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“I WILL DEAL WITH YOU ACCORDING TO THEIR LAWS”: REPRESENTATIONS OF GENTILE LEGAL SYSTEMS IN THE BABYLONIAN TALMUD

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ABSTRACT

The Babylonian Talmud has no unified treatment of gentile legal systems. Littered throughout the text are many, sometimes contradictory, discussions and stories that describe rabbinic engagement with gentile law, tax collectors, courts, and government authority. Self-interest and self-preservation, instead of legal principles, dominate rabbinic approaches in these *sugyot*. Through acquiescence, integration, and occasional rejection of gentile legal systems, the rabbis develop a self both distinct from and connected to the gentile legal Other.

Each of the three chapters of this thesis draw from passages across the Babylonian Talmud. Chapter 1 explores two legal principles, *lifneihem*, a prohibition from using gentile courts, and *dina d'malkhuta dina*, the law of the kingdom is the law. Both only rarely appear in the Bavli. Chapter 2 analyzes explicit references to the gentile legal system, including laws, taxes, and courts. These texts demonstrate high knowledge of gentile legal systems and Jewish engagement with them in many places and generations. Chapter 3 investigates how the Exilarch and gentile rulers both curtailed rabbinic authority and how rabbinic imagination responded to those limits.

This thesis integrates multiple reading strategies to provide new insights into the boundary between rabbinic and gentile legal authority, emphasizing how representations of the Other in the Bavli shape the rabbinic legal self. Paradoxically, the rabbis of the Bavli rely on the contours and confines of gentile law to construct their own distinct legal identity and culture. This thesis demonstrates how the rabbis engaged the gentile legal system when necessary or advantageous to them to preserve and expand their legal authority. Instead of rejecting the Other, it is integrated into the rabbinic legal self.

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INTRODUCTION

The Babylonian Talmud (the Bavli) is more than a record of statements and debates about Jewish law over time. The vast material contained within it reflects the values and ideologies of its creators. Additionally, the choices made in its construction also *generate* ideologies and identities in its readers. Students of the Bavli instantly recognize its multivocality and resistance to a single, unified, systematic ideology or theology.[1] This is especially true in its treatment of gentile legal systems. The Bavli contains diverse approaches to engaging with gentile laws, courts, tax collectors, and other legal authorities, neither wholly shunned nor completely accepted in any generation. Instead, much like how the Bavli itself is a project of developing and elevating rabbinic authority, the dominant approach to gentile legal systems is guided by rabbinic self-interest and self-preservation. The rabbis in the Bavli harness the power of gentile legal systems by integrating them into their own system, thereby constructing an identity as a minority diaspora community that can survive and be transmitted through the text. There are many diverse approaches to the goal of establishing an independent Jewish legal identity as a minority group, but acceptance and integration outweigh rejection throughout the Bavli.

Self-interest and self-preservation are different in each situation because of the numerous layers of time, location, and ideology in the text. The Bavli contains material from both Palestine and Babylonia, in Hebrew and in Aramaic (with many loanwords from Persian and Greek), material from the 1st until the 7th or 8th century, and many genres. This diversity results in "an interplay between closeness and foreignness" among the creators of the text, who write, react to, and grapple with texts that reflect their current situation, and others that

[1] Julia Watts Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity: Rabbinic Response to Drought and Disaster* (New York: Cambridge University Press, 2015), 14.

promote vastly different approaches.[2] The gap between material that is "close" to the producers of the Bavli and material "foreign" to their culture generates the process of negotiation and accommodation that yields rabbinic identity. Being attuned to these tensions provides readers the opportunity to explore multiple approaches in rabbinic Judaism guided by place, genre, and other factors. It further opens a deeper understanding of the aim of the final redactors of the text, who either reinforce or struggle against earlier conceptions of rabbinic legal identity. Relationships between the rabbis and the outside world, including the legal apparatuses of the empires that ruled over the early rabbis, are a clear example of these tensions at play.

Defining the Bavli is the task of multiple fields of study, each exploring how genre, dating, and authorship shed light onto the Bavli's origin and construction. Defining the text is not simply a neutral act, but informs the strategies employed to engage with, understand, and learn from it. The genre impacts the lens a reader uses, guiding their questions – and therefore the answers they discover.[3] David Kraemer offers a negative definition first, citing what the Talmud is not: it is not a literal transcript of rabbinic discussions, nor a code of *halakha*, nor an anthology of sources, nor a commentary on the *Mishnah*.[4] It is more accurate, in my opinion, to say that the Bavli contains each of these approaches, but no single approach dominates the text. Richard Kalmin notes that "the Bavli contains legal pronouncements on civil, criminal, and ritual matters. It also contains sententious sayings, advice, dream interpretations, magical incantations, medical cures, polemics, folk tales,

[2] Daniel Boyarin, *A Traveling Homeland: The Babylonian Talmud as Diaspora* (Philadelphia: University of Pennsylvania Press, 2015), 47.
[3] David Kraemer, *Reading the Rabbis: The Talmud as Literature* (New York: Oxford University Press, 1996), 9.
[4] David Kraemer, *A History of the Talmud* (Cambridge: Cambridge University Press, 2019), 169-171.

fables, legends, scriptural interpretations (midrash), legal case reports, and numerous other literary genres."[5] The diversity of material within the Bavli makes it resistant to a single definition or a single reading strategy. Instead, readers must define what material is present and adjust their approach accordingly.

Study of the Bavli used to differentiate between *halakha* and *aggada*, or legal and narrative material. However, these two kinds of texts are inseparable, acting on each other, and both manipulated until the final stage of editing.[6] The stories in the Bavli often build upon, modify, support, or reject the *halakha*, illustrating actions of rabbis and other characters related to the law being discussed.[7] The stories form a dialectic by engaging with the material surrounding it, sometimes supporting approaches different than the legal material in response to questions posed within a *sugya*.[8] The relationship between these two categories of text are closer to a Venn diagram with significant overlap while retaining distinct uses and functions.[9] The interwoven nature of law and stories points to the realization that within one *sugya*, multiple kinds of texts appear side-by-side, developing a nuanced approach to the topics at hand. While not all opinions offered are accepted, understanding the relationship between *halakhic* statements and *aggada* within a single *sugya* emphasizes the layered approach of the Bavli to gentile legal systems. Specifically, it demonstrates that what happened in "practice" (represented in *aggada*, either in reality or imagination) was different, and sometimes more permissive, than the opinions in the *halakhic* material. The tension

[5] Richard Kalmin, *Jewish Babylonia between Persia and Roman Palestine: Decoding the Literary Record* (New York: Oxford University Press, 2006), xiii.
[6] Jeffrey Rubenstein, *Stories of the Babylonian Talmud* (United States: Johns Hopkins University Press, 2010), 7.
[7] Kraemer, *A History of the Talmud, 167*.
[8] Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity,* 16.
[9] Jeffrey Rubenstein, Yonatan Feintuch, and Jane Kanarek, "Halakha and Aggada in Post-Tannaic Literature," in *The Literature of the Sages: A Re-Visioning*, ed. Christine Hayes (Leiden: Brill, 2022), 564.

between the abstract and the enacted clues readers into the situational factors that guide opinions in the Bavli on gentile legal systems, rather than relying on principles alone.

A brief comment must be made about the Palestinian or Jerusalem Talmud, the Yerushalmi. The Yerushalmi, completed around 400 C.E., is a much smaller, more cohesive work of rabbinic literature than the Bavli, but structured the same way.[10] Over time, due to the primacy of the Babylonian Jewish community in the medieval period, the Bavli became "the single most important document in rabbinic literature"[11] and "definitively authoritative for all medieval rabbinic Jewish cultures."[12] This thesis focuses exclusively on material present in the Bavli.

The Bavli is structured as a commentary on the *Mishnah* but contains material ranging far beyond exposition and interpretation of its statements. It is characterized by "its voluminous anonymous editorial materials, which give the Babylonian Talmud its distinctive stamp. Nearly every passage of the Babylonian Talmud – a bounded literary unit within the Talmud is called a *sugya* - is defined by its anonymous voice, which is responsible for the back-and-forth dialectic for which the Talmud is famous."[13] As Beth Berkowitz astutely states, the Bavli must be understood as a complete work edited and assembled by a group called the *Stammaim*, or the anonymous voices. The Bavli, therefore, contains at least four groups of material: (1) the *Mishnah*, completed around 200 CE; (2) other statements and stories contemporaneous to the *Mishnah* – referred to as *tannaitic* material; (3) statements and stories by and about *Amoraim* who debate, comment on, and repeat material from the

[10] Jacob Neusner, *Introduction to Rabbinic Literature* (New York: Doubleday, 1994), 153.
[11] Neusner, 182.
[12] Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture* (Berkley: University of California Press, 1993), 24.
[13] Beth Berkowitz, *Animals and Animality in the Babylonian Talmud* (Cambridge: Cambridge University Press, 2018), 33.

tannaim; and (4) an anonymous layer, the *stam*, which comments on earlier material and provides the structural framework for the discussions in the Bavli.[14]

The *stammaitic* layer is crucial for several reasons. This material is referred to as the *stam* (a singular anonymous individual), *stammaim* (plural, representing the belief that a group performed the final editing and redacting of the Bavli), or the *stammaitic* layer, without making assumptions about how many hands were involved. These terms are used in this thesis interchangeably to represent the final layer of writing and editing in the Bavli. The *stam* was not simply a collator, but an active editor, arranger, and author of the text, shaping the way readers receive the discussion or story.[15] The final versions of the texts were designed with a certain end in mind – the *stam* is not merely a transmitter of earlier traditions, but a shaper of how those traditions should be understood (and perhaps even a modifier of such texts if they wished to pursue a different agenda).[16] As Jeffrey Rubenstein writes about the *stam*, "The Stammaim are the true authors of the Bavli, for they fashioned the *sugyot* or literary units that comprise the text of the Talmud, weaving the Amoraic traditions transmitted to them by their predecessors into new structures of their own creation. In particular, they added dialectical argumentation to the brief, apodictic Amoraic traditions they received."[17] This is true for both the stories and the legal discussions in the Bavli.

The *stam* is dated, according to the widely influential work of David Weiss Halivni, to between 550-750 CE, concurrent (and the same as) the *Saboraim*.[18] According to this

[14] Judith Hauptman, *The Stories They Tell: Halakhic Anecdotes in the Babylonian Talmud* (New Jersey: Gorgias Press, 2022), 6.
[15] Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity*, 16-17.
[16] Yuval Blankovsky, *Reading Talmudic Sources as Arguments: A New Interpretive Approach* (Leiden: Koninklijke Brill NV, 2020), 48.
[17] Jeffrey Rubenstein, *Stories of the Babylonian Talmud*, 9.
[18] David Halivni, *The Formation of the Babylonian Talmud*, trans. Jeffrey Rubenstein (New York, NY: Oxford University Press, 2013), 7.

dating, the form of the Talmud as it exists today was developed in 8th century Babylonia, toward the end of Sasanian rule. However, not all Talmudic material is dated to that time. Some texts have been reproduced faithfully (to the best of our knowledge) from 1st and 2nd century Palestine, while others have been manipulated (either by the *stam* or earlier transmitters).[19]

The layered editing and redaction of the Bavli over centuries makes any historical comment on the text notoriously difficult. As Jeffrey Rubenstein writes, "The political, economic, and social situations of the Jewish communities in Sasanian Persia throughout late antiquity are known only in their most general contours."[20] Furthermore, as Christine Hayes rightfully points out, differences between material in the Bavli and in other texts cannot be exclusively attributed to external (historical) or internal (exegetical) factors, and any perceived differences should not immediately point readers to draw conclusions about the historical time period of the text.[21] She specifically highlights the tension between the time period when the characters in the text existed, and the time period of its final redaction. If these two stages are in different historical contexts, it can be challenging to uncover which context is being referenced and how later manipulation of the text might undermine its reliability to comment on the relationships between Jews and gentiles as they existed when the text purports to be from.[22] This problem is exacerbated by censorship of the Bavli in medieval times (both by Church officials and proactively by the Jewish community), impacting references to Rome and Babylonia, changing or deleting problematic phrases, and

[19] Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture*, 24-25.
[20] Jeffrey Rubenstein, *Talmudic Stories: Narrative Art, Composition, Culture* (Baltimore: The Johns Hopkins University Press, 1999), 15.
[21] Christine Elizabeth Hayes, *Between the Babylonian and Palestinian Talmuds: Accounting for Halakhic Difference in Selected Sugyot from Tractate Avodah Zarah* (New York: Oxford University Press, 1997), 3-4.
[22] Hayes, 11.

dulling some of the critique of non-Jews in the text.[23] There is also debate about the veracity of names attached to various sayings and stories, allowing for some analysis but limiting its precision.[24] By treating the Bavli as a complete work, as Beth Berkowitz argues, we become aware of the goal of the *stam*, while recognizing the tension between this goal and some of the material used in a *sugya's* construction. When relevant, reference to the authors or historical time periods referenced in the texts are introduced to better demonstrate the divergent approaches found in the Bavli toward gentile legal systems.

Even with these challenges, it is generally argued by both historians and Talmud scholars that the Jews, a minority in Babylonia, were shaped by the culture of the place they lived.[25] The Sasanian context of the rabbis impacted their ideology, authority, and culture, all making their way into the Bavli itself.[26] The history of the Sasanian Empire, during which most of the Bavli was likely written, is not well kept, and little material outside of the Bavli can adequately shine light on Jewish life in this time period.[27] In his monumental five-volume series *A History of the Jews in Babylonia*, Jacob Neusner emphasizes the importance of the Sasanian context in the development of rabbinic Judaism, beginning with Shapur I's rise to power around 241.[28] Tolerance of minorities fluctuated before, during, and after Shapur I's reign.[29] Neusner is quick to point out that the persecution of Jews was not

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[23] Yoel Kahn, *The Three Blessings: Boundaries, Censorship, and Identity in Jewish Liturgy* (Oxford: Oxford University Press, 2011), 46-47.
[24] Hayim Lapin, "The Rabbis of History and Historiography," in *The Literature of the Sages: A Re-Visioning*, ed. Christine Hayes (Leiden: Brill, 2022), 35.
[25] Ellis Rivkin, *The Shaping of Jewish History: A Radical New Interpretation* (New York: Charles Scribner's Sons, 1971), 97-8.
[26] Jason Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests: The Culture of the Talmud in Ancient Iran* (Oakland, California: University of California Press, 2015), 18-19.
[27] Seth Schwartz, "The Political Geography of Rabbinic Texts," in *The Cambridge Companion to The Talmud and Rabbinic Literature*, ed. Charlotte Elisheva Fonrobert and Martin Jaffee (New York: Cambridge University Press, 2007), 88-90.
[28] Jacob Neusner, *The Early Sassanian Period*, vol. II, 5 vols., A History of Jews in Babylonia (Atlanta, GA: Scholars Press, 1999), xi, 7.
[29] Neusner, 16-17.

specifically targeted at Jews, but rather part and parcel of the consolidation of power within a new empire, striking all minorities equally.[30]

Of particular interest to this study is the role of the rabbinic courts while living under the Babylonians, and the relationships between the Jewish and gentile court systems at that time. Neusner argues that at the beginning of their rule, the Sasanians eliminated Jewish legal autonomy and increased government oversight.[31] This exertion of power by the empire resulted in a more conciliatory political attitude by Jews, relying on earlier Jewish approaches to gentile governments to ensure their survival.[32] He describes the approach of the rabbis and Exilarchs as one of bringing Jewish law closer to Persian law, a development that happened at the beginning the Sasanian Empire.[33] Throughout the *Amoraic* period, the rabbinic courts did not have ability to administer capital punishment and generally relied on the cooperation of the community for their authority.[34] Throughout Shapur II's reign, ending around 379, Neusner finds no evidence of religious persecution of the Jews.[35] Over time, the rabbinic courts exerted increased authority and power over the Jewish community.

