
Essays

JUSTICE, WEALTH, TAXES

A View from the Perspective of Rabbinic Judaism

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ABSTRACT

A story of rabbinic poverty relief serves as the fulcrum of this presentation of a rabbinic perspective on wealth and taxes. The rabbinic move, from biblical to Mishnaic law, places the obligation of poverty relief on the city and suggests that the institutions of the *polis* are the only way to achieve justice on this scale. However, the city must be aware of the individual Other in making policy. In essence the story suggests that when policies ignore the face of an individual stranger, they do not fulfill the demands of justice. This is the rabbinic attempt at threading the needle by walking in the tension between the obsessive asymmetry of the obligation towards the other person and the need for a larger more equitable system of justice which must (by definition) include others.

KEY WORDS: *rabbinics, economic justice, taxes, Talmud, Emmanuel Levinas*

It was always the city that was, in the first instance, the recipient of gifts, or, if not the city, the civic community, the *démos* or the *populus*, of the city. It was never the poor. What one can call a “civic” model of society prevailed. . . . A rich man was praised for being a *philopatris*, a “lover of his home-city,” never for being a *philoptôchos*, a “lover of the poor.”. . . There was little room in such a model for the true urban “poor,” many of whom would, in fact, have been impoverished immigrants, noncitizens, living on the margins of the community.

– Peter Brown (2002, 5)

Doubtless, responsibility for the other human being is, in its immediacy, anterior to every question. But how does responsibility obligate if a third party troubles this exteriority of two where my subjection of the subject is subjection to the neighbor? The third party is other than the neighbor but also another neighbor, and also a neighbor of the other, and not simply their fellow. What am I to do? What have they already done to one another? Who passes before the other in my responsibility? What, then, are the other and the third party with respect to one another? Birth of the question.

– Emmanuel Levinas (1996, 168)

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1. In the Years of Drought

We start in the middle of a somewhat lengthy text in the Babylonian Talmud, on pages 7b–8a of the tractate Baba Bathra, with a short story.¹

Rabbi [Yehudah the Prince²] opened the grain stores in the years of drought.

He said: “Masters of Scripture, Masters of Mishnah, Masters of the Study³ should enter. *‘Amei Ha’aretz* cannot enter.”

Our tale starts with an act of generosity and concern. In “the years of drought” Rabbi opened the grain stores to feed the hungry. The phrase “the years of drought” locates this story very specifically. The specificity, though, is not in relation to a historic time period. While the story is told of a Palestinian sage who lived in the early third century CE, the only evidence of the story is in the Babylonian Talmud, written centuries after the story was supposed to have happened. The historicity of the story is both highly suspect and beside the point.

Further, although there is evidence that there was a drought in Palestine in the first centuries of the common era, the evidence of the impact of these droughts is less conclusive. Daniel Sperber (1974) argues that there is conclusive evidence of drought in Palestine in the third century, and more importantly, that that drought led to famine. Other scholars dispute this conclusion.⁴ What seems indisputable is that drought, as a literary motif rather than a historical datum, is important as a crisis point that exposes moral judgment or its opposite, immoral judgment (see Schofer 2010). The specificity of the story then lies in its moral importance.

From the Bible forward, rain and the lack thereof, as well as abundance of food and famine, are thematized as signs of blessing and punishment, righteousness and wickedness. Numbers 11:13–17 spells this out in the starkest manner possible:

¹ I will be analyzing the story in pieces. The text is based on the printed editions (Vilna 1880–86). Changes to that text based on manuscripts are noted in the footnotes.

² The manuscripts all just have the letter *resh* which is an abbreviation for *Rabbi*, either signifying Rabbi Yehudah the Patriarch, or simply signifying any rabbi. From the continuation of the narrative, in which Rabbi Yehudah’s son takes part speaking to Rabbi Yehudah, it seems likely that the reference is to Rabbi Yehudah the Patriarch.

³ The Hebrew word is *talmud* which obviously does not refer to the Talmud, but rather probably refers to the study of the discussions of Mishnah. Compare the comment of Rashi to B. Sukkah 28a, s.v. *talmud*.

⁴ Compare Garnsey 1988, 43–68 and especially 39: “My answer to the questions ‘How common?, ‘How serious?, is that food crisis was common, but famine was rare.” See also Garnsey 1999, 35: “If shortages were frequent, famines were infrequent.” This concurs with Saul Lieberman’s judgement that “absence of rain at the beginning of the season was not infrequent in Palestine, and prayers for it do not prove that there was a drought during the whole season” (1939–44, 435; cited in Garnsey 1988, 24).

If, then, you obey the commandments that I enjoin upon you this day, loving the Lord your God and serving Him with all your heart and soul, *I will grant the rain for your land* in season, the early rain and the late. *You shall gather in your new grain and wine and oil*—I will also provide grass in the fields for your cattle—and thus you shall eat your fill. Take care not to be lured away to serve other gods and bow to them. For the Lord’s anger will flare up against you, and *He will shut up the skies* so that there will be *no rain and the ground will not yield its produce*; and you will soon perish from the good land that the Lord is assigning to you. (emphasis added)

In addition, the story of Ruth is framed by famine.⁵ The rabbis understood that famine as a judgment on the people and the leaders of the community.⁶ In the Babylonian Talmud, drought is also a marker of judgment and religious crisis.⁷ The introductory phrase “in the year[s] of drought” in a narrative is a sign of a moral problematic to come.⁸ As Jonathan Schofer has written, “Drought becomes a test of virtue for the rabbi and the community” (2010, 112).

Returning to our narrative, from most of the textual witnesses, it is not clear whose grain stores Rabbi Yehudah opened. There are many stories in the Babylonian Talmud which speak of his great wealth (for example, B. Baba Metzia 85a). However, we can also surmise that as the Patriarch, he was responsible for the communal grain stores and that it was these that he opened. One manuscript (Paris 1337) does have the reading “his grain stores,”⁹ which adds a larger degree of generosity, and perhaps control, to this opening.

