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GAMBLING IN THE SYNAGOGUE

Introduction

Major sociological and economic upheavals in postwar America have placed tremendous financial burdens on Jewish communities involved in building and maintaining synagogues and educational centers. This is not a phenomenon limited to the Jewish community, but it does pose certain halakhic problems.

In many metropolitan areas synagogues have turned to a variety of gambling endeavors to help raise the needed funds. New York State has specifically legalized "Las Vegas Nights" as a money raiser for religious institutions. Bingo is also an old favorite and is permitted only for religious groups.

One senses that most halakhicly sensitive Jews intuitively feel a distaste for the large bingo signs that spring up on various synagogue and "temple" walls; yet our responsibility is to examine this value-laden issue from a halakhic perspective and not our intuition.

I

The Mishnah (*Sanhedrin* 24b) includes among the list of persons disqualified from giving testimony in court (*bet din*) the *mesahek bekubiya*, one who gambles. Disqualification from testifying was a serious matter; it indicated that such a person was presumed unreliable and unworthy of trust even under oath. The Mishnah itself does not explain why the gambler was disqualified. In the talmudic discussion that follows, however, Romi bar Chama explains the rationale. His reasoning is that one gambles with his money only because at

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heart he is convinced that he will win (an *asmakhta*); therefore, when he loses and has to hand over his money, he does so reluctantly. The winner is thus in a certain sense extorting money from the loser, who does not part with his money willingly. Herein there is a trace of stealing, and the gambler should not be trusted in court. Perhaps he will be willing to perjure himself for some personal gain, just as he was willing to "steal" from the loser.

On the other hand, Rav Sheshet argues that a gambler is barred from giving testimony in *bet din* because he is a "low-life," someone "who does not concern himself with the betterment of the world" (*sh'aino osek biyeshuvo shel olam*). Since he does not engage in constructive behavior we should not rely on his oath——his whole character seems to lack integity.

The difference between these two lines of reasoning, the Talmud explains, is that if we adopt Rav Sheshet's approach then, if the gambler held a job and was a productive member of society, there would be no reason to bar his testimony. On the other hand, according to Romi bar Chama, even the occasional gambler would be barred from appearing before the *bet din*.

Maimonides (Rambam) apparently[1] accepts Rav Sheshet's position: "A gambler is not permitted to testify, with the condition that he has no other means of employment."[2] Tosafot[3] and Mordechai[4] similarly follow Rav Sheshet's premise. Mordechai quotes the decision rendered by Rav Jacob Keinon that gambling is not robbery, nor is a gambler's testimony invalid. Only the *professional* gambler is disqualified from testifying in court.

This line of reasoning is echoed in the *Shulkhan Arukh*, which rules that "a gambler is forbidden from testifying, provided he has no other source of income,"[5] noting that the *mesahek bekubiya* (diceplayer) classification refers to all forms of games of chance. Elsewhere, the Rama forbids gambling for money or profit on the Sabbath, since it is a form of business undertaking;[6] the inference clearly is that there would be no such prohibition during the week. Rabbi Akiva Eger further reduced the onus on gamblers when he ruled that even the professional gambler should not be barred from appearing as a court witness unless he had previously been publicly admonished to cease his activities.[7]

In reviewing rabbinic opinion over a period of more than 1000 years, therefore, we may fairly conclude that gambling, while heartily disapproved of, was nonetheless tolerated by most halakhic authorities; only those gamblers who did nothing else were penalized.

II

Now, since we read that the opposition to gambling is usually based on a "sense of disapproval" and not a formal proscription, we might argue, as does the *Encyclopedia Judaica* (see article on "Gambling"), that while gambling is severely condemned, if gambling were to benefit a synagogue or other charity, it is condoned. However, to state that "rabbis not only did not frown upon such acts but frequently encouraged them" is not only an error in interpreting the halakhic sources but indicates a serious lapse in appreciating Jewish ethics. Never would our rabbis sanction engaging in morally abhorrent activities even to benefit noble causes because we do not accept the premise that the ends justify the means. (Thus, for example, the talmudic teaching that one who recites a blessing on a stolen piece of bread commits blasphemy.)[8] "*Mitsvah habaah b'avera,*" a good deed earned at the expense of committing a forbidden act, is no mitsvah at all.

The erroneous conclusion of the *Encyclopedia Judaica* is based on a flawed reading of two giants of medieval jurisprudence, Rabbi Meir ben Baruch of Rothenburg and Rabbi Benjamin Slonik.

