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"Taking Responsibility for Torah"

(HOW) DOES HALAKHAH TAKE ECONOMIC AND OTHER INEQUALITIES INTO ACCOUNT?

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The Talmud (Moed Qattan 27a-b) records a series of rabbinic decrees made to protect the dignity of the poor in the contexts of burial and bereavement. For example, "Originally, when they brought (food) to houses of mourning, the rich would use baskets of silver or gold, while the poor used baskets of peeled willow twigs." Rabban Gamliel led by example and ordered that his own burial shrouds be plain linen. The concluding Mishnah of Masekhet Taanit teaches similarly that the daughters of Jerusalem all wore borrowed white dresses to the public celebrations of 15 Av "so as not to embarrass she who had none."

However, this does not mean that halakhah always prioritizes the dignity of the poor above other values. Mishnah Bikkurim 3:8 records that "The rich brought their *bikkurim* in baskets of silver or gold, while the poor brought them in baskets of peeled willow twigs." Tosafot Yom Tov asks: Doesn't this embarrass the poor? Why didn't they decree that the rich had to use willow baskets, as they did regarding mourners? Some suggest that the honor of the Temple took precedence. Maybe halakhah is most interested in the dignity of poor mourners, or would-be brides. Or perhaps the Rabbis left *bikkurim* alone because the baskets were given to the *kohanim*, and therefore the rich paid directly and proportionately for their ostentation.

The modern equivalents of gold and silver baskets may be etrogim from family trees descended directly from King David's, or matzot made so labor-intensively that they are worth their weight in gold. These extravagant products may support businesses that employ many people who would otherwise be poor. The risks are that the poor may be embarrassed to eat their machine matzahs or carry their asymmetrical etrogim, and disengage from the community, or worse, that the non-rich will be driven to spend unsustainable sums on mere halakhic baubles.

All these are cases where halakhah clearly requires nothing beyond the capacity of the poor. What happens, however, when **baseline** halakhah becomes too heavy a burden on the poor, so that they need to avail themselves of halakhic leniencies? Do the non-poor have a right to keep baseline halakhah, even if that will embarrass the poor, or should halakhic authorities – as best they can – seek to

compel everyone to adopt the relaxed standard? (Note that Deborah Klapper argues that the same question often arises in the context of disabilities, as for example use of Shabbat elevators.) Is it a Torah value to ensure that the poor can freely invite the rich to meals, or to borrow their lulavim?

A fascinating responsum from the year 1852 addressed this issue head-on. Rabbi Yaakov Meir ben Chayyim Padua, Rabbi of Brisk, was asked to allow the eating of a type **בעבליך** (= chickpeas?), a type of *kitniyot*, because the poor would find little else to eat otherwise. Likely there was a potato shortage. Rabbi Padua easily reaches the conclusion that this is permissible for the poor. He then goes further:

If you were to say: Here too we will say this because circumstances are pressing (*sh'at hadchak*), so let us permit this exclusively for the poor who have nothing else to eat, but not for the burghers or the rich -

It would be improper to do this, because in truth there is no intrinsic prohibition, or even trace of a prohibition, in this (eating *kitniyot*), just (it was prohibited) for some reason they had, that one might come to error or something else (see Pri Chadash 453), and if we permit it for the poor and not the rich – the poor will have their joy of yom tov removed, because they will say: "There is something prohibited about this, but they permitted it to them because of the pressure of circumstances," and they will be denied the joy of yom tov,

We find that Chazal were afraid of such consequences, as they say in Tractate Niddah "If so, his heart (conscience) will trouble him and he will separate (from his wife) and not fulfill the commandment of procreation" -

so too here, if we permit for the poor alone, some of the G-d-fearing will have their hearts trouble them, and they will avoid eating **בעבליך**, and thus they will be denied the joy of yom tov. (Teshuvot Maharim miBrisk 48)