This act of generosity is immediately circumscribed in the second line. The grain is only for members of the rabbinic guild, those who are marked by having studied the rabbinic curriculum—Torah, Mishnah, and the investigations and inquiries into Mishnah.¹⁰ Those who are not proficient in these disciplines should not enter. (Those who are not proficient are named *‘amei ha’aretz*.¹¹) The difference between inside and outside here could not be more stark: guild members eat whilst non-members potentially starve.

⁵ Ruth 1:1: “In the days when the chieftains ruled, there was a famine in the land.”

⁶ *Ruth Rabbah* (1:1) for example, puns on *shfot hashoftim* (translated as “the chieftains ruled”), saying “Woe to the generation whose judges are judged.”

⁷ See the many stories collected by Sperber 1974 and Schofer 2010, 109–39.

⁸ See, for example, B. Gittin 35a, and my discussion of that story in A. Cohen 1998, 168–73.

⁹ *‘otzrotav* rather than *‘otzarot*.

¹⁰ Vatican 115 adds *ba’alei halakhot ba’alei ‘aggadot* (“masters of law and masters of lore”). This just extends the curriculum.

¹¹ I do not translate this term since it is more textured than simply “the ignorant” or “rabbinically illiterate” in the way its meaning has evolved. The term *‘am ha’aretz* is rather benign in its early biblical career (Abraham bought a burial ground for Sarah from Efron who was called an *‘am ha’aretz*) where it probably meant “native”—as its literal meaning suggests. By the time of the Bavli there are vociferous denunciations of the *‘am ha’aretz* (for

The tension portrayed in this story is identical to that noted by Peter Brown in the passage from his *Poverty and Leadership in the Later Roman Empire* (2002) that serves as this essay's epigraph. Who was considered "we" when the rabbis thought of communal responsibility? While Brown claims that around the time of Constantine there was a shift towards the recognition of the poor as a class (over and above the longstanding distinction between citizen and non-citizen), and that this shift was a result of Jewish and Christian influence, it seems that in this Jewish (rabbinic) text of the seventh century¹² or so, the shift is still contested¹³—or, perhaps, the memorializing of that struggle was still considered important. Before we continue with our story, we need to digress a bit.

2. Communal Justice and the Rabbinic Moment

The shift from obligations to the poor as they appear in the Torah to obligations to the poor in rabbinic literature is not a simple one.¹⁴ There are four different biblical obligations to the poor, all of which are agriculturally based, in addition to more general commands for poverty relief.

The agricultural tithe, or *ma'aser*, usually supports the Levites as they (as pictured by the biblical authors) do not have a steady means of support. They are more or less landless since their tribe is not given an estate amongst the tribes of Israel. Every third year (in a seven-year cycle) the tithe is dedicated to the poor in general.

At the end of three years you shall take out all the tithe of your yield in that year and set it down within your gates. And the Levite shall come, for he has no share and estate with you, and the sojourner and the orphan and the widow who are within your gates, and they shall eat and be sated, so that the Lord your God may bless you in all the work of your hand that you do. (Numbers 14:28–29)

The Levite, then, in the third year is supported among other groups of poor people in Israel.

example, B. Pesahim 49b) which suggest to me that something else was going on. I would suggest that the *amei ha'aretz* were non-rabbinic Jews who did not accept rabbinic authority.

¹² While the story is *about* Palestinian rabbis who lived in the third century, the earliest appearance of the story is in the Babylonian Talmud and therefore I take it as saying something about rabbinic attitudes, conflicts, or cultural negotiations in the seventh century in Babylonia and not in the third century in Palestine.

¹³ This will become apparent in the continuation of the story.

¹⁴ See Loewenberg 2001, especially 127–54. Compare these comments on the issue of property rights and the obligation to prevent loss: "From a historical point of view, it is possible to note the development of Jewish law on our topic from biblical to Rabbinic times, as the rabbis deliver a much more nuanced (and indeed thoughtful?) rubric than does the Bible; on the other hand, the biblical project may not be primarily legal in the usual sense of the term" (Blidstein 2009, 209).

In addition to the tithe, there are three more agriculturally based forms of charity. The clearest of these is *pe'ah*, or corner. This entails a prohibition against harvesting the field totally. There is an obligation to leave a corner or an edge of the field intact for the poor to harvest. This is articulated in Leviticus 23:22: "And when you reap the harvest of your land, you shall not finish off the edge of your field in your reaping, nor gather the gleanings of your harvest. For the poor and for the sojourner you shall leave them. I am the Lord your God." In addition, there are two other types of agricultural remains that belong to the poor. But they are not as clearly distinguished. The first is already present in the above verse. This one is referred to as *leqet* or "gleanings." As the verse says, "nor gather the gleanings of your harvest." Since the whole point of harvesting is to gather that which one harvests, this must mean something like the following: When you are harvesting, and in the process of harvesting some of the grain falls off your scythe or out of your harvesting bag, leave it on the ground for the poor and the needy. Do not go back over the field a second time to clean this up.

The final part of the portions of the poor, is referred to as *shikhḥah*, "forgetting." This is found in a verse in Deuteronomy 24:19–21.

When you reap your harvest in your field and forget a sheaf in the field, you shall not go back to take it. For the sojourner and for the orphan and for the widow it shall be, so that the Lord your God may bless you in all the work of your hands. When you beat your olive trees, you shall not strip the branches of what is left behind you. For the sojourner, for the orphan, and for the widow it shall be. When you glean your vineyard, you shall not pluck the young grapes left behind you. For the sojourner, for the orphan, and for the widow it shall be.

The opening of the text above, verse 19, describes *shikhḥah*, the forgetting of a sheaf in the field. Once it is forgotten, it belongs to the poor. The difference between "forgetting" and "gleanings," at least according to the rabbinic understandings, is that with gleanings, the grain that is left unharvested is left or lost during the harvesting process. There was an intention to harvest and this intention was foiled by accidental movement, the wind, or whatnot. The cut but ungathered produce then belongs to the poor. The later verses in the quotation describe variations of gleanings which pertain to olives and grapes, but not grain. "Forgetting" refers to grain that was harvested and bundled and then forgotten in the fields. While the concept of *pe'ah* involves an intentional leaving for the poor, gleanings and forgetting are dependent upon accident and even serendipity.

Finally, there is a more direct obligation for charitable support.

