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## CLASS SIZE—A HALAKHIC PERSPECTIVE

**T**he maximum number of children that should be assigned a single classroom has long been the subject of debate and has received renewed attention during the course of the past several years. Recently, legislation was enacted in Florida requiring that by the year 2010, classes from kindergarten through the third grade be limited to eighteen students, classes from grades four through eight be limited to twenty-two students, and that high school classes have a maximum of twenty-five students. Because of the high cost of implementing the provisions of this new legislation, Governor Jeb Bush has attempted to repeal or to scale back this proposal.<sup>1</sup> Seven years ago, the California legislature enacted a law limiting class size from kindergarten through third grade to twenty students per class. Anecdotal evidence attests to the dramatic success of those small classes.<sup>2</sup>

### I. THE ORDINANCE OF R. JOSHUA BEN GAMLA

The issue of class size was addressed in rabbinic sources at a very early date.<sup>3</sup> The Gemara<sup>4</sup> ascribes particular merit to R. Joshua ben Gamla, a High Priest who served during the period of the Second Temple “for, if not for him, the Torah would have been forgotten from Israel.” The Gemara relates that prior to promulgation of R. Joshua ben Gamla’s ordinance, if a child had a father, the father taught him Torah, but if the child was orphaned and bereft of a father, he did not have an opportunity to study Torah. The Sages ordained that teachers be appointed in Jerusalem for the instruction of all students, thereby bringing to fruition the prophecy that “from Zion the Torah shall go forth” (Isaiah 2:3). However, this innovation did not resolve the social problem. A child who had a father traveled with his father to Jerusalem to study,

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but an orphan who was not capable of traveling independently had no choice but to remain at home. Consequently, the Sages issued an edict requiring that each district appoint teachers to provide instruction locally for students of the community at the age of sixteen or seventeen.

But that edict did not completely solve the problem either since if a student angered the teacher, the teacher would berate him and the adolescent would withdraw from the class. Accordingly, in order to assure that education be available to all, R. Joshua ben Gamla ordained that depending upon the physical and social maturity of the child, instructors be provided for youngsters at the age of six or seven. Thus, the ordinance of R. Joshua ben Gamla succeeded in creating universal Torah education for boys from the age of six or seven.

The statement of the Gemara praising R. Joshua ben Gamla—“for, if not for him, the Torah would have been forgotten from Israel”—might appear to be hyperbole. Since children who had a father to provide instruction were taught by their fathers, as commanded by Deuteronomy 6:7, those children would surely have preserved the Torah and transmitted it to the next generation. The late Rabbi Ya’akov Weinberg, who served as *Rosh Yeshiva* of Yeshivat Ner Israel, offered a highly significant insight in elucidating this Talmudic statement. He observed that the Gemara’s statement reflects the conviction that authentic transmission of the Torah requires that the Torah be taught to *all* children. If the Torah is mastered by only a portion of the totality of Jewish children, the purity of transmission is likely to become compromised. Hence it is the responsibility of the community to assure that all children are taught Torah.<sup>5</sup>

As noted, the original *takkana* provided for the education of children aged 16 and 17 in a single location, *viz.*, Jerusalem. Presumably, instruction was delayed until that relatively later age because travel would have been too arduous for children of a tender age.<sup>6</sup> With the promulgation of R. Joshua ben Gamla’s ordinance requiring that instruction be provided locally, it was possible to commence education of the youth at a much earlier age.

Although the age at which education must begin is clear, the extent of the education that must be provided is unclear. The Talmudic discussion makes no reference to the scope of education that must be offered, *i.e.*, the subject matter that the child must be given the opportunity to master, or the age beyond which instruction need not be provided. There is also no explicit statement with regard to who must shoulder the financial burden of defraying teachers’ salaries, *i.e.*,

whether education must be provided at the expense of the community or of the father.

The most detailed discussion of those issues is that of *Shulhan Arukh ha-Rav*.<sup>7</sup> *Shulhan Arukh ha-Rav* follows the early-day authorities cited by R. Moses Isserles<sup>8</sup> in ruling that the salaries of teachers constitute a charge against the communal treasury. Funds for that purpose are to be raised by means of a wealth tax imposed upon the entire community including those who do not have children. *Shulhan Arukh ha-Rav* emphasizes that the poor have a right to demand that the cost of educating their children be defrayed by the wealthy. By the same token, the wealthy need not contribute more to the costs of tuition than their equitable share of the communal tax. *Shulhan Arukh ha-Rav* adds that “in these lands,” every father pays the cost of tuition “if he can afford” to do so.

*Shulhan Arukh ha-Rav* also rules that R. Joshua ben Gamla’s ordinance requires only the teaching of Scripture for which one teacher suffices for each group of twenty-five students. Accordingly, rules *Shulhan Arukh ha-Rav*,

If those who cannot afford to pay tuition wish to teach their sons Mishna and Gemara for which a single teacher or even two [teachers] are not sufficient for twenty-five children, they must pay the balance from their own funds.

Under no circumstances, rules *Shulhan Arukh ha-Rav*, subsequent to the *takkana* of R. Joshua ben Gamla, is the community responsible for providing instruction beyond the age of thirteen.

It would thus follow that according to *Shulhan Arukh ha-Rav*, all parents are entitled as a matter of right—not as charity—to demand that the community at large pay the proportionate share of a teacher’s salary for the hours devoted to teaching Humash and Nakh and perhaps for Mishna and Gemara<sup>9</sup> as well for all children from the age of six or seven until the age of thirteen, provided that the class is comprised of a minimum of twenty-five students. The extent of additional obligations incumbent upon the father is beyond the ambit of a discussion of the *takkana* of R. Joshua ben Gamla.

