

The Enactment of Yehoshua ben Gamla

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Historical Development of Jewish Public Education

The Gemara² states:

R. Yehudah said in the name of Rav: Yehoshua ben Gamla should be remembered reverently, for if not for him, Torah would have been forgotten by the Jewish people. For it used to be that someone who had a father would be taught Torah by him, but one who didn't have a father wasn't taught Torah. This was in accordance with the verse, "And you shall study it,"³ meaning both studying it personally and also teaching it to one's child. They therefore enacted that there be teachers in Jerusalem, as it says, "For Torah shall emanate from Zion."

Still, those who had fathers would bring them to Jerusalem to study, but those who didn't have fathers

1. I was privileged to study in the Rabbi Jacob Joseph School from kindergarten through high school. Although I attended the school many years after Reb Marvin Schick, I still heard of him while studying there. Years later, when I was already learning in Israel, Reb Marvin organized a meeting of former RJJ students to speak about reviving the school and ensuring that the *rebbeim* had appropriate pensions.

This article deals with an issue that befits his memory: the enactment of obligatory and universal public Jewish education, an obligation that was dearest to the heart of Reb Marvin. May his memory be a blessing for all of us and may his great deeds inspire us.

2. *Bava Basra* 21a.

3. *Devarim* 11:19.

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would not go to Jerusalem. They therefore enacted that they would place a teacher in every area of the country, and they would bring the boys to study there at the age of sixteen or seventeen. However, [since they were older], those whose teacher would get upset at them would rebel and leave.

Yehoshua ben Gamla then came and enacted that they place teachers in every city and that children would be brought to them to study at the age of six or seven...

Rava said: From the enactment of Yehoshua ben Gamla and onwards, we do not take a child from one city to another to study, but we do take him from synagogue to synagogue. However, if there is a river between the two synagogues, we do not bring him from one to the other. However, if there is a bridge over the river, we use it [and thus may switch a child to a different synagogue], unless it is a narrow bridge.

Rava also said: The appropriate number of children per teacher is twenty five. If there are fifty children, we hire two teachers. But if there are forty, we hire an assistant for the teacher.

This Gemara describes the development of the establishment of public education among the Jewish People. From a cursory reading of the Gemara, it seems that Yehoshua ben Gamla's enactment was merely the final step in a three-part process. He did not initiate public education, but rather improved upon the previous model. This reading leaves us wondering why all the credit is given to him, while the first two enactors remain anonymous.⁴ This question

4. The *Yerushalmi* (*Kesubos* 8:11) does credit Shimon ben Shatach with arranging that Jewish children go to school. This may mean that he was one of the initiators of the first enactments. On the other hand, R. Yitzchak Isaac Halevi (*Doros Harishonim* vol. 2 ch. 27) contends that Shimon ben Shatach was the true author of the enactment of Yehoshua ben Gamla. However, due to the almost complete dominance that the Sadducee sect had over the levers of political power and their reflexive hostility to Shimon ben Shatach as the foremost representative of the *perushim*, he thought it prudent to use Yehoshua ben Gamla - who enjoyed a far more

is not merely academic reflection. Rather, it goes to the heart of Yehoshua ben Gamla's actual enactment and its relevance today.

The Obligation to Teach Children Torah

Let us start with the basic law. The obligation of teaching a child is solely the responsibility of the father or the son himself. This in effect is what we understand from the verse, "And you shall study/ and you shall teach."⁵ This point is further apparent elsewhere in the Gemara,⁶ where the obligations of a father to a child are listed. The obligations include circumcising a child, redeeming him if he is a firstborn, teaching him Torah, teaching him a trade, and marrying him off. Only regarding circumcision does *beis din* - representing the public - step in if the father neglects his obligation. It seems quite clear that the other mitzvos are performed either by the father or, if he fails to do so, by the son when he comes of age. It seems that circumcision is the exception because there time is of the essence, as one must perform it on the eighth day or as soon as possible thereafter.

