

## בראשית פרק יט:ד

טרם ישכבו ואנשי העיר אנשי סדום נסבו על הבית מנער ועד זקן כל העם מקצה:

## [רבינו] בחיי בראשית פרק יט:ד

"ואנשי העיר אנשי סדום" - בא לרמוז כי אנשי סדום היו אנשי העיר והמגדל רשעים גמורים, הם דור הפלגה שאמרו "נבנה לנו עיר ומגדל", ויהיה "אנשי העיר" באור ל"אנשי סדום".

## בראשית רבה (וילנא) פרשת וירא פרשה נ

"ואנשי העיר אנשי סדום נסבו על הבית" - אין אחד מהם מעכב.

Sodom is the second city in Genesis to be subjected to a Divine Inquisition, and the second to be found guilty. In rabbinic theology it is to be expected that when G-d descends in person, the verdict is followed by the merciful sentence of dispersion, whereas when He sends angelic representatives, the sentence is destruction.

The connection between Sodom and Babel is drawn explicitly by Rabbeinu Bechayei among others on the basis of the obvious redundancy in 19:4 "Before they could lie down, the men of the city, the men of Sodom, surrounded the house from lad to elder, the whole people, from the furthest reaches". Why are the Men of Sodom first described as the Men of the City? Because they came from the previously mentioned city, Babel (and perhaps as well from Nimrod's Nineveh, and Cain's Chanokh).

Now the punishment of Babel was dispersion, so these men must have regathered, and overcome their new linguistic diversity. Here the Rabbis (see Bereshit Rabbah et al) pick up on the peculiarity that Sodom is presented as a den of *unified* evil, an organized criminal enterprise rather than an anarchic wasteland. There are *no* righteous people in Sodom, with the possible exception of Lot; no terrorized moral majority locked in their apartments while the mob stormed Lot's house. Indeed, mob is a misnomer – the Sages declare that Lot had violated the *nomos*, the law of Sodom, which required the maltreatment of aliens and forbade hospitality.

I wonder if this is not the true explanation of the apparent redundancy, that the officials of the city were there along with, and directing, the common people. This might also explain the enigmatic 19:9, which we can now explain as follows: Lot was not maltreated in Sodom, perhaps even appointed to a leadership position, because he presented himself as a new member of the city rather than as an alien; by welcoming the angels, he has shown himself to be truly alien as well, and so he should be treated worse than they, who were at least open about their alienness.

The first lesson to learn from here is that the Nuremberg defense doesn't work – the people of Sodom are not excused for their behavior because they were just following the law. It follows that in at least some circumstances civil disobedience is an obligation under Jewish law. It follows that the halakhic principle *dina demalkhuta dina* cannot require Jews to obey secular law without regard to its morality.

Now *dina demalkhuta* has a long history and wide variety of halakhic interpretations, which have been surveyed and analyzed well by a host of other competent scholars. So rather than surveying the field, or paskening, I'll just say that I prefer not to understand it as a requirement to obey laws per se, but rather as a legitimization of the government's ability to establish a framework for civil society, which is generally expressed by giving the government the right to use coercion, especially in the area of

taxation, and the exclusive right to coin money, which carries with it a host of other powers over commerce.

I have recently been listening to a set of tapes by a variety of rabbis on this subject, and I am following as well the halakhic and communal dialogue about how the prohibition of *mesirah*, of providing information about Jews that will lead to their punishment by the courts, relates to America in general, and to suspected abusers in particular. Part of this conversation often revolves around whether there is an obligation under *dina demalkhuta dina* to obey mandatory reporting laws. One of the subdiscussions is whether there is a general obligation to aid the enforcement of the laws of a Gentile *malkhut shel chessed*, roughly a just government, or whether one can hand over Jewish criminals to even such a government when it will impose penalties that are equal to or less than those that would be imposed by a halakhic court.

My intuition is that *dina demalkhuta dina* is the wrong ground for this conversation. *Dina demalkhuta* approaches the government as an outside agency; in one formulation, it is even justified as a sort of rent which the government is charging in exchange for allowing you to live on its land. But what is needed here is the language of social contract, in which a criminal justice system is necessary because we all want to live in a society in which we all are held to these principles. This is perhaps the meaning of the Noachide obligation of *dinnim*. And in that framework, it should be evident that Jews are obligated to behave in the manner that they believe others should behave – so that if we would be horrified if a Gentile refused to turn a Gentile in, we must turn a Jew in. (See in this regard also <http://www.torahleadership.org/categories/chayyeisarahohrhachayyim.pdf>). I think this is particularly correct for a democratic government in which Jews are full participants. Furthermore, I think that the obligation to obey is much greater in a system which grants one genuine opportunity for influence, and even power, as one must subordinate one's judgment to the same extent that one would wish others to.

The outcome of my two arguments is that the primary Jewish relationship to secular – I distinguish secular from Gentile – law is both generated and limited directly by ethical obligation. The secondary question is whether the evaluation of whether to obey the law in specific contexts and cases should be conducted halakhically – i.e. whether the scholarly class, the poskim, should create a formal halakhic layer to mediate between the ethical mechayyev and the mechuyyav, and/or interpose themselves as mediators – or whether it is best left to individuals or the community as a whole.

This depends, of course, on the state of both halakhah and of the community's moral intuition, and the answer may differ by community. At this point in time, it seems to me, for a variety of practical and secular legal reasons, that with regard to mandatory reporting laws, the Orthodox community as a whole is better off with the latter option, so that while rabbis should as always provide and encourage the seeking of Torah guidance, it should not be in the form of direct sh'eilot and psakim. Furthermore, the existence of swirling formal halakhic debates must not be allowed to generate a formal response of shev v'al taaseh adif, that passivity is the safer choice, rather than a substantive response to the ethical demands of a situation.

Shabbat shalom

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