

Of Elections, Riots, and *Dina D'malkhuta*

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The horrific events of January 6, 2021, the day a violent mob incited by the President of the United States stormed and sacked the U.S. Capitol building, put us in mind of the Jewish legal principle דינא דמלכותא דינא, *dina d'malkhuta dina*, often translated “the law of the state/realm is valid law.”

The principle is declared explicitly in four places in the Babylonian Talmud, always cited in the name of the *amora* Shmuel (d. ca. 257 C.E.). [1] Like many legal and halakhic principles, this one has undergone significant development over time, [2] but in general we can say that it speaks to the *legitimacy* (or lack thereof) of the actions of civil (i.e., non-Jewish) legal and political institutions in the eyes of Jewish law and Jewish courts. The body of *legitimate* acts, statutes, rules, and procedures is called *dina d'malkhuta*, the law of the state. When we say *dina d'malkhuta dina*, “the law of the state is valid law,” we mean therefore that *halakhah* itself recognizes the validity of those legitimate acts, that a rabbinical court would enforce them, and that the Jewish residents of the state are to abide by them. This principle served as a tool with which rabbis could adapt the *halakhah*, originally rooted in a conception of the Jewish people as a sovereign *malkhut* (that’s Hebrew for the Aramaic *malkhuta*), to serve the needs of a Jewish community that lived as a minority within larger political communities, subject to the laws of those communities and lacking the legal and judicial autonomy that is assumed by most Biblical and Talmudic legal sources.

There are (at least) two major questions we should ask in discussing the nature and applicability of *dina d'malkhuta dina*. The first of these is *limits*: how far does the principle extend, and just what sorts of governmental act are judged as legitimate and valid under Jewish law. An obvious exception is matters of *issur v'heter* (איסור והיתר), laws concerning what we call “ritual” practice. Jewish courts generally do not recognize the validity any governmental intervention into this realm. The second is *justification*. It is, after all, hardly obvious that Jewish law, a system anchored in the specific covenant between God and Israel at Sinai, would require that Jews abide by the laws of a government led by non-Jews who are not party to that covenant. Why *should* the *halakhah* accept these laws as valid, not simply out of expediency but as a matter of principle?

It’s hardly surprising that, in a tradition built upon *mahloket* (argument, dispute), the halakhic literature offers several differing theories to justify the principle *dina d'malkhuta dina*. [3] Some of these are based upon underlying political theories, like that of the feudal structure of government, that no longer speak to our reality and mindset. But one that *does* is that of the Tosafist R. Shmuel b. Meir (Rashbam, 12th-century France), who writes the following in his Talmud commentary: [4]

כל מסים וארנוניות ומנהגות של משפטי מלכים שרגילים להנהיג במלכותם דינא הוא שכל בני המלכות מקבלים עליהם מרצונם חוקי המלך ומשפטיו והלכך דין גמור הוא...

All taxes, fees, and procedures of state law [*mishp'ei m'lakhim*, “laws of kings,” i.e. laws promulgated by non-Jewish governments] that are customarily enacted by rulers in their realm are valid law (*dina*), because all the subjects of the realm have willingly accepted upon themselves the laws and statutes of the ruler. Therefore, such laws are valid without question.

Rashbam locates the binding authority of the government’s law in the consent of the governed, the willingness of the people to accept the ruler’s statutes. This acceptance, moreover, is rooted in a conception of *legality*: the legitimate powers of the ruler are those that are exercised within recognizable (“customarily enacted”) bounds.

While we should not exaggerate the “democratic” tendencies of this twelfth-century rabbi, his theory speaks persuasively to our progressive temperament. The law of the state is valid law, he tells us, not because it is forced upon us by divine decree or by an earthly seigneur, but because we ourselves have freely affirmed it. We would add that this affirmation is strengthened by the fact that, in Western democratic regimes, we Jews are citizens of the realm, possessing the rights as well as the obligations of citizenship. The laws of the *malkhuta* are binding upon us because, like our fellow citizens, *we* are the *malkhut*, the state. We are part of the sovereign power, participating as equals in the election of those who make and enforce the laws. Those laws are binding upon us because *we* have made them and because, by our free-will acceptance (*ratzon*), we have pledged our fidelity to them.

Does this mean that Jewish law obligates Jews to obey without question the dictates of the civil government? Are we denied the right of revolution against an oppressive state? The answer is clearly “no,” and not simply because we may be citizens of a republic born of a revolution or a war of national liberation. If the principle *dina d'malkhuta dina* is binding upon us at all, it is because we accept the law of the state as *dina*: valid, legitimate, grounded in the demands of justice and equity. *That* is the law to which we have given our *ratzon*, that we have “willingly accepted.” From this, it follows that when the institutions of the law have become corrupted – say, when free and democratic elections are stolen and their results distorted – they no longer enjoy the status of *dina* under the *kalakhah*. They are no longer the valid law that we have accepted as binding upon ourselves, and we may act accordingly.

That conclusion is logical. But it is also potentially dangerous, because it offers a פתרון פה, a pretext for unscrupulous and (frankly) evil political actors to use falsehood and deception to destroy the public trust in the legitimacy of legal institutions. If a corrupt and stolen election is the antithesis of legitimacy in a democratic state, false accusations of election theft and corruption are equally heinous. Popular acceptance of the laws – what Rashbam calls *ratzon* – is possible only when the people can trust in the sincerity and good faith of their public officials. And that trust can only be based on the people’s recognition of *fact*, the *fact* that its elections are conducted fairly and accurately, the *fact* that basic honesty and decency prevails in the halls of government. In the absence of that recognition, the *ratzon* to accept the validity of the law will vanish. And what we witnessed on January 6 will be the result.

It matters, therefore, when presidents lie, when they claim that elections were stolen, file lawsuits based on falsehoods, and intimidate election officials to change the results. It matters when

senators and lawmakers and other public officials, who should and do know better, indulge the president's lies or actively conspire with him. And it matters when politicians trade in these lies to stoke the anger and the resentment of masses of people who – perhaps – don't know better, all out of their own lust for power, their craven desire to remain in office. All of them must be held accountable, under the very system of law they seek to subvert, for their actions.

In that way – *only* in that way – will *dina d'malkhuta* truly remain *dina*, the valid, legitimate law of the state.

[1] *B. N'darim* 28a; *B. Gitin* 10b; *B. Bava Kama* 113 a-b; *B. Bava Batra* 54b-55a.

[2] For sources, see Mark Washofsky, "[Thinking Halakhically About Immigration and Refugees](#)," in Walter Jacob, ed., *The Stranger: Immigrant, Migrant, Refugee, and Jewish Law* (Pittsburgh: Rodef Shalom Press, 2019), note 8.

[3] For sources and discussion, see *ibid.*

[4] *Bava Batra* 54b, s.v. *v'ha'amar Shmuel dina d'malkhuta dina*.