

Dealing with Uncertainty: Does a Statistical Minority (Mi'ut) Matter - Avodah Zarah 34b, 40b

In cases of uncertainty, Jewish law generally follows the majority. This is the case where there is a concrete majority before us (רובא דאיתא קמן), such as a majority of judges who rule one. It is also the case where a statistical majority (רובא דליתא קמן) creates a legal presumption, such as the legal assumption that a married pregnant woman has conceived via her husband rather than someone else. In such cases, the law asserts that רוב בעילות אחר הבעל - the statistical majority of sexual unions of a married woman is with her husband. This is a reasonable way of resolving uncertainty. However, Avodah Zarah 34b and 40b introduce the surprising approach of Rabbi Meir who is not content to follow the majority when it comes to statistical realities. He believes that halakha should account for statistical minorities as well. For instance, even if most people one do/become/experience X, some people do/become/experience Y. And that minority experience should impact our halakhic decisionmaking!

What is the logic behind this approach? Is he simply being strict? Is there something else behind this? Moreover, what are the parameters of an approach like this? How minor is too minor?

Questions? Comments? Email dinanddaf@gmail.com

3 concepts:

חזקה = legal presumption based on status quo ante
רוב = statistical or concrete majority
מיעוט = statistical or concrete minority

1. עבודה זרה מ:

מתני' כל הצלמים אסורין, מפני שהן נעבדין פעם אחת בשנה, דברי רבי מאיר. וחכמים אומרים: אינו אסור אלא כל שיש בידו מקל או צפור או כדור...

MISHNA: All statues are forbidden, i.e., it is prohibited to derive benefit from them, because they are worshipped at least once a year; this is the statement of Rabbi Meir. And the Rabbis say: The only type of statue that is forbidden is any statue that has in its hand a staff, or a bird, or an orb, as these are indications that this statue is designated for idolatry...

גמ' אי דנעבדין פעם אחת בשנה, מאי טעמא דרבנן? אמר רבי יצחק בר יוסף אמר רבי יוחנן: במקומו של רבי מאיר היו עובדין אותה פעם אחת בשנה, ורבי מאיר דחייש למיעוטא — גזר שאר מקומות אטו אותו מקום, ורבנן דלא חיישי למיעוטא — לא גזרו שאר מקומות אטו אותו מקום.

GEMARA: If it is true that the statues to which Rabbi Meir is referring are worshipped at least once a year, what is the reason for the opinion of the Rabbis, who permit deriving benefit from them? Rabbi Yitzhak bar Yosef says that Rabbi Yohanan says: In Rabbi Meir's locale, people would worship statues once a year. And therefore, Rabbi Meir, who maintains that one must be

concerned for a statistical minority (see *Yevamot* 61b), issued a decree that statues are forbidden even in other places, because of the local where people do worship such statues. And the Rabbis, by contrast, who do not maintain that one must be concerned for a statistical minority, did not issue a decree that statues are forbidden even in other places due to that locale where people do worship such statues.

Origins?

2. יבמות סא:

וְהִתְנִיחַ: קָטָן וְקִטְנָה לֹא חוֹלְצִין וְלֹא מִיבְמִין, דְּבַרֵּי רַבִּי מֵאִיר. אָמְרוּ לוֹ לְרַבִּי מֵאִיר: יִפָּה אֲמַרְתָּ שְׂאִין חוֹלְצִין. "אִישׁ" כְּתִיב בְּפָרְשָׁה, וּמִקְשִׁינִן אִשָּׁה לְאִישׁ. אֵלָּא מֵאִי טַעְמָא אֵין מִיבְמִין?

And is it not taught in a *baraita*: An underage boy and an underage girl may not perform *ḥalitza* or levirate marriage; this is the statement of Rabbi Meir. The Rabbis said to Rabbi Meir: You spoke well when you said that they may not perform *ḥalitza*, as the term "man" is written in the passage of *ḥalitza* (Deuteronomy 25:7–10), which limits the *halakha* to an adult male, and we draw a parallel between a woman and a man. However, what is the reason that they may not perform levirate marriage?

[אמר להם:] קטן — שְׂמָא יִמְצָא סְרִיס, קִטְנָה — שְׂמָא תִּמְצָא אֵילוּנִית, וְנִמְצָאוּ פּוֹגְעִין בְּעֶרְוָה...

Rabbi Meir said to them: An underage boy may not perform levirate marriage lest he be found to be a eunuch, i.e., one who is incapable of fathering children for his late brother. Similarly, an underage girl may not perform levirate marriage lest she be found to be sexually underdeveloped and thus infertile when she grows up. In either case, this would result in them sleeping with a forbidden relative....

