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DINA DEMALKHUTA DINA: HOW BROAD A PRINCIPLE?

WEEK ONE SUMMARY OF SBM 2020

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Mishnah Bava Kamma 113a places various restrictions on transactions with tax collectors on the ground that their coins are considered stolen. For example, one may not accept charity from tax collectors or ask them to change larger denominations.

You may be wondering: why would someone having a private economic transaction with a tax collector receive coins collected as taxes in change? Likewise, how could tax collectors give tax money away as charity? Shouldn't it all have been given to their government? The answer is that the governments with which *Chaz"a* interacted, such as the Roman Empire, would sell the right to collect taxes to private individuals. Those individuals could legitimately keep the tax money they collected.

The Gemara asks: given Shmuel's statement that *dina demalkhuta dina* (the law of the government is the law), why is the money of tax collectors considered stolen? After all, the government authorizes them to collect it! The Gemara gives two answers. The first answer is that the Mishnah is referring to tax collectors who have no upper limit on the taxes they can collect. They are viewed as having purchased a license to extort from the government, and Shmuel's statement is not intended to cover *all* government laws. The second answer is that the Mishnah is referring to tax collectors who set up shop without governmental authorization – essentially organized thieves, like highwaymen charging "tolls." Taken together, the answers imply that governmental taxes with quantitative limitations are legitimate and are not theft, and that this is so because of Shmuel's statement that *dina demalkhuta dina*.

The Gemara then cites versions of the sugya in which the objection from Shmuel's statement that *dina demalkhuta dina* and the answers to that objection are responses to Tannaitic texts other than the Mishnah with which we began. One version relates them to a text in which Rabbi Akiva permits wearing *kil'ayim* (i.e. *shatneiz*) in order to evade taxes on goods (which sometimes exempted the clothing one was wearing). Another version related them to a mishnah that permits taking false oaths to the effect that certain food is *terumah* to dissuade a tax collector from taking it. Interestingly, and disturbingly, the last version adds a third answer to the challenge from Shmuel's statement, that it refers to non-Jewish tax collectors. The relationship of this answer to the question is unclear. It does not seem to reconcile the mishnah permitting taking the false oath with Shmuel's statement that *dina demalkhuta dina*, since a non-Jewish tax collector is certainly a representative of the government.

The Gemara then moves to a discussion of Shmuel's statement in its own right. Rava states that the statement must be accepted as *halakhah*, because "they cut down date trees [belonging to private individuals] in order to build bridges, and we walk over them." The government, in other words, used a right of eminent domain. If that was theft, then those bridges would be stolen objects, so crossing them should be forbidden as using someone else's property without permission. Since we do cross over them, they must not be considered stolen, so cutting down the palm trees must not be theft. This demonstrates that the government has a right to take private property. In other words, *dina demalkhuta dina*.

Abaye (as was his wont) rejects Rava's evidence: perhaps the reason that we can pass over these bridges is not that *dina demalkhuta dina*, but rather that the owners of the palm trees despaired of recovering them, so that they become government property despite having been obtained illegally. Rava replies that, if it were not for the fact that *dina demalkhuta dina*, the owners would not thus despair. (Rashi, going against the apparent pshat of the Gemara, interprets this to mean that the despair (*ye'ush*) which they feel would not, by itself, legitimate using the bridges. A "transfer of possession [to a third party]" or an "active changing [of the stolen object]" is also necessary.)

The Gemara then objects that in Rava's case, *dina demalkhuta dina* should not be sufficient to legitimate traversing the bridges. Why? Because the people who, on the orders of the government, cut down the palm trees, did not precisely follow the government's orders. The government told them to cut down trees from various people's properties, but they cut down all the palm trees on one person's property. How then, are the timbers of the bridge not stolen?

The Gemara replies with a sweeping statement of governmental authority: "the emissary of the government is like the government," and, consequently, whatever *dina demalkhuta dina* permits the government to do, any emissary of the government can do within the scope of their discretion. If the government itself had ordered its emissaries to cut down all the palm trees in one person's property, that would not be theft. Consequently, it is not theft for the emissaries of the government to cut down all of one person's palm trees, even though it is not what their instructions said. This is why we can pass over the bridges.

In shiur, we discussed various possibilities regarding the scope and power of *dina demalkhuta dina* that emerge from this sugya and other sugyot. With regard to the government's ability (to use a word which is, hopefully, neutral between various possibilities) to take things from its subjects, Rav Klapper outlined three possibilities. Firstly, and most narrowly, perhaps the principle of *dina demalkhuta dina* says merely that when the government takes things from its subjects, they are

not considered stolen. The sugya in Baba Kama requires at least that much. A much more expansive possibility is that *dina demalkhuta dina* creates a positive obligation to give things to the government, to pay taxes. Rav Klapper suggested a third possibility, which is that relations with a person acting with government authorization are considered to be relations with the government. For example, even though the tax collector has already paid the government, and is now collecting for his own pocket, evading such a collector is considered halakhically to be evading the government. This third option is neutral regarding what exactly one's obligations toward the government are. Consequently, as Zach Orenstein pointed out, there is no immediately apparent *nafka minah* (practical difference) between this third option and the other two.

We also discussed possible ways in which Shmuel's principle could apply beyond the sphere of taxation or eminent domain (which can be understood as a form of taxation). For example, it might be possible for legal documents (*shtarot*) originating in Gentile courts to be halakhically valid because of that principle. Mishnah Gittin 10a states that, with a few exceptions, legal documents from non-Jewish courts are valid. The Gemara objects that performative legal documents, such as gift deeds, should not be valid, since they do not have halakhically valid witnesses! Its first answer is that *dina demalkhuta dina* nonetheless validates those documents. This would extend the statement's power well beyond taxation. However, the Gemara offers a second answer that limits the Mishnah's rule to evidentiary documents. A Geonic tshuvah favors the second answer, and furthermore claims that the second answer rejects the application of Shmuel's statement even to evidentiary *shtarot*. So it is possible that the statement *dina demalkhuta dina* is far-reaching, but also that it is extremely limited.