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BECAUSE OVERCOMING FALSE CERTAINTY IS A JOY

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Sometimes ignorance is bliss. In my brief adolescence as a pure Brisker lamdan, prior knowledge of consensus halakhic outcomes rarely prevented me from seeing and appreciating the details and development of a Talmudic argument. Now it happens too often. So it is a source of joy and envy to read an essay by a superb talmid chakham that successfully models a kind of "second naivete", the ability to read a sugya rigorously but as if unaware of the halakhic assumptions that contemporaries have grafted onto it. The essay I have in mind is Rav Moshe Botzko z"l's essay on coerced divorce, "בדין כפיית הגט", found on p. 409 of vol. 2 of his *הגיוני משה*. (My deep gratitude to Rav Shaul David Botzko shlita for gifting me the set.)

Contemporary halakhic discussions generally assume that a coerced get is valid only where halakhah permits coercing it. I speculated a few months ago in a guest shiur at Yeshivat Machanayim that this assumption is unjustified. Perhaps a coerced get is valid whenever the husband is halakhically obligated to give it, whether or not halakhah goes so far as to permit coercion. But at the time I had found no precedent supporting this speculation. On my return from Israel, I was very happy to find that Rav M. Botzko was a precedent.

I found several more precedents last night, and hope to produce a more comprehensive discussion of the issue soon. But rereading Rav Botzko's essay, I realized that I had overlooked or underappreciated the simple beauty of his reading of some primary sources.

Let's begin with Mishnah Arakhin 5:6

חייבי ערכים - ממשכנין אותן;
 חייבי חטאות ואשמות - אין ממשכנין אותן;
 חייבי עולות ושלמים - ממשכנין אותן
 אף על פי שאין מתכפר לו עד שיתרצה,
 שנאמר (ויקרא א:ג) לרצונו - כופין אותו עד שיאמר
 'רוצה אני'.
 וכן אתה אומר בגטי נשים - כופין אותו עד שיאמר 'רוצה
 אני'.

Those liable for oaths to donate a "value" to the Temple – we seize their property as surety;
 those liable to bring sin or guilt offerings – we do not seize their property as surety;
 those liable to bring wholly-burnt or 'peace' offerings – we seize their property as surety,
 even though the sacrifices does not effect atonement for him until he gives it willingly,
 as Scripture says: לרצונו/in accordance with his will – we coerce him until he says "I am willing".

You say the same regarding women's writs of divorce – we coerce him until he says "I am willing".

Rabbi Botzko notes that the Mishnah does not explicitly limit the effectiveness of coercion for divorce to specific cases. He contends that the simplest reading is that coerced divorces are valid in all cases, so long as the husband verbally states that he is willing. One might counter that the Mishnah draws an analogy between obligatory sacrifices and divorces; one can therefore argue that the analogy applies only to obligatory divorces. One might further argue that the Mishnah assumes that coercion is appropriate for all obligatory sacrifices of this sort, and therefore the analogy applies only to divorces where coercion is appropriate. But the burden of proof seems to be on at least the last step (and perhaps the default assumption should be that coercion is appropriate whenever divorce is obligatory).

The language of the Mishnah suggests that the legitimacy of coercion is inherent in the word לרצונו – all that is required is an ultimate verbal statement *rotzeh ani/I am willing*. However, a beraita cited on Talmud Arakhin 21a creates a different impression.

יקריב אותו - מלמד שכופין אותו.

יכול בעל כרחו? ת"ל: לרצונו:

הא כיצד?

כופין אותו עד שיאמר 'רוצה אני'.

He will sacrifice it – this teaches that we coerce him.

This might mean even against his will – therefore Scripture teaches *lirtzono*.

How can these be reconciled?

We coerce him until he says "I am willing".

In this version, the default meaning of *lirtzono* contradicts coercion. The question is whether the conclusion means that the halakhah here is a sort of hendiadys in which *he will sacrifice it* compels us to modify the standard meaning of *lirtzono*, or else that we change the default meaning to include willingness produced by coercion, so long as it is attested by an explicit verbal statement.

The term *ratzon*/will does not appear in the Torah's account of divorce (Devarim 24:1-4). Nonetheless, Mishnah Yebamot 14:1 records the Sages from the asymmetry between husbands and wives as follows: "The woman departs the marriage whether or not *lirtzonah*, whereas the man causes her to depart the marriage only *lirtzono*". I wonder whether the language is specifically chosen to draw the analogy to sacrifices and emphasize the legitimacy of coercion. Regardless, Mishnah Arakhin explicitly presents divorce as parallel to

these sacrifices, which suggests that the outcome cannot be grounded exclusively in Biblical interpretation.

