

Should “pshat” affect psak?

Last week I was asked by a couple preparing for a small wedding whether the necessary minyan at the ceremony could include the groom. The answer seemed straightforward – on Ketubot 8a we read

א"ר נחמן אמר רב: חתנים מן המנין . . .

Said Rav Nachman: Grooms count in the minyan and similarly on Ketubot 8b

. . . אמר רבי יצחק אמר רבי יוחנן: מברכים ברכת חתנים בעשרה וחתנים מן המנין . . .

Said Rabbi Yitzhak said Rav Yochanan: One makes the “Blessing of Grooms” in the presence of ten, and grooms count in the minyan.

To the best of my knowledge these Talmudic statements are the undisputed Halakhah today, and have been accepted by all post-Talmudic authorities.

Nonetheless, I found myself uncomfortable giving that answer? Why? Because I knew that the standard source for requiring a minyan is Megillat Rut 4:2

וַיִּקַּח עֲשָׂרָה אַנְשִׁים מִזְקְנֵי הָעִיר
וַיֹּאמֶר שְׁבוּ פֹה
וַיֵּשְׁבוּ:

He (Boaz) took ten men from among the elders of the city.
He said: “Sit here!”
They sat.

Boaz is the relevant groom, and he takes ten *other* men. How can we derive from here that the necessary minyan may include the groom?

I told them that the clear Halakhah is that the groom counts, but that I have an idiosyncratic position that would prefer a minyan in addition to the groom, and that accordingly I would prefer if they didn’t disinvite a potential eleventh.

But now I felt uncomfortable the other way. What ground did I have for giving my discomfort even trivial halakhic significance? I could not even claim that I was raising a new problem, as here the Arukh HaShulchan Even Haezer 62:11 writes:

וילפינן לה מקרא דבועז דכתיב ויקח עשרה אנשים וגו' [כתו' ז' ב]
ומ"מ אין ללמוד מפסוק זה דבעינן עשרה לבד מהחתן
דאין זה סברא כלל

We derive this from the verse regarding Boaz, as Scripture writes “He took ten men”
But nonetheless one should not learn from this verse that we require ten apart from the groom, as this is simply unreasonable.

This is a harsh dismissal of my concern! Presumably Arukh HaShulkhan thinks the verse is a mere mnemonic.

Happily, however, I discovered that Arukh HaShulchan was likely responding to someone who shared my unreasonability.

Here is the key passage from Ketubot 7a.

אמר רב נחמן: אמר לי הונא בר נתן:
תנא:

מנין לברכת חתנים בעשרה?

שנאמר "ויקח עשרה אנשים מזקני העיר ויאמר שבו פה".

ורבי אבהו אמר מהכא: (תהלים ס"ח) "במקהלות ברכו אלקים ה' ממקור ישראל".

ורב נחמן בהאי קרא דרבי אבהו מאי דריש ביה?

מיבעי ליה לכדתניא:

היה ר"מ אומר:

מנין שאפילו עוברים שבמעו אמרו שירה על הים?
שנאמר "במקהלות ברכו אלקים ה' ממקור ישראל".

ואידך?

אם כן לימא קרא 'מבטן' - מאי "ממקור"? על עסקי מקור.

ורבי אבהו בהאי קרא דרב נחמן מאי דריש ביה?

ההוא מיבעי ליה למידרש "עמוני" ולא עמונית; "מואבי" ולא מואבית.

דאי סלקא דעתך לברכה, לא סגי דלאו זקנים!?

ואידך?

אי סלקא דעתך למידרש, לא סגי דלאו עשרה!?

אין - לפרסומי מילתא.

Said Rav Nachman: Huna bar Natan said to me:

From where in Tanakh do we learn that the Blessing of Grooms requires ten?

As Scripture writes: He took ten men from among the elders of the city. He said: "Sit here!".

But Rabbi Abahu learned it from here: "In *kehillot* bless Elokim; Hashem from the *makor* of Israel" (*makor* = womb, which becomes 'matters of procreation').

How did Rav Nachman understand Rabbi Abahu's verse?

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How did Rabbi Abahu understand Rav Nachman's verse?

Boaz needed the ten so as to establish the interpretation that Scripture bans Moabites and Ammonites, but not Moabitesses and Ammonitesses, from marrying into the Jewish people (even after conversion);

if you were to think that Boaz needed the ten for the blessing, would it not be sufficient to have ten men who were not elders?!

How would Rav Nachman respond?

If you were to think that Boaz was establishing an interpretation, why would he need ten elders (rather than a court of three)?!

He needed them to publicize the matter.

While Rav Nachman derives the minyan requirement for Birkat Chatanim from Boaz, Rabbi Abahu has an entirely different source text.

Responsa Knesset Yechezkel makes the following argument:

- A) Rambam Hilkhoh Berakhot chapter 2 cites R. Abahu's proof text rather than Rav Nachman's.
- B) Kessef Mishnah challenges this choice.
- C) The answer is that Rav Nachman would not count the groom as part of the ten, as Boaz clearly did not count himself, but Rabbi Abahu would, and so Rambam correctly quotes the verse that accords with the halakhah that the groom counts.