*Yad Rama* apparently assumes that pursuant to the enactment of R. Joshua ben Gamla, the financial obligation to provide a Torah education devolves primarily upon the community<sup>10</sup> rather than upon the father.<sup>11</sup> However, the terminology employed by Rema<sup>12</sup> implies that when financially capable of doing so, the father is obligated to pay the costs of his son’s Torah education.<sup>13</sup> R. Ya’akov Meir Stern infers from

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the comments of Rabbenu Yeruham<sup>14</sup> that the latter maintains that the father's personal financial obligation was in no way mitigated by R. Joshua ben Gamla's ordinance.<sup>15</sup> However, all authorities apparently agree that since R. Joshua ben Gamla obligated the community to provide instruction, the community must bear the cost of educating children of parents who do not have the financial resources<sup>16</sup> to pay for the tuition of their children.<sup>17</sup>

## II. NUMBER OF STUDENTS IN A CLASS

The Gemara reports that Rava declared the appropriate number of students for a teacher in a single class to be twenty-five.<sup>18</sup> In some circumstances, depending upon class size, the teacher is authorized to hire an assistant and the townspeople must defray the additional cost.<sup>19</sup> Presumably, that assessment reflects the presumption that if the class is comprised of more than twenty-five students, the students will not obtain maximum benefit from the classroom experience and will be deprived of requisite personal attention from the instructor. In some circumstances, the appointment of a teacher's assistant allows for adequate, if not ideal, teacher-student interaction. Thus the figures stipulated for classroom size are apparently designed to serve the educational needs of the students.<sup>20</sup>

However, R. Shimon b. Tsemah Duran (hereafter, *Tashbets*) asserts in his responsa that the stipulation of a maximum of twenty-five students per class was not designed to promote the interests of the students.<sup>21</sup> *Tashbets* maintains that there is no limit to the number of students that may be assigned to a teacher provided that the class size is stipulated in advance. If, however, no mention is made of the number of students for whom he will be responsible, the teacher may insist upon limiting the class to twenty-five students or to forty if he is provided with an assistant. Assigning a larger number of students to the teacher is comparable to an employer unilaterally changing the nature of the work for which an employee has been engaged. A worker should not be hired for light work and then required to perform more arduous labor. *Tashbets* asserts that the effect of the provision for class size is to grant the teacher arbitrarily assigned a large number of students the right to declare that it is too difficult for him to discharge his responsibilities under such circumstances and, consequently, to insist that the town hire additional teachers or assistants.<sup>22</sup> However, if there are fewer than twenty-five students in the class, the teacher cannot claim that the

class is too large for him to teach properly. In the first of these responsa, *Tashbets* adds that this interpretation was previously advanced by Rabbenu Yona. *Tashbets* himself suggests that the Talmudic discussion may also be understood as granting any of the townspeople the right to demand that class size be limited to the stipulated number.

These diverse analyses of the rationale underlying the rules governing class size yield quite different practical results. For example, may a teacher voluntarily agree to provide instruction to forty students without the aid of an assistant? If the rationale for the engagement of an assistant is based upon consideration of the students' needs, the teacher is certainly not free to offer concessions that have a negative impact upon satisfying the educational needs of his students. However, according to *Tashbets*, the cap on classroom size is intended for the welfare and benefit of the teacher, and hence the teacher may voluntarily agree to accept a larger number of students in his class. Nevertheless, on the basis of his own understanding of the Talmudic discussion, *Tashbets* seems to concede that parents may demand that class size be limited, presumably for the benefit of the students. Thus agreement of both the teacher and the parents would be required to vary the stipulated limit placed upon class size.

Moreover, it would appear from the comments of Rabbenu Yona and *Hiddushei ha-Ran*<sup>23</sup> that even if a teacher was hired for the express purpose of teaching "the students of the entire town," he may nevertheless demand an assistant because it must be presumed that a teacher would not have intended to single-handedly undertake teaching the student body of an entire community, and hence it is self-understood that the teacher accepted the position assuming that he would receive assistance. Nevertheless, inherent in the comments of those authorities is the implicit assumption that if a teacher were to state explicitly that he is willing to teach more than the required number of students, it would be acceptable for him to do so.

### III. THE ROLE AND FUNCTION OF THE TEACHER'S ASSISTANT

As noted, the Gemara declares that when there are forty students in a class, an assistant teacher must be appointed. Rashi asserts that the function of the assistant is to pay heed to the lesson as the instructor teaches the children and then to repeat the lesson on behalf of the students.

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Rashi provides little insight into the requisite qualifications of the teacher's assistant. It is unclear whether, according to Rashi, the assistant must be an educated person or whether it is sufficient that he be an intelligent student. *Nimmukei Yosef* comments that the assistant must be an "*ish mevin*," i.e., a person of intellectual understanding. *Nimmukei Yosef* presumably intends to indicate that the assistant need not necessarily be a scholar, but that he cannot be a mere student. *Yad Rama* remarks that the assistant needs not himself be a qualified teacher and, accordingly, whenever the assistant feels that he lacks the requisite knowledge or information, he must turn to the teacher for guidance. Again, the impression is that the person engaged in this capacity is knowledgeable although not fully qualified as a teacher. On the other hand, Me'iri describes the assistant as a "*talmid hashuv*," a proficient student, who assists in the teaching of the lesson. Similarly, *Tashbets* asserts that when a class has over twenty-five students, the teacher has the right to demand a "*talmid harif*," i.e., a sharp or keen student to assist him.<sup>24</sup>

### IV. TWENTY-FIVE STUDENTS: A MAXIMUM OR A MINIMUM?

There is a fundamental dispute among early-day Talmudic commentators with regard to whether the Gemara's stipulation of twenty-five students for each teacher is a statement of a minimum requirement, i.e., that the communal obligation to engage a teacher is applicable only when there are a minimum of twenty-five students requiring instruction, or whether the number of twenty-five students is stipulated as a maximum, i.e., as establishing a cap on the number of students that may be assigned to a single teacher.

