

Yeshiva University's CJF correctly grasped the need to respond religiously to the unfolding events in Egypt, and that I am following their lead in this devar Torah. For a past devar Torah on Parashat Terumah, please click [here](#).

CJF sent out a brief blogpost linking to a shiur outline by Rabbi Joshua Flug on the topic of civil disobedience. The shiur framed civil disobedience in the halakhic context of "dina demalkuta dina", the Talmudic expression literally meaning "the law of the regime is the law". I hope at some point to detail my specific disagreements with this nonetheless impressive and useful outline, but here I wish to make a broader point.

The presumption of the shiur, as I understand it, is that dina demalkhuta is a prescriptive statement – since the law of the regime is law, one is religiously bound to obey it. Accordingly, acts of disobedience must be justified as exceptions to this principle. I suggest on the contrary that it is a descriptive term – either

- a) the law of the regime is law, and therefore may be legitimately enforced, or
- b) the law of the regime is law, and therefore one is permitted to obey it even where Halakhah might otherwise have reached a different conclusion.

In that light, dina demalkhuta dina never imposes an obligation of obedience. I hasten to add that obedience to the law of the land is in fact generally required halakhically, and that my only contention here is that dina demalkhuta is not the formal driver of that obligation.

I suggest as an alternative framing that two fundamental religious issues are at stake here.

- 1) How should we balance the possibility of practically or ethically improved governance against the risks of instability, loss of respect for the rule of law, anarchy, or even worse government?
- 2) Should we religiously evaluate world political events primarily in terms of their direct impact on the affected citizenries, or rather on whether they are good for the Jews?

There is a third crucial issue here, on a slightly different axis, which is whether the decisions as to whether particular cases of civil disobedience are justified should be handed over to posekim, rather than be made by each individual for him or her self, within broad parameters created by talmidei chakhamim of stature.

None of these questions, I contend, is amenable to a pure conceptual or cut-and-dried halakhic answer. With regard to the first, each set of circumstances is unique, and one must surely consider how wrong a government action is, and the probability of various consequences. With regard to the second, surely it depends on specifically what benefits and risks will result for both Jews and nonJews. The third deserves at least an essay unto itself.

As it happens, around a month ago I bought Ben Zion Netanayahu's provocative, challenging, and sometimes brilliant Don Isaac Abravanel at a rummage sale around a month ago. Netanyahu argues forcefully that it is inaccurate to construct Abravanel's overall political conception from his position that "Som tasim alekha melekh" is not a mitzvah – "You must surely appoint a king over you" – but rather the mitzvah is that should you choose to appoint a king, "som tasim alekha melekh asher yivchar Hashem Elokekha bo mikeev achekha" – "You must appoint a king over you who is chosen by Hashem from amongst your brethren".

I confess that I had, indeed, built my vision of Abravanel off that position, and so Netanyahu succeeded in deeply disconcerting me when he depicted Abravanel as a

believer in the Divine Right of Kings who gave no halakhic legitimacy whatever to resisting political authority, however corrupt or evil. Taken as authoritative, this position would likely see the Egyptian opposition as violating one of the 7 Noachide mitzvot. I have not had time to read all his evidence, but the attached and translated section of Abravanel's commentary on "som tasim" seems sufficient to make his point.

It is worth noting that Abravanel asserts that this question is not addressed anywhere in prior rabbinic literature. This may confirm my contention above about dina demalkhuta, or he may simply mean that he is the first to address the question of disobedience or revolution with regard to Gentiles.

In a recent conversation on LookJed, some friends wrote in to challenge my assertion that teaching rishonim on Chumash was not per se a safe way to inculcate a proper hashkafah in our children, as a significant portion of their comments have not "stood the test of time". This seems to me a prime example – it is to be hoped, for example, that no contemporary Jewish scholar would deny the obligation, let alone the right, of the German people to have rebelled against their Fuhrer, and that same right must be extended to all those living under murderous regimes today. At some other point, as part of Talmud Torah, I may write a point-by-point response to Abravanel's arguments, and if they were to be given formal halakhic weight, it would be easy enough to distinguish his reality from ours in legally significant ways – for example, his contention that the social contract which establishes governments is unconditional seems an empirically false description of much contemporary nation-construction – but I want to be explicit that I reject his conclusion a priori.

Whether Hosni Mubarak is bad enough to generate the right of rebellion is a function of the three questions listed initially above.

Shabbat shalom!
Aryeh Klapper

ואמנם בהיות המלך רע ובליעל, צריך לחקור האם ראוי לעמו שימרדו בו ויסירוהו מהמלוכה כיון שהוא אויב חרף ה' וחומס נפשו כי הנה לא ראינו בדברי מחכמי עמנו בזה דבר. וחכמי האומות תקרו ונתנו בדרוש הזה וגזרו אומר שהוא ראוי לעשותו כמו שעשו השבטי' לרחבעם .

ואני דברתי בדרוש הזה לפני מלכים עם חכמיהם, והוכתתי שאינו מהראוי ושאין יכולת לעם למרוד במלכם ולהסיר ממשלתו ומלכותו, אף שירשיע על כל דבר פשע. ועשיתי על זה שלש טענות: האחת-

שהעם בהמליכם מלך כורתים לו ברית לשמור ולעשות דברו ומצותו, והברית והשבועה הזאת איננה בתנאי כי אם אמנה מוחלטת. ולכן היה המורד במלך הייב מיתה בין שיהיה המלך צדיק או שיהיה רשע, כי אין העם ממה שיבחין צדקתו או רשעתו, ולזה אמד יתברך ליהושע (סימן א') "כל אשר ימרה את פיך יומת", ומזה הצד מהשבועה והברית שהעם כורתים למלכים, הם מחוייבים בכבודו, ואין בהם יכולת ליסרו ולא למרוד בו: והטענה הב' היא -