So I could frame my discomfort as a desire to account for Rav Nachman's position as understood by Rambam as understood by Knesset Yechezkel, and it would perhaps be within the bounds of standard psak to pay even a universally rejected Talmudic position some slight deference.

However, Responsa Tzitz Eliezer 13:18 points to two major difficulties with Knesset Yechezkel:

- a) Rav Nachman is one of the Amoraim cited as explicitly counting a groom to a minyan
- b) There is no such Rambam or Kessef Mishnah

Each of these arguments seems conclusive and sufficient. I would welcome explanations as to what sources Knesset Yechezkel might perhaps have misremembered as Rambam or Kessef Mishnah, or references to an edition of Rambam that he might have been citing.

However, the author of footnote 153 to the edition of **Nachalat Shiv'ah** found on the Bar Ilan CD sees a) as generating a contradiction within Rav Nachman. He seeks to resolve the contradiction by suggesting that Rav Nachman agreed with Rabbi Abahu that the minyan was really needed to publicize the permission to marry converted Moabitesses, but that the way to publicize the permission was to actually conduct such a marriage. Boaz counted in the minyan for the Birkat Chatanim, but the eleventh man was needed for the publicity.

The problem with this argument, as with the many similar arguments seeking to distinguish between Birkat Nisuin as absolutely requiring a minyan (to which the groom counts) and Birkat Erusin as requiring one only lekhatchilah (to which the groom does not count), is that once the eleventh man was present, there is no way to establish that he is not necessary – one can posit that, but one cannot demonstrate it. For that matter, once Boaz needed a minyan for one aspect of the ceremony, one cannot use the verse to prove the necessity of a minyan for any other part.

Nonetheless, here is the Shulchan Arukh Even Haezer 34:4 with the commentary of Chelkat Mechokek:

שלחן ערוך
ברכת ארוסין (ז) צריכים עשרה, לכתחלה.
חלקת מחוקק סימן לד ס"ק ז

(ז) צריכים עשרה לכתחלה - כלומר מלבד שני עידי קדושין צריך עוד שמונה אנשים אף קרובים להיות אצל הברכה:

Shulchan Arukh

Birkat Erusin requires 10 lechatkhilah.

Chelkat Mechokek:

Meaning: aside from the two witnesses, one needs another eight men – even if they are relatives – to be present for the blessing.

It seems clear to me that Chelkat Mechokek does not include the groom in his 10, as if he did, he would say that one needs seven in addition to the groom and the witnesses.

Furthermore, Arukh HaShulchan's own rationale for counting the groom in the minyan for Birkat Nesuin is

דכיון דהם ברכות שמחה והוא שרוי בשמחה למה לא יהא מן המניין

Since these are blessings of joy, and he is steeped in joy, why should he not count?

It is not obvious that this rationale applies to Birkat Erusin, which is a birkat hamitzvah, and therefore may require, at least lechatkhilah, an *audience* of 10. (This may have implications for the question Tzitz Eliezer above as discussing, namely whether the mevarekh counts in the minyan for birkat hagomel).

Now it may be that Chelkat Mechokek simply slipped, but if he did, I suggest that it was a Freudian slip betraying that he shared my discomfort with the relationship between the law and its putative source. I am therefore fairly comfortable using him to justify my discomfort.

Two asides:

- 1) I am astonished that no one seems to discuss the question of whether the kiddushin itself, in addition to the berakhot, requires a minyan lechatkilah.
- 2) I hope in the future to address the dispute as to whether it is plausible to even consider requiring a minyan for marriage even bediavad, as opposed to assuming that halakhah must allow for the possibility of marriage in tiny communities.

On a completely different topic:

I hope next week to address the MTA abuse scandal at length. For now, 3 brief comments:

- a) The Forward was to my mind certainly justified in publishing credible allegations that YU had handled these issues badly. I was less confident of the propriety of publishing the name of someone who had only one anonymous accuser (although others have apparently since come forward), but I think that issue needs to be thought through carefully and with reference to the details of the case.
- b) Gary Rosenblatt's Jewish Week column this week "What I've Learned Since Lerner" is courageous, thoughtful, and powerful, whatever weight – if any - one ends up giving in practice to the concerns he raises. I am grateful to him for being willing to raise them publicly.
- c) The Forward reported today that the independent investigation YU has supposedly commissioned may end up reporting orally and exclusively to the YU Board. This is clearly an utterly unacceptable resolution. I am not yet prepared to join an unequivocal call for full publication of a complete report, assuming that such a report will in fact be prepared and could be trusted, but even if I were to agree that some editing might be permitted to prevent the unnecessary sullyng or destruction of reputations, that editing cannot be done by anyone who has any association with the institution. I would consider an independent panel of experienced secular judges, for instance. The nature, content, and authors of any advice that might be given such a panel as to the laws of lashon hora etc. would require much thought, and again at the least could not come from anyone associated with the institution.

Shabbat shalom!

Aryeh Klapper