Rabbenu Yona understands R. Joshua ben Gamla's ordinance as requiring the appointment of a teacher even if there are fewer than twenty-five students and accordingly regards the number twenty-five as the maximum acceptable number of students per class. Similarly, maintains Rabbenu Yona, a class that exceeds twenty-five students in number is entitled to the services of a teacher's assistant. Hence, he asserts, if there are between twenty-five and forty students, it is sufficient for the town to provide a single teacher and an assistant. However, Rabbenu Yona maintains that if there are between forty-one and fifty students in the class, two fully qualified teachers are required. Consistent with that position, Rabbenu Yona explains that the Gemara's further comment that

two teachers are sufficient for fifty students is also intended as a limitation upon the number of students per teacher, and hence, although two teachers are sufficient for fifty students, if there are as few as even fifty-one students, it is necessary to provide two teachers and an assistant.

According to Rabbenu Yona's analysis, if there are between fifty-one and sixty-five students in a class, two teachers and an assistant are required. If there are sixty-six or more students, the community is required to engage three teachers. R. Joel Sirkes clearly understands that Rabbenu Yona's position yields that conclusion.<sup>25</sup>

Nevertheless, Ritva, who follows the general position of Rabbenu Yona in regarding the figure twenty-five as a limitation upon class size, comments that for fewer than twenty-five students, it is sufficient to provide one teacher; for between twenty-five and forty students, the community is required to provide a teacher and an assistant; for between forty and fifty students, it is necessary to provide two teachers; and for between fifty and seventy-five students, it is sufficient to provide two teachers and one assistant. On first impression, Ritva's comments are rather puzzling: When there are forty-one students, two teachers are required. If so, when the class size reaches sixty-six students, two teachers plus an assistant should not suffice, and hence there should be a need for three teachers!

It is possible that according to Ritva, the Gemara assumes that a single assistant is sufficient because such an assistant can help both teachers.<sup>26</sup> A thesis of that nature is advanced by Rabbi Asher Weiss in comments appended to Rabbi Israel Joseph Braunstein's *Sefer Melekkhet ha-Shem al Hilkhhot Melamdin*.<sup>27</sup> That analysis is, however, rejected by Rabbi Mordecai Leib Katzenellenbogen.<sup>28</sup> R. Katzenellenbogen suggests a textual emendation in the comments of Ritva that would render the position of Ritva consistent with that of the *Bayit Hadash*.<sup>29</sup>

Rabbenu Yona's interpretation is accepted and elaborated upon by *Nimmukei Yosef*. It is also endorsed by Ramban, Rashba, Ritva, *Hiddushei ha-Ran* and Rambam.<sup>30</sup> This is also the position of Rashi as understood by *Hiddushei Anshei Shem* in his comment on *Rif*, and also appears to be the position of *Shulhan Arukh*.<sup>31</sup>

R. Judah Zoldan ascribes a third position to Ramban and Rashba.<sup>32</sup> According to R. Zoldan, those authorities maintain that in addition to the two teachers that must be provided for fifty students, each additional twenty-five students requires another instructor, but there is no requirement for a teacher's assistant once the student body exceeds the number of fifty. R. Zoldan fails to provide a rationale for this rather puzzling position. Why should a single teacher be required to teach more than

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twenty-five students without the help of an assistant simply because there are more than fifty students in the student body? Possibly, these authorities understand the Gemara as assuming that a single teacher cannot maintain discipline over more than twenty-five students, but that two teachers can cooperatively manage as many as seventy-four students. This explanation appears to be strained since, presumably, each teacher provides instruction for a separate group and, moreover, during Talmudic times and well into the modern period, teachers taught pupils in their own homes rather than in the setting of a school building.<sup>33</sup>

A totally opposite interpretation of the decree of R. Joshua ben Gamla is formulated by *Tosafot*. *Tosafot* declare that the number twenty-five represents the threshold number of students below which there is no communal responsibility, i.e., R. Joshua ben Gamla did not require a town having fewer than twenty-five students to engage a teacher. Rosh applies the same understanding to the requirement for having a teacher's assistant.<sup>34</sup> Accordingly, a town is required to provide the instructor with an assistant only if there are between forty and forty-nine students; if there are fifty students, a number sufficient for two classes, the town is required to provide two full-fledged instructors.<sup>35</sup> In addition to Rosh, the position of *Tosafot* is accepted by *Hagahot Maimoniyot*,<sup>36</sup> Rabbenu Yeruham,<sup>37</sup> Me'iri,<sup>38</sup> and *She'iltot de-Rabbi Aha'i Ga'on*.<sup>39</sup> This view is also cited by *Darkei Moshe*.<sup>40</sup> Rema cites the opinions of both Rabbenu Yona and *Tosafot*.<sup>41</sup>

*Arukh ha-Shulhan*, however, argues, albeit rather tenuously, that all authorities are in agreement that if the children will not otherwise receive a Torah education, the community is required to provide a teacher even if there are fewer than twenty-five pupils, but that the community is not required to hire an instructor in a town which does not have twenty-five students if the students are able to avail themselves of a teacher in a neighboring locale.<sup>42</sup> A similar analysis is also presented by R. Aaron Samuel Kaidanower.<sup>43</sup>

According to the authorities who that maintain that the town is obligated to provide a teacher for even fewer than twenty-five students, a question arises with regard to whether a teacher must be engaged for the benefit of even a single student or whether there is some alternate minimum number of students that triggers the obligation to engage a teacher. It should be noted that the Gemara (*Shabbat* 119b) declares that any town in which children do not study under the guidance of a teacher will be destroyed. Since Torah study on the part of children protects the city, it follows that the requirement that townspeople hire



an instructor is designed, at least in part, for their own protection just as they may be compelled to erect a wall and fortification to protect the townspeople from potential enemies. If so, engagement of a teacher should be mandatory even if there is but one student.