These few data points from Neusner's portrayal of the Sasanian Empire's impact on the Jewish community and rabbinic courts already demonstrate the changing relationship between the Jewish community and Empire and various approaches Jews employed to navigate those changes. Even as details vary, most scholars since Neusner accept that the rabbis depicted in the Bavli lived in a multicultural society with cross-cultural engagement,

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[30] Neusner, 29.
[31] Neusner, 30-35.
[32] Neusner, 66-67.
[33] Neusner, 117-9.
[34] Jacob Neusner, *From Shapur I to Shapur II*, vol. III, 5 vols., A History of Jews in Babylonia (Atlanta, GA: Scholars Press, 1999), 221-5.
[35] Jacob Neusner, *The Age of Shapur II*, vol. IV, 5 vols., A History of Jews in Babylonia (Atlanta, GA: Scholars Press, 1999), 55.

including between Jews and non-Jews.[36] The diverse religious and cultural groups were "in conflict and in conversation" in the Sasanian Empire, which surely influenced rabbinic culture.[37]

With this background it should come as no surprise that a wide variety of Others are present in the Bavli. As Mira Wasserman writes,

> the Talmud is not hermetically sealed in a time and place all its own. Interactions with intellectual currents of diverse cultures from east and west shape both the Talmud and the traditions of its interpretation. The Talmud recounts rabbis' interactions with Christians, pagans, non-rabbinic Jews, and all manner of religious heretics, it preserves folklore in diverse languages, and is shaped by ideas about monks, magi, scholastics, Greek philosophers, Roman kings, and Persian courtiers, if not by actual encounters with these figures. Talmudic culture is always already engaged with others, outsiders to the rabbinic enterprise whom rabbinic storytellers summon as real and imagined interlocutors.[38]

The variety of other cultures and opponents highlights the broader cultural engagement of the Bavli – both real and imagined. The diversity of cultures contributes to the multiple positions found in the text. What rabbis in one situation with a particular interlocutor might deem necessary may be too lenient or too harsh for rabbis in other situations who feel differently threatened. Within one tractate or even one *sugya*, it is rare that a single statement can be made about what the rabbis' or the Bavli's stance is on an issue.[39] There is no single voice coming from the Bavli, but a multilocal, multigenerational conversation between different approaches.[40] This is especially true of narratives, which add considerable nuance and diversity of opinion to the text, often modifying the dominant position advanced previously.[41]

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[36] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests,* 49.
[37] Lapin, "The Rabbis of History and Historiography," 31.
[38] Mira Wasserman, *Jews, Gentiles, and Other Animals: The Talmud After the Humanities* (Philadelphia: University of Pennsylvania Press, 2017), 7.
[39] Wasserman, 49.
[40] Shai Secunda, *The Iranian Talmud: Reading the Bavli in Its Sasanian Context* (Philadelphia: University of Pennsylvania Press, 2013), 30.
[41] Hauptman, *The Stories They Tell,* 8-10.

For this study, the Bavli will largely be considered in its complete and final form. While redactional analysis and historical context will be considered when particularly impactful on the construction of the text, the *sugyot* analyzed represent a collection of texts contained in the Bavli that shed light on its final multivocal approach to gentile legal systems. The diversity of approach found is certainly related to the compositional nature of the text, but few conclusions will be drawn from attempting to discover a historically accurate picture of the political context in which a certain rabbi lived or taught. The texts cited all come from *Dfus Vilna*, the standard printed edition of the Bavli, with manuscript variants referenced when they significantly modify the text.[42]

By treating the text as a complete work and delineating the layers when possible, emphasis is placed on the *function* of the Bavli to create identity in its readers guided by the *stam*. This returns us to where the introduction began, namely that the Bavli actively shapes rabbinic ideology and authority in diaspora, within the text and its readers.[43] This shaping is complicated by the lack of a single editor or redactor – the finalization of the Bavli likely was completed by many hands over a substantial period.[44] The Bavli, as a completed work, is an exploration of rabbinic identity and an attempt to shape the identity of those who read it. The multiple influences result in the concerns of one period and place to be fully integrated into the final approach of rabbis of another time, producing a "dually located" culture.[45] This duality seeps into approach of the Bavli toward gentile courts. The form of the text mirrors, or even guides, its function: just as the text is dually located, so too are the rabbis and their legal system (in rabbinic and gentile law, in history and in present, in Palestine and in

[42] Talmud Bavli, ed. Romm, Vilna, 1880-1886, with commentaries.
[43] Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity,* 4.
[44] Halivni*, The Formation of the Babylonian Talmud*, 67.
[45] Boyarin, *A Traveling Homeland,* 71.

Babylonia). This dual location in the text is also present between the text and reader, who perhaps adapts the approach of the Bavli to their own time and context.

The breakdown of definitive cultural boundaries facilitates how the Bavli constructs identity. The definition of a self necessarily requires an Other, but that Other is fluid and changing. A rabbi can be part of the in-group but can also become an Other through their actions. Others can be integrated into the self-identity, but perhaps never fully.[46] This dance is the same between rabbinic and gentile legal systems: defined in opposition to each other, but often connected and integrated as well. This need to differentiate, while being unable to separate entirely, is indicative of rabbinic culture being created as a minority, "colonized culture," forced to engage with, appease, and respond to the dominant culture of its surroundings.[47] Rabbinic legal identity was constructed and modified to respond to the sociopolitical context to allow them to maintain their authority through relationship with the gentile authority.[48]

In the texts relating to gentile legal systems considered in this study, rabbinic identity is often constructed by leveraging the very system rabbis sought to differentiate themselves from. The preservation of the rabbinic legal system necessitated concessions to the broader legal context, integrating gentile laws and approaches into the rabbinic system. Both legal principles and stories of rabbinic legal actions demonstrate that engagement with and acquiescence to gentile legal systems is necessary for self-preservation and rabbinic authority. These concessions, even to actors portrayed negatively by the Bavli, are accepted to support the broader project of developing rabbinic authority.

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[46] Berkowitz, *Animals and Animality in the Babylonian Talmud*, 184-5.
[47] Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture*, 16-17.
[48] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests*, 81-83.

This study develops over three chapters. Chapter 1 explores the origin of two legal principles, *lifneihem* and *dina d'malkhuta dina*. While *lifneihem* attempts to distance Jews from gentile courts, *dina d'malkhuta dina* finds ways to integrate gentile legal practices into Jewish practices. These legal principles, however, only show up sparingly, and are rarely leveraged in other stories and debates. Chapter 2 analyzes references to Persian law, taxes, and uses of gentile courts, developing a robust picture of how these different elements of gentile legal systems appear in the Bavli in both legal and narrative form. They demonstrate a high level of awareness of gentile legal practices and a diversity of approaches to the reliability of the various actors within the gentile legal system. Chapter 3 relates to the limits of rabbinic authority vis-à-vis the Exilarch, and the limits imposed on the rabbinic courts by the gentile authorities. These stories highlight the tension between overlapping systems of authority, the ability of Jews to engage with multiple legal systems, and the rabbinic imagination of leveraging other powers to bolster their own power.

Ultimately, the preservation of rabbinic culture and society is the task of the Bavli itself and the material it contains. Their relationship to gentile legal systems is one of self-interest. Instead of leveraging principles to construct a unified approach to gentile legal systems, the rabbis, in their various contexts, find ways to exert their authority without upsetting the more powerful gentile governments, navigating a complex legal landscape to ensure their own growth and survival. In its final form, the Bavli represents the project of creating a rabbinic identity in a multicultural context, differentiating the self and the Other while recognizing the fluidity of boundaries necessary for their continued existence.

CHAPTER 1: TALMUDIC PRINCIPLES FOR ENGAGING WITH GENTILE LEGAL SYSTEMS

Introduction

Throughout the 1980s and 1990s, different factions within the Satmar Hasidic community located in Kiryas Joel, NY, and Brooklyn, NY, sued each other in secular court. They battled over issues including parsonage for the Rebbe's[49] widow, property ownership, and education for youth with special needs.[50] These cases pitted members of this extremely isolationist and tight-knit community against each other in secular court, a highly unusual occurrence. In their book *American Shtetl*, David Myers and Nomi Stolzenberg portray these legal actions as contrary to Hasidic ideology, which invests "the supposed autonomy of Jewish law" in the Rebbe's authority and demands from its followers a "commitment to withdraw from worldly affairs (and thereby separating their religious community from secular politics)."[51]

This supposedly isolationist attitude of the Satmar Haredi community is not without basis in Jewish text and tradition. The prohibition against appearing in a gentile court (*lifneihem*, named for the word in Exodus 21:1 from which this prohibition is derived) originates in the Bavli and was developed in Jewish legal codes throughout history, including the *Shulkhan Arukh*, the foundation of modern *halakha*. Even so, complete disentanglement from gentile civil authorities is impossible. A second Talmudic principle, *dina d'malkhuta dina*, "the law of the kingdom is the law," develops to permit, and sometimes require, Jewish engagement with gentile court, government apparatuses, and laws, depending on a variety of

[49] A rebbe is a spiritual leader of a Hasidic community. Rabbi Joel Teitelbaum was the founder and spiritual leader of the Satmar Hasidic community and is referred to here as "the Rebbe."
[50] David Myers and Nomi Stolzenberg, *American Shtetl: The Making of Kiryas Joel, a Hasidic Village in Upstate New York* (New Jersey: Princeton University Press, 2021), 230-250.
[51] Myers and Stolzenberg, 249, 279.

factors. According to Myers and Stolzenberg, *dina d'malkhuta dina* rests on the creation of two separate domains of law: civil law governed autonomously by the gentile state and religious law governed autonomously by the rabbis.[52] This dichotomy is foreign to the *sugyot* in the Bavli that record these principles; the categories of law (civil and religious) and legal authority (gentile and rabbinic) are porous. *Dina d'malkhuta dina* does not create two domains of law but rather a Jewish legal pathway out of rabbinic authority and into gentile law when it was deemed necessary, even when such laws contradicted Jewish law. The prohibition of recourse to gentile courts, *lifneihem*, does not invalidate all gentile law according to *halakha*, nor does *dina d'malkhuta dina* permit all uses of gentile courts. However, each principle articulates the force of judicial power in opposing directions: *lifneihem* serves to bolster the legal authority of Jewish courts, while *dina d'malkhuta dina* cedes authority to the prevailing gentile government.

Within the Bavli, where these principles first find expression in Jewish text, they are never directly pitted against one another, and no unified rabbinic ideology toward gentile government institutions emerge. Instead, the debate over acquiescing to, appealing to, or engaging with gentile authorities generates a nuanced picture balancing many factors, including: the distinction between religious and civil law, the institutional authority of gentile and rabbinic judicial authorities, and the autonomy of Jewish minority communities. The various discussions of law and stories demonstrate inconsistent relationships with gentile government institutions, including courts, tax collectors, and gentile law itself. Because there is no single treatment of these issues where multiple principles are debated, questioned, and

[52] Myers and Stolzenberg, 279.

ultimately accepted or rejected, as readers we must collate these disparate sources to read them together.

This chapter traces the origins of *lifneihem* and *dina d'malkhuta dina* in the Bavli, with a brief mention of their development in *halakha* over time. This chapter provides the intellectual framework for the debates and stories that follow in Chapters 2 and 3. These two principles suggest opposite reactions to the coexistence of Jewish and gentile legal systems. However, neither is universally promoted across these passages, indicative of the project in the Bavli to rely on contextual factors in constructing identity. A more contextually dependent approach emerges from these texts, attempting to preserve Jewish rabbinic autonomy while recognizing the practical and ideological limits of Jewish diasporic existence. The intentional diminishment of these principles cultivates an identity rooted in context and culture, not in pronouncements and principles.

Lifneihem

As Menachem Elon writes, the prohibition of Jews resorting to gentile courts is "a prohibition that the *halakhic* authorities and the communal leaders regarded as particularly strict."[53] While it became that way over time, this prohibition is not so stringent in the Bavli. The *sugya* that brings this teaching contains several recurring themes in this collection of texts: ideology, contemporaneous Jewish behavior, negotiating realms of authority, self-preservation, and self-interest.

The prohibition of *lifneihem* comes from a *baraita*, a *tannaitic,* non-Mishnaic saying attributed to Rabbi Tarfon found on b. Gittin 88b. The *sugya* has three distinct levels: (1) the

[53] Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Me Sykes, vol. 1, 4 vols. (Philadelphia: Jewish Publication Society, 1994), 13.

baraita itself, (2) the story in which is it taught, and (3) the location of this story in the *Gemara* more broadly. Starting with the smallest unit of text and subsequently adding layers uncovers different voices and opinions in each stratum of the *sugya*, and how the editors wove them together to construct a specific argument while leaving traces of other opinions. The *baraita*, which pre-exists the *sugya*, contains two *midrashim* linked to the same verse in Exodus. As is the practice for the Bavli, the *baraita* appears in full, even though only the second interpretation is relevant to the surrounding material. Because of this practice, the *midrash* that provides the homiletical basis for *lifneihem* appears almost accidentally in the Bavli. The *baraita* reads:

> ותניא היה ר"ט אומר כל מקום שאתה מוצא אגוריאות של עובדי כוכבים אע"פ שדיניהם כדיני ישראל אי אתה רשאי להיזקק להם שנאמר {שמות כ"א} ואלה המשפטים אשר תשים לפניהם לפניהם ולא לפני עובדי כוכבים דבר אחר לפניהם ולא לפני הדיוטות

> *... And it is taught in a* baraita *that Rabbi Tarfon said, "In every place that you find* agoriot shel ovdei kokhavim (*gentile courts), even if their laws are like Jewish laws, you are not allowed to make use of them, as it says, 'And these are the laws that you shall put before them'* (Ex. 21:1). *Before <u>them</u>, and not before <u>gentiles</u>. Another option, before <u>them</u> and not before <u>laymen</u>.*

The *midrash* is anchored[54] in Exodus 21:1, which opens the law code directly following the Israelites' encounter with God at Mount Sinai where they heard the decalogue. In the biblical text, *lifneihem*, them, refers to the Israelites, i.e. "These are the laws that you (Moses) shall give to them (the Israelites)." The *midrash* emphasizes before *them*, and not before someone else. One interpretation teaches that *them* means Israelites and not gentiles. A

[54] It is possible that the verse was read, and then this interpretation was created, or perhaps the prohibition predates the interpretations, which was generated to justify itself in the biblical text. See Jacob Neusner, *Introduction to Rabbinic Literature*, (New York: Doubleday, 1994), 227. The debate about the creation of *midrash* is not the focus of this project. However, it is interesting to note that another *halakhic* principle called *lifneihem* exists, referencing Lev 18:3. This prohibition is against cultic and religious laws, not gentile courts (see "Approaches to Foreign Law in Biblical Israel and Classical Judaism through the Medieval Period," *The Cambridge Companion to Judaism and Law,* ed. Christine Hayes, (New York: Cambridge University Press, 2017), 128-156).

second interpretation teaches that *them* means before judges, and not laymen. This verse and its two interpretations are used to justify two different rabbinic proclamations: the one attributed to Rabbi Tarfon in the *baraita*, and one attributed to Abaye in the larger *sugya*.

Rabbi Tarfon's statement prohibits Jews from appealing to *agoriot*, even if the law is like Jewish laws. The word *agoriot* in Greek refers to markets or gathering places. In ancient Greece, the *agora* was both a market for buying and selling goods and a public meeting place where one could engage in political life (including hearing the opinions of the court). Most translations of this text render *agoriot* as non-Jewish courts.[55] While this translation describes the element of an *agora* most directly relevant to the story, it fails to convey dimensions of public life more broadly. *Agora* points the reader a shared public sphere where Jews and non-Jews interact, regularly encountering the Other and providing the physical landscape for navigating multiple realms of authority that governed their behavior. Rashi[56] hints at this meaning when he defines *agoriot* to be an assembly or gathering place, directing readers to a text in Proverbs about stores or merchandise.[57] Prohibiting an *agora* preaches against seeking out a gentile court specifically *and* cautions engagement with the courts found in oft-visited public square. This prohibition should not just be understood against gentile legal structures, but the cultural phenomenon of gathering and mixing with gentiles.