It therefore stands to reason that the first enactment was a mere enhancement of the existing obligation. Thus, the father remained the one obligated to teach the son, but he was aided by the creation of a resource in Jerusalem, effective if the father could not himself teach him. It was a place where one could study independently of a father. But this only solved the problem of fathers who did not have the requisite knowledge or ability to teach their son. If the boy was an orphan, then there was no one responsible for having him study and no one willing to bring him to Jerusalem. Rabbeinu Gershom⁷ seems to be emphasizing this by explaining: "Whoever had a father - who was obligated to teach him." Thus, it seems that the real deficiency with this system was the lack of any obligated party.

cordial relationship with King Alexander Yannai and the Sadducee elites that surrounded him (see *Yevamos* 61a and *Tosafos Bava Basra* 21a s.v. *zachur*) - as a sort of cat's paw.

5. *Devarim* 11:19.

6. *Kiddushin* 29a-b.

7. *Bava Basra* ad loc.

The next step was to create schools in many districts, where older boys were served. The switch to older boys seems strange. But one can perhaps explain that this was done so that we could target boys at an age when they themselves were obligated to study. This is similar to the obligation of the firstborn to redeem himself if the father did not do so. Accordingly, it was not necessary to have a school in every city, as the boys were old enough to travel on their own. The flaw in this system was the conflict that was created when older boys were disciplined by a teacher.

The final enactment was that of Yehoshua ben Gamla. His innovation was not merely an upgrade to the existing framework, but rather a paradigm shift. The heretofore parental obligation became a communal responsibility.⁸

Tzarchei Ha'ir

This enactment was more than a generic assumption of communal responsibility. While in the times that the Jewish People had nationhood, national communal obligation was the duty of the monarchy or the *sanhedrin*, once those institutions fell apart, a general communal responsibility had no real teeth. Therefore, the rabbis gave it a specific legal framework: *tzarchei ha'ir* (communal needs).

Let us explain this. There are three legal constructs of partnership that mutually obligate the partners: *bnei hachatzeir* (residents of a common courtyard), *bnei hamavui* (residents of a common alleyway), and *bnei ha'ir* (residents of a common city). These are legal entities that *Chazal* created to enable the normal function of groups of co-inhabitants. Thus, people living in a common courtyard, street, or city can force each other to build commonly needed structures and

8. The *Ohr Samei'ach* (*Hilchos Talmud Torah* 1:2), though, states that within the Torah commandment to teach Torah lies an obligation on both the parent and the community. Yehoshua ben Gamla's ordinance seems, according to him, to be technical in nature. See also the *Lechem Mishneh* (*Hilchos Talmud Torah* 1:3), who considers the obligation of the father to hire a teacher for his son to be a derivative of Yehoshua ben Gamla's enactment. This obviously implies that all of it emanates from the parental obligation.

institutions.⁹ If any one of the parties demands that one of the commonly needed entities be built, he can legally force the others to contribute. It is telling that this enactment of Yehoshua ben Gamla is not only located in *Yoreh Dei'ah*,¹⁰ which discusses the laws of the study of Torah, but also in *Choshen Mishpat*,¹¹ which deals with the laws of *tzarchei ha'ir*.¹²

Despite the fact that educating children is considered *tzarchei ha'ir*, it still carries within itself the meta-obligation of Torah study. Thus, if the entire city is disinterested in establishing a school for children, then from the perspective of *tzarchei ha'ir*, it would not need to establish a school. But *Chazal* created a responsibility on the Jewish People to make sure that the city creates a school. We are told that a city that does not provide this education is to be banned and eventually destroyed.¹³ The combination of both these legal requirements means that it is both a moral obligation and the financial right of each person in the city to have a place of Torah study for children.

Zoning Ramifications

This perspective on Yehoshua ben Gamla's enactment helps us understand another aspect of the law: zoning issues. The basic law is that residents can protest against anyone opening an unusually disruptive business in their courtyard. The Gemara states that once Yehoshua ben Gamla promulgated his edict, one can no longer protest the establishment of a school in his courtyard. Given that there were two edicts preceding his, why is it that only after Yehoshua ben Gamla promulgated his edict did the establishment of a school override neighbors' protests? Perhaps the reason is that the previous enactments were merely aids to fathers fulfilling

9. See *Shulchan Aruch* C.M. 161-163.

10. 245:7.

