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CHARITY VS. SECURITY: A JEWISH ANALYSIS OF A MORAL POLICY QUESTION

Rabbi Aryeh Klapper, Dean

Does Judaism require relatively well-off people to give alms-collectors access to their homes and neighborhoods, even if this increases the risk of crime? In a recent Facebook exchange with me, Jewish social activist Aryeh Bernstein argued passionately that it does. He cited as evidence a Talmudic passage on Bava Batra 7b, and the 13th century Spanish commentary of Rabbi Meir Abulafia (Yad Ramah) thereupon.

I grew up in a dangerous neighborhood. Every apartment had multiple locks plus a security rod set into the floor; all first floor and fire escape windows were barred; even car windows and doors were kept locked and closed at all times when riding. Anything less was an invitation to robbery and violence. So Aryeh's position struck me as implausible.

But I love and respect his eagerness to bring Jewish texts to bear directly on contemporary social issues. I share his concern that zoning and safety laws are sometimes abused to protect the rich from having to realize that the poor exist. Moreover, one of the core values and virtues of halakhic Judaism is that we cannot dismiss arguments rooted in traditional texts simply because we find them implausible; we have to engage the texts ourselves. So let's read Aryeh's arguments, and then the texts, and see if his claim stands up.

Here are Aryeh's words:

"[This] implies a position that the obligations of people with means toward people lacking means do not apply if the other people with means in the neighborhood have reason to believe that that help endangers them. In that light, how do you read Bava Batra 7b, which takes for granted that Eliyahu haNavi cut off a relationship with an otherwise pious person b/c he installed a gate-house, which, as Rashi explains, cut off poor people? And not only does it accept this story at face value, but it imbues it with enough halakhic import as to put significant oqimtot on the mishna there which normalizes construction of gatehouses, insisting that it's acceptable only if it is not actually

locked and does not cut off poor people? How do you read the Yad Ramah there with regard to security concerns overriding concerns of the poor having access? [Here Aryeh inserted an excerpted version of Yad Ramah.]"

I contend that his argument is wholly mistaken with regard to Bava Batra 7b, and that he has simply misread Yad Ramah. Let's learn them together.

Mishnah Bava Batra 7b rules that residents of a courtyard can be compelled by majority vote to pay for the construction of a gatehouse. It records a minority opinion that this is true only for those courtyards that abut a heavily trafficked space.

Majority rule applies only to improvements, and it follows the Mishnah must consider a gatehouse to be an improvement. The Talmudic editor challenges the Mishnah on the basis of a story.

*There was once a pious man who was regularly visited by Elijah.
When he built a gatehouse, Elijah ceased to visit him.*

The challenge assumes that morally odious constructions cannot be considered improvements for the purposes of this law. Therefore, since Elijah's displeasure indicates moral censure, a gatehouse cannot be considered an improvement. Why, then, does the Mishnah consider it one?

The Talmud responds by distinguishing among gatehouses. The relevant distinctions are whether the gatehouse is built inside or outside the courtyard entrance; whether the gatehouse has a door at its entrance; whether the door has a lock; and whether the lock is on the inside or the outside. Texts and commentators differ as to which factor or combination of factors make the gatehouse an improvement, and which make it odious.

Why would a gatehouse be odious? Rashi explains that Elijah objected because “it is a barrier to the poor, who shout but their voices are not heard”. So there is no question that the poor need to have vocal access to the courtyard. What about physical access?

Why would a gatehouse be an improvement? Rashi explains that it serves “so that the guard of the entrance can sit there in the shade and distance the public from looking into the courtyard”. In other words, the assumption throughout is that the courtyard has a guard at its entrance who will prevent outsiders from gaining entrance.

Do those outsiders include the poor? Rashi explains that a gatehouse built outside the courtyard entrance is fine, but one built inside “is a worsening, because the door of the courtyard is locked and the poor person shouts but the gatehouse within blocks his voice”. An external gatehouse is not problematic, so long as it is openable from the outside, because the poor can still shout from the courtyard entrance. This is true even though the courtyard entrance itself is locked.

In other words: No one considers allowing any outsiders physical access to the courtyard, let alone to the private dwellings that surround it. There is properly a locked door to prevent that, and also a guard. However, even if the guard sits in a gatehouse outside the courtyard so as to discourage voyeurs, he must still allow the poor to stand at the entrance and shout for alms.

A courtyard is a collection of private dwellings surrounding a shared public space. The best modern analogy is a condo apartment building, or perhaps a gated community. To satisfy Elijah, it seems that there must be an intercom system to which the poor have access. No one suggests that the owners must give the poor physical access.

Rashi’s explanatory framework seems to be almost universally accepted. The exception is Rabbi Abulafia, to whom we now turn.

Yad Ramah does not mention a guard. He also contends, in contrast to Rashi, that an internal gatehouse is never problematic. Presumably he is not worried that the internal wall will have a serious acoustic dampening effect. An external gatehouse is problematic only if it has a door that cannot be easily opened from the outside.

Here Rabbi Abulafia wonders: How is an external gatehouse which can be easily opened from the outside an improvement? If the poor can get in, can’t thieves and robbers get in along with them?!

His response is that we are discussing a case in which the courtyard itself has a door that locks from the inside.

But, he continues, if the gatehouse serves no security purpose, what use is it?!

He answers that even an openable door discourages animals and casual passers-by from entering – on other words it protects against vermin and violations of privacy.

So Rabbi Abulafia agrees with Rashi that a courtyard can physically exclude the poor; that Judaism insists only that they must be given vocal access to the rich; and even then only to their shared courtyards and not their private spaces.

I can see numerous ways to plausibly distinguish the Talmudic case from many of the cases that raised Aryeh’s ire. For example:

1. a neighborhood is not a courtyard, and nothing in the Talmud suggests that the poor can be barred from any public street
2. the weather is much more severe in the contemporary Midwest than in the ancient Middle East, so that shelter is concomitantly more necessary, and people are less likely to spend time outdoors in their courtyards.
3. The poor are generally less integrated into society than they were, and we need to compensate for that by giving them greater access.
4. Surely it matters how much risk is entailed in giving the poor how much access.

These distinctions can serve to defend his social policy position against the Jewish sources he cited. But to the extent those sources are relevant, they directly oppose his position.