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Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

WHO GETS A VOTE IN ORTHODOXY?

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Once upon a time the financial and religious elites discovered that they had shared interests. Each of them also felt unjustly tied down by a democracy with broad suffrage, like Gulliver among the Lilliputians. So they made a deal to support a constitutional amendment that would make eligibility to vote depend on having adequate property and education.

This is not a Marxist fable, but rather a sh'eilah asked to Rabbi Menachem Mendl Krochmai in the seventeenth century. Here is the complete text of the question (Shut Tzemach T'zekek (kakadmon) #2):

I was asked

by a community whose practice forever has been to reach all communal decisions regarding the hiring/ accepting of a rabbi, chazan or shamash on the basis of agreement of all taxpayers.

Similarly, they chose heads and representatives of the community, and the gabbaim, and the beadles, on the basis of a lottery among all taxpayers.

Now some of the dignitaries of the city wish to establish a new practice, that all communal matters will no longer be directed by all taxpayers great and small, as has been the case up until now,

but rather at the direction of those who are distinguished because they pay a great deal in taxes, or else that they are distinguished in Torah.

They wish to decide how much one must pay in taxes in order to be among those who count when determining whether the community has accepted a representative, or to stand as a candidate for the positions chosen by lot,

or at the least to require that a person be ordained as a chaver even if he is among those who pay the least in taxes, so that people who are not bnei Torah and also pay little in taxes will be excluded from the lottery.

They offer this rationale for their words:

Since most communal needs involve decisions about spending money, how can it be proper that the opinion of the poor should be equal to that of the rich?! Also, how can it be proper that the opinion of an

am haaretz should be equal to that of a chaver, if he has no advantage in wealth?!

They add a further peg for their words, that all the great and important communities practice thus, and why should they be less than them?!

But the poor, the masses of the people, cry out asking why their rights should be diminished when they pay their taxes and give their fair share, and even though the rich give more, still the little the poor give causes them more hardship than what the rich suffer by giving more.

The poor add

that the current practice is a continuous ancestral custom from days of yore, and since custom can even uproot law, how can it be permitted to alter custom?!

Let our teacher instruct us as to whose position is legally correct.

Rabbi Krochmal's answer begins with an idealistic defense of the poor's equality. His tag line is the concluding Mishnah of Masekhet Menachot:

נאמר בעולת הבהמה "אשה ריח ניחוח",

ובעולת העוף "אשה ריח ניחוח",

ובמנחה "אשה ריח ניחוח" –

ללמד שאחד המרבה ואחד הממעט,

ובלבד שיכין אדם את דעתו לשמים:

Scripture writes regarding the olah animal offering "a burnt sweet savor";

and regarding the olah bird offering "a burnt sweet savor"

and regarding the flour offering "a burnt sweet savor" –

to teach you that the one who brings more and the one who brings less are equal

so long as the person directs his intent toward Heaven.

Rabbi Krochmal's argument lays bare the awkwardness – really the indefensibility – of the anti-democratic coalition. What sense does it make to equate financial and religious superiority? This is obviously a power play with no

underlying moral consistency! Political voice should be proportional to religious sincerity, and since the relative size of one's tax bill is no measure of sincerity, there is no basis for giving the rich more political voice than the poor.

But Rabbi Krochmal is not just an idealist – he is also an honest halakhist, and a realist. As an honest halakhist, he acknowledges that there is halakhic precedent for giving those who pay more a larger voice in how the money is spent. As a realist, he acknowledges that the rich must be given some advantage in a democratic system, or else they will overturn it completely. So he devises a compromise that should be very familiar to Americans – a bicameral popular assembly, in which no legislation or appointments pass unless they command majority support among both the rich and the poor.

So much for the economic elites. But Rabbi Krochmal's rejection of their argument seems to strengthen the hands of their strange religious bedfellows – if political power should be proportional to religious sincerity, shouldn't *chaverim* have more say than *amei haaretz*?

Here is Rabbi Krochmal's response:

As for their desire to push aside those who are not bnei Torah – this is also not proper
:The proof of this is from Chagigah 24a
“Which tanna takes the risk of animosity into account? Rabbi Yose, found in the following beraïta ...
Said Rav Pappa:
Which tanna justifies our practice today of accepting testimony from amei haaretz? Rabbi Yose”
and Rabbi Yose's rationale (in that beraïta) is “so that people don't each go build private altars”.
So it is clear that we even accept testimony from amei haaretz out of fear of animosity
lest when they see that we are distancing them, they build altars for themselves
All the more so in our case,
if we go so far in distancing the amei haaretz as to not include them in communal deliberations
certainly they will feel antagonistic toward us, and they will build altars for themselves
and they will separate from the community,
and as a result divisions will multiply among the Jews, G-d forbid.
Therefore it is not proper to do this.

One can distinguish between Rabbi Krochmal's case and the situation of American Orthodoxy today. One can outright reject his ruling. But there is a strong case that he is halakhically correct, and that his law applies directly to our facts. So the burden of proof rests on those who disregard him.

I suggest that Orthodox discourse – within our denominational community, on its margins, and with the Jewish community as a whole – would be dramatically improved if it started from two core principles of his responsum.

The first principle is that people react to being excluded by leaving and “building altars for themselves”, and that halakhic authorities have a responsibility to prevent this. A corollary is that when people are building altars for themselves all around us, we need to figure out what we're doing wrong, and change it, rather than blaming them.

The second principle is that it is legitimate and proper to bend halakhah in order to keep marginally observant people from leaving – not by justifying their nonhalakhic practices, but by treating them as full community members for other purposes, perhaps especially with regard to credibility.

I invite comments and discussions that test whether and how accepting these principles can generate positive change in our rhetoric and policies.

Shabbat Shalom!