Of interest are the remarks of Ramban who asserts in his novellae that “even if there are only two or three students, the community is required to provide them with an instructor.” Ramban’s comments imply that although there is a requirement to hire an instructor even for two or three students, nevertheless, if there is but a *single* student, there is no such obligation. Ramban’s position is somewhat problematic: If the community is required to provide instruction even for two or three students, why should the community be exempted from providing instruction for one student?

A possible answer to this question may be found in an anecdote related by the biographer of the late Rabbi Moshe Feinstein. R. Feinstein reported that in the locale in which he was raised, the practice was for a teacher to provide instruction for a group of ten pupils. However, to assure that his son receive adequate attention, R. Moshe’s father, Rabbi David Feinstein, arranged for his son’s teacher to instruct a group of only five students. R. David Feinstein himself defrayed the teacher’s salary by paying a sum equal to the fee for the tuition of five other students in addition to that of his own son. R. Moshe remarked that his father felt that it would be unwise to hire a private tutor for him because, for purposes of proper social and educational development, a child requires classroom interaction with members of a peer group. R. Moshe added that this consideration was indeed integral to the *takkana* of R. Joshua ben Gamla who, in R. Feinstein’s opinion, stipulated that youths be taught in a classroom setting. According to this analysis, R. Joshua ben Gamla’s *takkana* was instituted not simply to assure that every child receive an education, but also to assure that such education take place in a group or classroom setting.

If this is indeed the case, the position of Ramban is readily understandable: Only when there are at least two or three students in a town is it possible to provide classroom instruction and it is only in such circumstances that there is an obligation for the town to hire a teacher. When there is only a single student in the town, classroom education is not possible and hence that intrinsic aspect of R. Joshua ben Gamla’s *takkana* cannot be fulfilled. In such circumstances, maintains Ramban, the community is not required to bear the cost of an individual child’s education.<sup>44</sup>

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### V. CONTEMPORARY ISSUES

Although it would appear that *Shulhan Arukh* maintains that a town is obligated to hire a teacher for even fewer than twenty five students, Rema takes note of the fact that there is a dispute with regard to that matter. In accordance with usual canons of halakhic decision-making, it might be presumed that since the matter is the subject of dispute, the community cannot be compelled to hire a teacher for fewer than twenty-five students. Nevertheless, R. Aaron Samuel Kaidanower expresses the opinion that the position of *Shulhan Arukh* is normative halakha and the townspeople can be compelled to provide a teacher for even fewer than twenty-five students.<sup>45</sup>

R. Kaidanower further declares that even according to the position of *Tosafot* who maintain that the community is required to maintain an instructor only for a minimum of twenty-five students, that rule applied only during the Talmudic period. The situation in later times is entirely different, he maintains, because “in these generations, when the hearts . . . have become diminished,” it is impossible for an instructor to provide adequate instruction to as many as twenty-five students:

Would that it were possible to fulfill our obligation to ten [students] and certainly [would that it were possible to fulfill our obligation] to twelve which is equivalent to twenty-five [students] at the time of the sages of the Talmud.

Accordingly, R. Kaidanower concludes that although he failed to find such a ruling in the writings of any other authority, maximum classroom size in contemporary times should not exceed ten to twelve students in order to assure that each student receive adequate attention.

Although R. Kaidanower writes that he had not found a precedent for his ruling, the comments of *Shakh* are extremely germane.<sup>46</sup> *Shakh* observes that the number twenty-five is not etched in stone:

It would appear (*ve-nir'eh*) that we conduct ourselves in accordance with the teacher and the youths and with regard to whether they are learning much or little, all in accordance with the circumstances.

Hence, it would appear that if R. Kaidanower's contention is empirically correct, i.e., if in contemporary times a teacher can successfully provide instruction to only ten or twelve children, *Shakh* would agree that the townspeople are obligated to hire an instructor for even a smaller number of students.<sup>47</sup>

There is, however, one source that explicitly contradicts R. Kaidanower's ruling. *Shulhan Arukh ha-Rav* also observes that in the time of the Gemara, when instructors taught only Scripture (*mikra*), one teacher was sufficient for twenty-five students; however, in contemporary times, when instructors teach Talmud, a class of twenty-five is too large to be taught effectively.<sup>48</sup> Nevertheless, *Shulhan Arukh ha-Rav* declares that since the obligation of the community to provide educational instruction is predicated on the *takkana* of R. Joshua ben Gamla which according to the position of *Tosafot*, provided for a class size of twenty-five students, the community cannot be obligated to hire additional teachers even in changed times and under different circumstances.<sup>49</sup>

## VI. STUDENTS WITH SPECIAL NEEDS

There are, unfortunately, a significant number of students who suffer from learning and/or developmental disabilities and who, consequently, must be taught in extremely small classes. Is the community obligated to guarantee universal education by providing for those special needs? R. Moshe Feinstein observes that the Gemara relates simply that R. Joshua ben Gamla ordained that the community must provide teachers for groups of twenty-five students but makes no mention of a requirement to provide for the needs of special students whose needs can be met only by means of a much lower teacher/student ratio.<sup>50</sup> R. Feinstein as well as other rabbinic authors who discuss this issue assume that there are some students who cannot be integrated in a usual classroom setting and therefore require separate classes. These discussions are limited to an analysis of the question of a halakhic obligation to provide communal funds for support of such classes. Assuredly, any special arrangements must be provided with concern for, and sensitivity to, the dignity and emotional well-being of the students involved.