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[55] For two examples, see Saul Berman, *Boundaries of Loyalty: Testimony Against Fellow Jews in Non-Jewish Courts*, (New York: Cambridge University Press, 2016), 4, and Adin Even-Israel Steinsaltz, *Tractate Gittin, Koren Talmud Bavli: The Noe Edition, Commentary by Rabbi Adin Even-Israel Steinsaltz,* (Jerusalem, Koren Publishers, 2015), 21:532. While most printed editions of the Bavli use the word *agoriot*, MS Munich 95 contains the word *arkaot*, a place in the Roman judicial system like an archive and often translated as non-Jewish court – see the analysis in Chapter 2 on b. Gittin 9a-11a.

[56] Rabbi Shlomo Yizchaki (Rashi) was an 11th century French commentator on Torah and Talmud, arguably the most well-known commentator on such texts. His commentary to the Talmud is printed on the inside page of the *Dfus Vilna*.

[57] Rashi on b. Gittin 88b, "*Agoriot* – like stores in the summer (*oger ba'kayitz)* (Proverbs 10:5).

The teaching attributed to Rabbi Tarfon specifies that the prohibition holds true even if the law that would be applied in the *agoriot* are the same as Jewish laws. This additional stipulation clarifies what is at stake is the authority of the institutions, not the validity of the laws. This teaching is not concerned with the relative correctness or justness of Jewish and non-Jewish law, but which bodies are fit to administer any kind of law for Jews. This tension is highlighted even more prominently when read alongside a teaching in *Mekilta de-Rabbi Yishmael* that permit Jewish courts to rule according to non-Jewish law.[58] The concern is not the gentile law, but the authority of gentile institutions over Jews and autonomy of the Jewish legal system. The focus on institutional authority and validity is also reflected in the principle of *dina d'malkhuta dina*, which does not address the content of the law on its merits, but instead on whether those laws are correctly implemented.

Rabbi Tarfon, the ascribed author of this *baraita*, is an early 2nd century *tanna*, living and teaching at the end of the Second Temple and immediately following its destruction.[59] This dating is important because, according to Katell Berthelot, it "may reflect a position that went back to a time of severe conflict between Rome and the Jews, which lost part of its intensity after the failure of the last revolt against Rome and gave way to a more realistic perspective."[60] Gershom Bader remarks that during the life of Rabbi Tarfon, "A bitter struggle was then being waged against the early Christians who were Jews, and Rabbi Tarphon who was their severest opponent."[61] By linking this teaching to the political context

[58] Berkowitz, "Approaches to Foreign Law in Biblical Israel and Classical Judaism through the Medieval Period," *The Cambridge Companion to Judaism and Law,* ed. Christine Hayes, (New York: Cambridge University Press, 2017), 145.
[59] Gershom Bader, *The Encyclopedia of Talmudic Sages*, trans. Solomon Katz, (Northvale, N.J.: Jason Aronson, 1988), 247.
[60] Katell Berthelot, *Jews and Their Roman Rivals: Pagan Rome's Challenge to Israel*, (Princeton, N.J.: Princeton University Press, 2021), 311.
[61] Bader, *The Encyclopedia of Talmudic Sages*, 250.

of Rabbi Tarfon and the intense ideological conflict against the early Christians and the Romans, the desire to isolate (and thereby sustain) Judaism and Jewish law through the trauma of the destruction of the Temple becomes clear. This context doesn't discredit the *baraita* but locates it in a particular moment, with concerns for self-preservation that may be less relevant to subsequent communities. Jews of later generations appear to rely on gentile courts, signaling that this statement was not (yet) a dominant ideology, but one of several approaches to engaging with gentile governments.

Based on this *baraita*, Saul Berman claims that "early Jewish law deemed it impermissible for Jewish litigants to submit their conflict to non-Jewish courts."[62] Such a determination about early Jewish law cannot be made definitively. This *baraita*, also appearing in *Midrash Tanchuma, Mishpatim,* 3, is not referenced or repeated throughout the Bavli and other rabbis in the Bavli (from both earlier and later generations) relied on gentile law (b. Baba Metzia 73b), permitted the use of gentile courts (Baba Kama 113a-114a), and accepted some of their documents and rulings as valid (b. Gittin 9a-11a), creating indeterminacy as to what the early law actually held, if such a universal law existed. Berman's claim additionally highlights the tension between law and action. Even if the law was written a certain way, very little evidence exists about the extent to which contemporaneous Jews followed such rabbinic ordinances. As is demonstrated below, this *baraita* is elevated by *halakhic* authorities who, retrospectively, seek to draw a continuous line of Jewish law from Rabbi Tarfon to their contemporary situation. However, it is highly doubtful such connections can be made.

[62] Saul Berman, *Boundaries of Loyalty: Testimony Against Fellow Jews in Non-Jewish Courts*, (New York: Cambridge University Press, 2016), 3.

In addition to the lack of references to this *midrash* in the Bavli, it is further minimized by its incidental inclusion in the *sugya*. The story that contains this *baraita* only relies on the second interpretation, "not before laymen," referring to the prohibition against certain rulings by non-ordained judged.

אביי אשכחיה לרב יוסף דיתיב וקא מעשה אגיטי א"ל והא אנן הדיוטות אנן ותניא היה ר"ט אומר כל מקום שאתה מוצא אגוריאות של עובדי כוכבים אע"פ שדיניהם כדיני ישראל אי אתה רשאי להיזקק להם שנאמר {שמות כ"א} ואלה המשפטים אשר תשים לפניהם לפניהם ולא לפני עובדי כוכבים דבר אחר לפניהם ולא לפני הדיוטות

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> *Abaye found Rav Yosef sitting and coercing* gets.[63] *Abaye said to Rav Yosef, "Aren't we laymen*[64] *And it is taught in a* baraita *that Rabbi Tarfon said, 'In every place that you find* agoriot shel ovdei kokhavim (*gentile courts), even if their laws are like Jewish laws, you are not allowed to make use of them, as it says, "And these are the laws that you shall put before* them" (Ex. 21:1). *Before <u>them</u>, and not before <u>gentiles</u>. Another option, before <u>them</u> and not before <u>laymen</u>.' Rav Yosef responded, "We act as their agents, like in the cases of admissions and loans." Abaye asked, "If this is the case, why do we not judge cases of robbery and injury as well?" Rav Yosef answered, "We work as their agents in common matters, but in uncommon matters we do not work as their agents."*

This story is an example of a "*halakhic ma'aseh*," a case, sometimes hypothetical and sometimes in narrative form, that connects to the law, either explaining it or introducing an innovation. In the past 30 years, scholarly treatment of the Bavli has changed the relationship between stories and law in the Bavli, breaking down the barrier between *halakha* and *aggada* and recognizing their didactic influence on each other.[65] These anecdotes, according to Judith

[63] A *get*, meaning document, here means a divorce document, also called *gitei nashim*, or "women's documents." While other kinds of *gitim* (plural of *get*) exist, when used without a modifier, a *get* refers to the document needed to establish a valid divorce.
[64] Non-ordained judges, as only rabbis with *s'mikhah*, formal ordination in the Land of Israel, can coerce *gets*.
[65] See, for example, Jeffrey Rubenstein, *Stories of the Babylonian Talmud*, (United States: Johns Hopkins University Press, 2010), 7; Julia Watts Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity: Rabbinic Response to Drought and Disaster,* (New York: Cambrige University Press, 2015), 18; Jeffrey Rubenstein, Yonatan Feintuch, and Jane Kanarek, "Halacha and Aggada in Post-Tannaitic Literature," in *The Literature of the Sages: A Revisioning,* ed, Christine Hayes, (Leiden: Brill, 2022), 544-621; and Barry Scott Wimpfheimer

Hauptman, are central to understanding the *halakha* presented in the Bavli because they do not simply demonstrate a law in action, but somehow modify or change the law as initially written.[66] The anecdote in this passage is central in establishing the authority and jurisdiction of Babylonian rabbis, which Hauptman calls "the main message of the sugya."[67] This story follows the literary structure of other interactions between Rav Yosef and Abaye (early 4th century Babylonian *Amoraim*), where Abaye, Rav Yosef's student and successor, questions a statement or action of Rav Yosef, only to be rebuffed.[68]

Rav Yosef's response further emphasizes the centrality of Babylonian rabbinic authority to this story. Abaye challenges Rav Yosef *in public* while he is issuing judgments. Rav Yosef's reaction to this public challenge is not rooted in any previous teaching or biblical text.[69] Nevertheless his claim provides the theoretical basis for future judges in the Diaspora to operate with close to fully rabbinic legal authority. Without this claim, the Jewish legal system would have been severely hamstrung without *s'mikhah* (at least in theory). The authority of the Babylonian rabbis a central theme here, but against whom they are rebelling is more nuanced. The story of Abaye and Rav Yosef asserts Babylonian authority vis-à-vis rabbis in the land of Israel, while the *baraita* functions on two levels, potentially undermining Babylonian Jewish courts (by criticizing them as *hedyotot*) and rejecting the

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Narrating the Law: A Poetics of Talmudic Legal Stories, (Philadelphia, University of Pennsylvania Press, 2011). Each of them builds on the foundational essay by Haim Nahman Bialik, "Halakha ve'aggada," trans. L. Simon, *Revealment and Concealment: Five Essays,* (Jerusalem: Ibis, 2000), 45-87, and Daniel Boyarin, *Carnal Israel: Reading Sex in Talmudic Culture*, (Berkley, University of California Press, 1993).

[66] Hauptman, *The Stories They Tell*, 5.

[67] Hauptman, 159-60.

[68] Richard, Kalmin, *Sages, Stories, Authors and Editors in Rabbinic Babylonia* (Atlanta: Scholars Press, 1994), 104.

[69] Amihai Radzyner, "'We Act as their Agents' and the Prohibition of Judgment by Laymen: A Discussion of Babylonian Talmud Gittin 88b," *AJS Review* (37:2, November 2013, 257-283), 267.

authority of gentile courts. Thus, the Babylonian rabbinic court is strengthened against the gentile courts, but needs strengthening against the challenge from Palestine.

At the innermost level are two *midrashic* interpretations of the word *lifneihem*: the unnecessary-to-the-story prohibition against *agoriot* (from which the principle *lifneihem* emerges), and the prohibition against laymen, which functions as a (soon-to-be-rejected) prooftext for Abaye against Rav Yosef. However, this second interpretation is also suspect: the parallel text in *Midrash Tanuchma* does not contain the reference to non-ordained judges. The authority of Babylonian rabbis to judge is discussed extensively on b. Baba Kama 84b, without reference to this *midrash.* This story and the *baraita* it contains are both out of place if the central theme for this passage is the authority of Babylonian rabbis compared to Palestinian rabbis. [70] However, by expanding the analysis to the broader *Gemara*, it becomes clear that the central theme of the *sugya* is the authority of the Babylonian rabbis compared to *gentile courts*, supporting Hauptman's initial claim but providing an important clarification.

In the narrative, Rav Yosef is compelling husbands to give *gets* to their wives. The broader *sugya* discusses the validity of gentile courts to issue a *get* for a Jewish couple – a topic which the "unnecessary" prohibition against *agoriot* strongly comments on. The tangentially related story about the authority of Babylonian rabbis compared to their counterparts in Israel becomes the vehicle to deliver an important biblical citation to the broader conversation in the *Gemara*, sharpening the focus of the passage on the relative authority of Babylonian rabbinic courts and gentile courts.

> מתני' גט מעושה בישראל כשר ובעובדי כוכבים פסול ובעובדי כוכבים חובטין אותו ואומרים לו עשה מה שישראל אומרים לך (וכשר):

[70] Radzyner, "'We Act as their Agents,'" 275.

מ' אמר ר"נ אמר שמואל גט המעושה בישראל כדין כשר שלא כדין פסול ופוסל ובעובדי כוכבים כדין פסול ופוסל שלא כדין אפי' ריח הגט אין בו

מה נפשך אי עובדי כוכבי בני עשויי נינהו איתכשורי נמי ליתכשר אי לאו בני עשויי נינהו מיפסל לא ליפסל

אמר רב משרשיא דבר תורה גט מעושה בעובדי כוכבי' כשר ומה טעם אמרו פסול שלא תהא כל אחת ואחת
הולכת ותולה עצמה בעובד כוכבי' ומפקעת עצמה מיד בעלה

אי הכי שלא כדין אפי' ריח הגט אין בו ונהוי שלא כדין כישראל ומפסיל נמי לפסול

אלא הא דרב משרשיא בדותא היא וטעמא מאי כדין בכדין דישראל מיחלף שלא כדין בכדין ישראל לא מיחלף:

אביי אשכחיה לרב יוסף דיתיב וקא מעשה אגיטי א"ל והא אנן הדיוטות אנן ותניא היה ר"ט אומר כל מקום שאתה מוצא אגוריאות של עובדי כוכבים אע"פ שדיניהם כדיני ישראל אי אתה רשאי להיזקק להם שנאמר {שמות כ"א} ואלה המשפטים אשר תשים לפניהם לפניהם ולא לפני עובדי כוכבים דבר אחר לפניהם ולא לפני הדיוטות

א"ל אנן שליחותייהו קא עבדינן מידי דהוה אהודאות והלואות אי הכי גזילות וחבלות נמי כי עבדינן שליחותייהו במילתא דשכיחא במילתא דלא שכיחא לא עבדינן שליחותייהו

***Mishnah**: A get compelled by Jewish courts is kosher, but by gentile courts it is invalid, but if gentile courts beat him and say to him, "Do what the Jewish courts tell you," it is kosher.*

***Gemara**: Rav Nachman says, "Shmuel says, 'A get compelled by Jewish courts according to the law is kosher. If it is not according to the law, it is invalid, but it invalidates her from marrying a kohen. And for gentile courts, if it is according to the law, it is invalid, but it disqualifies her from marrying a kohen. If it is not according to the law, it does not even have the trace of a get in it.'"*

Which way do you want it? If gentile courts themselves are legally able to compel, it should be a valid get and permit her to remarry. If they themselves cannot legally compel, the get should be invalid and not permit her to remarry.

Rav Mesharshya said, "It is a matter of Torah law that a get compelled by gentile courts is valid. What is the reason the rabbis ruled that this get was invalid? So that each and every woman will not go and make herself dependent on a gentile (to beat her husband so that she can) bring herself out from the hand of her husband (to force him to give her a get)."

If so, (why does Shmuel say a get coerced) by gentile courts not according to the law does not have even a trace of validity to it? It should be like the unlawful get coerced by a Jewish court, which is invalid but also disqualifies her from marrying a kohen.

Instead, Rav Mesharshya's statement is a mistake (and therefore gentile courts cannot coerce a get under Torah law).

What is the reason (that a get compelled by gentile courts not according to the law is completely invalid, instead of being invalid but disqualifying her from marrying a kohen)? A lawful get (by gentile courts) can be confused with a lawful get from Jewish courts (and therefore must have the added restriction), but an unlawful get (from gentile courts) cannot be confused with a lawful get from a Jewish court (and therefore there is no concern anyone will believe the document is legitimate).

Abaye found Rav Yosef sitting and compelling gets. *Abaye said to Rav Yosef, "Aren't we laymen (non-ordained judges?) And it is taught in a* baraita *that Rabbi Tarfon said, 'In every place that you find* agoriot shel ovdei kokhavim *(gentile courts), even if their laws are like Jewish laws, you are not allowed to make use of them, as it says, "And these are the laws that you shall put before* them" (Ex. 21:1). *Before <u>them</u>, and not before <u>gentiles</u>. Another option, before <u>them</u> and not before <u>laymen</u>.' Rav Yosef responded, "We act as their agents, like in the cases of admissions and loans." Abaye asked, "If this is the case, why do we not judge cases of robbery and injury as well?" Rav Yosef answered, "We work as their agents in common matters, but in uncommon matters we do not work as their agents."*

The *Mishnah* opens with a discussion of a *get* that is issued because of the ruling of a court as opposed to the will of the husband. In *halakha,* a *get* must be given willingly by a husband to a wife. Even in *Mishnaic* times, however, the rabbis recognize that sometimes a case exists where a divorce would be preferable (especially for the woman), but a husband might refuse to give a *get* without a court compelling him. If this was the case and the court was not authorized to compel him to give her a *get,* she would have no recourse. Therefore, the court is allowed to compel a *get* from a husband in certain cases. The *Mishnah* outlines three cases: a *get* compelled by a Jewish court, a *get* compelled by a gentile court, and a gentile court enforcing the ruling of a Jewish court.