כי המלך בארץ הוא במקום הקב"ה בעולם, ולכן היה מסור אליו היכולת המוחלט להעניש גם שלא כדין כפי צורך שעה, ולבטל הנמוס הכללי, כמו שהש"י לצורך השעה מבטל הטבע ועושה נפלאות גדולות לבדו. ולכן היה יחיד במלכות כיחוד הקב"ה בעולמו. ומפני זה ארז"ל במסכת ברכות פרק הרואה: "הרואה מלכי א"ה אומר: ברוך שהלק מכבדו וכו', והרואה מלכי ישראל אומד: ברוך שחלק מכבדו ליריאיו". והנה במה שאמרו מכבדו הודו שמלכי חאדמה יש אתם מכבוד הש"י ומעלתו על דרד הדמוי וההעברה,

ולכן אין ראוי להמון העם שישלטו במלכם להסירו ממלוכה, כי היה זה רב ידו לו כשולח ידו בכבוד אלקים, וכבר העד ע"ז דוד המלד עליו השלום שעם שהיה משוח מלחמה לא רצה לשלוח ידו בשאול להיותו מלך ישראל ואמר (שמואל א' כ"ז) "כי מי שלח ידו במשיח ה' ונקה". והטענה הג' מיוהדת לישראל, והיא

כי מי שאין בידו יכלת לחמליך ולבחור מלך, אין ראוי שיהיה. בידו לחסירו ממלוכה, ובהיות שבחירת המלך אינה ביד העם כי אם ביד השם יתברך, כמו שנאמר "שום תשים עלד מלך אשד יבחר ה' אלקיך בו", לכן לא היה ראוי שהם שלא נתנו לו חמלוכה יסירוה ממנו, כי אם הש"י שהוא מהקם מלכין.

ולכן תמצא שאמר שמואל הנביא לישראל כי בהיות המלך איש ריב ומדון לכל הארץ ופושע מבטן יצעקו אל הש"י, והוא אמרו "וזעקתם ביום ההוא מלפני מלככם אשר בחרתם בו ולא יענה אתכם ה' ביום ההוא וגו' - הנה לא נתן להם הש"י רשות למרד בו ולהסירו ממלוכה עם היותו בגבול הרשעה, כי אם שיצעקו אל ה' ית' שליט עילאה במלכות אנשא למאן די יצבא יתננה:

Abравanel to Devarim 17:15

However, in the case of a king who is evil and dissolute, we must investigate whether it is appropriate for his nation to rebel against him and remove him from the kingship, since he is an enemy who despises G-d and does violence to his soul, because we have seen nothing about this in the words of the sages of our nation.

The Gentile sages investigated and discoursed on this theme, and they concluded that such revolt is appropriate, in the manner that the 10 tribes behaved toward Rechav'am (son of King Solomon).

But I have spoken on this theme before kings and their sages, and demonstrated that it is inappropriate, that the nation does not have the legitimate ability to rebel against their king and remove his regime and kingship, even if he is wicked in every manner of evil.

I made three arguments:

1. When the nation coronates a king, they establish a covenant with him to guard and do all his words and commands, and this covenant and oath is not conditional but rather a total commitment.

Therefore one who rebels against the kings deserves execution, whether the king was a righteous or a wicked man, because the people of his nation are not the ones who should determine his righteousness or wickedness, and this is why The Blessed said to Yehoshua "Anyone who rebels against your mouth will be executed".

As a result of this aspect of the oath and covenant that the nation establishes for kings, they are obligated to honor him, and they have no legitimate ability to chastise him or rebel against him.

2. The king on earth is in place of The Holy Blessed One in the world, and therefore he is given the unqualified capacity to punish, even extralegally, as the time demands, and to nullify the general law (RK – I think this refers to the body of natural and conventional law accepted by all civilized countries), just as Hashem the Blessed nullifies Nature and does wonders by Himself when the times require.

Therefore the solitary ruler in his kingdom is like the uniqueness of The Holy Blessed One in His world. For this reason Chazal said in Berakhot: "One who sees Gentile kings says: Blessed is He Who gave a portion of His honor to flesh and blood; One who sees Jewish Kings says: Blessed is He Who gave a portion of His honor to those in awe of Him."

Their statements about the honor of the king constitute an admission that the kings of the land have with them something of the honor of Hashem the Blessed and His exaltedness, in the manner of simile and analogy,

and therefore it is not appropriate for the masses of the nation to have dominion over their king for the purpose of removing him from kingship, as this would be as hubristic of them as if they attacked the Honor of Elokim, and King David testified regarding this that even though he was battle-anointed that he did not wish to attack Shaul, since he was King of Israel, and said "Whoever attacks the anointed of Hashem will be punished".

3. This argument applies exclusively to the Jewish People.

It is not appropriate for someone who does not have the capacity to coronate and choose a king, to have the power to remove him from kingship,

And since the choice of king is not in the hands of the Jewish people, but rather in those of Hashem the Blessed,

as Scripture writes "You must surely appoint over yourself a king whom Hashem your God will choose",

therefore it is not right for those who did not give him the kingship to remove it from him, rather this should be done Hashem the Blessed Who is the raiser-up of kings,

Therefore you find that Shmuel the Prophet said to Israel that when the king is a quarrelsome man and a trouble to the whole land and a sinner from the womb, that they should cry out to Hashem the Blessed,

which is his intent in saying "and you will cry out on that day because of the king whom you have chosen, but Hashem will not answer you on that day etc." –

Hashem the Blessed did not give them authority to rebel against him and remove him from kingship despite his being at the extreme of wickedness,

rather they must cry out to Hashem the Blessed the supreme ruler Who can give human kingship to whom He desires.