

To what extent does Jewish religious law recognize the authority of secular law? Some recent views on the subject are critically examined by Rabbi Landman, Professor of Rabbinics at Yeshiva University and spiritual leader of Congregation Talmud Torah of Flatbush, Brooklyn, New York.

DINA D'MALKHUTA DINA:

Solely a Diaspora Concept

INTRODUCTION

The third century Amora, Samuel, initiated the concept of *dina d'malkhuta dina* (the law of the state is the law). Living in Persia, Samuel recognized that strict adherence to the corpus of Jewish law would create problems in Diaspora life. He realized that it is difficult for the Jew to live in any foreign state, be loyal to the laws of the state and at the same time remain true to the juridical principles of his own faith. The two systems of jurisprudence were bound to clash and unless some accommodations were made, Jewish survival was threatened. Some accommodations were necessary and as a result the principle of *dina d'malkhuta dina* evolved. It was limited to civil matters and with it Samuel provided the *modus vivendi* for the Jews in the Diaspora.

I

Since its inception, the concept of *dina d'malkhuta dina* has been a vital concern in Jewish life because of its historic, social and halakhic importance. During the last ten years it has been the focus of particular attention because of its political and moral implications relating to crucial current issues both here in the United States and in the State of Israel.¹ Samuel's maxim of *dina d'malkhuta dina* was never probed nor analyzed by the sages of

the Talmud. Although fully accepted in the Talmud as legally valid, neither Samuel himself nor any of the later Amoraim reveal to us the reasons upon which his decision was based. With every other law, whose source was not readily known, the Talmud asks, "How do you know?" or "from whence stems this law?" Not so with Samuel's law of *dina d'malkhuta dina*. It was accepted by all without question.

The sages of the Middle Ages, however, did attempt to explain it. Thus, one view claimed that a king's authority was based upon the acceptance of his reign by his subjects. It was government by the will of the people.² Samuel b. Meir (1080-1158) stated:

All regular and special taxes, and all decrees promulgated by the kings are the law because all the people of the kingdom willingly accept the statutes and ordinances of the king. These are therefore binding. No man may be accused of robbery if he holds money given him by "the law of the kingdom."

In a handful of words, R. Samuel expresses an idea which appears far too sophisticated for the 12th century, namely, rule by the consent of the people. R. Samuel enunciated the concept that a king's authority is based upon the acceptance of his reign by his subjects. It does not demand that this be a formal declaration and neither does it require anyone to be present when a king assumes the throne. Whenever an individual takes up residence within the domain of a king, he does so with the express understanding that he must accept the authority of the king and will act in accordance with the prevailing laws.

Another view, articulated by the Tosafists,³ stated that *dina d'malkhuta dina* applied only to non-Jewish kings because the land upon which they rule is theirs. Since the land is their property, it is within their power to demand obedience to the law. Defiance would be met with expulsion.

II

Recently, two articles appeared, wherein the authors attempted explanation for the concept of *dina d'malkhuta dina*. Nahum Rackower⁴ and Aaron Rakefet-Rothkoff⁵ both feel that

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Samuel's concept of *dina d'malkhuta dina* is explicitly connected with another of Samuel's laws, namely, the law determining the rights and the authority of a Jewish king.

The powers of a Jewish king were delineated in the Book of Samuel.⁶ The prophet enumerates a list of powers which fell within the king's jurisdiction. Nevertheless, a dispute arose. According to one point of view, enunciated by the same Amora Samuel, the Bible, by enumerating the various powers of a king in this passage, grants these as the inherent rights of all kings.⁷ On the other hand, another view held that the listing of such powers was merely the prophet's method of discouraging the people of Israel from choosing a king.⁸ They were warned that certain rights, certainly those enumerated, would be lost to them and usurped by any king if they persisted in their determination to do so.