Should there be a pauper among you, from one of your brothers within one of your gates in your land that the Lord your God is about to give you, you

shall not harden your heart and clench your hand against your brother the pauper. But you shall surely open your hand to him and surely lend to him enough for his want that he has. Watch yourself, lest there be in your heart a base thing, saying, "The seventh year, the year of remission is near," and you look meanly at your brother the pauper and you do not give to him, and he call to the Lord against you and it be an offense in you. You shall surely give to him, and your heart shall not be mean, when you give to him, for by virtue of this thing the Lord your God will bless you in all your doings and in all that your hand reaches. For the pauper shall not cease from the midst of the land. There I charge you, saying, "You shall surely open your hand to your brother, to your poor, and to your pauper, in your land." (Deuteronomy 15:7–11)

This obligation is not bound to agriculture, nor to a specific time of year or a specific year—although the larger context here is the commandment for the sabbatical year. The Deuteronomic obligation is for poverty relief. The sense of the passage, especially in light of verse eleven's "For the pauper shall not cease from the midst of the land," is that this obligation is ongoing and indefinite. Give money or lend money to the poor person, so that they might not want.

This is all well and good. However, if there are poor people who do not live in agricultural areas, or do not have the luck to stumble across people who might have enough resources to support them, they are in trouble. The rabbis were apparently aware of this issue. The Mishnaic tractate Pe'ah uses seven and a half of its eight chapters to discuss all the details of three agricultural poverty offerings: gleanings, forgetting, and the corner. The eighth chapter of the tractate moves from a discussion of the final date at which gleaning is still considered property of the poor person (after which it either reverts to the owner or is considered ownerless), to a discussion of whether or not one can believe a person who says that the flour with which they baked this bread with was from the poor tithe and therefore did not itself need to be tithed, and finally to a discussion of the minimal amount of food a poor person must be given in the food tithe. At this point there is a somewhat abrupt turn.

A poor man who is journeying from place to place should be given not less than one loaf worth a *pondion* [from wheat costing] one *sela* for four *se'ahs* [of flour]. If he spends the night [in such a place] he should be given what is needful to support him for the night. If he stays over the Sabbath, he should be given food enough for three meals. If a man has food enough for two meals he may not take aught from the [Paupers'] Dish, and if enough for fourteen meals he may not take aught from the [Poor-] Fund. The [Poor-] Fund is collected by two and distributed by three. (M. Pe'ah 8:7)¹⁵

¹⁵ Translations from the Mishnah, with a few emendations, are from Danby 1933.

The Mishnah here has left the discussion of tithes and gleanings and has begun a legal discussion of poverty relief that is connected neither to produce nor to land. Moreover it is not a prescription for personal charity but, rather, an obligation on the polis. “A poor man who is journeying from place to place should be given not less than one loaf worth a *pondion* [from wheat costing] one *sela* for four *se’ahs*.” The “should . . . not” in this sentence is in the prescriptive form (that is, a legal imperative), and its subject is the city. This understanding is reinforced by the introduction at the end of the Mishnah of both the institutions of poverty relief and the functionaries of poverty relief. Both institutions and functionaries are new to the legal discourse.

This distinction between private charity and public relief is heightened in the version of this Mishnah that appears in the Tosefta (T. Pe’ah 4:8), which adds one line: “If [the poor person] was going from door to door [collecting], they do not owe him anything.”¹⁶ That is, if the poor person is collecting from door to door, the city need not support him from their coffers. The Palestinian Talmud (Y. Pe’ah 8:7/21a), in commenting on this statement, clarifies it to mean that if the poor person had collected at least as much as he would have been given by the Poor-Fund, the city is off the hook.

This is the rabbinic moment: the move from a personal obligation for each and every person, to an obligation upon each and every person, which is mediated by the city. Formerly, each person had an individual obligation which was fulfilled by transferring resources to a specific poor person. Now, each person’s obligation is fulfilled by transferring resources to the city, which distributes them to the poor in an equitable manner. The city then is deputized, as it were, to tax, assess, and collect the money that is needed to support the poor of the city and those that might pass through. This is a move from the personal to the political.

3. The City, the *Polis*

Reading the Mishnah through the lens of medieval and early modern Jewish history, one might be tempted to see in M. Pe’ah 8:7 the signs of a voluntaristic Jewish community organization, or the less voluntaristic *qahal*, which at certain times had coercive power and at certain times did not. I want to strongly argue that the “place” here is a city and the “they” implied in the verb phrase “should not be given less than” refers to the institutions of the city.

Previously in M. Pe’ah (5:4) there is a parallel usage of this phrase, in the case of a householder (that is, a person who would not under normal

¹⁶ *hayah mesabeb ‘al ha-ptahim ‘ayn nizqaqin lo’ le-khol davar.*

circumstances need or be permitted to take gleanings, forgetting, or corner) who is “journeying from place to place.” In those special circumstances, he does not have the means to feed himself. The Mishnah unanimously decides that he may take gleanings, forgettings, or corners. There is a debate about whether, once he returns home, he is obligated to repay that which he took. Rabbi Eliezer says that he must repay, while Sages say that he need not, for “he was poor at that time.” The Palestinian Talmud (Y. Pe’ah 5:4/19a) quotes Rabbi Hiyya’s answer to the question “To whom does he pay?”: “Rabbi Hiyya says, ‘To the poor of that city.’” That is, the city where he partook of the gleanings, forgettings, or corners. Place here means “city.”

However, is the collection and distribution of poverty relief (that is, the poor fund, the paupers’ dish, etc.) a function of a “city” or “governmental” institution or part of the voluntaristic association of the Jewish community?¹⁷ I would suggest that the context here, which will be discussed forthwith, is obviously a discussion of matters that are handled by the city’s institutions, and not by private organizations. The building of a wall around a city—as is discussed previously in B. Baba Bathra 7b—and the contribution to defense of the city, and the infrastructure (all subjects that are part and parcel of this text) are matters for political institutions. It is in this sense and for this reason that I use the term *polis* and city interchangeably.¹⁸

4. Levinas and the “Face to Face”

This move from an individually based system of charity to a communal poverty relief system parallels the philosophical and ethical move that Emmanuel Levinas limns in the second epigraph at the beginning of this essay. According to Levinas, the basic ethical moment is the face to face encounter. When I encounter another person face to face, I recognize two things at the same time: (1) the other person is beyond my ability to completely assimilate into my preordained categories. That is, I cannot grasp the other person by placing her into a conceptual box that I have already created which would then completely define her; and (2) the vulnerability and need of that person which incurs in me a responsibility (intellectually and morally) and a desire (which is unrequitable) to

¹⁷ It is important to note that this question is again not a historical question. It is a question of the legal imagination of the sages: what did the sages imagine *should* have been? Historically, it seems that the rabbis had little or no influence on the institutions of government in the years of the writing of the Mishnah (the first three centuries CE). See Schwartz 2001, 103–5.