The initial discussion in the Bavli adds another layer of complexity to these cases: because courts can only compel a *get* to be issued in specific circumstances, there are divorce documents that are "legally compelled" and "illegally compelled," by either Jewish or gentile

courts, thus creating four categories. The final opinions of the *sugya* are summarized in the chart below after a range of opinions discuss the relative validity of each kind of *get*.

Table 1: The status of different compelled documents of divorce in b. Gittin 88b

	Issued by Jewish Court	**Issues by Gentile Court**
Fulfills a valid condition for compelling a *get*	Completely Valid	Invalid, but has enough validity to institute the restriction that disqualifies her from marrying a *kohen*
Does not fulfill a valid condition for compelling a *get*	Invalid, but has enough validity to institute the restriction that disqualifies her from marrying a *kohen*	Invalid; has no force whatsoever

In this *sugya*, the main message is the authority of both Babylonian rabbinic and gentile courts, widening Hauptman's lens from the specific narrative to the broader discussion. The various positions on the authority of a gentile court in the case of a compelled *get* reflect this central theme. The most lenient position is offered by Rav Mesharshya, a fourth century Babylonian *Amora*. He argues that the *get* compelled by gentile courts is valid according to Torah law but undone by rabbinic law because of their uneasiness relying on gentile courts. According to this statement, it is not a religious problem to use the gentile courts (indeed, the Torah permits it), but a cultural one: the rabbis did not wish for Jewish women to usurp their (supposed) authority and go to gentile courts to compel their husbands to give them a *get*.

This statement by Rav Mesharshya, while ultimately rejected by the *stammaitic* layer of the *sugya*, represents a powerful challenge to the prohibition against using gentile courts. For Rav Mesharshya, the Torah has no problem with their authority (seemingly rejecting Rabbi Tarfon's *midrash*), an opinion repeated on b. Gittin 9a-11a. By defining this prohibition as a rabbinic concern about unseemly behavior, not a Torah-level prohibition,

Rav Mesharshya reveals the main concern of the prohibition against using gentile courts. Like Rabbi Tarfon, the uneasiness he projects is cultural and context-dependent, not an inherent violation of *halakha*. When his teaching is rejected by the anonymous voice of the *stam*, it is simply labelled as a mistake, with no reason offered. This is a weak rejection.

The central challenge throughout the entire *sugya*, guided by the *stam*, is the authority of gentile courts to compel divorce documents for Jews. In this case, the story of Abaye and Rav Yosef does not function as a story about Babylonian rabbinic authority, but a vessel for the *midrash* that reinforces the *stammatic* rejection of the authority of gentile courts. While this story grows to have other important roles in subsequent *halakha* about rabbinic authority in Babylonia and Israel, the interaction does not contribute to the main idea of the *sugya*.

Ultimately, gentile courts are granted an intermediate status: they cannot compel a kosher *get*, but their rulings are not totally disregarded. The unchallenged logic in the *sugya* is that laypeople will be confused about which kinds of divorce documents given through coercion are valid. The *sugya* posits two extreme cases: lawful *gets* coerced by Jewish courts are completely valid, and unlawful *gets* coerced by gentile courts are completely invalid; and two intermediate cases: unlawful *gets* coerced by Jewish courts, and lawful *gets* coerced by gentile courts. These middle cases are given this intermediate status because of a concern that Jews would confuse them for properly issued *gets*. In the case of the Jewish court, a layperson might think that if a Jewish court forced a *get* to be given, it must have been for a legal reason. In the case of the non-Jewish court, the layperson might assume that gentile courts have the authority to compel a Jewish man to give his wife a *get*. While the final presentation of this *sugya* denies the gentile court *halakhic* authority to compel a *get*, it grants

the court a certain amount of relational currency, where Jews might errantly believe in their authority on this issue, against the rabbis wishes.

The initial position, which remains standing at the end of the *sugya*, is taught in the name of Shmuel. The principle of *dina d'malkhuta dina* is also exclusively taught in his name, and his relevance is explored more fully in the following section. Bringing both teachings in the name of the same person highlights that neither are absolute or held exclusively by ideologically opposed camps: the gentile court is granted neither complete authority nor rejected entirely. In fact, it is precisely because the court has legitimacy in other cases that generates the possibility that they might be followed regarding coerced *gets*. As noted earlier, the delineation between civil and religious law posited by Myers and Stolzenberg was not a strong enough separation to prevent the possibility of granting gentile courts more authority than the rabbis desired.

After the *halakhic* discussion, the *sugya* concludes with the story with Abaye and Rav Yosef. At first glance, this story about the limits of Babylonian rabbinic authority appears out of place in a debate about gentile courts. However, the *baraita* (in its apparent original form solely related to gentile courts) links the two together. This *sugya,* built by the *stam*, reinforces the rejection of all activity by gentile courts, calling Rav Mesharshya's statement a mistake, reinforcing Shmuel's rejection of gentile courts issuing a *get*, and adding onto it this teaching from Rabbi Tarfon. Even so, careful readers notice the assumption remains that Jews might use gentile courts for many matters, including compelling a *get*. Both the statement of Rav Mesharshya and the concern voiced by the *stam* reflect this possibility. This *sugya* was constructed to limit the gentile court's authority over these matters, while recognizing the role and authority they already hold over other domains of law.

There is no discussion in the *Gemara* of the final statement of the *Mishnah*, that a gentile court can enforce rabbinic decisions. In commenting on the broader context in which this teaching is placed, Berthelot notes,

> "The focus on family issues, such as marriage and divorce, that characterizes the evidence from the Mishnah and the Tosefta may indicate a shift from an absolute to a selective prohibition. In addition, m. Gittin 9:8 and t. Yevamot 12:13 open the door to the possibility of Roman enforcement of rabbinic decisions. One may thus cautiously suggest that there was a diachronic evolution in tannaitic thought on these issues. In any case, when looking at Palestinian rabbinic sources as a whole, it is possible to speak of a dialectic of rejection and accommodation vis-à-vis Roman jurisdiction."[71]

Berthelot identifies the tension between rejection of gentile authority and accommodating it based on the rabbis' lived reality. While the rabbinic worldview aimed for their complete authority over Jews' lives, especially over religious issues including marriage and divorce, they concede jurisdiction to gain help enforcing their ruling. They confront a reality where Jews might turn to a gentile court or be sufficiently convinced that a document produced by a gentile court can create a divorce. The *stammaim*, therefore, construct a *sugya* and artificially insert a *baraita* into a story at the end of the *sugya* to dispel those notions.

Whatever way this teaching entered the Bavli, *lifneihem* grew in importance over time and became a core *halakhic* principle. Medieval rabbis and legal commentators such as Rashi and Rashbam (Rabbi Shmuel ben Meir, an 11th century French commentator and Rashi's grandson), and later Rabbi Yosef Karo in the *Shulkhan Arukh*, codify this principle in *halakhic* writings.[72] Nevertheless, in a world where gentile courts are granted authority to legislate, and Jews are bound by gentile law, Jewish law has made exceptions to the rule in a variety of cases.[73] As Beth Berkowitz writes about the 11th century Babylonian rabbinic

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[71] Berthelot, *Jews and their Roman Rivals*, 311.
[72] Yaakov Feit, "The Prohibition Against Going to Secular Court," *The Journal of the Beit Din of America*, vol 1 (2012, 30-47), 30-31.
[73] Feit, "The Prohibition Against Going to Secular Court."

leader, “Hai Gaon limits the prohibition on foreign courts to cases when the Jewish court has the capacity to enforce its decisions.”[74] The central concern for Hai Gaon is the real world power, not an abstract approach to how he wished the courts worked. This tempering continued in the Middle Ages, allowing two parties who both agree to go to non-Jewish courts.[75] Ultimately, as Elon describes,

> “not only has resort to the general courts greatly increased throughout the Jewish diaspora since the end of Jewish juridical autonomy, but the halakhic authorities have reconciled themselves to litigation by Jews in non-Jewish courts and have given the prohibition an entirely different interpretation from that maintained by the halakhic authorities during all prior periods.”[76]

Just as rabbinic reaction to contemporary action by Jews is prevalent in the text, it pervades how later authorities approached these issues. Instead of taking a principled stand, they focus on self-preservation, only granted themselves power in a way that would allow their laws to survive challenges from both the Jewish community they attempted to rule over and the gentile authorities that ruled over them. Of course, these courts could not grant themselves power beyond the limits prescribed by the gentile authority, but still attempted to couch their actual authority as naturally occurring from within their ideal system.

Elon articulates, most powerfully using the words of the 17th century Sephardic (Italian) rabbi Samuel Aboab, what was at stake for *halakhic* authorities with this prohibition. Jewish judicial autonomy and the ability of the Jewish courts to exercise control - and influence the community - needed to be preserved in order to continue the “religious-national viewpoint of the people’s spiritual and law leaders and of the people at large.”[77] The existence of Judaism beyond a religion, including national elements, was preserved in part by

[74] Berkowitz, “Approaches to Foreign Law," 153.
[75] Elon, *Jewish Law*, 1:17.
[76] Elon, *Jewish Law,* 4:1917.
[77] Elon, *Jewish Law,* 1:35.

the creation of a judiciary independent from the governmental powers under which Jews resided. With their own courts and civil law, Jews maintained a distinctive communal characteristic that these *halakhic* authorities worried would disappear should Jews turn to gentile authorities. Accompanying this anxiety was the presence of gentile governments who exercised their power over the Jewish community. To survive navigating the existence of two court systems, theirs with much less power than the gentiles', the rabbis created a pathway to preserve their independence while formalizing the connection between the two systems: *dina d'malkhuta dina*.

Dina D'malkhuta Dina

While Myers and Stolzenberg discuss *dina d'malkhuta dina* in the context of Jews appearing before gentile courts in general, this approach is not found in the Bavli. The four *sugyot* containing this principle relate to taxes, customs officials, property acquisition, and in only one instance, documents created by gentile court. Even that one text (b. Gittin 10b) focuses on methods of sale according to gentile law, not two Jews bringing a dispute to a gentile court or the authority of the court to judge those cases. Over time, however, this principle becomes the site of debate over how far gentile authority extends over Jewish legal institutions, admitting Jews must follow gentile law but not wanting to undermine *halakha*.[78] As the scope of *lifneihem* was narrowed over time, *dina d'malkhuta dina* widened, but still within limits.

In each of the four cases, *dina d'malkhuta dina* is taught in the name of Shmuel. Ascribing this principle to Shmuel places it in the mid-third century, concurrent with the

[78] Berkowitz, "Approaches to Foreign Law in Biblical Israel and Classical Judaism through the Medieval Period." 154.

reign of Shapur I and the beginning of the Sasanian period. Initially, under Ardashir, the Sasanians severely curtailed Jewish legal autonomy and Jewish sources describe their oppression at the hands of the government.[79] However, Shapur I pursued a different policy, allowing greater Jewish autonomy, perhaps due to his friendship with Shmuel.[80] Shmuel was known for his liberal interpretations of law and his attempts to reconcile Jewish law with the gentile law, both through *dina d'malkhuta dina* and other rulings.[81] When read in the context of Shmuel and Shapur's friendship, this teaching takes on additional significance in defining Jewish approaches to the gentile government. However, Geoffrey Herman doubts this attribution. First, as we will see in b. Baba Batra 54b-55a, his statement is introduced by an exilarch, placing the introduction of this statement in the time of Shapur II, a century later. Other times when it appears, it is usually introduced in the *stammaitic* layer. This principle is either not followed or unknown by other rabbis of Shmuel's generation. If this is the case, Herman concludes that this statement might have originated in the fourth century (notably, at the same time of Rav Mesharshya's more lenient approach to gentile courts) to support the Exilarchate by promoting coexistence with the gentile law and the ties between the exilarch and the throne.[82] Whenever and however it enters the Bavli, as many scholars indicate, *dina d'malkhuta dina* gained incredible significance in later Judaism, helping define Jewish relationships with gentile governments, impacting attempts of Jews to integrate into non-Jewish society, and changing the authority of Jewish courts.

[79] Neusner, *The Early Sassanian Period*, 30-35.
[80] Neusner*, 67*.
[81] Bader, *The Encyclopedia of Talmudic Sages*, 671-3.
[82] Geoffrey Herman, *A Prince without a Kingdom: The Exilarch in the Sassanian Era* (Tübingen, Germany: Mohn Siebech, 2012), 206-7.

b. Nedarim 27b-28a

מתני׳ נודרין להרגין ולחרמין ולמוכסין שהיא תרומה אע"פ שאינו תרומה שהן של בית המלך אע"פ שאינן של בית המלך בש"א בכל נודרין חוץ מבשבועה וב"ה אומרים אף בשבועה ב"ש אומרים לא יפתח לו בנדר ובה"א אף יפתח לו ב"ש אומרים במה שהוא מדירו ובה"א אף במה שאינו מדירו כיצד אמר לו אמור קונם אשתי נהנית לי ואמר קונם אשתי ובני נהנין לי בש"א אשתו מותרת ובניו אסורין וב"ה אומרים אלו ואלו מותרין:

גמ' והאמר שמואל דינא דמלכותא דינא

אמר רב חיננא א"ר כהנא אמר שמואל במוכס שאין לו קצבה דבי ר' ינאי אמר במוכס העומד מאליו:

> ***Mishnah****: (One is allowed to) vow to murderers, to robbers, and to* mokhsin (*customs officials) "This is terumah," even though it is not terumah; "this is for the house of the king," even though it is not for the house of the king. Beit Shamai says, "One can use every kind of vow, except for an oath." Beit Hillel says, "even with an oath." Beit Shamai says, "Do not initiative the conversation with a vow" and Beit Hillel says, "You can even open with it." Beit Shamai says, "(Only) if the other person compels him" and Beit Hillel says, "Even in situations where he is not compelled it is allowed." How so? The other person forces him to vow, "It is forbidden for my wife to benefit from me," and he said, "It is forbidden for my wife and children to benefit from me," Beit Shammai says, "His wife is permitted and his children are forbidden," and Beit Hillel says, "Both are permitted."*
>
> ***Gemara****: (How could the Mishnah permit avoiding paying taxes?) Didn't Shmuel say, "The law of the kingdom is the law?"*
>
> *Rav Hinanya said, "Rav Kahana said, 'Shmuel said, "(the Mishnah refers to) a customs official that does not have a fixed amount."'" From the house of Rabbi Yanai said, "it refers to a customs official that appointed himself."*

In this *sugya*, *dina d'malkhuta dina* is used to limit the *Mishnah,* which allows for lying to murderers, robbers, and customs officials. Murderers and robbers appearing together makes intuitive sense to the modern reader as their actions clearly harm individuals and transgress both Jewish and civil law. The customs official is an odd addition to this group, both for modern readers and the subsequent layers of the Bavli. However, the *Mishnah*'s inclusion of the customs official alongside the murderer and robber suggests that the authors of the *Mishnah* see commonalities between them. The initial question of the *Gemara* helps clarify those similarities.

