incorporated bankruptcy into the Constitution itself.

Bankruptcy's Healthy Incentives

I spoke about this topic with Thomas Moers Mayer, Esq., one of the foremost corporate bankruptcy practitioners in the U.S. and co-chair of the corporate restructuring and bankruptcy practice at Kramer Levin Naftalis & Frankel, LLP. He first praised the aspect of American culture that values the payment of debt and views obtaining a bankruptcy discharge as a last resort. However, he



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also said he views the evolution of bankruptcy law as a vast improvement over the prior Puritanical view that those who could not pay their debts were inherently sinful. That concept was the basis for the institution of debtors' prisons.

Mr. Mayer also explained that the availability of the bankruptcy discharge for individuals benefits society because it prevents people from being driven into an underground economy to support themselves without having to pay everything they earn to creditors (and without paying taxes). This harms society because creditors are paid nothing, other citizens must supplement what black market economic participants do not contribute in taxes, and the pool of economically productive people decreases because they will always be limited to working "off the books."

Another unexpected benefit is the rule that one may not obtain a discharge if, in order to shield some of his assets from the court, he conceals anything from the bankruptcy court or fraudulently transfers any of his property to others before filing. The availability of the discharge encourages debtors to make *all* of their assets available for distribution in bankruptcy so that debtors will at least pay whatever they are able to when they file for bankruptcy.

Teshuvah Precedes the World

Chazal teach that *teshuvah* was created by Hashem before the world itself (*Pesachim* 54a). Why was it necessary for Him to do this? If *teshuvah* were simply a mechanism to erase one's sins, Hashem could have, for example, created it along with the first commandment. And the principle that Hashem creates the remedy before the affliction (*Megillah* 13b) does not sufficiently answer the question because it

does not explain why *teshuvah* uniquely had to be created before the world itself in contrast to other "cures" which Hashem made after the creation of the world.

Chazal teach that *teshuvah* gives us encouragement and strength to move forward after sinning. The *Gemara* (*Avodah Zarah* 4b) says that, "The Jewish people would not have committed the sin of the [golden] calf except to give an opening for *baalei teshuvah*." So, according to *Chazal*, Hashem temporarily suspended their free will by somehow "forcing" them to sin. Why? And how did this "give an opening for *baalei teshuvah*"?

Rashi explains that Hashem brought about this turn of events so that if an individual Jew or the Jewish nation as a whole ever feels that their sins are too horrible and that they have no hope of returning to Hashem, they will always be able to look back and say, "At least we did not commit our sin after personally hearing Hashem speak on Har Sinai. If Hashem welcomed our great-grandparents back after they did *that*, how much more so will He welcome *us* back."

We see from this statement of *Chazal* that *teshuvah* is not only a practical mechanism through which we rid ourselves of *aveiros*; it is, rather, a life-giving power that strengthens us to wake up in the morning. Without it, we would constantly feel the weight of our sins pulling us down. Without that fresh start, we would not have the wherewithal to start a new spiritual "business" by rededicating ourselves to *avodas Hashem*.

Rav Moshe Weinberger, Rav of Congregation Aish Kodesh in Woodmere, New York, and *Mashpia* at Yeshiva University, explains in the first volume of his *sefer Song of Teshuvah* that "Without the knowledge of *teshuvah*, when a person thinks back on his past and its mistakes, he might despair. *Teshuvah* makes it possible for him to rectify his errors and regain favor in G-d's eyes, and that brings him peace."

And why did Hashem create *teshuvah* even before the world itself? How is it more fundamental than so many other aspects of *Yiddishkeit*? The 15th-century *mussar sefer Orchos Tzaddikim* (in *Shaar Hateshuvah*) says that because Hashem created "Torah before the creation of the world, He also preceded *Teshuvah* [to the creation of the world], for ... if He had not done this, the world would not have been able to exist for even one generation."

Among many other subsequent Rabbanim, Rav Avraham Yitzchak HaKohen Kook, *zt"l*, answered this question (*Oros HaTeshuvah* 5:6, 6*), "*Teshuvah* preceded Creation. Therefore, it is the foundation of the world.... Without the thought of *teshuvah*, its serenity and security, a person could not find tranquility, and spiritual life would not be able to develop in the world."

Just as bankruptcy law was embedded in the nation's founding document and gives people a financial fresh start

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unencumbered by insurmountable past debts, *l'havdil, teshuvah* liberates a person from the mistakes of his past so that he can face himself and other people again. This enables him to avoid the temptation to either give up and “go underground” by attempting to live an entirely physical life because he has written himself off as a precious child of Hashem, or simply living a double, meaningless life. His ability to wipe the slate clean reestablishes his ability to live a spiritually engaged and productive life.

So how can someone like Dovid, who is struggling with “internet addiction,” turn his life around by using a deeper understanding of *teshuvah*? I spoke with Menachem Poznansky, a therapist who works with addicts, because the treatments often used for addiction are useful to anyone struggling to overcome their spiritual challenges.