¹⁸ Furthermore, the coercion with which M. Baba Bathra 1:5 leads, is dependent on a judiciary and some manner of police force. See my discussion of coercion in A. Cohen 2012, 74–75.

respond to that need. Scholars have referred to this an asymmetric obsession with the other.¹⁹ This moment of response is akin to the Biblical conception of poverty relief. I might even say anachronistically that biblical charity relief is grounded in this face-to-face encounter.

The Levinasian model runs into trouble when this asymmetric obsession is disturbed by another person. As Levinas writes: “The third party is other than the neighbor but also another neighbor, and also a neighbor of the other, and not simply their fellow. What am I to do?” How do we negotiate the now diffuse multidirectionality of obligations and responses? It is at this point that Levinas attempts to work out “justice,” which is a system of institutionally based equality and equity which still does not violate the very basic otherness of the other person. Sometimes Levinas calls this the move from the biblical to the Greek.

I would suggest that this is rather the move from the biblical to the Mishnaic. The complexity of the move is evident in that it is being worked out in the Mishnah, again in the Palestinian Talmud, and is still being negotiated in the Babylonian Talmud. This is a philosophical move from an obligation that was agriculturally grounded and individually based, which could accommodate the face-to-face encounter with the poor, to an obligation which is mediated through communal institutions, institutions which are political in nature and by definition. This is the move which is being negotiated in the Babylonian Talmud’s discussions of justice.²⁰

I will further suggest that it is the moment of the face-to-face encounter, and the implications of that encounter which serves as a brake on the political, communal, urban systems of justice which naturally drift towards the anonymous and the totalizing. First, though, we will return to the story.

5. The Teacher and the Student

In the next scene in the story, push literally comes to shove.

Rabbi Yonatan ben Amram forced his way and entered.

He said: “Rabbi [Yehudah ha-Nasi], feed me.”²¹

He said: “Have you studied Scripture?”

He said: “No.”

¹⁹ See, for example, R. Cohen 1990, 190.

²⁰ For a different analysis of this move in terms of a layering of obligations, see, Helinger 2010.

²¹ The Hebrew is *parnasseni* which means “support me,” or, perhaps more accurately, “sustain me.” However from the context (the year of drought and Rabbi opening his grain stores) and the continuation of the story (Rabbi bemoaning that he gave of his “bread” *pat* to an *am ha’aretz*) it is clear that “feed me” is the preferred translation.

He said: "Have you read Mishnah?"

He said: "No."

—"If so, with what²² shall I feed you?"

He said: "Feed me as the dog and the raven."

He gave him food.

Rabbi Yonatan ben Amram is a member of the rabbinic guild who for some reason does not want to identify himself as such. Interestingly, some of the manuscripts (Paris 1337, Vatican 115) have him as Yonatan ben Amram without the title "rabbi"—colluding with him, as it were, in his subterfuge. From the end of the story we find out that Rabbi Yonatan ben Amram is actually a student of R. Yehudah ha-Nasi (called "Rabbi" in the story). One is led to wonder how he disguised himself. Perhaps in the surprising answers to the rote questions, his actual identity was veiled. Perhaps in just this act of denying his knowledge his identity actually changed.

In any event, Rabbi did not recognize him, and did not want to feed him. Yonatan ben Amram's answer to Rabbi's challenge: "If so with what shall I feed you?" is very interesting. While the specific reference to the dog and the raven is unclear²³ the general rhetorical move has resonance with sayings of Jesus in the synoptic gospels: "Look at the birds of the air, for they neither sow nor reap nor gather into barns; yet your heavenly Father feeds them" (Matthew 6:26), or "Consider the lilies, how they grow: they neither toil nor spin, yet I tell you, even Solomon in all his glory was not arrayed like one of these" (Luke 12:27). This rhetorical flourish on the part of Yonatan ben Amram was perhaps intended to both reinforce his status as outsider, and yet, at the same time argue for his inclusion as one who deserves to be fed.²⁴

The argument seems to work, as Rabbi gives him food. However, all is not well.

After he left, Rabbi sat and worried.²⁵

He said: "Woe is me for I have given my bread to an '*am ha'aretz*.'"

²² That is, on what basis.

²³ Compare Rashi *ad locum*.

²⁴ It is also possible that this story is partaking of another rhetorical tradition, similar to that of the King Katzya and Alexander story (Y. Baba Metzi'a 8c) in which the point is that your wealth is not as a result of your own efforts. Your wealth is due to God and therefore there is no justification in withholding food from anyone. This tradition in rabbinic sources grounds itself on Psalms 36:7: "Man and beast You deliver, O Lord." Compare Goodman 2008, 8.

²⁵ The printed editions have *mizta'er* "pained." However the manuscripts either do not have anything (that is, they read "Rabbi sat and said") or they have *da'ag* "worried." This latter version seems proper as *da'ag* in the Babylonian Talmud usually means "worried about some consequence." Compare B. Berakhot 40a, 57b; B. Shabbat 106a; B. Yoma 88a.

R. Shimon bar Rabbi said to him: “Perhaps it was Yonatan ben Amram your student, for he does not want to profit from the honor of Torah.”

They checked and found that it was as he said.

Said Rabbi: “All should enter.”

Rabbi, it seems, had not changed his mind. He had been swayed by Yonatan ben Amram’s rhetoric, but minutes later he regrets it. He is convinced that Yonatan is an *‘am ha’aretz* and also that it is a bad thing to sustain those who are not part of the rabbinic guild. At this point in the narrative, Rabbi is still firmly of the opinion that “the poor” are not a class that is deserving of support. Specific poor people who are members of the rabbinic class are worthy of support. Moreover, Rabbi’s experience of giving Yonatan food has apparently intensified his feelings about those who are not members of the guild.