The *Gemara* understands *dina d'malkhuta dina* as contradictory to the *Mishnah*. It is brought in his name, but should not be understood as "When Shmuel heard this *Mishnah*, he responded, saying, "Isn't the law of the kingdom the law?" Instead, as Herman indicated, his statement is placed here when this *sugya* was put together, in the *stammaitic* layer. Two possible answers from early *Amoraim* are brought, from around the same time as Shmuel. First, through a chain of transmission they suggest that Shmuel himself taught that the *Mishnah* did not refer to all customs officials, but only to those who had rates that were flexible, not fixed by law. In a similar limitation, a tradition is taught from the school of Rabbi Yanai that the *Mishnah* referred to a 'self-appointed' customs official, instead of an official government agent. This 'self-appointed' official has no legal authority, and thus Jews have no legal duty of obedience.

Initially, the *sugya* presents two seemingly contradictory laws that must be reconciled: the *Mishnah* allows Jews to lie to customs officials, but another teaching dictates that they must follow the law of the kingdom. This is only a contradiction if both are valid legal principles. If the Bavli was flexible on the law of the kingdom, they could have resolved the contradiction to make an exception to *dina d'malkhuta dina* in this case. Instead, they bring traditions to limit the *Mishnah*, limiting the cases in which one can lie to a customs official, thereby strengthening the principle of *dina d'malkhuta dina*.

This redefinition of the customs official as someone operating outside of the law makes their connection with the murderer and robber apparent. All of them harm individuals by taking something of theirs; the rogue customs official steals money under the guise of taxes. The later discussion clarifies that, in general, customs officials have the legal right to take taxes and Jews must comply. However, if the official breaks gentile law, such as

collecting variable amounts or appointing themselves, it would not violate Jewish law to lie to them: both because the lying becomes permitted, and because it is not a violation of the law of the kingdom. If these individuals operate outside the laws of the kingdom, Jews are not bound by *dina d'malkhuta dina*, allowing the principle to remain intact and the law of the *Mishnah* to be applied in specific circumstances. *Dina d'malkhuta dina* applies only to those who are acting according to gentile law, not simply anyone who attempts to exercise governmental power. If a government official acts unlawfully, or an individual attempts to claim for themselves authority not bestowed on them by the government, *dina d'malkhuta dina* does not apply, and Jews are not obligated to follow their instructions.

b. Gittin 10b

מתני' כל השטרות העולים בערכאות של עובדי כוכבים אע"פ שחותמיהם עובדי כוכבים כשירים חוץ מגיטי נשים ושחרורי עבדים ר"ש אומר אף אלו כשירין לא הוזכרו אלא בזמן שנעשו בהדיוט:

גמ' קא פסיק ותני לא שנא מכר ל"ש מתנה

בשלמא מכר מכי יהיב זוזי קמייהו הוא דקנה ושטרא ראיה בעלמא הוא דאי לא יהיב זוזי קמייהו לא הוו מרעי נפשייהו וכתבין ליה שטרא אלא מתנה

במאי קא קני לאו בהאי שטרא והאי שטרא חספא בעלמא הוא אמר

שמואל דינא דמלכותא דינא ואב"א תני חוץ מכגיטי נשים:

> ***Mishnah****: All documents produced in the courts of gentiles, even though they are signed by gentiles, are valid, except for divorce documents and documents that emancipate slaves. Rabbi Shimon says, "Even these are valid. They only invalid if they were made by (gentile) laymen[83]."*
>
> ***Gemara****: The Mishnah definitively teaches there is no difference between a document of sale and of gift (both are valid if produced by a gentile court).*
>
> *(There is a problem with this teaching.) Obviously in a document of sale, where the purchaser gave the money to the seller before the court, he has acquired it, and the document merely witnesses it (the document does not establish the sale but is mere evidence that it occurred). And if he did not give the money before them, the gentile*

[83] Both here and in b. Gittin 88b the text refers to *hedyotot*, or laymen. Here that refers to gentile laymen acting as judges, and in b. Gittin 88b it refers to Jewish laymen acting as judges.

court would not delegitimize themselves and write a document for him about a sale that has not occurred.

However, how is a gift acquired - Is it not with a document? But this gift document is worthless (presumably because it is a document written by a gentile court that establishes the transaction, instead of merely being proof it occurred).

(One answer is) Shmuel says, "The law of the kingdom is the law." And if you want (a different answer), the Mishnah should read, "except for anything <u>like</u> divorce documents."

Various parts of this *sugya* and its continuation will be analyzed in Chapter 2, where I more fully treat the authority granted to the documents produced by gentile courts, but some introduction here is necessary. The debate in the *Mishnah* and subsequent *Gemara* involves two categories of documents - those that are merely proof of a change in status and those that effect the change. The *Gemara* opens by stating a conclusion it finds problematic: divorce documents, documents that emancipate slaves, and documents that gift property to someone else all *create* a change instead of testifying to a change that already exists. However, the *Mishnah* included documents of gifts within the category of *all* documents that are valid if produced by gentile courts, even though the *stam* assumes only Jewish courts have that authority. This contradiction is solved with two possible answers. First, they suggest that *dina d'malkhuta dina* applies to gift documents. Even though they change the status of an item, they are valid if produced by a gentile court because that is how gentile law functions. These documents are incorporated into Jewish law, allowing them to be *halakhic* instruments of a gift. This approach separates two documents of a similar category, accepting the validity of certain kinds of documents that effect a status change produced by gentile courts while rejecting others. *Dina d'malkhuta dina* is thereby strengthened, accepting the gentile process of documents establishing a gift within Jewish law.

However, they also offer a second interpretation: the *Mishnah* should be rewritten to say except for anything *like* divorce documents. This little change would retroactively insert the distinction between documents of sale and gift into the *Mishnah*. Here, *dina d'malkhuta dina* is overruled: even if it is the gentile law to establish ownership of gifts with documents, that would not work according to rabbinic law and thus the document is worthless. The *Gemara* does not indicate which of these rulings is preferable and moves on to other topics. Whether *dina d'malkhuta dina* applies in this case remains unresolved, allowing for an answer that limits this principle to stand. As Herman mentioned, here the principle again is completely isolated in the stratum of the *stam*, providing answers that both strengthen and undermine the force of *dina d'malkhuta dina*.

b. Baba Batra 54b-55a

A slightly more complicated deployment of this principle occurs in b. Baba Batra 54b-55a. The *Gemara* discusses scenarios when a Jew purchases land from a gentile and then another Jew attempts to usurp ownership over it. Throughout this *sugya*, multiple statements in the name of Shmuel are taught attempted to be reconciled. Trying to align the opinions attributed to one individual into a coherent ideology is a common practice of Talmudic texts. The discussion opens by articulating how a Jew might intercede in the middle of a land sale from a gentile to another Jew and claim ownership over the land.

אמר רב יהודה אמר שמואל נכסי עובד כוכבים הרי הן כמדבר כל המחזיק בהן זכה בהן

מ"ט עובד כוכבים מכי מטו זוזי לידיה אסתלק ליה ישראל לא קני עד דמטי שטרא לידיה הלכך הרי הן כמדבר וכל המחזיק בהן זכה בהן

> *Rav Yehudah says, "Shmuel says, 'Property of gentiles is like the desert, anyone who demonstrates possession it acquires it.'" (This statement refers to a gentile has sold the land to a Jew and received the money, but the Jew has not acted to formally take*

possession of it. Any Jew who seizes the property in this time becomes the legal owner.)

What is the reason? Gentiles, when money reaches his hand, he goes away (i.e. the transaction is complete according to gentile law), but a Jew does not acquire it (under Jewish law) until the deed reaches his hand. Therefore, it is like a desert (ownerless) and anyone who demonstrates possession acquires it.

The teaching by Shmuel fills a lacuna between Jewish and gentile law in property acquisition. Under gentile law, according to the *sugya*, the transaction is complete when money exchanges hands, but under Jewish law, the purchase of land is not complete until they receive the deed. In this interim time, after the gentile has received money but before the Jew gets the deed, the property is technically ownerless (like the desert), and anyone can acquire it by working the land.

This teaching is immediately challenged, using another statement of Shmuel.

א"ל אביי לרב יוסף מי אמר שמואל הכי והאמר שמואל דינא דמלכותא דינא ומלכא אמר לא ליקני ארעא אלא באיגרתא

Abaye challenges Rav Yosef, "Doesn't Shmuel say, 'The law of the kingdom is the law,' and the king says, 'land is not purchased except with a deed?'"

Just as Abaye challenges Rav Yosef in b. Gittin 88b, his question to Rav Yosef challenges the *stam*'s interpretation of Shmuel's statement, implying that they misunderstand gentile law. For Abaye, gentiles do not acquire land with money, but with a document, just like Jewish law. And if Shmuel says *dina d'malkhuta dina*, and the gentile law is to acquire land with a document, it would be contradictory for Shmuel to also hold that the property of gentiles is like the desert. For Abaye, there is no gap between gentile and Jewish ownership of the land because the law is the same. Rav Yosef replies, "I don't know" and proceeds to bring a story from *Dura D'ra'avata* to try to explain (this story is brought in full in Chapter 2). Abaye rejects this proof by undermining the ownership claim of the people of *Dura D'ra'avata*,

using gentile law to do so. Abaye's contradiction remains intact until the following story demonstrates that the rabbis of the Bavli held that the property of a gentile is like a desert.

רב הונא זבן ארעא מעובד כוכבים אתא ישראל אחר רפיק בה פורתא אתא לקמיה דרב נחמן אוקמה בידיה

א"ל מאי דעתיך דאמר שמואל נכסי עובד כוכבים הרי הן כמדבר וכל המחזיק בהם זכה ליעבד לי מר כאידך דשמואל דאמר שמואל לא קנה אלא מקום מכושו בלבד

א"ל בהאי אנא כשמעתין סבירא לי דאמר רב הונא אמר רב כיון שניכש בה מכוש אחד קנה כולה

שלח רב הונא בר אבין ישראל שלקח שדה מעובד כוכבים ובא ישראל אחר והחזיק בה אין מוציאים אותה מידו וכן היה ר' אבין ור׳ אילעא וכל רבותינו שוין בדבר

Rav Huna bought land from a gentile (and before he took possession of it) another Jew came and plowed it a pruta's worth. They came before Rav Nachman who ruled the second person has possession.

Rav Huna said, "What is your opinion? Is it because Shmuel said, 'Property of gentiles is like the desert, anyone who (acts in a way to demonstrate) possession it acquires it'?" The master should rule for me according to Shmuel's other opinion, for Shmuel says, 'he does not buy except in a place where he worked the land.'"

Rav Nachman said to him, "In this case our ruling is as Rav Huna says, 'Rav says, "Once he works with his hoe once, he has acquired, it all."'" (The law follows Rav instead of Shmuel's second opinion).

Rav Huna bar Avin sent, "a Jew that bought a field from a gentile (with money but did not take possession of it) and another Jew came and possessed it, the court does not take it from the second person." And Rabbi Avin, and Rabbi Ilea, and all our rabbis agree in this matter.

The two cases brought, concluding with the strong statement that "Rabbi Avin, Rabbi Ilia, and all our rabbis agree in this matter," reject Abaye's contradiction. In so doing, Abaye's understand of gentile law is rejected, and there is a gap between when gentile law concludes a sale and when rabbinic law rules that a Jew lawfully possesses the land. The principle of *dina d'malkhuta dina* remains intact and facilitates the transfer of property between gentile legal authority to rabbinic legal authority, because the rabbis accept gentile law that rules gentiles release ownership of the land upon receiving payment. Thus, even

though Abaye's reasoning is rejected, the *sugya* demonstrates knowledge of gentile law and the willingness to treat land sold by gentiles according to gentile law. However, *dina d'malkhuta dina* does not mean Jews can take possession of the land according to gentile law. They must act according to rabbinic law, even if that causes them to lose the land they purchased. Shmuel's opinions are harmonized ultimately by clarifying what the gentile law is and holding by two of the three statements by Shmuel: *dina d'malkhuta dina* applies, the land of a gentile is like the desert in this case, but the rabbis do *not* hold that the usurper only owns the exact land that he worked.

The *sugya* concludes (or, alternatively, the next *sugya* begins),

> אמר רבה הני תלת מילי אישתעי לי עוקבן בר נחמיה ריש גלותא משמיה דשמואל דינא דמלכותא דינא ואריסותא דפרסאי עד מ' שנין והני זהרורי דזבין ארעא לטסקא זבינהו זביני
>
> *"Rabba said, 'these three legal matters were told to me by Ukvan Bar Nehemya,* Reish Galuta*, in the name of Shmuel: (1) the law of the kingdom is the law; (2) sharecropping in Persia is up to 40 years, (3) and the tax officials[84] who sold land to pay the tax, the sale is a sale.'"*

The first two statements are not addressed, and the *Gemara* only discusses the tax officials and the tax. This teaching connects both to Abaye's mention of *dina d'malkhuta dina* and stories that deal with tax law and the sale of land. Because the *dina d'malkhuta dina* portion of this teaching goes unchallenged, the final word of the *sugya* reaffirms this principle, which is used only partially in earlier debate. Perhaps there was a concern that it needed additional validation, suggesting that at the time of the final construction of the *sugya*, *dina d'malkhuta dina* was legally significant and thus needed to be reinforced in the transmission of the text.

[84] The customs official referenced in b. Nedarim 27b-28a is a *mokhes*, and the tax official here is a *d'zavin*. These refer to two different individauls – the Mishnah in b. Nedarim refers to a Palestinian context, and this text comes from Babylonia. It might further be indicative of two different taxes paid to two separate collectors.

Geoffrey Herman writes about Rabba's concluding statement in detail in his book *A Prince without a Kingdom* (cited above, pages 203-207), casting doubt on the chain of transmission by highlighting the desire to place *dina d'malkhuta dina* in connection with the Exilarch and characters closer to the time of Abaye and Rav Yosef than Shmuel. By dating *dina d'malkhuta dina* later than the other teachings in Shmuel's name, the possibility arises that the laws of land acquisition have changed, solving Abaye's contradiction in a different way – when the gentile law was that money concluded the transaction, Shmuel's initial statement that the property is like the desert holds according to Jewish law, regardless of what the gentile law decides. But once *dina d'malkhuta dina* is developed, the rabbis need to know what the gentile law is to not allow Jewish law to activate until the gentile law completes the sale. If the principle arises later, earlier statements might contradict it not because they disagree, but because the law has changed, or they did not have the principle to rule by yet.

The attempt to definitively date this teaching is unlikely to yield fruits. However, by the end of this *sugya* in its final form three statements by Shmuel are brought and reconciled. The Jewish community follows the gentile court procedure for the release of gentile land from gentiles, but not for acquisition by Jews, ceding some power to gentiles. Through respecting these boundaries but still moving the land to their jurisdiction after a gentile no longer owns it according to gentile law, the rabbis increase their own authority within these limits, a powerful example of how not challenging the gentile custom in completing a sale increases their authority between two Jews struggling over land ownership. Until ownership is established by a Jew according to rabbinic law, this land is like the desert and any Jew can establish such ownership. When the *sugya* concludes by restating *dina d'malkhuta dina* (as a

statement, without debate or reference to anything else), it reinforces its presence without commenting on how it interacts with other legal principles or issues, limiting its significance in the Bavli.

b. Baba Kamma 113a-b

The fourth and final *sugya* to employ *dina d'malkhuta dina* is an extended discussion in b. Baba Kama 113a-b, the most complete discussion of this topic in the Bavli. This *sugya* repeats the discussion found in b. Nedarim, limiting the *Mishnah* in b. Baba Kama to a customs official who has variable rates or is not invested with authority by the government:

מתני' אין פורטין לא מתיבת המוכסין ולא מכיס של גבאין ואין נוטלין מהם צדקה אבל נוטל הוא מתוך ביתו או מן השוק:

גמ' תנא אבל נותן לו דינר ונותן לו את השאר:

ומוכסין והאמר שמואל דינא דמלכותא דינא אמר רב חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה דבי ר' ינאי אמרי במוכס העומד מאליו

> ***Mishnah****: It is forbidden to exchange coins from the trunk of the* mokhsin *(customs official) and the purse of the* gaba'in (*tax collector). It is forbidden to receive tzedakah from them, but one is allowed to take money from the collector's house or from him at the market.*
>
> ***Gemara****: It was taught: But one may give him a dinar and he can give him the change.*
>
> *"The customs officials." But doesn't Shmuel say, "The law of the kingdom is the law"? Rav Hanina bar Kahana says, "Shmuel says, '(the Mishnah refers to) a customs official who does not have a fixed amount.'" Those of the House of Rabbi Yanai say, "it refers to a customs official who appointed himself."*

The first statement of the *Gemara* clarifies that getting change for taxes owed, to ensure a Jew is not overpaying, is not the same thing as exchanging coins. Getting change is allowed, but this other (less clear) exchange is prohibited in the *Mishnah*. Following this

limitation on the Mishnah in b. Baba Kama, the *Gemara* applies this argument to two other *mishnayot* (m. Kilayim 9:2 and m. Nedarim 3:4), copying and pasting the exact debate three times. All three are about lying to *mokhsin*, and in all three cases, *dina d'malkuta dina* limits the *Mishnah*.