Talmud Bava Batra 47b-48a cites beraita Arakhin in the context of a discussion of coercion and will in commercial transactions.

אמר רב הונא:
תליוהו זבין - זביניה זביני.
מ"ט?
כל דמזבין איניש, אי לאו דאניס - לא הוה מזבין,
ואפילו הכי - זביניה זביני.
ודילמא שאני אונסא דנפשיה מאונסא דאחריני?
אלא כדתניא:
יקריב אותו - מלמד שכופין אותו. יכול בעל כרחו?
תלמוד לומר: לרצונו.
הא כיצד? כופין אותו עד שיאמר 'רוצה אני'.
ודלמא שאני התם,
דניחא ליה דתיהוי ליה כפרה!
ואלא מסיפא:
וכן אתה אומר בגיטי נשים, כופין אותו עד שיאמר
'רוצה אני'.
ודלמא שאני התם,
דמצוה לשמוע דברי חכמים!
אלא סברא הוא:
אגב אונסיה - גמר ומקנה.

Said Rav Huna:

If they hung him up (to compel him to sell), and as a result he sold – his sale is valid.

What is the rationale?

Everything that a person sells, if he were not compelled – he would not sell it, and even so – his sale is valid.

But maybe self-imposed compulsion differs from other-imposed compulsion (and therefore even though ordinary sales are valid, sales under physical compulsion from others are not valid)!

Rather, (the rationale for Rav Huna's ruling) is along the lines of the following beraita:

He will sacrifice it – this teaches that we coerce him.

This might mean even against his will – therefore Scripture teaches *lirtzono*.

How can these be reconciled?

We coerce him until he says "I am willing".

But maybe there (=the case of sacrifices) is different, because ultimately he is pleased to be atoned for!?

Rather, (the rationale for Rav Huna's ruling) is along the lines of the later section of that beraita:

You say the same regarding women's writs of divorce – we coerce him until he says "I am willing".

But maybe there (=the case of divorce) is different, because there is a mitzvah to obey the words of the sages!?

Rather, (the rationale for Rav Huna's ruling) is reason:

as the result of his being compelled, he makes up his mind to genuinely transfer ownership.

Rambam Hilkhot Geirushin 2:20 famously provides a beautiful articulation of the rationale "there is a mitzvah to obey the Sages":

זה שאינו רוצה לגרש,
מאחר שהוא רוצה להיות מישראל –
רוצה הוא לעשות כל המצות ולהתרחק מן העבירות,
ויצרו הוא שתקפו,
וכיון שהוכה עד שתשש יצרו
ואמר 'רוצה אני' –
כבר גרש לרצונו.

This one who does not wish to divorce,
since he (nonetheless) wills to be a Jew –
he wills to do all the mitzvot and to distance
(himself) from all transgressions,
and it is his (evil) inclination that has overpowered
him,
so that once he's been beaten to the point that his
inclination was weakened,
and he said "I am willing" –
he has divorced willingly.

It was this Rambam ringing in my head that obscured my vision of the sugya. Rabbi Botzko points out correctly that the sugya initially cites the case of divorce as evidence that ALL coerced sales are valid. This attempted proof makes sense only if ALL coerced divorces are valid!

The Talmud's next step rejects the proof, because maybe divorce is different because of the mitzvah to heed the words of sages. This disproof makes sense only if coerced divorces are valid only when divorce is mandated by sages.

However, the Talmud apparently concludes that Rav Huna's ruling is based on an intuitive/empirical claim about human psychology. One that is accepted, there is no basis for assuming that his ruling does not apply equally to divorce, and it presumably applies to all divorces. Understanding the mishnah as applying only where divorce is mandated prevents divorce from serving as a precedent for Rav Huna, but once Rav Huna is established, his ruling should prevent us from so limiting the Mishnah.

This is certainly not the end of the discussion. For example, the Talmud's next step seems to reinstate the limited reading of the Mishnah. However, this next step is itself rejected by Talmud Gittin 88a, so the issue may depend on which sugya we accept. We have also offered no explanation yet for why Rambam offers a rationale that seems to apply only to the limited reading. (Rabbi Botzko assigns this to the controversial category of explanations that Rambam provides for laws because they are pedagogically useful even if legally imprecise.) Nor have we discussed whether the argument in this essay can or should have any practical halakhic implications. All that will *iyH* be forthcoming. For this week, I want to focus on the points that I had missed – that the logic of the sugya in Bava Batra requires an initial belief that coercion is generally compatible with the requirement that divorce be willing; that this is a plausible reading of Mishnah Arakhin; and that the Talmud's final explanation of Rav Huna seems to support rather than reject that initial belief.

Shabbat Shalom!

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