Rabbi’s son intervenes at that moment, raising the possibility (which the reader knows is correct) that the anonymous pauper was actually a member of the guild all along and not actually an *‘am ha’aretz*. Moreover, Rabbi Shimon suggests that the mystery guest was actually a student of Rabbi’s who did not want to benefit from his status as a sage. There is a short investigation and it is found to be true. This last bit of evidence seems to cause Rabbi’s resistance to collapse. After it is presented to him in irrefutable terms that the person seeking sustenance was his student Yonatan ben Amram, Rabbi completely reverses himself and allows everybody to enter. Why is that?

I want to suggest that the turning point in the story is when Yonatan ben Amram emerges from anonymity. Until that moment, Rabbi, though swayed by Yonatan’s argument is not moved to change the policy. In fact he regrets what he did, and it seems that he is worried that he will in some way pay for it.²⁶ The interesting point here is that the anonymity itself is not simple. If in fact Yonatan ben Amram is Rabbi’s student²⁷ and not just a member of the rabbinic guild, how could Rabbi not recognize him? This must have been an intentional avoidance of recognition. Rabbi might have refused to look Yonatan in the face until he proved his bona fides, until it was obvious that Yonatan was an insider. If this is true, it follows that once Rabbi is forced to recognize Yonatan, to see him, to encounter him face to face, as it were, Rabbi is unable to hide behind the policy. It is at this moment—the moment that Rabbi recognizes that there could be many people who are being denied food, who are also people—that the doors swing wide.²⁸

²⁶ Going with the reading *da’ag* which suggests worry that something bad will occur.

²⁷ The manuscripts are divided on this.

²⁸ One could read this point in a more minimalist way, that is, that Rabbi is afraid that there are more Yonatan ben Amrams out there and, if that is the case, Rabbi would not be

6. Taxation and Public Welfare: The Mishnah

The larger context of this story is a discussion of taxation and public welfare. The section of the Mishnah, which generates the discussion of which this story is a part, is about the obligations of residency. The *sugya* itself is about who is responsible and for what. This is a discussion of public policy—a discussion of what the *polis* demands of the individual. It is a description of the obligations of the resident of a just city, a city which is a community of obligation.

The Mishnah lists certain financial obligations that an individual resident of a city has toward the city. The list is not exhaustive, and the Talmud (B. Baba Bathra 8a) extends it with a more comprehensive list. But first to the Mishnah (M. Baba Bathra 1:5).

They may coerce him to [participate in the] building of a wall, a double door and bolt for the city.

Rabban Shimon ben Gamliel says not all cities need a wall.

How long must one be in the city and be [considered] as a resident?

Twelve months.

If one bought a lodging, behold one is [considered] as a resident immediately.

It is important to note the “they” which “coerce.” This language takes the place of the “obligatory” of ritual law (*hayyav*). In other words, there is no essential obligation to build the wall, the double door, or the bolt. However, if the city decides to do so, an individual resident is then obligated to participate in the outlay, and if the individual is not willing, they may coerce the individual. This implicates some manner of police force, and the institutions of justice, in the optional building plan. Rabban Shimon ben Gamliel’s objection would seem to be that this cannot be a universal or an undifferentiated law. If we are going to allow a city to pass a tax on its residents to build infrastructure projects, there must be a good reason to do it. In the absence of a good reason, an individual can object, and seemingly opt out.²⁹

7. Taxation and Public Welfare: The Talmudic Discussion

The Talmud first expands upon Rabban Shimon ben Gamliel’s objection, then raises the question of assessment. “Rabban Shimon ben Gamliel

supporting the Sages. This reading seems unlikely since in R. Shimon’s description of Yonatan it sounds as if he is the one who does this. This is an identifying mark of his—not that he is part of a group that does this.

²⁹ The coercion takes care of the “free rider” problem, and Rabban Shimon ben Gamliel’s caveat uses free riders to temper the desire to build unnecessarily.

says not all cities need a wall. Rather a city that is near the border needs a wall, and one which is not near the border does not need a wall. Sages [say], It sometimes happens that armed marauders will come [upon the city].”

From the response that the anonymous voice of the editor (*stam*) puts in the mouth of the sages, Rabban Shimon ben Gamliel seems to have won the day on theory, even if the law follows the sages. Though the sages say that one can be coerced to participate in the building of a wall even when the city is not on the border or in imminent danger, the reason must still be tied to security concerns. In other words, although the law might follow the sages’ opinion, there still needs to be a substantive reason for building the wall.

The law does seem to have followed the sages. On the next folio (8a), following the story of Rabbi and his student and the grain stores, we find the following comment on the last lines of the Mishnah which read: “How long must one be in the city and be [considered] as a resident? Twelve months.”

They posed a contradiction [from a *baraita*]:

If a caravan of asses or camels, going from place to place, lodge in the midst of [the “beguiled city”], and are beguiled together with it, if they tarried there thirty days they are to die by the sword and their property is to be destroyed. [If they tarried] less than this they are to be stoned and their property is not to be destroyed.

Said Raba: “This is not a difficulty. Here it refers to *bnei mata*’, residents of the place, and here *yituvei mata*’, inhabitants of the place.”

As it states in a *baraita*:

One who abjures benefit from “residents of the city” (*bnei ha’ir*) and someone came and resided there.

As long as [the latter person] resided there twelve months it is forbidden to benefit from him. Less than that, it is permitted.

One who abjures benefit from “inhabitants of the city” and someone came and resided.

As long as [the latter person] resided there thirty days it is forbidden to benefit from him. Less than that, it is permitted.

And do all matters require twelve months? They posed a contradiction:

Thirty days for the Paupers’ Dish, three months for the Poor Fund, six for clothing, nine for burial, twelve months for infrastructure.

Said R. Asi in the name of R. Yoḥanan: “When our mishnah taught twelve months, it taught regarding infrastructure.”