Rackower cited the decision of Maimonides who ruled in favor of Samuel's view.⁹ Accordingly, Rackower equated the two principles put forth by Samuel: the principle derived from the Book of Samuel which grants the Jewish king all rights and authority, and the principle of *dina d'malkhuta dina*. While the first established the powers of the Jewish king, the second expanded these powers to include a non-Jewish king as well. While the first spoke of a time when Jews resided in their own land, the second enlarged it to include a new situation, namely, when Jews found themselves in exile under foreign domination.¹⁰

He derived the basis for equating Samuel's two laws from statements made by some of the sages of the Middle Ages. An impressive array of sources — Nahmanides, Meiri, Ibn Adret, Yom Tob Ibn Ashbilli, Nissim Gerondi, Simon b. Zemah Duran and Moses Trani were named to prove his thesis. Having cited all these sages of the Middle Ages and their seeming unanimity concerning the connection and dependence between the two statements of Samuel, Rackower unhesitatingly concluded that the basis for *dina d'malkhuta dina* found its source in Samuel, the Amora's interpretation of Samuel, the prophet's words. Thus, the Jew of the Diaspora is juridically bidden to accept the laws of the state in which he resided. Since the non-Jewish king is but the extension of his Jewish counterpart, his authority stems from

the same source as that of the Jewish king; namely, the Biblical portion which enumerates the rights of Jewish kings.

III

At first glance, following the customary rules of the Talmud, the decision reached by these rabbinic authorities appears well founded. In civil disputes between Rab and Samuel, the Halakhah is according to Samuel. Thus, a king should be granted all the powers enumerated in the Biblical passage. However, it must also be mentioned that a number of authorities ruled in opposition to Samuel and agreed with Rab's point of view granting none of these rights and powers to a king.¹¹ The Tosafists, (according to Ibn Adret), as well as Mordecai and Gersonides, specifically denied to a Jewish king the powers granted by *dina d'malkhuta dina*. They accordingly decided מלך אסור בו.¹² In addition, there are many who appear to waver between the two points of view. Thus, Joseph Ibn Habbib¹³ at one time ruled in favor of Samuel and at another time ruled the opposite.¹⁴ Ibn Adret agreed at one point that a king is granted all powers¹⁵ but appears to deny this elsewhere.¹⁶ Don Isaac Abrabanel, in his Commentary to Samuel, agreed that מותר בו, (granting full authority to a king),¹⁷ but elsewhere concluded דלא הותר (that these rights were never granted a king).¹⁸

It becomes obvious that there is an equally impressive array of sages who ruled against, or at least wavered in their assessment of Samuel's law regarding the powers assigned to a Jewish king. Surely neither Rackower nor Rothkoff can possibly conclude that all these sages also ruled against the concept of *dina d'malkhuta dina*. However, this is exactly the conclusion one has to reach if one postulates that the two concepts are interrelated, with the one, (מותר בו) being the reason and source for the other, (*dina d'malkhuta dina*). The facts deny such a conclusion since every one of the above mentioned authorities clearly accepts Samuel's dictum of *dina d'malkhuta dina*. They obviously do not accept the theory that *dina d'malkhuta dina* is based upon Samuel, the prophet's exhortation.

A second point must now be raised. If the basis for the concept

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of *dina d'malkhuta dina* is Samuel, the prophet's words, then just as the core of the *Parshat Hamelekh*,^{18a} applied to Judea, so must its corollary. If one is to follow Rackower and Rothkoff's reasoning, *dina d'malkhuta dina* would also be applicable to the Land of Israel, not merely to a Jewish king, but to any government therein established, e.g. Persian, Roman, Turkish, British, etc. If the two concepts are interrelated, then as a Jewish king has rights and powers in Israel, so would a non-Jewish king's authority be recognized by Jewish law. Yet, almost all scholars, classic or modern, fully agree that *dina d'malkhuta dina* never applied to *Eretz Yisrael*.¹⁹ It certainly never occurred to any of them that the very core and source for this law might be inextricably related to *Eretz Yisrael*.²⁰