Parameters: Not מיעוטא דמיעוטא

3. עבודה זרה לד:

וּגְבִינַת בֵּית אוּנְיָקִי. אָמַר רַבִּי שְׁמַעוֹן בֶּן לֵקִישׁ: מִפְּנֵי מָה אָסְרוּ גְבִינַת אוּנְיָקִי? מִפְּנֵי שְׂרֹב עֲגָלִים שֶׁל אוֹתָהּ עִיר נִשְׁחָטִין לְעִבּוּדָה זָרָה. מֵאִי אִירִיא רֹב עֲגָלִים? אֲפִילוּ מִיעוּט נְמִי, דְּהָא רַבִּי מֵאִיר חִיִּישׁ לְמִיעוּטָא!

The mishna teaches: And cheese of Beit Unyaki is prohibited. Rabbi Shimon ben Lakish says: Why did they prohibit deriving benefit from the cheese of Beit Unyaki? It is because most of the calves of that city are slaughtered for the sake of idol worship, and the milk curdled in their stomach contents is prohibited.

The Gemara asks: Why does this explanation specifically mention **most** calves? Even if a statistical **minority** of calves are slaughtered for idol worship, this would also be reason enough, as Rabbi Meir, who is the *tanna* of unattributed opinions in a mishna, is generally concerned about a minority.

אִי אֲמַרְתָּ רֹב — אֵיכָא מִיעוּט.

אֵלָּא אִי אֲמַרְתָּ מִיעוּט, כִּיּוֹן דְּאֵיכָא רֹב עֲגָלִים דְּאֵין נִשְׁחָטִין לְעִבּוּדָה זָרָה, וְאֵיכָא נְמִי שְׂאֵר בְּהֵמוֹת דְּאֵין נִשְׁחָטִין לְעִבּוּדָה זָרָה — הִוּוּ לִיהּ מִיעוּטָא דְּמִיעוּטָא, וּמִיעוּטָא דְּמִיעוּטָא לֹא חִיִּישׁ רַבִּי מֵאִיר.

If you say that the reason for the prohibition is due to a majority of calves slaughtered for idol worship, then despite the fact that the majority of animals in general used to curdle cheese are not slaughtered for idolatrous purposes, there are nevertheless a minority of animals altogether, i.e., the majority of calves, that are, and this minority of calves are cause for concern according to Rabbi Meir.

But if you say that Rabbi Meir prohibits the cheese due to a minority of calves, since there are a majority of calves that are not slaughtered for idol worship, and there are also a wider majority of the remaining animals used to curdle milk that are not slaughtered for idol worship at all, this would constitute a minority of a minority, and Rabbi Meir is not concerned for a minority of a minority. Since only a particular minority of animals used to curdle cheese, i.e., calves, are ever slaughtered for idolatry, and even within that group, only a minority are actually slaughtered, even Rabbi Meir would not be concerned.

A legal presumption of status quo ante helps the minority beat the majority

4. משנה טהרות ג:ח

תנינן שנתמצא בצד העסה והבצק בידו, רבי מאיר מטהר. וחכמים מטמאים, שדרך התינוק לטפח...

A child was found next to dough with a piece of dough in his hand: Rabbi Meir says that the dough is ritually pure; But the sages say that it is ritually impure, since it is the nature of a child to slap the dough...

5. קידושין פ.

מאי טעמיה דרבי מאיר? קסבר: רוב תינוקות מטפחין, ומיעוט אין מטפחין, ועיסה בחזקת טהרה עומדת, וסמוך מיעוטא לחזקה איתרע ליה רובא. ורבנן: מיעוטא כמאן דליתיה דמי, רובא וחזקה – רובא עדיף.

What is the reasoning of Rabbi Meir? He holds that a statistical majority of children will slap the dough while a statistical minority will not, and the dough itself maintains its presumed status of purity (as it was before the child was there). **Add the statistical minority to the presumption of purity, and the statistical majority has been nicked.** (Therefore, the dough is considered ritually pure.) But the Rabbis consider the statistical minority as nonexistent, and thus it is a case of majority (will slap the dough and make it impure) vs. the presumption that the dough is ritually pure (based on what it had been before the child showed up), and in such cases of majority vs. presumption, majority wins.

A legal presumption of status quo ante at least makes the minority equally strong as the majority

6. יבמות קיט.

משנה: האשה שהלה בעלה וצרתה למדינת הים, ובאו ואמרו לה: "מת בעליך" — לא תנשא, ולא תתייבם עד שתדע שמה מעוברת היא צרתה

MISHNA: In the case of a woman whose husband and rival wife traveled to a country overseas, and witnesses came and told her: Your husband died, she shall not marry any other man, and she also shall not enter into levirate marriage until she knows whether the rival wife is pregnant.