To place R. Feinstein's comments in context, one should note that Me'iri observes that the number twenty-five is an intermediate figure (*midda benonit*) and not necessarily the ideal. If so, R. Joshua ben Gamla's ordinance was apparently designed to provide the average child with an education. Consequently, the enactment does not serve to burden the community with the additional expense entailed in the education of children with special needs. A similar conclusion is, of course, mandated by the earlier-cited position of *Shulhan Arukh ha-Rav* who rules that the mandated class size is not subject to variance in response to changed circumstances.

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Nevertheless, according to the authorities who maintain that a teacher must be provided even in a community with fewer than twenty-five students, or in changed circumstances in which an instructor cannot adequately teach so many students, the question cannot be dismissed so readily. Do those authorities understand R. Joshua ben Gamla's decree as requiring universal education? If so, it should follow that the requirements of students with special needs must also be accommodated. Or do those authorities maintain only that the decree was intended to fill the needs of the generality of children, but that a student otherwise privileged to benefit from that *takkana* may not be disenfranchised because of an accident of demography? If so, there is no requirement binding the community to provide for the needs of handicapped students.

Of course, if R. Feinstein's ruling is based upon a straightforward mathematical application of *Tosafot's* position, it follows that even according to R. Feinstein, if there is a minimum of twenty-five students in a community who cannot be accommodated in a mainstream school but whose educational needs could be met by organizing a special education class on their behalf, the community would be duty-bound to do so.

Since R. Feinstein makes no reference to the dispute between *Tosafot* and other early-day authorities, he apparently maintains that even those authorities who require the community to hire an instructor for fewer than twenty-five students would also agree that the education of students who are not capable of benefiting from a normal classroom experience was not encompassed within the parameters of R. Joshua ben Gamla's ordinance. As noted, those authorities maintain that the number of twenty-five students serves as an upper limit designed to guarantee an adequate level of instruction and hence, even if there are fewer than twenty-five students in the community, the town is nevertheless required to provide instruction on their behalf. However, that requirement is limited to the education of the generality of students who can be accommodated in classes that can be capped at twenty-five rather than at a lower number.<sup>51</sup> Similarly, it might be argued that even according to the position of R. Kaidanower who maintains that under contemporary circumstances the average class should comprise no more than ten or twelve students, the enactment would only apply to average students of any given era, but not to students whose requirements are greater than those of the average.

Dr. Abraham S. Abraham identifies alternative grounds that might require the community to defray the costs of special education.<sup>52</sup> Dr.

Abraham reports that the late Rabbi Shlomo Zalman Auerbach maintained that the community is obligated to pay for the special needs of developmentally delayed children just as it is obligated to provide for the medical care of those who do not have the funds to pay for their own medical expenses. From the manner in which R. Auerbach's comments are reported, it would seem that he maintains that the obligation to provide for this type of education is not inherent in the enactment of R. Joshua ben Gamla; rather, it flows from the communal obligation of *tsedaka* (charity). The view that the community is obligated to provide such children with an education appropriate to their needs because of the general obligation of *tsedaka* was earlier articulated by Rabbi J. David Bleich.<sup>53</sup>

Dr. Abraham also cites the comments of Rabbi Yosef Shalom Elyashiv who asserts that the standard of twenty-five students per teacher established by the Gemara applies only to the generality of students, but that for students with special needs, the community has an obligation to provide a teacher for classes comprised of an appropriate number of students even if the number is less than twenty-five. It is, however, difficult to ascertain whether R. Elyashiv understood the enactment of R. Joshua ben Gamla as requiring universal education or whether his reasoning was similar to that of R. Auerbach. If R. Elyashiv did indeed assume that serving the needs of such students is mandated by the enactment of R. Joshua ben Gamla, his position is consistent with the previously-cited ruling of *Arukh ha-Shulhan*<sup>54</sup> and *She'elot u-Teshuvot Emunat Shemu'el*.<sup>55</sup>

## VII. SCHOOL-WIDE LECTURES

Any visitor to a *Bet Midrash* is aware of the excitement that is present when the *Rosh Yeshiva* delivers a *shi'ur kelali*, a lecture on the *sugya* that the students are studying delivered to the entire *yeshiva* student body. This *shi'ur* or lecture is generally delivered to an audience far in excess of twenty-five or even forty students and hence might seem to be inappropriate in light of the enactment of R. Joshua ben Gamla. There are numerous Talmudic references to weekly lectures in matters of halakha delivered to the entire populace on *Shabbat* by the principal rabbinic authority of the community. It would seem that adult lectures or lectures on behalf of students of an age or of an educational attainment beyond the ambit of the ordinance of R. Joshua ben Gamla are not subject to limitation in terms of the size of the audience.

Nevertheless, there is one source that allows for classes to be taught

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to a group of more than twenty-five (for most early-day authorities) or forty (according to *Tosafot* and *Rosh*) students on an occasional basis, provided that the usual and routine mode of study occurs in smaller groups of twenty-five or forty students.