Finally, it is clear that Rackower and Rothkoff misread the meaning of some of the sources cited in their articles. These sources do not interrelate the two laws of Samuel. In fact, they treat them as basically two separate concepts, dealing with individuals whose powers are similar, but are nevertheless guaranteed from two separate sources. The Jewish king derived his power from statements made in the prophetic sources, the non-Jewish king from one of three sources enumerated by the sages of the Middle Ages and their concept of kingship.²¹ However, since both rule the people and since Jews have been subjected to both authorities, the obvious parallels were made. Analogies were drawn, not to the sources of their separate powers, but to the safeguards set to limit both in order to ensure against unlimited, autocratic rule. Thus, Nahmanides, along with others, circumscribed a king's power and made sure that it was not unlimited. Any edict issued by a king on a whim was considered "royal robbery." In order to justify this limitation, Nahmanides said that a similar limitation was present even with a Jewish king. The laws which a Jewish king issued also had to be "known statutes" or tradition from the prophetic passage describing a Jewish king.²²

The same is equally true of Meiri.²³ He, like so many others who were cognizant of the terrible results of discriminatory laws, attempted to prove that any tax decree, as long as it included everyone equally and was not levelled at any individual or group

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exclusively, was valid. Furthermore, Meiri stipulated that *dina d'malkhuta dina* was applicable only to laws directly related to the king and when such laws directly concerned and benefited the king. In his attempt to justify these limitations, Meiri cited the parallel situation involving a Jewish king. In this case also, similar restrictions had been placed by the prophet Samuel. The powers cited by the prophet reflected laws which were equally enacted upon all subjects and affected the king or the kingdom personally and directly.²⁴

Rackower, in a footnote, mentioned others who, in his opinion, interrelated Samuel's two laws.²⁵ In each case, the sage merely attempted to justify one or another limitation and sought proof by comparing the two cases. They attempted to show that since both cases concerned the powers of a king it should follow that restrictions applied to a Jewish king should certainly be equally valid for a non-Jewish king. None of these sources linked the two laws to each other and none attempted to base one upon the other.

IV

Samuel's law of *dina d'malkhuta dina* was based upon the reasons outlined by the sages of the Middle Ages. It did not antedate him²⁶ and it certainly did not include the monarchs of Judea. No one explicitly stated that *dina d'malkhuta dina* included the Holy Land.²⁷ This was true for Jewish and certainly for non-Jewish kings. The Jews of Palestine or of the Diaspora would not recognize any foreign power in Judea. By the 15th century, however, there were some rabbis who claimed that the "kings" of ancient Judea, while the state was under foreign domination, ruled by means of the concept of *dina d'malkhuta dina*.²⁸ The Persians, the Syrians, the Romans appointed some of the rulers and kings of Judea who reigned by the power vested in them by the conquerors of the kingdom. Thus, these rabbis looked back into history and saw that the power of Ezra and the later kings of Judea rested upon the authority vested in them by the foreign conquerors. Any historian will recognize that these are extremely late sources that have no bearing upon *amoraic* days and certainly not for an earlier period. These early rulers obviously

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reigned by the authority granted them by foreign powers. However, this in no way hints that their authority was based on the concept of *dina d'malkhuta dina*. To the contrary, although Ezra was appointed by Darius, it was not recognition of the justification of that power but rather sheer force which made it authoritative. In other words, the choice was never in the hands of the Jews.

During the times when the land of Israel was conquered by foreign powers, the laws of the conquerors were obeyed. However, the Jews never granted legitimacy to any conqueror of the Holy Land. They certainly did not consider establishing a principle that the law of such a state is the legitimate law.

NOTES

1. Leo Landman, *Jewish Law in the Diaspora: Confrontation and Accommodation*, (Philadelphia, 1968); Also, by the author, "Law and Conscience: The Jewish View," *Judaism*, Vol. 18, (Winter, 1969), pp. 17-29; "Civil Disobedience: The Jewish View," *TRADITION*, Vol. X, (Fall, 1969), pp. 5-14.

2. Samuel b. Meir, B.B. 54b.

3. Tosafists, Ned. 28a based on R. Eliezer of Metz cited by *Or Zarua* B.K. 447; Ibn Adret, *Novellae*, Ned. 28a; Nissim Gerondi, *ad. loc.* For a full explanation and the historic background for these reasons, as well as the Geonic reason, namely, the Divine right of kings see my *Jewish Law in the Diaspora*, chapters II and III.

4. "*Dina D'Malkhuta Dina Ugedavov*," *Sinai*, Vol. 69, (1971), pp. 246-257.