11. Rama 163:3.

12. See *Bei'ur Hagra* C.M. 163:80, who emphasizes the point that hiring a teacher is *tzarchei ha'ir*.

13. *Shabbos* 119a; Y.D. 245:7. The specter of this punishment may itself classify establishing a school as *tzarchei ha'ir*, as otherwise, the city will suffer.

their personal obligation, as we explained earlier. This does not give them the right to overrule zoning restrictions. Yehoshua ben Gamla's enactment, on the other hand, turned it into a municipal requirement - an obligation for everyone - and therefore, no one has the right to protest.

The Parent's Role After Yehoshua ben Gamla

Let us examine Yehoshua ben Gamla's edict a bit more closely. There is a basic obligation on the father to teach his son Torah. If need be, the father is obligated to hire a teacher.¹⁴ Did Yehoshua ben Gamla abrogate the father's responsibility entirely or merely supplement it? There may be practical differences between these two possibilities, especially in determining the relative payment obligations of the parents and the community.

Several formulations of the exact responsibility of the parents subsequent to Yehoshua ben Gamla's edict are found in the *Rishonim* and *Acharonim*:

1] The *Yad Ramah*¹⁵ states: "We see from here that the community is obligated to place teachers in every city and pay their wages. This stands to reason, for what does Yehoshua ben Gamla's ordinance 'that they placed teachers' mean if not that we pay the salaries from public funds? This is the best setup to ensure that poor and rich alike will study."

It thus seems that the parents are totally absolved of their obligation.

2] The *Ritva*¹⁶ seems to say that when there are twenty-five children, the community pays in full. But when there are fewer, the parents pay, and the community supplements as needed.

14. See *Shulchan Aruch* Y.D. 245:3, based on *Kiddushin* 29a-b and *Nedarim* 37a.

15. *Bava Basra* 21a s.v. *v'amar Rava* (58).

16. *Ibid.* s.v. *amar Rava*.

3] The Rama¹⁷ states: “In those places that the community has placed teachers and the parents cannot pay the hire of a teacher, necessitating that the community pay... etc.”

It seems from his words that the primary obligation to pay remains with the parents, and the community acts merely as a safety net.

4] The *Shulchan Aruch Harav*¹⁸ indicates that the primary enactment was indeed that the entire salary of the teachers would be paid by the community, but the prevalent custom has become like the Rama that it is only a supplement to what the parents can pay.

5] The *Aruch Hashulchan*,¹⁹ however, has a far more radical interpretation of the edict. He writes that Yehoshua ben Gamla’s ordinance almost completely eliminated the father’s role, not only in terms of finances, but even in the education of the child. After Yehoshua ben Gamla, the father need only teach the child some introductory lessons, but everything else is taught by teachers. The advantage of this is that the boys will study far more than the mandatory *torah sheb’ksav* (written Torah); they would study Mishnah and Gemara as well. The *Aruch Hashulchan* seems to be assuming that many parents did not have the requisite skills or motivation to teach their children these more advanced subjects.

Although this removed the educational role of the parent, it did not, however, totally eliminate the obligation of the financially capable parent to pay for education. He even states that wealthy parents should continue hiring private teachers, as otherwise, the communal system will be overwhelmed by the volume of students.²⁰

17. C.M. 163:3.

18. *Hilchos Talmud Torah* 1:3.

19. Y.D. 245:6-7.

20. It is unclear how this fits with the advantages of the child attending a yeshiva, where he would continue studying Mishnah, etc. Perhaps he means that by hiring a teacher instead of the father teaching personally, he can realize the same goal of ensuring that his son studies more than the written Torah.

Taxation

Having established that this is a communal obligation and that everyone must at least in some circumstances contribute, we are now faced with the question of how the community is to raise the necessary funds to cover its obligations. Historically, the Jewish community had the autonomy to tax its residents, and this is how all communal needs were covered.