Rav Dovid Tzvi Hoffman makes a similar argument in Responsa Melameid L'Hoil 1:58 (the responsum is undated, so late 19th-early 20th century). German public schools met on Saturday. Rich Jewish parents could afford tutors for their children to make up the material missed, but the poor would fail if they were absent. Rabbi Hoffman writes:

You might suggest that the Jew should hire a private tutor to teach his child the material covered in school on Shabbat. Unfortunately, because of our many sins most Jews are poor and incapable of affording the expense of a private tutor for the Shabbat material. Therefore, since the learning is a prerequisite for making a living, it is certainly considered a “slight mitzvah” and universally considered permitted, just like arranging an apprenticeship for a child is permitted in Shulkhan Arukh Orach Chayyim 307:5.

I say further that there are places where even those who can afford a private tutor would do better to send their children to school on Shabbat just as the poor people are compelled to do. An example would be those places where many of our nation, because of our many sins, desecrate the Shabbat by writing, and Jewish students who don't write on Shabbat are rare. If there are more Jewish students committed to not writing on Shabbat, their hands will be strengthened – “they will help one another and say to each other: “Be strong!” If the G-d-fearing students are few, though, we must be concerned that – Heaven forbid – they will not withstand this test of their commitment. Certainly at least the weakest of them will falter. It is appropriate for the rich to do something that doesn't even amount to a “small prohibition” in order to save their Jewish brethren from “great prohibitions.”

I don't mean to say that Maharim miBrisk or Rav Hoffman were necessarily correct in their rulings, or that they expressed a dispositive halakhic principle. For example, Maharim MiBrisk's ruling was lovingly criticized by Rabbi Malkiel Tenenbaum (Divrei Malkiel 1:28) writing in response to a potato shortage in 1880. Rabbi Tenenbaum permits all kitniyot, but only for the poor.

Since the whole basis of the leniency we have explained with Heaven's help is the pressure and compulsion of circumstances – therefore one may not permit except for the poor who endure that pressure, and not for the rich, and everyone who can make the effort not to eat *kitniyot* without experiencing that pressure is certainly forbidden to eat *kitniyot*.

But Rabbi Tenenbaum then provides another reason for insisting that the rich share the halakhic lot of the poor:

But according to what we are told, the gaon Maharim miBrisk spoke well in accordance with his times, when food was enormously expensive and there was no money, and certainly that tzaddik realized that there were many people who were ashamed to proclaim their poverty, and kept up the appearance of wealth, so that it would be humiliating for them to eat *kitniyot*, and they would instead endure the humiliation of hunger on yom tov – therefore he garbed himself in righteousness, as befit him and commanded that all of them eat, as this almost touched on *pikuach nefesh* according to what I've heard of the great expensiveness and hunger of that time, and in such circumstances we can say that “Better for a *chaver* to violate a lighter prohibition, etc. (= if he thereby prevents an *am haaretz* from violating a greater prohibition).”

Our ongoing crisis will pose many similar dilemmas. Challenges of supply may put inflationary pressure on Pesach products (although so far the news is good), and people who have for years been treated by relatives to Pesach vacations will now be forced to make their own sederim, and find it hard to maintain the yom tov dignity that they are accustomed to. For example, my grandfather z"l refused to join us at the YU Sukkah for yom tov the year after they switched to serving on disposable dishes. Yet I don't have Pesach china, or Pesach dishwashers.

Perhaps more seriously, the halakhic options available to the elderly and the immunosuppressed, or the quarantined, may become very different than those available to the rest of us. Specifically with regard to mourners, can we say that they must rely on options for kaddish that would be insufficient for the rest of us? Perhaps yes; perhaps this is an opportunity to correct the magical thinking that has arisen around kaddish. But no such arguments would have applied to the megillah, or will to Birkat Kohanim on yom tov. But perhaps we are less concerned outside the sphere of mourning?

Each halakhic issue in any case requires separate treatment. I hope only to have shown that poskim can and should think about class distinctions and other social consequences as they help us navigate these challenging times.