After other commentary and debate about the *Mishnah* in b. Nedarim and stealing from gentiles, which will receive fuller treatment in chapter 2, the *Gemara* returns to *dina d'malkhuta dina* on b. Baba Kama 113b.

גופא אמר שמואל דינא דמלכותא דינא אמר רבא תדע דקטלי דיקלי וגשרי גישרי ועברינן עלייהו

א"ל אביי ודלמא משום דאייאוש להו מינייהו מרייהו אמר ליה אי לא דינא דמלכותא דינא היכי מייאשי

והא לא קא עבדי כדאמר מלכא מלכא אמר זילו וקטלו מכל באגי ואינהו אזלו וקטלו מחד באגא

שלוחא דמלכא כמלכא ולא טרח ואינהו אפסיד אנפשייהו דאיבעי להו דאינקוט מכוליה באגי ומשקל דמי

Returning to the matter: Shmuel said, "the law of the kingdom is the law." Rava said, "Do you know that they cut down palms (from owners without their consent) and build bridges and we cross over them (even though Jewishly it is forbidden to benefit from stolen property)?"

Abaye said to him, "Perhaps they were resigned to someone else taking them." Rava said to him, "if not for 'the law of the kingdom is the law,' how would their resignation help us?"

(The stam *continues) But they did not act as the king has said. The king said, "Go and cut from all the valleys" but they went and cut from one valley. (Thus, the king's laws are appropriate, but the messengers did not follow the instructions, and thus the palms were unlawfully taken and therefore 'the law of the kingdom is the law' does not apply).*

A messenger of the king is like the king and he does not trouble (to cut the trees down proportionally). The palm tree owners cause themselves a loss, and instead he (the one who owned the trees the messenger took) should collect money from all the other valleys.

This is the only reference in the Bavli where the topic of *dina d'malkhuta dina* is explicitly addressed, using the word *gufa* to return to a topic for further discussion. Unlike in

b. Baba Batra 55a, where Shmuel's teaching reappears without further commentary, here Rava and Abaye have an extended discussion about civil law introduced by this teaching. Just as in b. Baba Batra 54b-55a, Abaye follows *dina d'malkhuta dina* and permits gentile actions. In this story, Rava identifies a potential conflict between Jewish law and civil law: Jewishly one cannot benefit from stolen property. However, the king (illegally) steals trees to build bridges and the Jews use them. The actions of the Jews contradict how Rava understands this case, and thus either the principle is incorrect (Jews are allowed to benefit from stolen property) or the actions are misinterpreted (perhaps the king did not illegally steal the trees).

Abaye offers a solution: the people were resigned to someone else taking them. Abaye suggests that the owners of the trees believed they would not be able to keep their trees, and thus their resignation makes the trees *hefker*, ownerless, and thus legal according to Jewish law for the king to take. Rava, however, does not believe that the owner's actions result in the trees being ownerless. Instead, he maintains that the only way to solve the contradiction is that the king acted lawfully under gentile law, and using the principle of *dina d'malkhuta dina*, the king's actions are acceptable under Jewish law. Even though they offer different solutions, both attempts are reasons to justify the king's actions, acknowledging the reality that the Jews use this bridge, and finding a way to validate that under Jewish law.

The *Gemara* then explores if *dina d'mlalkhuta dina* applies in this case, challenging Rava by demonstrating the king's instructions and the messenger's actions are different. This challenge reflects the earlier limit on the *Mishnah*, which characterizes unlawful actions by a royal official as outside the scope of *dina d'malkhuta dina*. The *Gemara* applies this line of thinking to the situation of the trees: the king has the legal right to take the trees, but the

king's messenger did not follow the legal instructions. They interpret the king's law as sending a messenger to take trees from all the valleys (from multiple owners) and instead the messengers take the trees from only one valley. If this is the case, then the bridge could be used by Jews *if* the king's instructions were followed, because *dina d'malkhuta dina* applies. However, because the laws of the kingdom were not followed, this principle does not apply, Jewishly the trees are considered stolen, and theoretically the bridge should be forbidden to Jews.

Finally, the *Gemara* resolves this contradiction. This messenger, who is appointed by the king, is like the king, and does not have to take equally from all the valleys. Instead, the owner of the taken trees should go and collect proportionally from all the tree owners who were under the king's order but didn't lose any trees. Notably, the messenger in this story is acting lawfully, unlike the suggestion of the customs official in the earlier part of the *sugya*.

At the conclusion of this discussion, the king and his messenger acted lawfully under gentile law in taking the trees and building the bridges. Even if under Jewish law the trees might be considered stolen, *dina d'malkhuta dina* applies and thus the Jews are permitted to use the bridge made of (Jewishly stolen, gentilic permitted) wood.

Like the earlier references in this *sugya*, *dina d'malkhuta dina* is not automatically applies to any action of a government official. Instead, it is limited to actions that are lawful according to the law of the kingdom. In all of these cases, knowledge of gentile law is essential for *dina d'malkhuta dina*. To evaluate whether a gentile actor is covered by this principle, the rabbis must have an accurate understanding of the law. The cases in b. Baba Kama, b. Nedarim and b. Baba Batra are all debated or resolved based on knowledge of the gentile law. Across all four cases, *dina d'mlkahuta dina* is never explicitly rejected, but

sometimes limited or reframed to allow rabbinic law to take over, most notably in b. Baba Batra 54b-55a. When the conflict was between two Jews, after the gentile relinquished ownership over the land, rabbinic ownership law applied. Here, *dina d'malkhuta dina* creates a pathway into and out of Jewish law only when gentiles are involved. Unlike later uses of the concept, *dina d'malkhuta dina* is limited in the Bavli to cases involving a gentile. This pathway preserves space for rabbinic authority over actions between Jews, while ceding actions involving gentiles to gentile legal authorities.

Scope of *Dina d'Malkuta Dina* in the Bavli and Over Time

Across these four references to *dina d'malkhuta dina*, there are three *mishnayot* limited by this principle (m. Nedarim 4:3, m. Kilayim 9:2, and m. Baba Kama 10:1). Each of these cases isolates an agent of the king and teaches that *dina d'malkhuta dina* applies if they act in accordance with gentile law, but not ipso facto due to their status in the government. The principle is upheld but does not mandate Jews follow government orders regardless of their legality. In two cases, b. Gittin 10b and b. Baba Batra 54b-55a, *dina d'malkhuta dina* is potentially upheld, although there are other ways to solve the issues the *Gemara* raises. Generally, this principle remains intact, but its scope and impact remain open questions. Neuser argues that this principle undoubtedly recognizes the authority of Iranian law, and that their laws were just, a practice that was applied by subsequent Jewish communities throughout the centuries who obeyed the laws of their land.[85] In contrast, Herman raises the possibility of a more narrow definition, that this statement only applies to land law, due to its role as an 'introductory' statement in the quote from Rabba in the name of Ukvan bar

[85] Neusner, *The Early Sassanian Period,* 69.

Nehemya.[86] In general, Jewish thought distinguishes between civil/economic law, and religious law, with *dina d'malkhuta dina* only applying in the former.[87] However, the text in b. Gittin about divorce documents demonstrates the challenge with this distinction. Framed in this matter, this principle is understood as a concession to diasporic living, with *halakhic* authorities cautious of ceding too much authority to the gentile court system.[88]

Later debates over the scope of *dina d'malkhuta dina* include whether it is a Torah-level or rabbinic obligation. Ultimately, Rashi, commenting on b. Gittin 9b, calls it a Torah-level obligation, establishing it as a principle with greater heft and significance.[89,90] A second source of debate is whether *dina d'malkhuta dina* applies to foreign rulers in the Land of Israel, or to Jewish rulers ruling by gentile laws.[91] Over time, *dina d'malkhuta dina* was expanded to include shared costs of security, social services, and new forms of tax law beyond what the Bavli envisioned.[92] In the modern era, this expansion was continued both by the Israeli supreme court, who noted that *dina d'malkhuta dina* has been used to force Jewish parties to obey gentile law irrespective of their conformity to Jewish law[93]; and by Reform rabbis like Samuel Holdeim, who was part of a group "ready for a more wholehearted embrace of the secular state; they pushed *dina de-malkhuta* far beyond its medieval limits."[94] In fact, Holdheim was willing to accept the validity of civil divorce within Jewish law even

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[86] Herman, *A Prince without a Kingdom,* 204.
[87] Michael Walzer et al., eds., *The Jewish Political Tradition*, vol. 1: Authority, 4 vols. (New Haven, Connecticut: Yale University Press, n.d.), 434.
[88] Menachem Elon, *Jewish Law: History, Sources, Principles*, trans. Bernard Auerbach and Me Sykes, vol. 1, 4 vols. (Philadephia: Jewish Publication Society, 1994), 65-70.
[89] Chaim Jachter, *Gray Matter: Discourses in Contemporary Halacha*, vol. 4, 4 vols. (Teaneck, NJ: H. Jachter, 2000).
[90] Rashi writes that in the Noahide laws all people are required to establish justice systems. Therefore, the gentile justice systems are commanded in the Torah and Jews are able, according to Torah law, to follow them.
[91] Leo Landman, "DINA D'MALKHUTA DINA: Solely a Diaspora Concept," *Tradition: A Journal of Orthodox Jewish Thought* 15, no. 3 (1975), 93.
[92] Elon, *Jewish Law,* 2:921.
[93] Elon, *Jewish Law,* 4:1821.
[94] Walzer et al., *The Jewish Political Tradition*, 434.

without a Jewish *get* on the basis of *dina d'mlkahuta dina*.[95] However, this expansion of the principle is not limitless; both Walzer and Elon describe the necessity of a minimal amount of justice or equity under gentile law. *Dina d'malkhuta dina* does not force Jews to abide by unequal laws, even if they are the legal law of the land.[96]

The weakening of *lifneihem* over time follows the inverse trajectory of *dina d'malkhuta dina*, where Jews increasingly engage the gentile legal system, either by value or by necessity. Interestingly, these two principles are never directly brought into conflict with each other in the Bavli. If *dina d'malkhuta dina* would require Jews to use a gentile court, would *lifneihem* forbid them? Menachem Elon writes that such an action would not be permitted according to Ramban and the Rashbez (Rabbi Shimon ben Zemah Duran, a 14th century Spanish rabbi).[97] However, cases across history, including the court cases that opened this chapter, demonstrate that even with the injunction of *lifneihem*, Jews have used gentile courts when advantageous.

These principles are not fully developed in the Bavli, and even as later rabbis develop them more completely, they are not created in a vacuum. They exist as ideologies laden with the weight of practical considerations, both in the Bavli and in modern times. Their employment in the Bavli is limited at best, only appearing in five places across the over 2,700 pages. Instead, other principles and practical concerns govern the Jewish engagement with gentile legal systems in the Bavli.

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[95] Mark Washofsky, "Getting Our Get Back: On Restoring the Ritual of Divorce in American Reform Judaism," in *The Sacred Encounter: Jewish Perspectives on Sexuality* (New York: CCAR Press, 2014), 409.
[96] Elon, *Jewish Law,* 1:175.
[97] Elon, *Jewish Law*, 15, 135.

CHAPTER 2: REPRESENTATIONS OF GENTILE LEGAL SYSTEMS

Introduction

The Bavli never positions the two principles discussed in Chapter 1, *lifneihem* and *dina d'malkhuta dina,* next to each other. However, several *sugyot* scattered throughout the Bavli explicitly address gentile laws, courts, tax collectors, and sources of legal authority. As Yishai Kiel writes, the Bavli *is* a product of Sasanian culture, and the rabbis are equally rooted in their rabbinic tradition and local culture.[98] Living as a semi-independent minority group in Sasanian Persia, *Amoraim* sought ways to retain, grow, or exercise rabbinic authority while recognizing the constraints placed upon them by the governing powers.[99] As Beth Berkowitz demonstrates, there are many forms of the rabbinic self, and many kinds of rabbinic Others, but these categories are fungible, ever-changing, and not always so distinct.[100] This chapter navigates the fluid boundary of the rabbinic legal self, defined sometimes in opposition to and sometimes in partnership with the rabbinic legal Other - gentile legal authorities. The relationship between the two legal systems, both their laws and the institutions that enforce them, is characterized by neither strict separation nor acquiescence, but a constant dance, recognizing their overlapping areas of authority. The texts don't show a single rabbinic self in defiant opposition to gentile court systems, nor gentile court systems entirely good or bad. Like the development of *dina d'malkhuta dina*, each story reveals specific contextual factors that guide the extent of Jewish participation in gentile legal systems.

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[98] Yishai Kiel, "The Sassanian East and the Babylonian Talmud," in *The Literature of the Sages: A Re-Visioning*, ed. Christine Hayes (Leiden: Brill, 2022), 401.
[99] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests*, 81.
[100] Berkowitz, *Animals and Animality in the Babylonian Talmud*, 182-185.

Much of this work follows in the footsteps of Shai Secunda. In his book *The Iranian Talmud: Reading the Bavli in Its Sasanian Context*, he writes:

> Even with the relative independence that they enjoyed, Babylonian rabbis would have encountered the Sasanian legal system both voluntarily and involuntarily on a regular basis. Their assessment of that system is at least partially registered in the pages of the Talmud, and most explicitly in moments where the rabbis refer directly to Persian law.
>
> When it comes to assessing rabbinic perceptions of the Sasanian courts, one encounters a confusing, sometimes contradictory set of sources. In certain instances, the Bavli roundly criticizes Sasanian legal institutions. To an extent, the negative sources have been read maximally by scholars as evidence that the rabbis viewed the Persian legal system, in toto, negatively. However, a close examination of the relevant passages that takes into account alternative "discourses of the Other" reveals that this is not entirely the case, and that a fair amount of complexity can be detected on the issue. First, even in regards to rabbinic sources that do criticize the courts, the broader implications of this phenomenon are not immediately clear. While it is possible to read rabbinic disparagement of these institutions uncomplicatedly as simply reflecting a perception that Persians and their legal systems were problematic, oppressive, ineffective, and/or corrupt, one might also understand the critique as simply a strategy for discouraging Jews from attending Sasanian courts. Indeed, as I soon suggest, one statement on the matter may even represent a kind of "comparative legal approach" to Sasanian law. Only later stages in the history of transmission and interpretation of this set of texts evince a later ambivalence and negativity set against a neutral or even positive view of the Sasanian system.[101]

Secunda correctly notes, as we have already seen, the corpus of texts contains confusing, and sometimes, contradictory, approaches to gentile laws. This chapter explores three categories of references to the gentile legal system: the laws themselves, tax collectors and customs officials, and the authority and practices of the courts. This analysis does not catalog or analyze every reference to Persia, Persians, King Shapur, or non-Jews. Instead, these texts represent the collection that explicitly references the Persian legal system and how, through various debates, the Bavli understands how Jews should interact with it. This interaction is both forced and voluntary and the texts portray a collection of opinions that represents the diversity of interaction with the Persian legal system. These interactions are integral to the

[101] Secunda, *The Iranian Talmud*, 91-92.

creation of rabbinic legal identity, created not in opposition to the gentile legal system, but in relationship with it. Further, these texts demonstrate that identity is not created in a vacuum, but the desire for rabbinic preservation and growth of authority required that Jews engage with gentile legal systems. It is through this interaction that the Bavli constructs a rabbinic legal identity that embraces a broader cultural and political engagement.