There are two types of communal taxes: per capita and wealth-based.²¹ Generally speaking, which one is used depends on what is being addressed with the particular tax. Potentially life-saving needs are met with per capita collection, as everyone makes equal use of them, while needs that are primarily economic are met with some sort of wealth-based tax.

The Rama²² states that the tax to cover the cost of schooling is wealth-based. Even though the need is not economic, a wealth-based tax allows for hiring more competent teachers.²³

The Minimum Number of Students

Does this requirement to hire a teacher apply even to communities that have very few students? The key passage to determine this is the Gemara that the appropriate amount of students per teacher is twenty five. At first glance, this seems to be merely a maximum student teacher ratio requiring that an assistant be hired if there are more students.

Tosafos,²⁴ however, state that twenty five students is the minimum for parents to exercise their right to force the community to establish a school. The Rosh concurs. He therefore interprets the Gemara about hiring an assistant to mean that until a class reaches

21. See *Bava Kamma* 116b, *Bava Basra* 7b, and C.M. 172:15.

22. Y.D. 163:3, based on Rabbeinu Yerucham (*Meisharim* 29:3).

23. This seems to contradict what he states in O.C. 53:23 that it is half based on wealth and half per capita. See *Magen Avraham* 53:27 and *Machatzis Hashekel* ad loc.

24. *Bava Basra* 21a s.v. *sach makrei*.

forty students, there is no need to hire an assistant, and it is only from forty students onwards that one must hire an assistant.

The Ramban and others argue that even for two or three students, the community must hire a teacher.²⁵ The number twenty five is the maximum before one must hire an assistant.

The Rama²⁶ cites both opinions without issuing a definitive ruling.²⁷

Modern Application

The enactment of Yehoshua ben Gamla is one of the most significant ever implemented. No wonder the Gemara so profusely praises him for preserving Torah among the Jewish People! Almost every community since has had some system of public education.

However, when trying to apply the details of this enactment to modern settings, many questions arise. Some of these questions have been dealt with by *poskim*, while some of them still need to be resolved.

First of all, we lack the type of communal structure that can employ taxation. We do not “ban communities” or “destroy them.” At best, we can use the obligation as moral persuasion for people to undertake the creation and support of yeshivos. The one thing that should be a clear takeaway from this Gemara is that Jewish education is not the obligation of the parents alone. It is an obligation on the community to ensure that Torah continues. This means that while we may put pressure on parents to do their share, at the end of the day, the viability of the school needs to be the community’s responsibility. A child who does not attend yeshiva

25. It appears that for one student, one cannot force the community to hire a teacher according to any opinion.

26. Y.D. 245:15.

27. Generally speaking, when he cites two opinions, it is understood that the Rama accepts the second opinion (see *Yad Malachi*, *Klalei Shulchan Aruch* 13). In this case, this would mean that even for fewer than twenty five students, the community must hire a teacher. However, regarding the number of students present before hiring an assistant, the Rama states that the maximum is forty, which seems to accord with the first opinion. This requires further study.

for financial reasons is a stain on the community, regardless of the parents' negligence.

Another area that requires resolution is the part of the school budget that is meant to cover secular studies and the like. Given that a school must have all of these additional classes, is that included in the obligation of the community?

How many years would we consider today as the minimum for which a child must have a Jewish education? It may be that today, without a more extended education, the child's Judaism simply is not viable.

What is the minimal number of students that can require the community to make a school? It is very different when all that was required was one teacher, as opposed to today when one needs a great deal of infrastructure even for one student.

A more vexing issue is what counts as having sufficient schools. If in one city there is a particular school affiliated with this or that group, does that count as being sufficient for everyone even if its *hashkafah* or flavor does not suit many parents?

All of these are questions that need to be considered when applying this edict in practice.

We have seen with our own eyes that when there was no robust Jewish education, Judaism in America nearly disappeared. And we have seen the great revolution that Jewish education brought about in the post war years. May we continue to do what it takes to ensure that every Jewish child receives the Torah education that Yehosua ben Gamla envisioned.