In the first instance cited by the *Judaica*, Rabbi Meir of Rothenburg (Maharam) was asked if a person who swore to donate part of his gambling earnings to charity must keep his oath even if the gambling were accomplished by a proxy (agent).[9] Maharam responded in the affirmative and countered the argument that legally a man cannot be considered an agent to commit a sin:

ונהי דאין שליח לדבר עבירה הני מילי היכא דשליח בר חיובא הוא אבל אי לאו בר חיובא היא כגון כהן דאמר לישראל קדש לי גרושה מחייב... כיון דלא בר חיובא דההיא עבירה גופא ... ומחייב שולחו.

> Albeit we have the rule that a person cannot designate an agent (proxy) to perform a sin for him (i.e., the proxy has the guilt, and not the sender), yet that is only if the act would be a sin for the agent. However, if this is not an act which is prohibited to the proxy—for example, if a *Cohen* instructs an Israelite, "Be my agent to marry this divorcee for me"—then the sender bears the guilt, since the Israelite is permitted to marry a divorcee, he is not culpable in this case, but the sender, a *Cohen*, is.

From this, the *Judaica* incorrectly concludes that since the agent is not considered a *bar hiyuva* (culpable), evidently gambling is per-

missible. This conclusion, however, is not warranted by the facts of the case. Rabbi Meir was not discussing the "sin" of gambling at all, since that act was already a *fait accompli*. Instead, he was asked about the necessity of fulfilling an oath even if the deed had been done by a proxy, not about the propriety of the act itself. If the author of the *Judaica* article were correct in maintaining that neither the agent nor the sender sinned through gambling, there is no sin for Rabbi Meir to refer to! Closer perusal of the entire responsum will disclose that he is referring to some other sin and is not considering the permissibility of gambling.

The second proof adduced by the *Judaica* to support the contention that the rabbis permitted gambling for charity is based on a responsum of Rabbi Benjamin Slonik (*Massaot Binyamin*).[10] Here again, the *Encyclopedia* did not closely follow the rabbi's reasoning. The case deals with two persons who came to *bet din*. They agreed that whoever was adjudged liable in the case would give a specified amount to charity. Now, the loser turned to Rabbi Benjamin to be excused from having to pay the promised amount. Rabbi Benjamin released him from any obligation to pay, since the rabbi deemed that the man had sworn in error; that is, when he swore, he was convinced that he would never have to pay because he believed himself to be in the right in the case before the court and was sure that the *bet din* would take his side. "And this is not comparable to an *asmakhta* (conditional agreement) which is binding in the case of charity . . ." continues the rabbi, since this is not the case here. An *asmakhta* is binding for charity only if the person truly wants to give the charity. In such a case, his statement alone would bind him to give. The *Judaica* article wrongly concludes, *from the first part of the responsum*, that gambling (an *asmakhta*) would be permissible for a charity when, however, Rabbi Benjamin clearly qualifies that statement. The conclusion of the responsum *taken in its entirety* is that only activities such as raffles or lottery tickets would be permissible for charity since, by purchasing a ticket outright, the donor has clearly indicated his willingness for the money to go to charity, regardless of whether or not he wins. However, a gambler is playing to win and not for charity, and he only forfeits his money because he is forced to do so.

Gambling where the proceeds benefit a synagogue or yeshiva is permitted only because gambling *per se* is not forbidden, albeit scarcely encouraged, according to Jewish law. We need not rationalize it any other way. Indeed, the suggestion that a forbidden act can be "cleansed" by donating the profits to charity does violence to our basic ethical principles.

III

Given that gambling itself might be permitted, should such activities be permitted in the synagogue structure itself? As a prelude to understanding the halakhic question involved, we should note that modern synagogue structures differ markedly from those of previous generations. The older synagogues, furnished with tables, benches, and bookcases, were exclusively dedicated to Torah study and prayer. Now, however, scarcity of funds and space necessitate the erection not of a sanctuary for prayer and study alone but the construction of a multipurpose Jewish communal center whose large hall can serve as prayer room, catering hall, assembly room, or even site of a bingo game or Las Vegas night. The question is whether we may countenance gambling activities there.

