CENTER FOR MODERN TORAH LEADERSHIP

WEEK 2 SUMMARY OF THE 2015 SUMMER BEIT MIDRASH

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Under what circumstances can someone residing in a particular area prevent someone else's commercial activities in that area? According to the *Mishna* on *Bava Batra* 20b, residents of a courtyard can prevent their neighbor from opening a store by complaining about the potential traffic noise. However, they cannot prevent the same neighbor from running a workshop, regardless of the noise. Elementary *yeshivot* also cannot be restrained even though the students are noisy; the *Gemara* explains that Yehoshua Ben Gamla enacted a special *takkanah* mandating public education. The *Gemara* moves on to discuss geographic restraints on competition: within alleys, between different alleys within the same city, and between cities. The discussion begins with a statement of Rav Huna: "If a resident of an alley established a mill (Rashi: to grind and sell), and a fellow alley-resident set up [a mill] adjacent to him, it is the rule (*dina*) that the first resident can protest against the latter, because he can say: 'You impeded my livelihood'" (*Bava Batra* 21b).

Rabbi Klapper summarized the meaning of Rav Huna's statement: "There is a case in which one person has the right to limit competition. The grounds of that right are economic and the limit is geographic." Beyond that, the limits of Rav Huna's statements are unclear. Where are the mills located vis-à-vis each other? Is this an endorsement of prior restraint, or does it only authorize post facto complaints? What are the parameters of an "impeded livelihood"?

A *baraita* is brought to provide support to Rav Huna: "We distance fishtraps from the fish according to the full measure of the run of the fish." This case has generated a variety of interpretations, but the gist of the *baraita* is that *halacha* impedes the rights of fishermen to compete with each other. This restriction has a geographic limit - "the full measure of the run of the fish," which the *Gemara* defines as a *parsa* (equivalent to a league). Rashi glosses that this restraint applies "even though he hasn't yet caught the fish and it hasn't come into his hand, because he can say 'you impeded my livelihood.'" That is, the economic grounds for limiting competition extend to the potential, not just actual, livelihood of the fisherman. Similarly, one can prevent the opening of a competing mill because it will lure away anticipated customers. The Talmud concludes, however, that the fish case can be distinguished from Rav Huna's statement. Rashi explains that the fisherman "is certain that he will catch [the fish], and it is as if it has already come into his hands, and thus his fellow fisherman is damaging him, but here [in Rav Huna's alley-mill case] - whoever comes to me will come, and whoever comes to you will come."

An almost-caught fish is still only potential livelihood, but it is more assured profit than potential customers for a mill. However, Rabbenu Gershom insists that the fish must be enticed out of the trap of the first fisherman for the second fisherman to be guilty of unfair competition, which in this case is tantamount to theft. For Rabbenu Gershom, there are no gradations within the category of "potential," and the fish case is one of actual livelihood while Rav Huna's case remains merely in potential. Taking a different approach, R' Yosef Ibn Megas makes a theological

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distinction: If one totally obstructs someone's livelihood, as in the fish case, then one is culpable of unfair competition; but if one only somewhat limits another's livelihood, as with the mills in the alley, then one can claim that "What comes to you is what is meted out to you by Heaven, and what comes to me is what is meted out to me by Heaven."

With the fish case distinguished, the *Gemara* discusses several other *baraitot* which might support or oppose Rav Huma's statement. It concludes that Rav Huna corresponds to the opinion of R' Shimon ben Gamliel, who states in a *baraita* that one resident of an alley can prevent another resident from opening a competing business. However, the anonymous position (presumed to represent the majority) in that *baraita* and in other anonymous *baraitot* is that one cannot prevent a fellow alley-denizen from competing.

Rav Huna Brei d'Rav Yehoshua (not to be confused with Rav Huna) elaborates the position of Rabanan: "It is obvious to me that the residents of one city can constrain the residents of another city [from setting up businesses]. If they pay taxes (to the same government), they cannot be restrained. A resident of an alley cannot constrain another resident of the same alley." However, Rav Huna Brei d'Rav Huna asks, What about residents of different alleys (in the same city)? The question ends with a *teiku* or aporia.

Tosafot Rid brings an obvious question: if an outsider who pays taxes has the right to compete, why isn't it obvious that a city dweller living in a different alley has the same right? The Tosafist Rabbenu Yitzhak suggested that this city dweller might not pay taxes. Rid rejects this position, suggesting nonresidents are only allowed to open competing businesses at the edge of the city, not in an inhabited alley. Their case accordingly does not settle the issue of whether the resident of an adjoining alley is free to compete. As for *halacha l'maaseh*, the Rabad quotes an anonymous position that we prevent the competition, because the resident of the other alley "entered the borders of his fellow." However, most other *rishonim* decide that, given that the question is unresolved, we don't prevent this competition.

The *Gemara* then gives exceptions to the above general rules. One is that if visiting merchants are forced to stay in the city to collect debts, they may continue trading enough to maintain their livelihood. Mordechai, in a related point which resonates with his position in medieval Ashkenaz, and with our current season leading up to Tisha B'Av, remarks that competition restrictions don't apply to refugees fleeing persecution, at least until they can return to their homes.

Is *halacha* in these areas driven by a coherent economic policy, or are all these rules constructed ad hoc? This meta-question is addressed creatively by R' Yosef Ibn Megas. R' Ibn Megas provides the *sevara* that the underlying consideration of these rulings is the interest of consumers. Therefore, outside merchants cannot be prevented from doing business in a city if they are offering products that are at a lower price, or are of a higher quality, than those found in the local market. In modern terms, a free market is the best way to drive down prices and benefit customers.

Ramban, however, rejects R. Ibn Megas' position. His argument is as follows: Rav Huna Brei d'Rav Yehoshua explicitly allows a city to restrain outsiders from competing with locals. But competition automatically lowers prices! Therefore, it cannot be the case that benefit to consumers automatically overrides legal restraints on competition. Ramban contends that if prices seem too high, they should be lowered through internal economic restrictions such as price-ceilings or fostering internal competition. Nimukei Yosef in response offers a version of R. Ibn Megas' position, arguing that the prices of the visiting merchants must be *significantly* lower to generate a right of competition.

Rabbi Klapper suggested that Ramban and Nimmukei Yosef represent two sides of a classic economic debate: What should happen when outsiders have a cost advantage so significant that, if they compete freely, they will wipe out local businesses? Ramban held that the local economy should be protected, and local consumers must forgo the benefits of lower prices in such cases. Nimmukei Yosef, by contrast, held that these are *the* cases in which free competition must be allowed. Both Ramban and Nimmukei Yosef agree, however, that outside competition can be prevented when outsiders have no cost advantages, as the city can, if it chooses, artificially obtain whatever consumer benefits would naturally result from free competition.

Our question, as we continue to study, is to what degree the economic conceptions or values of the various *halachic* sources correspond to the economy in which we find ourselves here and now. Tentatively, we might relate R' Ibn Megas to an international laissez-faire approach, while the Nimukei Yosef might give more consideration to the potential damage caused by globalization. *Shabbat Shalom!*

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