הִיְתָה לָהּ חֲמוּת — אֵינָהּ חוֹשֶׁשֶׁת. יֵצְתָה מְלִיאָה — חוֹשֶׁשֶׁת. רַבִּי יְהוֹשֻׁעַ אָמַר: אֵינָהּ חוֹשֶׁשֶׁת.

If she had a mother-in-law overseas, but her late husband had no brothers, she need not be concerned that a brother has been born. But if her mother-in-law departed from her town pregnant, this widow should be concerned that perhaps her late husband now has a brother, with whom she is obligated in levirate marriage. Rabbi Yehoshua says: Even in such a case she need not be concerned and may marry whomever she wishes.

גמרא לֹא תִנָּשֵׂא וְלֹא תִתְיַבֵּם וְכו'. בְּשִׁלְמָא יְבוּמֵי לָא, דְּדִלְמָא מִיעֲבָרָא, וְקִפְגָּעָה בְּאַשְׁתָּא אַח דְּאוֹרְיִיתָא. אֲלֵא לֹא תִנָּשֵׂא, אֲמַאי? הֵלֶךְ אַחֵר רַב נָשִׁים, וְרַב נָשִׁים מִתְעַבְּרוֹת וְיֹלְדוֹת!

Gemara: It was taught in the mishna: She shall not marry any other man and shall not enter into levirate marriage until she knows whether her rival wife is pregnant. Granted, she may not enter into levirate marriage, because perhaps her rival wife is pregnant, and if so, this widow would encounter the Torah prohibition proscribing a brother's wife. But why should she not marry another man? Follow the majority of women, and as most women become pregnant and give birth, it is probable that her rival wife did have a child.

לִימָא רַבִּי מֵאִיר הִיא דְחֵיִישׁ לְמִיעוּטָא?...

Shall we say that the mishna follows the opinion of Rabbi Meir, who is concerned about the minority? There is a statistical minority of women who do not give birth, and Rabbi Meir takes this statistical minority into consideration and requires the widow to wait and clarify whether or not she is required to enter into levirate marriage...

...אָמַר רַבָּא:

...Rava said:

(דף קיט:)

רִישָׁא, חֲזָקָה לְיִיבוּם, וְרוּבָא לְשׁוּק. וְחֲזָקָה לֹא עֲדִיף כִּי רוּבָא. וְאֵייתִי מִיעוּטָא דְּמִפְּלִילוֹת סְמוּךְ לְחֲזָקָה, וְהוּא לִיה פְּלָגָא וּפְלָגָא — לֹא תִנָּשֵׂא וְלֹא תִתְיַבֵּם.

In the first clause of the mishna, the legal presumption is that this widow is obligated to enter into levirate marriage, but in a majority of cases she will actually be permitted to marry a man from the general public, because it is statistically probable that her rival wife had a child. A legal presumption is not as significant as a majority, meaning that the majority carries more weight than the presumption, and she should be permitted to marry immediately. But bring the minority who miscarry into consideration, and join this to the legal presumption, and it becomes similar to an even balance of half and half. Those who miscarry detract from the strength of the majority, causing it to be equal in legal significance to the legal presumption. Therefore, the ruling is that she shall not marry any man who is not her *yavam* and she shall not enter into levirate marriage either.

סיפא, חזקה לשוק, ורובא לשוק. והוּי ליה זכרים מיעוטא דמיעוטא, ומיעוטא דמיעוטא — לא תייש רבי מאיר.
However, in the latter clause, the legal presumption is that the widow is permitted to marry a man from the general public, since her late husband had no brothers initially. And in a majority of cases her mother-in-law will not have had another son, and therefore the widow will actually be permitted to marry a man from the general public. Consequently, the possibility that her husband has a brother, necessitating levirate marriage, is not taken into account because it is a minority of a minority, i.e., it is a minority and it contradicts the legal presumption, and even Rabbi Meir is not concerned about a minority of a minority.

Does the Minority Need the Legal Presumption in Order to Win?

תוספות יבמות קיט: ד"ה סיפא

...והא דנקט דבעין ברישא חזקה בהדי מיעוטא לא בעין הכי אלא שלא תהא חזקה מסייעתא לרוב דאז הוי המיעוט מיעוט דמיעוט.

...And that which is claimed that we need the legal presumption to support the statistical minority, we don't need this. But it cannot be that the legal presumption actively supports the statistical majority because they the statistical minority because a minority of a minority.