The Mishnah’s assertion of twelve months as the minimum time required for a person to be considered a resident is challenged. The assertion is

contradicted by a text discussing a so-called “beguiled city” (in Herbert Danby’s charming translation), a city all of whose inhabitants have been convinced (or beguiled) to worship idols. The biblical law demands that “you shall certainly strike down the inhabitants of that town by the edge of the sword, putting it under the ban, it and everything in it, and its beasts, by the edge of the sword. And all its booty you shall collect in the middle of its square and burn in fire—the town and all its booty” (Deuteronomy 13:16–17).

The *baraita* that is quoted places those who have been in the city only thirty days together with the inhabitants of the town, and therefore even these caravanners are also put to death by the sword. This contradicts the twelve-month requirement. Raba harmonizes the two texts, distinguishing between “inhabitants” (*yoshvim* or *yoshvei ha’ir*; the term that the Deuteronomist uses to describe those to be killed in the beguiled city), and “residents” (*banim* or *bnei ha’ir*; the term used in our mishnah). This distinction is then supported by another *baraita* (a version of which can be found in T. Nedarim 2:10) that distinguishes between residents of a city (*bnei ha’ir*) and inhabitants of the city (*yoshvei ha’ir*) in the same way as Raba does. It is only the *bnei ha’ir*, the residents, who require twelve months.

The *stam*, the anonymous editorial voice of the Talmud, then asks: is it actually true that all of the obligations of residency require a twelve-month tenure to become effective? The implication of the question is that there is a text that would contradict the notion. Another *baraita* is quoted that assigns an escalating scale of time for incurring obligation. Thirty days for the paupers’ dish, three months for the poor fund,³⁰ six months for the clothing fund, nine months for burial needs, and twelve months for the city infrastructure. The time line, then, is much more involved than our Mishnah’s simple twelve months.

Rav Asi, a Babylonian rabbi from the first half of the third century CE, supplies the answer. He says in the name of R. Yoḥanan (a Palestinian rabbi from the same period) that our Mishnah’s twelve months refers exclusively to infrastructure needs. That is, the Mishnah is answering the question “How long must he be in the city and be considered a resident of the city?” only for the purpose of infrastructure needs such as a wall and double door. For this purpose the time requirement is twelve months. For other obligations, there are other shorter periods of residency after which obligation is incurred. This is all to say that once the discussion is begun in the Bavli, Rabban Shimon ben Gamliel’s opinion is no longer heard.

It is also important to note that the discussion in the Talmud also seamlessly moves poverty relief (money, food, and clothing) and burial

³⁰ Some of the manuscripts switch these two.

services into the category of assessments that the city can coerce a resident to contribute. As the eleventh-century sage Isaac Alfasi, from Morocco, writes in his legal commentary to this discussion: “We learn from this that all these matters are obligatory and we extract them [from residents] even against their will.” We return to the initial discussion on 7b.

8. Assessment, An Interpretive Challenge

The discussion continues to the matter of assessment.

Rabbi Elazar asked of Rabbi Yoḥanan: “When they collect, do they collect based on the number of people [in each house] or perhaps on the basis of wealth?”

[Rabbi Yoḥanan] said to him: “They collect on the basis of wealth, and Elazar my son, do not stray from this legal presumption when you judge.”

There are those who say,

Rabbi Elazar asked of Rabbi Yoḥanan: “When they collect, do they collect based on the proximity of the houses [to the wall], or, perhaps, on the basis of wealth?”

[Rabbi Yoḥanan] said to him: “They collect based on the proximity of the houses [to the wall], and Elazar my son, do not stray from this legal presumption when you judge.”

The fact that this part of the discussion ends here poses something of an interpretive challenge. Which is it? Do we collect on the basis of an individual’s resources, or do we collect based on the individual’s proximity to the wall?

To sharpen this point, that is, the interpretative problematics of this part of the text, we look at the history of interpretation of this exchange beginning with Alfasi in the eleventh century (1013–1103). He either has a different version of the text that does not have two possibilities or he reads the two versions as one. Therefore in his work *Sefer ha-Halakhot* (included in standard modern editions of the Talmud) we find:

Rabbi Elazar asked of Rabbi Yoḥanan: “When they collect, do they collect based on the number of people or perhaps on the basis of wealth or, perhaps, on the basis of the proximity of the houses [to the wall]?”

[Rabbi Yoḥanan] said to him: “They collect based on the proximity of the houses [to the wall], and Elazar my son, make this your legal presumption when you judge.”

For Alfasi then, there is only one version of the question, which includes three possibilities for assessment—based on the number of people, wealth, or proximity—and then one answer, which is proximity.

However, almost immediately (in the sweep of history), without mentioning Alfasi, R. Yosef ibn Migash, a younger Spanish contemporary of Alfasi's (1077–1141), understands the exchange differently (1985, 20). Ibn Migash reads the second version as building on the first answer. In other words, once we have the first answer “according to wealth,” the next question is asked and the answer is that if all else is equal (that is, similar wealth) then we judge according to proximity to the wall. The proximity to the wall is an additional consideration beyond the question of the resources that one has.

Moving north, Rashi (Rabbenu Shlomo Yitzhaki [1040–1105]) the great French commentator (who was slightly older than ibn Migash and slightly younger than Alfasi) writes that the reason for taking proximity into account is because houses that are closer to the wall need the protection of the wall more than houses that are closer to the center of the city.³¹ In the next generation the Tosafists comment that the reason that the assessment—at least according to the first version—is on the basis of wealth is because there is no danger to life. The assumption, according to the Tosafists,³² is that the marauders just want to make off with money and are not interested in homicide. However, when there is a danger to life, the assessment would be based on the number of people. Hence the theory is that the assessment is contingent on the risk.

In their comment on the second version, wherein the answer is that the assessment is based on proximity, Rabbenu Tam (1100–71, a central French Tosafist) seems to agree with ibn Migash (without citing him). He writes: “Poor people who are closer to the wall give more than poor people who are farther from the wall. So too wealthy people who are closer give more than wealthy people who are farther. However, wealthy people who are farther from the wall give more than poor people who are closer, since the collection is also based on money.” Maimonides, the great Andalusian/Egyptian jurist whose father was a student of ibn Migash, decides the law with Alfasi, writing simply: “When they collect from the residents of the city funds for the building of the wall, they collect according to the proximity of the house to the wall: the closer one lives to the wall the more he must give” (Maimonides 1951, 178 [*Laws of Neighbors*, 6:4]). There is no mention of wealth.