Rabbi Hayyim Pelaggi raises the following question:<sup>56</sup> *Midrash Rabba* (Esther 9:4) eloquently describes how after preparing the gallows intended for Mordecai, Haman set forth to search for Mordecai and found him in the *Bet Midrash* with twenty-two thousand students seated before him. All were attired in sackcloth and were fasting. From the text of the Midrash it would appear that Mordecai was providing instruction for all of those students. R. Pelaggi makes the obvious observation that twenty-two thousand students greatly exceeds the normative standard number of twenty-five students and proceeds to query how Mordecai could legitimately teach such a large group. Similarly, the Gemara (*Yevamot* 62b) relates that Rabbi Akiva had twelve thousand pairs of (or twenty-four thousand) students who died between *Pesah* and *Shavu'ot*. Since twenty-four thousand students exceeds the prescribed maximum by an enormous amount, according to R. Joshua ben Gamla, R. Akiva's conduct would have been inappropriate.<sup>57</sup>

Of course, the problem with regard to R. Akiva is readily resolved if it is assumed that his pupils were mature students of adult age. Mordecai's students are, however, explicitly described as children of tender years. R. Pelaggi advances two solutions to this problem: Mordecai and R. Akiva were both master teachers who had many assistants who taught students in smaller groups of twenty-five or forty, but whenever a difficult question or complex point arose, it was brought to the master teacher to resolve. Similarly, Scripture describes Moses as declaring, "and everything difficult you shall bring before me" (Exodus 19:26). It appears to this writer that this explanation is congruent with the language of the Midrash which reads: "And he found Mordecai sitting in the *Bet Midrash* and the children were seated before him and sackcloth was on their loins and they were occupied with Torah." The Midrash depicts Mordecai as seated in the *Bet Midrash* with the children seated in front of him in their sackcloth and studying Torah. This Midrash emphasizes the fact that the children were studying Torah in the presence of Mordecai, not that Mordecai was the teacher. It would appear that he served as an overseer or *Rosh Yeshiva* rather than an instructor for individual students.

R. Pelaggi advances a second thesis as well, *viz.*, students studied an assigned tractate in individual groups but for two months a year, during

*Elul* and *Adar*,<sup>58</sup> when the students came to attend the in-depth *shi'urim* or lectures of Mordecai and R. Akiva. Thus, general instruction took place in smaller settings that conformed to the prescribed size limits. Nevertheless, the general lectures which served as a form of educational enrichment were conducted on behalf of much larger groups. According to this analysis, it is entirely appropriate for the *Rosh Yeshiva* to provide educational enrichment in the form of a *shi'ur kelali* to a large group of students or even to the entire student body regardless of the age of the students provided that the *yeshiva* caps the regular class at twenty five or forty students. The selfsame considerations would apply to conducting school assemblies from time to time for instructional purposes.

R. Joshua ben Gamla was a pioneer in establishing a system of universal education. Because of his insightful innovation, the Sages said of him, "May that person be remembered for the good." In promulgating his enactment, R. Joshua ben Gamla took cognizance of the sociological realia of his day and responded by transforming the educational system from a private endeavor to a communal one. Rabbi Joel Schwartz<sup>59</sup> has pointed out that a fundamental lesson may be gleaned from the action of R. Joshua ben Gamla: Leaders of the community are charged with assessing the sociological needs and educational challenges of the era in which they live and with discerning the most effective means that will serve to address those concerns. Contemporary educators who strive to emulate the actions of R. Joshua ben Gamla will contribute to the realization of a world in which "All your children are learned of the Lord" (Isaiah 54:13). Those who hasten actualization of that ideal will certainly deserve "to be remembered for the good."

#### NOTES

1. See Abby Goodnough, "Florida Court Backs Retreat on Class Size," *New York Times*, August 20, 2003, p. A10.
2. Michael Winerip, "Miracles of Small Class Size Unfold Daily in California," *New York Times*, October 29, 2003, p. B8.
3. Recent reviews of those sources may be found in R. Israel Joseph Braunstein, *Sefer Melekheth ha-Shem al Hilkhoteh Melamdin* (Israel, 2000) and R. Judah Zoldan, "Busing Students to Educational Institutions Outside of their Areas of Residence," [in Hebrew] *Tehumin* 12 (1991): 133-143.
4. All unreferenced citations refer to *Bava Batra* 21a.
5. Cited by R. Pesach Lerner, *Young Israel Viewpoint* 45:1 (Fall 2002): 26. For a further discussion of this Talmudic statement and an analysis of the

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authority of Sages to mitigate the obligation of a father to teach his son Torah by transferring that responsibility to the community, see R. Jacob Kamenetsky, *Emet le-Ya'akov al Seder Nashim ve-al Seder Nezikin* (New York, 1989), *Avot* 5:21. Cf., however, the novel opinion of *Or Same'ah* (*Hilkhhot Talmud Torah* 1:2) who asserts that there is a biblical obligation for the community to finance Torah education for its members. According to *Or Same'ah's* analysis, the edict of R. Joshua ben Gamla did not establish a rabbinic obligation *de nouveau* but rather served as a device to assure fulfillment of a biblical law. Although this view is also advanced by R. Aaron Soloveichik (*Perah Matteh Aharon, Hilkhhot Talmud Torah* 2:1), the thesis is extremely novel. The text of the Gemara strongly implies that the communal obligation to provide financial resources for communal Torah education is rabbinic in nature and was an innovation of R. Joshua ben Gamla. For a fuller critique of *Or Same'ah's* position, see R. Ya'akov Meir Stern, *Imrei Ya'akov* (Bnei Brak, 1991), *Yoreh De'ah* 245:7, *Be'urim*, s.v. *mashivin melamdei tinokot*.