He told me, “People generally cannot break away from whatever behavior is plaguing them until they hit the bottom and finally come clean about everything they did. When they reach the point where they no longer hide anything from themselves or those from whom they are seeking help, they finally make amends with whomever they can. After that, when they truly feel that they have done whatever they can to correct the past, they finally accept themselves. They’re only able to walk away from the past after they have

stopped running from it.”

Just as one cannot obtain a bankruptcy discharge if he has not come clean by disclosing all of his debts to the bankruptcy court and has paid back whatever he can, one cannot internalize the healing power of *teshuvah* until he has done whatever he can to rectify the spiritual wreckage of his past.

Liberated by Teshuvah’s Fresh Start

I spoke with Rebbetzin Yehudis Mashinsky,* a *menacheles* in New York, who struggled with overeating for most of her life. While eating compulsively may not technically be an *aveirah*, the internal battle is analogous. She tried dieting and exercising numerous times, but eventually, no matter how many times she told herself, “Don’t eat that! Don’t eat that! Don’t eat that!” she always failed.

She shared with me that one day, about five years ago, she finally reached a point — after what felt like a million failures — when she finally said to Hashem, “I give up. I thought I could do this on my own, but I can’t. I declare that I am bankrupt. But curling up in a ball in the corner is not an option. Right now, I know the only way is to ask You to give me the strength I need. Otherwise, my failures will simply follow me and weigh me down.”

CONCEPTUAL SIMILARITIES BETWEEN U.S. BANKRUPTCY LAW AND, L'HAVDIL, THE LAWS OF TESHUVAH

U.S. BANKRUPTCY LAW	THE LAWS OF TESHUVAH
Must disclose all known debts to the bankruptcy court	Must confess all known sins to Hashem
Must pay back all debts to the extent one is able	Must pay back damages and seek forgiveness for interpersonal sins
If one disclosed all his debts to the bankruptcy court, whatever (dischargeable) debts he cannot pay in bankruptcy are discharged.	If one confesses his sins, regrets them, and makes amends to the extent possible, all his past sins are erased (although even the mere desire to become righteous achieves atonement — <i>Kiddushin</i> 49b).
Debt discharge encourages people to become economically productive after bankruptcy and not become a burden on society or limit themselves to underground economy	Teshuvah liberates a person from his past, allowing him to work toward righteousness again without feelings of guilt or unworthiness because of past.

Rebbetzin Mashinsky said that after internalizing how, on her own, she was “bankrupt,” she was able to be honest about why she was overeating and make a fresh start. Thankfully, by turning to Hashem whenever she is tempted to think about food, she has been living without being enslaved to indulging her appetite for over five years.

Let us now return to Chaim and Rivky. After discussing the matter with their Rabbi and unsuccessfully attempting to negotiate a workable payment plan with each of their major creditors, they decided to file for bankruptcy both personally and for their business. The business was liquidated; its assets were sold to pay creditors. Personally, they proposed a payment plan to the court under which they paid their disposable income over the next five years to the court to distribute to their creditors.

Chaim and Rivky knew that as long as they followed the plan, at the end, their leftover debt would be discharged and they would be able to begin again. The process would not be easy, but they felt this was a good middle ground between eternal indebtedness and the unthinkable option of going “off the books” to bilk their creditors completely. And since their son’s treatments eventually caused the cancer to go into remission, and it is still holding, *baruch Hashem*, they have no regrets.

Similarly, Dovid found a Rabbi who had experience working with those suffering from internet addiction. Although being honest about his difficulties with someone he respected was very difficult at first, once he felt he had hit bottom and “declared bankruptcy,” he finally realized he

had to take major action to turn himself around. He knew he had no choice but to find help. And it was a tremendous relief not to bear his shameful secret alone.

His Rabbi directed him to *shiurim*, *sefarim* and other resources that gave him practical tools to separate himself from the habits he had previously had so much difficulty breaking. Also, seeing that others had already succeeded in the same battle gave him the confidence to leave the past behind and make a truly fresh start. Dovid is almost 28 years old now and he has been “clean” for almost three years. For the first time since adolescence, he feels optimistic about the future, his spiritual life, and his relationship with *Hashem*.

Modern American bankruptcy law may not have been consciously based on the concept of *teshuvah*, but its structure is a manifestation of the fact that the spirit of *teshuvah*, of laying it all on the line, of making amends, and of embarking on a new start unprejudiced by one’s past, is so deeply ingrained in the fabric of reality that it expresses itself even in purely human constructs like the U.S. Bankruptcy Code. ■

1. This article is not meant to serve as a halachic discussion of the propriety of filing for bankruptcy. For more information on that topic, consult a Rav or Posek who specializes in these matters.

* Personal information has been changed to protect anonymity.

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