Acting According to Gentile Laws

Sometimes, the Bavli explicitly references gentile legal systems through words such as *dina d'parsaei* (Persian law), *bei doar (*courthouse*),* and *bei magista* (Magian court). Other times, however, the Bavli records the more generic phrase "their law" (*dineihem, dinaiho*). Such a case exists in b. Baba Metzia 73b.

רב מרי בר רחל משכן ליה ההוא נכרי ביתא הדר זבנה לרבא נטר תריסר ירחי שתא שקל אגר ביתא אמטי ליה לרבא אמר ליה האי דלא אמטאי למר אגר ביתא עד האידנא דסתם משכנתא שתא אי בעי נכרי לסלקי לא הוה מצי מסלק לי השתא לשקול מר אגר ביתא

אמר ליה אי הוה ידענא דהוה ממושכן ליה למר לא הוה זבינא ליה השתא כדיניהם עבדינן לך כל אימת דלא מסלקי בזוזי לא שקיל אגר ביתא אנא נמי לא שקילנא מינך אגר ביתא עד דמסלקנא לך בזוזי

A gentile mortgaged his house to Rav Mari bar Rachel (as collateral for a loan). Later, he sold the house to Rava. Rav Mari bar Rachel waited twelve months, took the rent, and brought it to Rava. He said to Rava, "I did not bring to you the rent for the house until now because a typical mortgage is for a year. If the gentile wanted to remove me, he could not have removed me (until now). Now, you, Master, should take the rent."

He said to him, "If I had known that it was mortgaged to you, Master, I would not have purchased it. <u>Now, I will deal with you according to their law:</u> as long as he does not remove you with money (by paying back the loan), he does not take rent. I also will not take rent from you until you are removed with money.

This story appears in a series of discussions about whether certain financial transactions and investments are considered taking interest on loans, which is *halakhically* forbidden for one

Jew to do to another. In this story, Rav Mari bar Rachel gives a gentile a loan, and takes his house as collateral until the loan is repaid. The house is then sold by the gentile to Rava. Under the agreement, Rav Mari bar Rachel is allowed to live in the house rent-free for at least 12 months. After this point, according to gentile law, Rav Mari bar Rachel either is repaid his money and removed from the house or continues to live in the house, rent-free, until the loan is repaid.

Living in the house rent-free could be considered interest, an extra financial benefit from extending a loan to a borrower. Charging interest was allowed under gentile law, and under Jewish law if the recipient of the loan is a gentile. However, when the house is sold to Rava, the *halakhic* prohibition of interest *might* activate. Thus, after the 12-month period where Rav Mari cannot be kicked out of the house, he begins paying rent on it to its current owner Rava, to avoid taking interest on a loan involving another Jew. However, Rava rejects the money, saying "I will deal with you according to their law." Rava leverages gentile law to allow Rav Mari to *not* pay rent. Rashi explains this *sugya* by saying that the loan was between Rav Mari and the gentile, not between Rav Mari and Rava, and therefore there is no concern of taking interest from a Jew, because Rava is not part of the financial arrangement.[102] However, this explanation does not account for Rava's response. Rava explicitly relies on the gentile law, implying that Rav Mari *is* taking interest from a Jew and would be forced to pay rent under his interpretation of rabbinic law.

In this case, the gentile law is applied positively to benefit Rav Mari. Rava extends the application of gentile law, instead of insisting on transitioning the relationship to rabbinic law, to allow Rav Mari to live rent-free. The willingness to continue to employ gentile laws

[102] Rashi on b. Baba Metzia 73b, "Until I compel the gentile to pay you, this is not interest. Rava is not the one that obligates, rather it is the gentile."

demonstrates, in this story, that they are not to be always avoided. The boundary between when rabbinic law applies and when gentile law applies is made fuzzy.

Rav Mari bar Rachel is a 4th century Babylonian *amora* who married Shmuel's daughter, Rachel.[103] As we saw in Chapter 1, Shmuel attempted to reconcile Jewish and gentile law and had favorable interactions with gentiles. Rav Mari's partner in this matter, Rava, is associated with the mother of King Shapur II, Ifra Hormiz. She is credited with preventing King Shapur from harming Jews, one example of which will be discussed in Chapter 3.[104] Both characters in this story had connections to the gentile ruling authority and were known for engaging with them and their laws. They both had knowledge of gentile law and accepted it enough to use it when it was beneficial to them. These stories reflect a specific approach to gentile engagement. While this doesn't preclude the possibility of these beliefs being widespread, recognizing the close-knit social circle identified with this ideology acknowledges that other groups of rabbis might not share this group's approach. It also must be noted that this discussion is between two rabbis, not between a rabbi and a layperson. It is possible that the rabbis were more willing to bend the rules for each other than for non-rabbis, due to the concern that they would misinterpret their actions and begin to rely too extensively on gentile law. This emphasizes the driving force of self-interest in this *sugya* above any ideological approach to gentile law: among trusted colleagues, the rabbis were willing to bend the rules for each other.

This *sugya* continues with two more instances related to benefiting from a gift that may or may not be the givers to give. These stories, which address the issue of gentile taxes,

[103] Alfred Kolatch, *Master of the* Talmud*: Their Lives and Views* (New York: Jonathan David Publishers, 2003), 257.
[104] Bader, *The Encyclopedia of Talmudic Sages*, 737.

are discussed in the following section. Again, in both cases, the rabbis leverage gentile laws on taxes and ownership to justify their actions. There is no negative valence on foreign laws, rather an intimate knowledge of them and using them to their benefit. This supports Kiel's claim that the rabbis and their laws are part of Sasanian culture. They are aware of Sasanian law, leverage it to benefit themselves, and there are no stated concerns about relying on gentile laws and granting it authority.

In addition to the generic "their laws," in two *sugyot* the phrase *dina d'parsaei*, Persian laws, appears. One instance, related to the *Reish Galuta* (b. Baba Kama 58b) will be analyzed in Chapter 3. The other is in b. Baba Batra 173b. Much of interpretation that follows is based on the work of Shai Secunda, who analyzes this passage on pages 93-100 of *The Iranian Talmud*. This *sugya* opens with a *Mishnah* prohibiting a Jewish lender from collecting the loan from the guarantor of the loan. Then the *Gemara*, beginning with the *stammaitic* layer, opens with a question:

גמ' מאי טעמא רבה ורב יוסף דאמרי תרוייהו גברא אשלימת לי גברא אשלימי לך מתקיף לה רב נחמן האי דינא דפרסאי אדרבה בתר ערבא אזלי אלא בי דינא דפרסאי דלא יהבי טעמא למילתייהו

אלא אמר רב נחמן מאי לא יפרע מן הערב לא יתבע ערב תחלה תניא נמי הכי המלוה את חבירו על ידי ערב לא יתבע ערב תחלה ואם אמר על מנת שאפרע ממי שארצה יתבע ערב תחלה

> *What is the reason (for this Mishnah that limits the guarantor's liability)? Rabba and Rav Yosef both say, "You (the creditor) sent a man (the debtor) to me (the guarantor), and I sent the man to you."*[105] *Rav Nachman objects, "This is the Persian Law!" On the contrary, the Persians go after the guarantor directly. Instead, (Rav Nachman means) Persian courts do not give a reason for their rulings.*
>
> *Rather, this is what Rav Nachman said: "What does it mean 'he cannot collect from a guarantor'? He cannot claim from the guarantor at the beginning (before attempting to collect it from the debtor). It was also taught in a baraita: One who loans money to his friend with the support of a guarantor, he cannot claim from the guarantor at the beginning. And if the creditor says, "On the condition that I will collect from whoever I want," he can claim from the guarantor at the beginning.*

[105] They imply that the creditor should take the money from the debtor himself by any means instead of the guarantor.

Secunda argues that Rav Nachman's response and subsequent reinterpretation represent the editorial process of the Talmud, which altered the evaluation of Persian law. The table below charts out the two layers according to his divisions:

Table 2: Amoraic and Stammatic Layers in b. Baba Batra 173b

Amoraic Layer	***Stammaitic Layer***
Rav Nachman said (about the *Mishnah*)	
	By way of objection
this is the Persian law	
	On the contrary, the Persians go after the guarantor directly
	Instead, (Rav Nachman means) Persian courts do not give a reason for their rulings.
	Rather, this is what Rav Nachman said
"What does it mean 'he cannot collect from a guarantor'? He cannot claim from the guarantor at the beginning (before attempting to collect it from the debtor).	
	(Inserted, but not written, by the *stammaim*) It was also taught in a baraita: One who loans money to his friend with the support of a guarantor, he cannot claim from the guarantor at the beginning. And if the creditor says, "On the condition that I will collect from whoever I want," he can claim from the guarantor at the beginning.

According to the final, edited version of the *sugya*, the statement by Rav Nachman is viewed as a negative critique of the *Mishnah*: "This cannot possibly be our law, for it is how the Persians work." Then the *stammaitic layer* refutes Rav Nachman with its own knowledge of Persian law and reinterprets his statement to imply that the *Mishnah* is *acting like* Persians, which is meant to be an insult. This is followed by a reinterpretation of the *Mishnah* to put more liability on the guarantor.

Secunda outlines numerous problems with this passage: Rav Nachman was integrated into Persian society and occasionally adopts Persian law; in general, the Bavli does not have

a problem if the Jewish and Persian laws happen to be the same; the *stam* misrepresents the Sasanian law; and the Persian law codes sometimes do contain legal reasoning. The *stammaitic* layer appears to have a vested interest in casting Persian law, and Persian courts, negatively in this passage. They claim the law is without reason (something Jewish law should distance itself from) and puts undue onus on the guarantor.

However, when stripping away the *stammaitic* layer, one could read Rav Nachman's statement as *aligning* the *Mishnah* and Persian law, as he did on other occasions.[106] In response to the *Mishnah* saying one cannot go after the guarantor to repay the loan, he says, "This is how the Persians do it: one cannot go after the guarantor at first. But if the debtor fails to pay, then the guarantor can be responsible. And not only is this Persian law, but a *baraita* teaches the same perspective."

Yaakov Elman argues that Rav Nachman is viewed as "an authority of Sasanian law" and often modifies Jewish law to bring it closer to Persian law, yet every explicit mention of "Persian law" in his name is negative.[107] This contradiction is explained if these references are inserted by the *stam*, who often demonstrates negativity toward Persian law, reflecting perhaps a change in relationship or a desire to strengthen the independence (or differentiation) of the rabbinic courts.

In these two *sugyot*, Rav Nachman and Rava both treat the gentile law favorably, relying on it to justify their actions and opinions. While the *stammaim* insert a more negative appraoch, the *Amoraic* layers of both *sugyot* demonstrate knowledge and use of Persian law in determining rabbinic law.

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[106] Bader, *The Encyclopedia of Talmudic Sages*, 691.
[107] Yaakov Elman, "Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition," in *The Cambridge Companion to The* Talmud *and Rabbinic Literature*, ed. Charlotte Elisheva Fonrobert and Martin Jaffee (New York: Cambridge University Press, 2007), 165–97.

Taxes

Three of the four mentions of *dina d'malkhuta dina* appeared in the context of tax collection and customs officials. As David Goodblatt writes, there are multiple different words for various tax authorities, including 19 references specifically to the poll tax (*karga*) throughout the Bavli.[108] *Karga* was levied on all Jews and Christians by community, which was then split among each resident.[109] This study does not contain every reference to gentile taxes or customs officials, but focuses on the narrower consideration of Jews avoiding such taxes, and the use of gentile tax law in *halakhic* disputes. This focus highlights the boundary between rabbinic and gentile law, providing examples of the differentiation and merging of self and Other that characterize the Bavli's mixed approach to gentile legal systems.

To frame the discussion of Jews paying gentile taxes, we turn to an *aggada* from b. Yoma 77a. In this story, Gabriel, an angel who represents Jews, is replaced by Dubiel, whom the text identifies as the angel of the Persians.[110] The narrative contains multiple words that signal the Persian and Babylonian influence. The word in the text for replace, *bakharikei*, is likely derived from Iranian, meaning equivalent (they put Dubiel in the place of Gabriel). Dubiel then asks the other angels to "write for me that Israel must pay taxes," using the word *karga*, Persian for poll tax. In addition to having Israel pay taxes, Dubiel demands that the rabbis pay taxes as well. Eventually, God reinstated Gabriel and the story concludes,

> אתא אשכחיה לדוביאל דנקט ליה לאיגרתיה בידיה בעא למרמא מיניה בלעה איכא דאמרי מיכתב הוה כתיבא מיחתם לא הוי חתמא איכא דאמרי אף מיחתם נמי הוה חתמא כדבלעיה מחיק לה מיניה היינו דבמלכותא דפרס איכא דיהיב כרגא ואיכא דלא יהיב כרגא

[108] David Goodblatt, "The Poll Tax in Sassanian Babylonia: The Talmudic Evidence," *Journal of the Economic and Social History of the Orient* 22, no. 3 (October 1979): 234.
[109] Neusner, *From Shapur I to Shapur II*, 25.
[110] In other texts, such as b. Avodah Zarah 2a, Persians are compared to bears, *dov*, a possible etymological connection between Dubiel and Persians taught by the Maharasha, (Rabbi Shmuel Edels, 16th-17th centry Poland.)

> *Gabriel came and found Dubiel holding the letter in his hand, he wanted to take it from him – so Dubiel swallowed it. Others say: the letter was written but it was not signed; or signed but not sealed. Others say it was even signed and sealed, but when he swallowed it, it was erased. This is why in the kingdom of Persia, there are those that pay* karga *(taxes) and there are those that do not pay taxes.*

The summary statement of this story makes its purpose, a homiletical explanation of the fact that Jews in Persian pay taxes but some are exempt, explicit. The text does not identify who is exempt, except to root that exemption in a half-completed angelic contract. This story presents *karga* as a divinely ordained punishment of the Jews at the hands of the Persians, as acted out by Gabriel and Dubiel. Likely, the story was written to explain, or justify, the facts as they existed, granting them divine approval: Jews could be forced to pay taxes to gentiles, and Jews were allowed to avoid paying these taxes.

This texts places divine authority on gentile law, reinforcing one rabbinic conception of God as the God of history, approving of the oppression of the Jews at the hands of the Persians. This story provides important background for other debates, like the *halakhic* dispute in b. Nedarim 27b-28a, where the *Gemara* undermines the *Mishnah*'s approval of lying to tax collectors. If the taxes are divinely ordained, to avoid them is to attempt to circumvent God's will. None of the references to *mokhsin*, customs officials, contain the word *karga*, poll tax, so it is possible that the b. Yoma text discusses only one form of taxes (indeed, Goodblatt argues that each version of tax must be treated entirely separately).[111] However, in both of these cases, and in the case of the word *taksa* below, all of the texts demonstrate the responsibility of the Jewish community to conform to gentile tax law and pay the various taxes imposed upon them.

[111] Neusner, *From Shapur I to Shapur II*, 35

Mokhsin also appear in b. Baba Kama 113a-114a, as we saw in Chapter 1. This *sugya* opens with by collecting three *mishnayot* that all deal with *mokhsin*, repeating the same text from b. Nedarim 27b-28a.