6. See the comments of *Maharam Lublin* and *Maharsha* (*Hiddushei Aggadot, Bava Batra* 21a).
7. *Hilkhhot Talmud Torah* 1:3.
8. *Hosben Mishpat* 163:3.
9. *Shulhan Arukh ha-Rav* indicates that whether the teaching of Mishna and Gemara is included in the financial obligation devolving upon the community pursuant to the ordinance of R. Joshua ben Gamla may be contingent upon a controversy recorded by the Gemara, *Nedarim* 37a.
10. See R. Samuel ha-Levi Wosner, *She'elot u-Teshuvot Shevet ha-Levi* (2002), VI, no. 147.
11. R. Menashe Klein cogently notes that although R. Joshua ben Gamla's ordinance places the financial responsibility upon the community, it does not extinguish the father's obligation. Hence, if the community fails to discharge its responsibility, the father remains obligated to bear the costs of instruction. See R. Menashe Klein, *Mishneh Halakhot* (New York: Makhon Mishneh Halakhot, 1998), X, no. 159.
12. *Hosben Mishpat* 163:3.
13. For a fuller discussion, see R. Hayyim ben Attar, widely known as the author of *Or ha-Hayyim* in his *Rishon le-Tsiyyon* (*Yoreh De'ah* 245:7); R. Yitshak Ya'akov Weiss, *She'elot u-Teshuvot Minhag Yitshak* (Jerusalem, 1993), X, no. 84; *She'elot u-Teshuvot Shevet ha-Levi* (VI, no. 147); and R. Nathan Gestetner, *She'elot u-Teshuvot le-Horot Natan* (Jerusalem: Makhon ha-Ma'or, 2001), V, no. 54. Cf., R. J.D. Bleich, *Contemporary Halakhic Problems* II (New York: Ktav, 1983), 309.
14. *Netiv* 29:3.
15. R. Ya'akov Meir Stern, *Imrei Ya'akov*, *Yoreh De'ah* 245:7, *Be'urim*, s.v. *ve-kol ir*.
16. Similarly, if a father simply refuses to pay tuition and the community is incapable of compelling him to discharge his financial obligation, the child has the status of "an orphan in the lifetime of the father" and the community is bound by the ordinance of R. Joshua ben Gamla to provide for his education. For this reason, R. Jacob Kamenetsky is quoted by R. Daniel



- Neustadt, the editor of R. Kamenetsky's posthumously published *Emet le-Ya'akov al Arba'at Helkei ha-Tur ve-haShulhan Arukh* [(Cleveland: Rabbi Jacob Joseph School Press, 2000), *Yoreh De'ah* 245:4, n. 106] as advising that a school dare not refuse to accept a student whose parents refuse to pay tuition fees. See *infra*, note 12.
17. Cf., *Mishneh Halakhot* (X, no. 159) who observes that absent a *kehilla* structure, it is impossible to assess or compel payment of funds required to satisfy the obligation established by the ordinance of R. Joshua ben Gamla. *Mishneh Halakhot* further argues that when the community as a whole is remiss in discharging its obligation, no individual is bound to contribute the sum that would have been levied upon him in order to satisfy the requirements of the ordinance. *Mishneh Halakhot's* thesis is disputed by *Imrei Ya'akov* (*Yoreh De'ah* 245:7, *Be'urim*, s.v. *ve-kol ir*).
  18. See, however, Rashba who records a variant reading of the text from which it appears that appropriate classroom size is twenty-four students. See also the comments of R. Mordecai Leib Katzenellenbogen, *Hiddushei ha-Rashba, Bava Batra* (Jerusalem: Mossad ha-Rav Kook, 1997), note 14.  
Interestingly, Me'iri, in his commentary, observes that the number twenty-five represents a middle-of-road approach (*midda benonit*) with regard to satisfaction of pedagogic needs. The ideal, apparently is significantly less.
  19. A literal reading of the Gemara gives the impression that the teacher pays the assistant and is reimbursed by the community. The Gemara is, in fact, understood in that manner by Rabbenu Yehonatan, as cited in *Shita Mekubbetset*. However, the consensus of early-day commentators, including Rashba, Ri mi-Gash, Rabbenu Yona and Ritva, is that the community pays the assistant directly.
  20. See also R. Hayyim Pelaggi, *She'elot u-Teshuvot Hayyim be-Yad* (Izmir, 1872), no. 126.
  21. *Sefer ha-Tashbets-Teshuvot*, II:64; III:153.
  22. A recent article by Donald MacLeod, "No Benefit in Smaller Classes, Study Finds" published in the Internet edition of the London newspaper, *The Guardian*, January 6, 2005 (<http://education.guardian.co.uk/schools/story/0,,138387,00/html>) reports that a study conducted by members of the faculty of the University of London's Institute of Education found that there was no difference in educational achievement between students taught in small (defined as less than twenty-five students) and those taught in large (defined as thirty students) classes. However, the study revealed that teachers assigned larger classes felt more pressure and found classroom management more difficult. This study lends support to *Tashbets's* contention that the Gemara's limitation of class size was designed for the benefit of the teacher rather than of the student.
  23. *Hiddushei ha-Ran* is also cited by *Bet Yosef*, *Yoreh De'ah* 245.
  24. II, no. 64.
  25. *Bayit Hadash*, *Yoreh De'ah* 245.
  26. Although pedagogically plausible, this conjecture is historically improbable since in Talmudic times teachers taught in their homes rather than in a central designated school building. Hence it is unlikely that a single assis-