In the next generation, the Spanish sage and judge R. Meir Halevi Abulafyah (1170–1244), effectively deconstructs the idea that the reason for the assessment based on the proximity of a house to the wall has to do with security (Abulafyah and Ashkenazi 1790/1791). First, he questions the notion of “close.” He suggests that differentially assessing houses that are merely inches or feet from each other, based on their proximity to the

³¹ B. Baba Bathra 7b, s.v. *qiruv batim*.

³² B. Baba Bathra 7b, s.v. *le-fi shevah mamon*.

wall, is an absurdity. If one house is a foot closer could we really assess it more? How much more would the percentage be? The implication for Abulafyah is that we would not, nor could we. This leads to a situation where the third house is then only slightly closer than the second and so on. Since the difference between each of these is insignificant, how is one then to charge more for the house at the end of the chain—that is, in the middle of the city farthest from the wall—than the one next to the wall? In this manner it would be capricious since there has been no ability for a gradual escalation of the assessment.

Abulafyah then challenges the notion that the reason that houses closer to the wall should pay more has to do with security needs (as Rashi said above). Abulafyah claims, logically, that either, one, the wall is being built during peaceful times and then it is not at all clear if there will ever be a band of marauders, or two, the wall is being built during a war while the city is under attack and as such the wall will never be built in time. Therefore, Abulafyah claims that the reason that those on the outer reaches of the city need to pay more is because they expand the footprint of the city and cause everybody to build more wall. Further the reason that more is collected from the outer houses is not that they cause higher payments for the larger wall to the residents of the inner houses, rather it is because they cause more expense to the city. This is important inasmuch as Abulafyah is claiming that the assessment is not as a form of compensation for those in the inner circle who have to pay more, but rather it is payment to the city as a corporate body, which has to pay more.

Finally Abulafyah also makes clear that this is only relevant if there is no wall. However, taxes for upkeep of an already existent wall are dependent on the percentage that one's house takes up of the area of the city. For this short survey, R. Shlomo ben Adret (1235–1310), a sage from Barcelona, cites Yosef ibn Migash and writes that the collection is based on a combination of liquid assets and proximity, but that a poorer person would always pay less than a wealthy person (Adret 1990, 3:382).

9. What Work Is This Text Doing?

This short tour of almost three centuries of commentary points to the essential ambiguity of this piece of text. The two versions both stand and there is no “third scripture to decide between them.” In these cases Stanley Fish's suggestion comes to mind (1980, 23). He says that when there are insoluble cruxes in a text, places at which the debates about meaning go on for centuries, the right question is not what the text means but what it does. In other words, what is the work that this text is doing?

I want to suggest that the place to start thinking about this is the rare phrase at the end of both versions: “And Elazar my son, do not stray from

this legal presumption when you judge.” It is this unique phrase³³ repeated with different answers—strongly asserting opposing views—that backlights the surprising nature of the piece, and serves as a hermeneutic index. The literal translation here would be: “And Elazar my son, set nails in it.” The word nails (*masmerot*) appears rather infrequently in the Bible. Actually, it only appears three times and one of those appearances suggests itself as an apt intertext, a verse which, as read midrashically, serves as something of a motto for the rabbinic enterprise. Ecclesiastes 12:11 reads as follows: “The sayings of the wise are like goads, like nails (*masmerot*) planted/embedded in prodding sticks they were given by one Shepherd.”³⁴ The Tosefta (T. Sotah 7:7) reads the verse midrashically in the following way.

Just as this goad guides the cow to bring life into the world, so too words of Torah bring life to the world, as it is said (Proverbs 3) “It is a tree of life.” But just as a goad is portable perhaps Torah is also portable? Scripture comes to teach “like nails planted.” Just as a plant is fruitful and multiplies so too the words of Torah are fruitful and multiply. *Ba’alei asufot* [lit. “the masters of the gatherings”], these are the students of the sages who enter and sit in gatherings and say about the impure that it is impure, and about the pure that it is pure.

This verse about the sayings of the wise is, not surprisingly, read by the Tosefta to refer to Torah in the broad sense and the sages. The opening midrashic reading is pretty standard—Torah guides one into life since a verse from Proverbs says about Torah that “it is a tree of life.”

It is the next piece through which we might read our text in Baba Bathra 7b. Perhaps Torah is “portable” (*mitaltal*), a word that refers to something that is not solid, that is neither yes or no, like a boat that is thrown about on the waves. Perhaps Torah is thrown about, wonders the Tosefta. The answer is the next phrase in the verse: “like nails planted.” Torah is not unbounded, ungrounded, unmoored. Torah is attached like nails that are planted in a piece of wood.

“Planted” then gains the attention of the midrashist, who proceeds to read against the foundationalist grain of “like nails planted.” Torah is fruitful and multiplies. At one and the same time Torah is nailed down, and is creative and generative. Torah reproduces Torah. Words of Torah are reproductive. Now, however, one might be tempted to think that it is only in the creative play that Torah lives. How then are we to know how to practice? The next phrase supplies the answer: The *ba’alei asufot* are

³³ This is its only occurrence in the Bavli, and as far as I could tell, in rabbinic literature.

³⁴ The phrase *ba’alei asufot*, here translated as “sayings of the wise,” has been translated alternatively as “their collected works” (NIV) or “the collected sayings” (NRSV) or “masters of the assemblies” (KJV).

“the students of the Sages who enter and sit in gatherings and say about the impure that it is impure, and about the pure that it is pure.”

The phrase “and Elazar my son, set nails in it,” does not set the discussion; it rather upsets it or unsettles it in that it points to the valorization of debate and dispute rather than to a definitive legal ruling. The version of the midrash which is found in the Babylonian Talmud (B. Ḥagigah 3b) has a modified form of the last line quoted above: “*Ba’alei asufot*, these are the students of the Sages who sit in groups and study Torah. These say ‘impure’, and those say ‘pure.’ These forbid, and those permit. These invalidate, and those validate.”