5. "Dina D'Malkhuta Dina—The Law of the Land in Halakhic Perspective," *Tradition*, Vol. 13, (1972), pp. 5-23.

6. Samuel 8:11.

7. *Sanhedrin* 20b—

8. *Ibid.*— א"ר יהודה אמר שמואל כל האמור בפרשת המלך מותר בו

ורב אמר לא נאמרה פרשה זאת אלא לאיים עליהם

9. Maimonides, *Melakhim*, IV, 1—

רשות יש למלך ליתן מס על העם . . . וקוצב לו מכס . . .

ודיניו בכל אלו הדברים וכיוצא בהם דין שכל האמור בפ' המלך מלך זוכה בו.

10. Rackower, *op. cit.*, p. 247-8.

11. L. Landman, *op. cit.*, p. 203, notes 26 and 27.

12. Mordecai, B.K., *ad. loc.*—

ובמלכי ישראל לא אמרו' דד"ד כדאמרו' בפ' כ"ג דלא
נאמר פ' המלך אלא כדי לאיים עליהם אבל המלך אסור בכל האמור בפ' המלך;

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Gersonides, Samuel 8:11—

והנה הודיע שמואל לישראל את משפט המלך ר"ל ואחשוב שאין המלך מותר באותם הענינים שזכר אבל רצה שמואל ליראם ולבהלם והודיעם מה שיעשה המלך כשיתחזק על ממלכתו . . .

Ibn Adret, *Novellae*, Ned. 28a.

13. Ibn Habbib, *Novellae*, Ned. 28a.

14. *Idem*. B.B. 54b.

15. Ibn Adret, *op. cit.*

16. Ibn Adret I, 637.

17. Samuel 8:11.

18. *Ibid.*

דלא הותר למלך דברים הללו ועושק וגזל הוא בידו ולא נאמר פ' זאת אלא לאיים שהתורה לא זכרה דבר מזה בפ' המלך.

Similarly, Hayyim b. Isaac once ruled against granting any powers to a Jewish king but elsewhere compromised to say that if the purpose of the prophetic passage was to grant powers to a Jewish king then it was only to grant him those powers specifically enumerated, but no more. See Hayyim b. Isaac, *Or Zerua*, 110a.

18a. The section of the prophet which established a king's authority.

19. For a full list, see my *Jewish Law in the Diaspora*, Chapter IX.

20. *Ibid.*

21. See notes 2 and 3.

22. Nachmanides, B.B. 55a—

ואף במלכי ישראל הקדושים דיני המלך ידועין כמו שכתוב בקבלה על ידי שמואל הנביא ואמרו רבותינו כל האמור בפרשת המלך, מלך מותר בו.

23. *Bet Habihira*, B.K. 113a—

ואין אומרים שהמכם מעיקרו גזל הוא אלא דד"ר ר"ל שכל חוק שחקקו המלך לכל ולא חדש לאדם אחד בפרט על איזה מעשה, דין גמור הוא ואסור לגזלו ולא סוף דבר במלכי ישראל אלא אף במלכי האומות . . . כל מה שאמרנו בדיון המלכות שהוא אצלינו דין גמור הוא, בחוקים שחקקו הן לתועלתו הן לתועלת נכסיו . . . שכך הוא ראוי לו מצד מלכותו על (הדין) הדרך האמור במלכי ישראל כל האמור בפרשת המלך, מלה מותר בו.

24. *Ibid.*—

שכך הוא ראוי לו מצד מלכותו על הדרך האמור במלכי ישראל . . .

25. Bezalel Ashkenazi, *Shittah Mekubetzet*, B.K. 97b; Ibn Adret, Ibn Ashbilli, Nissim Gerondi to B.B. 54b; Ibn Adret III, 109; Simon b. Zemah Duran I, 158.

26. See my *Jewish Law in the Diaspora*, p. 22 ff.

27. See Leo Landman, "The Prerogatives of the Jewish and Non-Jewish King," (Hebrew), *Bitzaron*, Vol. LXVI, (Oct.-Nov., 1974), pp. 29-33 esp. footnote 1.

28. Barfat, 271; Samuel b. Simon Duran 533, 637.