The *Shulkhan Arukh* states that all activities other than prayer and Torah study are prohibited in a synagogue[11] because they are inconsistent with the holiness of the sanctuary. However, to get around this limitation, it is permissible at the time of establishing the building as a house of worship to stipulate that the place will be used not for prayer exclusively but for other activities as well—that is, *brit milah*, weddings, lectures, meetings, and the like.

Two primary halakhic viewpoints elucidate this proviso for us and indicate efficacy of the stipulation: the Rash (Rabbenu Asher ben Yehiel) and Tosafot hold that the stipulation is valid only *after* the building is no longer used as a synagogue but, as long as it is being used for prayer, it may not ever be the focus of other activities. (Lacking such a prior stipulation, they believe that after a building ceases being occupied as a synagogue it may never be used for *any* other purpose.)[12]

Rashi, however, states that it is permissible to stipulate that even while the structure is in use as a synagogue it may simultaneously house other activities, *with the proviso* that these activities are in keeping with the basic respect due a shul.[13] In his gloss to the *Mishna Brura*, the Chofetz Chaim noted that "merriment," and similar activities, obviously cannot be included in that stipulation.[14]

In general, our rabbis have been guided by the more lenient school of thought regarding multipurpose synagogues. But we cannot ever forget the all-important proviso that this lenient opinion attached to the stipulation.

Surely gambling, which is clearly an activity barely tolerated by our sages, cannot be considered as being within the spirit of respect

for a holy place, nor are the ribaldry and looseness commonly associated with "Las Vegas Nights" appropriate in a room that is also used for prayer and Torah study.

We should note, however, that within the strict application of the halakhah the preceding restrictions apply only to the room designed for prayer services, not to the entire structure housing the synagogue. But since many modern shuls are designed with multipurpose rooms, it would not be permissible to run bingo games or other gambling functions (or, for that matter, any activity not consonant with *kdushat beit ha'knesset*) in the same room designed for praying. Nor does it mitigate the prohibition to cover the *Aron Kodesh* or otherwise block it. However, if there is a separate social hall, the gambling activities may, technically, take place there. (In connection with this, Rabbi Moshe Feinstein writes in *Iggrot Moshe, Orach Chaim* I, Responsum #31, that one may not *daven* in a place that is generaly used for *prizut* or other activities not in keeping with the sanctity of a shul. This might then prohibit a congregation from using its bingo hall for an overflow *minyan* on the High Holy Days.)

IV

Turning now from a strictly legalistic approach toward this situation, surely we must be disheartened by the fading of our noble Jewish tradition of taking care of our own needs. In numerous medieval charters granting Jews the right of domicile, and even in the permit issued by the Dutch West India Company to the first Jewish settlers in New Amsterdam, we find provisions that "the poor among them shall not become a burden to the company or to the community, but be supported by their own nation." Until very recently, the Jews were envied for their alacrity in meeting not only their own community's needs, but also those of their brethren throughout the world.

In contemplating the reality that *yeshivot* and synagogues in America have been reduced to maintaining themselves with funds lured out of the least noble and industrious of their Gentile neighbors, through bingo games—and surely this thought must give us pause—we must furthermore grapple with the halakhic question of whether it is permitted for Jews to accept charity from Gentiles for the maintenance of their religious institutions.

In the Talmud, a poor Jew who accepted charity from non-Jews was denounced for shaming the entire Jewish community and bring-

ing disgrace, so to speak, on the Divine Name.[15] When Ezra was supervising the rebuilding of the Second Temple, he rejected the gifts tendered by the Samaritans with the words, "It is not for you and for us together to build a Temple for our God" (Ezra 4). Similarly, the Mishnah (*Shekalim,* chapter 1, mishnah 4) teaches that we are not permitted to accept sacrificial offering from non-Jews. The Talmud (*Bava Batra* 10b) records an incident where the Queen of Babylon sent a charitable donation to Rabbi Ami, who refused to accept it. When she thereupon sent it to Rava, that rabbi accepted it only so as not to offend the royalty and ruled that the donation be used only for dispensing alms to the non-Jewish poor.