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- tant would have been able to assist two teachers in two separate locations.
27. p. 300.
  28. *Hiddushei ha-Rashba, Bava Batra* 21a, note 18.
  29. See also the comments of *Melekheth ha-Shem* offered in the name of the author's brother, R. Ya'akov Bernstein, p. 170.
  30. *Hilkhot Talmud Torah* 2:5. See also *Lehem Mishneh*, ad loc., and *Be'ur ha-Gra, Yoreh De'ah* 245:23.
  31. *Yoreh De'ah* 245:15.
  32. Zoldan, "Busing Students," 137, note 9.
  33. See also R. Katzenellenbogen's lengthy analysis in his comments on *Hiddushei ha-Rashba, Bava Batra* 21a, note 18.
  34. *Bava Batra* 2:7.
  35. For a fuller discussion of the position of Rosh, see R. Israel Joseph Braunstein, *Melekheth ha-Shem*, p. 169, who asserts that *Bayit Hadash (Yoreh De'ah* 245) and *Be'ur ha-Gra (Yoreh De'ah* 245:23) disagree with regard to the proper understanding of Rosh's position. However, this writer fails to perceive any disagreement in these commentators' understanding of Rosh. For an excellent chart that highlights the differences between the various positions, see Zoldan, "Busing Students," 137.
  36. *Hilkhot Talmud Torah* 2:3.
  37. *Sefer Adam, Netiv Sheni, Helek ha-Rishon*.
  38. *Bava Batra* 21a.
  39. See *She'ilta* 142 and the comments of Netsiv, *Emek ha-She'ela*, ad loc., no. 6.
  40. *Yoreh De'ah* 245:5.
  41. *Yoreh De'ah* 245:15.
  42. *Yoreh De'ah* 245:25-26.
  43. *She'elot u-Teshuvot Emunat Shemu'el* (Jerusalem, 1981), no. 26  
 This analysis is contradicted by *Shulhan Arukh ha-Rav (Hilkhot Talmud Torah, kuntres aharon* 1:3) whose comments will be discussed later. See also R. Ya'akov Meir Stern (*Imrei Ya'akov* [Bnei Brak, 1991], *Yoreh De'ah* 245, *Sha'ar ha-Tsiyyun*, no. 90), who maintains that the consensus of the *poskim* and the terminology employed by Rema indicate that even if the students will otherwise receive no education whatsoever, the community is not required to provide a teacher for fewer than twenty-five students.
  44. See R. Moshe Feinstein, *Iggerot Moshe*, VIII (Jerusalem, 1996), Introduction, "*Ma'an Malkei Rabbanan*," p. 8.
  45. *She'elot u-Teshuvot Emunat Shemu'el*, no. 26
  46. *Yoreh De'ah* 245:10.
  47. The ruling of *Emunat Shemu'el* is cited by *Pithei Teshuva* (245:8) and *Gilyon Maharsha* (245:15). For a fuller discussion of this position, see *Imrei Ya'akov, Yoreh De'ah* 245:15, *Be'urim*, s.v. *de-afilu pahot mi-zeh hayyavim*.
  48. *Hilkhot Talmud Torah, kuntres aharon* 1:3. See also *Shulhan Arukh ha-Rav*, loc. cit., who, *inter alia*, makes the additional point that in the time of the Gemara, students were proficient in the Hebrew language from early childhood, whereas in our day, the language must be taught as well.
  49. R. Samuel ha-Levi Wosner, *Teshuvot Shevet ha-Levi*, VI, no. 147, draws additional conclusions from *Shulhan Arukh ha-Rav's* view that the commu-

- nity cannot be compelled to provide educational support beyond that explicitly mandated by the decree of R. Joshua ben Gamla. *Shevet ha-Levi* cogently notes that in contemporary times, it is often necessary to bus students, serve breakfast and lunch, provide textbooks, buy or rent a building and to provide heat and air conditioning. Since, according to the view of *Shulhan Arukh ha-Rav*, defrayment of those expenses is not encompassed within the decree of R. Joshua ben Gamla, the community cannot now be compelled to pay for them. For a further discussion of whether even a father is obligated to pay for educational expenses for his son beyond those of the teacher's salary, see R. Menashe Klein, *Mishneh Halakhot*, X, no. 159.
50. *Am ha-Torah* 2:2 (1982), reprinted in *Iggerot Mosheh, Yoreh De'ah*, IV, no. 29.
51. Cf., however, R. J. David Bleich (*Contemporary Halakhic Problems* II, 309-310) who seems to understand R. Feinstein's position as predicated upon the view of *Tosafot*. *Iggerot Moshe* may well have concluded that a community cannot be held liable for satisfaction of a financial obligation that is the subject of controversy and hence predicated his comments upon the less financially demanding position of *Tosafot*.
52. Abraham S. Abraham, *Nishmat Avraham* (Jerusalem: Makhon Schlesinger, 2002), V, 81
53. *Contemporary Halakhic Problems*, II, 310.
54. *Yoreh De'ah* 245:25-26.
55. No. 26.
56. *She'elot u-Teshuvot Hayyim be-Yad*, no. 126
57. It would appear that R. Pelaggi's objection flows from the presumption that the cap of twenty-five students is intended for the benefit of the students. However, as noted previously, if this limit is designed to benefit the teacher who may find teaching a larger number to be onerous, there is no problem. It is quite likely that Mordecai and R. Akiva were both charismatic and dynamic teachers who could effectively teach large numbers of students and voluntarily did so.
58. R. Pelaggi comments that at the time of the decree of Haman, an exception was made in order to counteract the decree of Haman, and Mordecai delivered these large lectures during the month of *Nisan* as well.
59. R. Joel Schwartz, *Netiv le-Yeshiva* (Jerusalem, 1997), pp. 17-18.