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"Taking Responsibility for Torah"

ONE LAST? TRIP TO THE SBM VINEYARD

by Rabbi Aryeh Klapper

(Please note: My first column in the international edition of Kiddush Times came out this week. Such a column requires stripping all vestiges of baroque style from one's writing – I may have overcompensated here. Also, you may note that this covers some of the same material as last week's dvar Torah; I don't vouch that it is wholly consistent with it.)

It is a truth universally acknowledged that every naked Talmudic assertion is in need of an explanation. What is only intermittently acknowledged is that such explanatory clothing often makes its way into the text. Moreover, aggressive readers may sometimes mistake an original explanation for a repainted fig leaf and mistakenly disregard or even remove it.¹

Devarim 23:25 reads:

When you enter into the vineyard of your *reia*,
you may eat grapes as you will, to your satiety
but to your container you must not give

Let us assume that the "you" here is a laborer hired to pick the grapes. A beraita on Bava Metzia 87b provides a midrashic gloss:

"Into the vineyard of your *reia*" – and not in the vineyard of a nonJew.

Since the verse contains both a permission and a prohibition for those entering a *reia*'s vineyard, our first interpretive question therefore is whether the midrash intends to exclude the non-*reia*'s vineyard from the permission, the prohibition, or both.

However, the Talmud instead asserts that this gloss fits well with to the position "robbery of a gentile is forbidden", but not with to the position that "robbery of a gentile is permitted". Why should this be so? The text of the Vilna Talmud fully clothes the assertion:

הניחא למאן דאמר גזל נכרי אסור –
היינו דאיצטריך קרא למישרי פועל,
אלא למאן דאמר גזל נכרי מותר –
השתא: גזילה – מותר; פועל – מיבעיא!?

This is easily compatible with the position that "robbery of a gentile is forbidden",

that's why we need a verse to permit the laborer,
but according to the position that "robbery of a gentile is permitted" –
if robbery is permitted, do we need (to mention) the laborer?!

The Vilna text is supported by manuscripts and prior published editions. However, the manuscripts Firenze 8-9 and Hamburg 165 leave the assertions naked, omitting the bolded sections above and substituting for the last line:

"what can be said (to explain this midrash)?!"

RITVA seems to have had this version, and therefore inserts his own commentary to explain the first assertion

הניחא למ"ד גזל גוי אסור –
פירוש:

איכא למימר דהכא נמי לא יאכל,
דאחשביה רחמנא כגזל, כיון דאיהו לאו בר מצוה הוא.

This is easily compatible with the position that "robbery of a gentile is forbidden" –
meaning:

we can say that here too he must not eat,
because the Torah considers it like robbery, since (the Gentile employer) is not subject to *mitzvot*.

What he seems to be saying is that a Jewish grapepicker may eat the grapes he is picking for Jewish employers because they are commanded to allow him to do so, but the same action is theft-like from nonJewish employers because they are not subject to that command.

The Talmud responds to this challenge by explaining that the position "robbery of a gentile is permitted" would use the word *reia* to exclude a vineyard belonging to *hekdes*. RITVA understands this to mean that this position uses the word exclusively to exclude vineyards belonging to *hekdes*, presumably because it permits the harvester to eat in a nonJewish employer's vineyard as no worse than robbery, whereas the position that "robbery of a gentile is prohibited" uses the word to exclude vineyards belonging to either *hekdes* or nonJews².

¹ This process may even happen iteratively, but I don't see that as a relevant possibility for this essay.

² One might explain that one position is working within a hermeneutical framework that sees words as technical *ribuim*/inclusions or *miutim*/exclusions, meaning that any limiting term such as *reia* is intended to include or exclude precisely one other case. The other position is reading *reia* in ordinary legal language – it excludes everything that does not fit within its meaning.

ולמ"ד גזל גוי אסור – תרתי ש"מ: רעך – ולא של גוי ושל הקדש, דלאו רעך הוא.

So far as I can tell, the midrash understands all other Biblical uses of *reia* as intended to exclude all cases that are not *reia*, although the definition of *reia* may be disputed and may vary contextually.

The upshot according to RITVA is that whether a Jewish employee can eat the grapes of a nonJewish employer depends on whether one holds generally that “robbery of a gentile” is permitted or forbidden. The only anomaly is his interesting use of “the Torah considers it like robbery” when describing the prohibition. Why not just “It is robbery”?

I suggest that RITVA is referring to a sugya on Sanhedrin 57a. The sugya there begins from a beraita that states:

והתניא:
על הגזל
= גנב וגזל . . . וכן כיוצא בהן –
נכרי בנכרי, ונכרי בישראל – אסור;
וישראל בנכרי – מותר.