Whatever the purely halakhic strictures involved in accepting charity from non-Jews, there was never any call to do so in the past. It was the universally accepted practice for centuries that all would pay their fair share of communal needs. In virtually all communities Jews were taxed, by their own Jewish community leaders, to maintain the necessary synagogues, schools, mikvaot, hospitals, and similar institutions. "It is a simple custom in all the countries of dispersion," writes Rar Asher b. Yehiel, "for a defaulting taxpayer to be arrested and to be brought before the elders. . They judge him according to custom and do not release him until he either pays or offers security."[16] Harsh penalties were meted out to those who shirked their responsibility even, in extreme cases, putting the offender under the ban (*herem*) "segregated from the two worlds (this world and the hereafter), have no child circumcised and not be buried in a Jewish graveyard . . . "[17]

I find it sad that in the most primitive *shtetel,* during the Dark Ages, every Jewish child was assured of a free Jewish education but, in our *goldene medinah*, *yeshivot* totter on the brink of bankruptcy, salvaged only by bingo or questionable government programs that inject money into their anemic budgets. Those who are not moved by regret for our fallen pride might nevertheless consider the consequences of our new policy. Whereas previously all Jews automatically accepted the responsibility for maintaining the dignity and viability of Jewish institutions and their fellow Jews, we have now become accustomed to shifting the burden on anonymous "others"—the government, the bingo players, the gamblers. How will a young generation unaccustomed to a sense of personal resonsibility for the health of Torah institutions react if, at some future date, charity gambling becomes illegal or unprofitable? I do not know, but I am unhappy at the prospect.

We might also give thought to another unfortunate consequence of our new method of funding communal institutions. We have be-

come totally unrealistic in the ways we spend money for the community, since so often the money we spend is not our own, not squeezed painfully from a tight budget. Perhaps, if we had to build and maintain our institutions ourselves, we would not think that every "edifice to God" warrants a gym, sauna, and swimming pool. Possibly every 20 families who felt so inclined would not be that quick to establish their own breakaway *minyan* or independent yeshiva. Indeed, we might find it a most pleasant experience to have the entire community marshal its effort and ingenuity to meet the needs of its members. Perhaps we could see a return to unity rather than fragmentation, to pride and dedication rather than laziness and dependence.

The acceptance of gambling as a means of raising funds for Jewish institutions is not only morally equivocal, but I see it as also destructive in a number of ways. It deflects us from our noble traditions and encourages the tawdry exploitation of human weakness. It makes us neglect the qualities of pride, responsibility, and selflessness, and it robs us and our children of the *mitsvah* and personal satisfactions inherent in dedication to an altruistic cause. Let us give serious consideration to these questions, for they go to the root of our survival as a community.

NOTES

1. Yet we must note that elsewhere in *Mishneh Torah* (*Hilkhot Gezela* 6:10) Rambam writes that "any games of chance, whether with sticks or animals . . . are all forbidden and were considered by our rabbis as equivalent to robbery." The difficulty in discerning clearly the Rambam's position on the quesiton of gambling is discussed in *Kessef Mishnah, Hilkhot Edut* 10, halakhah 4, and by Radbaz, *Hilkhot Gezela* 6, halakhah 10.
2. Maimonides, *Mishneh Torah, Hilkhot Edut* 10:4.
3. Tosafot on Babylonian Talmud, *Sanhedrin* 24b.
4. Mordechai, ibid.
5. *Shulkhan Arukh, Hoshen Mishpat* 34:16.
6. *Shulkhan Arukh, Orakh Haim* 338:5.
7. Rabbi Akiva Eiger on *Shulkhan Arukh, Orakh Haim* 338:5.
8. B. Talmud, *Berakhot* 45b.
9. *Teshuvot Maharam mi-Rothenburg,* Responsum #493 (Prague edition).
10. Benjamin Solnick, She'elot U'Teshuvot Massaot Binyamin, Responsum #60, Cracow, 1633.
11. B. Talmud, *Megillah* 28a, 28b; and *Shulkhan Arukh, Orakh Haim* #150.
12. B. Talmud, *Megillah, loc, cit.,* commentaries of Rash and Tosafot.
13. Ibid.
14. *Mishnah Brura, Orakh Haim, Biyur Halakha* #150.
15. B. Talmud, *Sanhedrin* 26b. The talmudic tale should not be construed as only "aggadata." Maimonides, *op. cit., Hilkhot Edut* 1:5, and *Shulkhan Arukh, Hoshen Mishpat* 34:23 include this principle in their compendia of Jewish law.
16. Salo W. Baron, *The Jewish Community*, Vol. 2,(Philadelphia: Jewish Publication Society, 1948), p. 219. Also, Ramo on *Shulkhan Arukh, Hoshen Mishpat* #163.
17. Ibid., p. 234.