The midrash then continues:

Perhaps a person would say: How might I learn Torah now? Scripture teaches: “they were given by one Shepherd”—one God gave them . . . so too you should listen intently, and acquire an understanding heart to hear the words of those who say impure and those who say pure, those who forbid and those who permit, those who invalidate and those who validate.

And so the text is left in the tension between knowing that there is a law and that it is only in some way in the knowledge that the Torah originates with one God that that law is clear and one. This opens the space to both legislate and debate without worrying that the debate will obviate the legislation or vice versa.³⁵

Within the linear progression of this text, we move from the dispute between the Sages and Rabban Shimon ben Gamliel about infrastructure, and by way of this question we are left with the sense that there must be an assessment but not how to determine it; this too is Torah. This brings us to a discussion (which we will not rehearse here) of the Sages themselves and whether they also have to pay the assessment. This leads to a short discussion about whether or not orphans have to pay the assessment for infrastructure.

Out of this discussion we come to the story of Rabbi, his student Yonatan ben Amram, the grain stores and the year of drought. Up to this point the exchange—in the mishnaic tractate Pe’ah as well as in B. Baba Batra—has been about the principles of public policy. Following the story we again return to the principles of public policy—three months for the paupers’ plate, six months for the poor fund, nine months for clothing allowance, twelve months for burial funds. How many people are appointed to collect and distribute the money? Are the funds fungible?

³⁵ This dynamic is perhaps akin to the Coverian tension between imperial and paideic moments. “The paideic is an etude on the theme of unity. Its primary psychological motif is attachment. . . . The imperial is an etude on the theme of diversity. Its primary psychological motif is separation” (Cover 1992, 109–10).

This review of the linear progression of the text serves as a reminder of the starkness of the intervention of the story of Rabbi and his student in the midst of this legal discussion.

10. Conclusion

The story of Rabbi and R. Yonatan ben Amram serves as a balance if not a corrective to this broad sweep and possibly alienating nature of public policy. What happened in the moment when Rabbi came face to face with his student? The gravity of the moment is articulated by a statement which appears in the Palestinian Talmud, commenting on M. Pe'ah 8:7. Referring to a Toseftan ruling that the distribution of funds to the needy requires three people, the anonymous voice of the Palestinian Talmud says that the reason for this is that these are *dine nefashot*, capital cases. In other words, an actual court is required (according to the regulations laid out in M. Sanhedrin 1) to disperse the funds, since decisions have to be made deciding that some are worthy and some are not. The seriousness of this statement, the non-hyperbolic nature of it, is highlighted when the question is raised: "Why not twenty-three judges?" This is the number that is actually required for capital cases. The challenge is that if these really are capital cases, then the Mishnah (according to M. Sanhedrin 1) demands that twenty-three judges sit on a capital case. The answer that is given is that if we are required to wait until twenty-three judges are gathered in order to distribute funds to the poor, we would be endangering people's lives (Y. Pe'ah 8:7/21a).³⁶

The rabbinic move which places the obligation of poverty relief on the city makes the claim that institutions of the *polis* are the only way to achieve justice on a large scale. However, the city must be aware of the individual Other in making policy. In essence the story suggests that when policies ignore the face of an individual stranger, they do not fulfill the demands of justice. This is the greatest challenge to doing justice which does not at the same time totalize those to whom the city is obligated. How is one to maintain an efficient institutional mode of providing poverty relief, essentially a bureaucracy, without it becoming alienating and totalizing? In other words, how is one to maintain a bureaucracy without it becoming . . . well, bureaucratic?

The rabbinic answer suggests that those who are in charge of the distribution need to be constantly reminded of the importance, perhaps

³⁶ In the continuation of our text in the Babylonian Talmud (B. Baba Bathra 8b) the rationale for three judges is that these are monetary cases, which according to the law in M. Sanhedrin require three judges. I am not trying to say that the comment in Y. Pe'ah was commenting on the story, rather that it is intertextually hovering over it, that it is a way of signaling the seriousness of the situation.

sacredness, of their tasks. They need to keep in mind that they are dealing with matters of life and death. The debate over taxation therefore needs to be reframed such that the poor have a face in the debate, that poverty relief is not aimed at a faceless mass, but at individual people. This also requires a move toward an assumption of righteousness rather than an assumption of mendacity. Yonatan ben Amram's argument: feed me because I am a creature of God, and should be heeded. We, as a society, should be giving those who request relief from crushing poverty the benefit of the doubt rather than assuming that they are "welfare frauds."³⁷

The policy implications of this discussion are twofold. On the one hand there is a clear rabbinic mandate for taxation.³⁸ At the same time there is a mandate for a system of distribution which recognizes the face of the Other. This follows the rabbinic attempt at threading the needle, walking in the tension between the obsessive asymmetry of the obligation to the other person and the need for a larger more equitable system of justice which must (by definition) include other others.

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³⁷ While I am referring to contemporary discourse around poverty relief, the concern with so-called "welfare frauds" is also present in the Mishnah and Talmud. See M. Pe'ah 8:9; Y. Pe'ah 8:9/21b; and B. Ketubot 67b-68a. This question of the "deserving poor" has an analog in the interesting notion of the deserving philanthropists. See B. Baba Bathra 9b, which raises the possibility that God only provides worthy poor people to righteous benefactors. See the excellent discussion of this concept and the way it plays out especially among medieval Jewish halakhists in Seif 2013.

³⁸ The issue of the biblical mandate for taxation is a major point of contention among Christian ethicists. Susan Pace Hamill (2002, especially 54–57) makes a Christian biblical case (which she calls Judeo-Christian) for tax reform, coming to the conclusion that "because Alabama's tax structure also violates the moral principles of Judeo-Christian ethics, Alabamians practicing Christianity or Judaism, by virtue of their knowledge, acceptance, love, and worship of the one true God, have an even more compelling affirmative moral duty to support these tax reform efforts as part of their response in gratitude to God" (2002, 72). In a response to Hamill, Adam Chodorow concludes with the limited claim that "To the extent that progressive taxation is seen as redistributive and designed to help the poor, it is consistent with the broad principles found in the Bible and Talmud, regardless of how any one tax system operated" (2007, 96). Chodorow's approach differs radically from the approach in the current essay.

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