. . .
כיוצא בו בגזל, מאי היא?
אמר רב אחא בר יעקב:
לא נצרכה אלא לפועל בכרם.
פועל בכרם אימת?
אי בשעת גמר מלאכה - התירא הוא;
אי לאו בשעת גמר מלאכה - גזל מעליא הוא?!

. . .
אלא אמר רב פפא . . .

But a beraita teaches:
[A nonJew is obligated] regarding robbery
[meaning:] theft or robbery . . . and other like them –
A nonJew against a nonJew, or a nonJew against a Jew –
forbidden;
a Jew against a nonJew - permitted.

. . .
“things like robbery” – what is the case?

Said R. Acha bar Yaakov:

The phrase is used to cover the case of a worker in a vineyard.

A worker in a vineyard at what stage?!

If at the time of harvest – this is permitted!?

If not at the time of harvest – this is actual robbery (and not merely “like it”)!?

Rather, said R. Papa . . .

The *beraita* in that sugya teaches that there is a robbery-like action which is permitted for a Jew against a Gentile, but not vice-versa, and identifies that with the case of the worker in a vineyard. This is exactly what RITVA says in Bava Metzia for the position “robbery of a Gentile is permitted”! It follows that the beraita in Sanhedrin holds that robbery of a Gentile is permitted, and, as the entire sugya is an attempt to explain that *beraita*, the entire *sugya* is constrained by that position.

One might challenge this reading by saying: But doesn’t the Talmud reject the suggestion that the *beraita* refers to the harvester case!?

We do not have RITVA on Sanhedrin. However, RASHI there offers as his first explanation that since the *beraita* leaves out the case where both the quasi-robber and the quasi-robbed are Jewish, and its only permitted case is where the Jew is robber and the nonJew robbed, that implies that the case where both are Jewish is prohibited, which is certainly not true for the harvester. Yad Ramah’s version of the *beraita* seems to have included an explicit statement that the case where both are Jewish is prohibited. Moreover, the Talmud’s final *okimta* for the

beraita is the case of withholding wages, which the Torah explicitly prohibits at least when both are Jewish! So it seems likely to me that RITVA adopted this explanation.

Now to be clear, even if one is convinced by this reading of RITVA, it is possible that the position that a Jewish employer must allow a nonJewish employee to eat while harvesting is true even according to the position that “robbery of a gentile is forbidden”. It’s just that this sugya can’t count as proof if we rule that way, as we should.

Furthermore, this reading of RITVA seems wholly incompatible with the text in the Vilna Talmud and most manuscripts³.

I must also note that Rav Aharon Soloveitchik in his essay “Civil Rights and the Dignity of Man” (a centerpiece of my planned Kiddush Times column next week) argues passionately that regardless of which way we rule in the Talmudic dispute, and regardless of how much we limit the scope of the lenient position, the contemporary halakhic outcome is the same: nonJews must be treated exactly as we treat Jews. Even “Taking and keeping the lost object of a pagan would still be considered an unjust and unfair act inasmuch as it runs counter to the principle of human rights and to the concept of *tzedek*, which must be shown to Jews and non-Jews alike”. I suspect that Rav Aharon would have said the same thing about allowing harvesters to eat, and my instinct is to agree.

Now Rav Aharon, in the same essay, defends distinctions between Jews and nonJews in areas that he sees as unrelated to *mishpat*/justice or *tzedek*/righteousness. I argued to SBM that there might be circumstances in which *mishpat* and/or *tzedek* play out differently within communities and across communities. For example, I suggested that the eternal tension within justice between “to each according to his/her needs” and “to each according to his/her contributions” might properly tilt the first way within a community and the second way when dealing with “outsiders”. What do you think of that suggestion?

I further argued that the permission for harvesters to eat is best understood that way, at least if one focuses on the economic effect of the law. The total compensation paid by employers to employees will remain the same regardless of whether harvesters are permitted to eat; since halakhah has no minimum wage, employers will pay lower wages in anticipation of losses. However, since harvesters are permitted to eat until they are sated, those with greater needs will eat more, and therefore be paid more, than those who arrive less hungry. Do you think my economic analysis is correct? Do you think that economic effect is a core purpose of this law?

Shabbat shalom!

³ Although as of yet I have found only Or Zarua among printed rishonim citing a text like Vilna’s, and nothing else in Or Zarua depends on having that text. Rashi is often read as if he had this text, but, as I hinted at the outset, it seems to me at least as likely that the text developed as an attempt to clarify Rashi. In general, my sense is that the variations we have in Talmud manuscripts do not approach the range that was in front of the rishonim taken as a whole, and therefore that arguments from manuscript silence are generally not willing.