מתני' אין פורטין לא מתיבת המוכסין ולא מכיס של גבאין ואין נוטלין מהם צדקה אבל נוטל הוא מתוך ביתו או מן השוק:

גמ' תנא אבל נותן לו דינר ונותן לו את השאר:

ומוכסין והאמר שמואל דינא דמלכותא דינא אמר רב חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה דבי ר' ינאי אמרי במוכס העומד מאליו

איכא דמתני לה אהא לא ילבש אדם כלאים אפי' על גבי עשרה בגדים להבריח בו את המכס מתני' דלא כר"ע דתניא אסור להבריח את המכס ר"ש אומר משום ר"ע מותר להבריח את המכס

בשלמא לענין כלאים בהא קמיפלגי דמר סבר דבר שאין מתכוין מותר ומר סבר דבר שאין מתכוין אסור אלא להבריח בו את המכס מי שרי והאמר שמואל דינא דמלכותא דינא א"ר חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה דבי ר' ינאי אמרי במוכס העומד מאליו

ואיכא דמתני אהא נודרין להרגין ולחרמין ולמוכסין שהיא של תרומה שהיא של בית מלך אע"פ שאינה של תרומה אע"פ שאינה של מלך ולמוכסין והאמר שמואל דינא דמלכותא דינא א"ר חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה דבי ר' ינאי אמרי במוכס העומד מאליו

> ***Mishnah****: It is forbidden to exchange coins from the trunk of the* mokhsin *(customs officials) and the purse of the* gaba'in (*tax collectors). It is forbidden to receive* tzedakah *from them, but one is allowed to take money from the collector's house or from him at the market.*
>
> ***Gemara****: [Discussion on this Mishnah] It was taught: But one may give him a dinar and he can give him the change.*
>
> *"The customs officials." But doesn't Shmuel say,* "dina d'malkuta dina, *The law of the kingdom is the law"? Rav Hanina bar Kahana says, "Shmuel says, '(the Mishnah refers to) a* mokhes *who does not have a fixed amount.'" Those of the House of Rabbi Yanai say, "it refers to a* mokhes *who appointed himself." (Therefore this unauthorized tax collector is not operating under the laws of the kingdom and* dina d'malkhuta dina *does not override Jewish law).*
>
> *[Discussion on a Mishnah from Kilayim]*
> *Some teach (these Amoraic statements that limit the* Mishnah*) about this other* Mishnah *(*Kilayim *9:2): "A man is prohibited from wearing* kilayim *even on top of ten other pieces of clothing to avoid the* mekhes*." This Mishnah (about* kilayim*) is*

not according to Rabbi Akiva, as it is taught, "It is forbidden to avoid mekhes*. Rabbi Shimon says in the name of Rabbi Akiva, "It is permitted to avoid paying* mekhes*.*

Clearly about the issue of kilayim *they disagree, for one (Rabbi Akiva) teaches, "An action performed without intent is allowed" (implying that wearing* kilayim *without intent to benefit from it is allowed) and one (*tana kama*) teaches, "an unintentional act is forbidden." But is avoiding taxes ever permitted? Doesn't Shmuel say, "The law of the kingdom of the law."? Rabbi Hanina bar Kahana says, "Shmuel says, '(the* Mishnah *refers to) a* mokhes *who does not have a fixed amount.'" Those of the House of Rabbi Yanai say, "it refers to a* mokhes *who appointed himself."*

[Discussion ona Mishnah from Nedarim]
Some teach (the statements that limit the Mishnah*) for this* Mishnah *(Nedarim 3:4) : "(One is allowed to) vow to murderers, to robbers, and to* mokhsin *(customs officials) 'This is* terumah*,' even though it is not* terumah*; 'this is for the house of the king,' even though it is not for the house of the king." For customs officials? Doesn't Shmuel say, "The law of the kingdom of the law."? Rabbi Hanina bar Kahana says, "Shmuel says, '(the Mishnah refers to) a* mokhes *who does not have a fixed amount.'" Those of the House of Rabbi Yanai say, "it refers to a* mokhes *who appointed himself."*

The initial *Mishnah* distances Jews from two kinds of tax collectors - *gabain* and *mokhsin* – and specifically from the containers that they use to collect money. However, the subsequent discussion refers only to *mokhsin*. The *Mishnah* prohibits Jews from exchanging coins with or receiving *tzedakah* from the tax collector's container. However, the *Mishnah* allows Jews to exchange money with them when they act as private individuals, in their home and at the market. This mixed message based on status allows for interaction between Jews and gentiles in general, and even with gentiles who act in official capacities, lowering the barrier between them. It further disentangles multiple gentile Others, treating someone officially acting as a tax collector different from the same person in another role, or any other person. Even within the individual who operates as a tax collector multiple Others are found, each treated differently by the *Mishnah*. The two prohibited actions, exchanging money and receiving *tzedakah*, are linked through the doubtfulness of the money's origin. If the tax

collector has stolen money from people under the guise of collecting taxes, the money exchanged or received as charity is tainted, and Jews are forbidden to benefit from it. However, the same suspicion is not cast on regular gentiles, even the money of that very same gentile. The generic gentile is not treated suspiciously, demonstrating a neutral approach toward gentiles of rabbinic law in this case. Interestingly, the *Mishnah* does not raise the suspicion that a tax collector might siphon off tax money for personal benefit, which then would cast doubt on the origin of his personal money. This might be expected if the main purpose of the text was to undermine the tax collectors and completely distance Jews from them. However, if the money comes from a gentile's personal property, it is assumed to be theirs, even if the same interactions are prohibited with that person in a professional capacity. The main agenda of this opening statement, and the rest of the *Gemara*, is to limit the kinds of prohibited actions, increasing Jewish participation in gentile legal systems.

The first thing the *Gemara* clarifies is the difference between exchanging coins and getting change. If one owes less than the coin amount they have, they are allowed to get change to ensure accurate tax payment. This is considered different from exchanging money in the purse or trunk of the tax collector. Second, the *Gemara* applies the teaching about *dina d'malkhuta dina* to this *Mishnah*, limiting the suspicion on tax collectors to be only for unauthorized collectors. Both maneuvers narrow the prohibition and widen the amount of permissible contact between Jews and gentile tax collectors.

This same approach of *dina d'malkhuta dina* is applied to the *Mishnah* from m. Kilayim. Whereas the *Mishnah* in b. Baba Kama decreases interaction between a Jew and the *mokhsin*, m. Kilayim prohibits the wearing of *kilayim* to lessen their tax liability. The *Mishnah* even specifies that wearing it over 10 other layers, where presumably the wearer

gets no benefit from wearing it, is not allowed. Then, the *Gemara* introduces a contrary opinion from Rabbi Akiva, who, according to Rabbi Shimon, allows Jews to wear *kilayim* to avoid the tax collector. There are three questions on which there is potential disagreement: 1) is wearing *kilayim* ever allowed? 2) is avoiding taxes ever allowed? And 3) if the answer to both 1 and 2 is yes, can *kilayim* be used to avoid taxes? The *Gemara* acknowledges that there is a longstanding debate between Rabbi Akiva and the *Mishnah* about if wearing *kilayim* is ever allowed. This debate is about a *halakhic* principle "*d'var sh'aino mitkaven*" whether an action without intent is allowed or not. If the intent of wearing *kilayim* was to avoid taxes, but not for the intent of wearing *kilayim*, it is allowed by Rabbi Akiva. However, according to others, if the unintentional act violates Jewish law, even though it is unintentional, it is forbidden.

The *Gemara* uses *dina d'malkhuta dina* to restrict when taxes are ever allowed to be avoided (either through wearing *kilayim* or other methods), just as was done with the discussion in b. Nedarim and with the *Mishnah* in b. Baba Kama. Avoiding legitimate taxes was prohibited, but the debate remains whether *kilayim* can be worn to avoid paying money to illegitimate tax collectors. Finally, the *Mishnah* and discussion from b. Nedarim is brought. In addition to the similar patterns observed earlier, the *Gemara* in b. Baba Kama brings an alternative suggestion.

רב אשי אמר במוכס כנעני דתניא ישראל וכנעני אנס שבאו לדין אם אתה יכול לזכהו בדיני ישראל זכהו ואמור לו כך דינינו בדיני כנענים זכהו ואמור לו כך דינכם ואם לאו באין עליו בעקיפין דברי ר' ישמעאל ר"ע אומר אין באין עליו בעקיפין מפני קידוש השם

> *Rav Ashi said, "(One is allowed to deceive) a gentile* mokhes*, (really, any gentile) as it is taught, 'When a Jew and a gentile are compelled to appear at the court: if you can acquit a Jew by Jewish laws, acquit him and say to the gentile, "these are our laws." (If you can acquit a Jew) under gentile laws, acquit him and say to the gentile, "these are your laws." If it cannot be done, approach him circuitously (with tricks),*

according to the words of Rabbi Ishmael. Rabbi Akiva says, "Do not approach him circuitously, because of sanctification of God."

The debate in b. Baba Kama extends the discussion of deceiving a customs official to the ability of a Jew to deceive any gentile in the legal system. Rav Ashi is a 5th century *Amora* and according to Jewish tradition, began the process of collating and arranging the Talmud.[112] His statement introduces a *baraita* in the name of Rabbi Ishmael that permits Jews to rely on the gentile court in a disagreement with gentiles, or to bring that gentile to Jewish court. By connecting Rav Ashi, as one of the latest named rabbis in the Bavli, and Rabbi Ishmael, an early named rabbi, this single texts spans the time of most of the material in the Bavli, indicating the longevity of this position. This *baraita* therefore assumes that there was fluidity between the two court systems, and that Jews and gentiles could appear in both Jewish and gentile courts. Rabbi Ishmael is depicted in the Bavli as living during a time of great political oppression and humiliation of the Jews, including a (fantastical) story of his head being preserved and brought out every seventy years to debase the Jews.[113] However, Rabbi Akiva was also persecuted by the Romans and opposes such tricks because of the "sanctification of God," which calls to mind his pursuit of Torah learning up to the moment of his execution. Both Rabbi Akiva and Rabbi Ishmael could be explained according to self-interest: Rabbi Ishmael's self-interest causes him to find ways for the Jew to win no matter what. Rabbi Akiva seemingly brings an ideological objection to the tricks, but also could represent a real fear that the tricks would backfire and cause the Romans to punish the Jews.

It should be noted that Rabbi Akiva's opposition to such tricks might contradict his earlier statement allowing the wearing of *kilayim* to trick the *mokhes* and avoid paying the

[112] Kolatch, *Master of the Talmud,* 128.
[113] b. Avodah Zarah 11b, Bader, *The Encyclopedia of Talmudic Sages*, 242.

tax. This seeming contradiction is not addressed by the text. It is possible that Rabbi Akiva endorses different approaches based on if the gentile is a regular person or government official or one of the teachings is not authentically from Rabbi Akiva.

This statement by Rav Ashi simultaneously confirms and undermines the associations with gentile courts. Instead of relying on *dina d'malkhuta dina*, the *baraita* rejects gentile law by allowing Jews to trick gentiles and undermines the requirement to pay the taxes. However, it confirms that engagement with the gentile legal system is permitted if it will benefit the Jews. Rav Ashi states most explicitly that self-interest and practical realities govern engagement with the gentile courts just as much, if not more so, than ideological considerations.

Throughout this *sugya* we are introduced to three kinds of gentiles: a regular gentile, an official tax collector, and an unauthorized tax collector. Each category of gentile has a different law applied to it and relies on different reasoning. Instead of letting *dina d'mlakhuta dina*, or another principle, provide a categorical statement, each interaction between a Jew and gentile in the legal system is governed by different considerations. However, the dominant opinion related to taxes is that the Jews must pay the gentile tax, because of *dina d'malkhuta dina*, if the tax collector is authorized and acting according to gentile law.

The validity of the tax system is further confirmed through gentile law's reliance on taxes to determine land ownership which the rabbis in the Talmud deem acceptable in three *sugyot* previously mentioned.

First, in b. Baba Batra 54b-55a, the Bavli discusses the process by which land is sold from gentiles to Jews, and if it is possible for one Jew to "intercept" the transfer of land and

claim ownership of it before the original Jew who bought the land acquires it. Rav Yosef brings a story in his debate with Abaye, saying,

הוה בדורא דרעותא בישראל דזבן ארעא מעובד כוכבי' ואתא ישראל אחרינא רפיק בה פורתא אתא לקמיה דרב יהודה אוקמה בידא דשני

א"ל דורא דרעותא קאמרת התם באגי מטמרי הוו דאינהו גופייהו לא הוו יהבי טסקא למלכא ומלכא אמר מאן דיהיב טסקא ליכול ארעא

> *there was a case in Dura D'ra'avata, where a Jew bought land from a gentile and another Jew came and plowed a pruta's worth. They came before Rav Yehudah (a student of Shmuel), who ruled the second person had possession.*
>
> *Abaye said to him, "Dura D'ra'avata, you say? There, fields are hidden (from paying taxes), since they themselves would not give tax (*taska – *Persian) to the king, and the king said, 'whoever pays the tax can profit from the land.'"*

Here, Abaye rejects the example Rav Yosef brought. The people in Dura D'ra'avata do not pay taxes on their land, and thus do not own the land according to gentile law. Because of that, they cannot legally sell the land (for it is not theirs to sell) and that is why possession can pass to the second Jew. This rejection relies on the king's right to collect taxes and determine ownership over the land. Like b. Baba Metzia 73b, the gentile law is known and relied upon, even if the status of the ownership was questionable under Jewish law.

In b. Baba Metzia 73b, following the use of gentile law in the case of Rav Mari renting a house from Rava, other stories are brought where rabbis potentially take interest, but their benefit is explained according to other, permissible reasons. In one of these examples, Ravina lends money to people in the fortress of Shanvata, and they give him an extra jug of wine. Ravina goes to Ravi Ashi to see if this is a gift or interest. Rav Ashi says it is a gift, and then Ravina offers a complication: they do not own the land. However, they pay taxes on the land, and according to gentile law, those who pay the taxes can profit from the

land, and thus they can give Ravina a gift from the land, and he is free to enjoy it. This story applies the same law as in the case of Dur D'ra'avata – whoever pays taxes owns the land.

In another story on that page, Rav Papa says that rabbis pay the taxes for people and then force them to work above and beyond work equal to the value of their tax liability. This extra work might be considered interest for the rabbis having to loan the money. However, a teaching is brought in the name of Rav Sheshet that these people are the king's servants, not the rabbis', and the document of their servitude is with the king. According to gentile law, the person that does not pay the tax must serve the one who does. This is the case according to this *sugya*, even above and beyond the amount of taxes they owed. Rashi specifically mentions *dina d'malkhuta dina* when explaining this story, even though it is absent from the *Gemara*.[114] However, all these stories rely on gentile law, implicitly bolstering *dina d'malkhuta dina*. This story contains several loanwords from Persian and a seemingly intricate understanding of gentile legal documentation and archives, showing a sophisticated awareness of the gentile legal system.[115] The willingness to use gentile law to enslave others for the rabbis' benefit is a clear demonstration of their self-interest governing their reliance on gentile law.

Finally, at the conclusion of aforementioned *sugya* on b. Baba Kama 113b, the rabbis apply *dina d'malkhuta dina* to the taking of palm trees entirely from one person's field in order to build a bridge. The previous page, b. Baba Kama 113a, discussed the three *Mishnayot* that were limited by *dina d'malkhuta dina*, and then a long discussion about tricking or stealing from a gentile. In the story where this comes up again, related to taxes,

[114] Rashi on b. Baba Metzia 73b: "In the chest of the king it is placed, and they are the king's servant because *dina d'malkhuta dina*."
[115] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests,* 110.

the rabbis say that the actions of the messenger are not stealing, for taxes are allowed to be levied on one individual, who can then be compensated by others in the area for their share of the tax burden. Ultimately, this method of tax collection is allowed by the king, and therefore allowed by the rabbis as well.

Across all these *sugyot* related to taxes, Jews must pay taxes. Indeed, they were "divinely ordained." If the tax collector is an authorized messenger of the king, Jews cannot violate Jewish law to avoid paying taxes, but they are not required to submit to unauthorized collectors. These tax laws are valid in determining ownership of land and profits from that land, and the rabbis leverage gentile law without issue when it is to their benefit, showing no desire to distance themselves from the gentile legal system in favor of their own.

Jewish Engagement with the Gentile Courts

The final section of this chapter addresses a series of texts that specifically show Jews appearing in gentile courts, either as claimants or witnesses. For those wishing to seek out a negative view of gentile courts in the Bavli, b. Yevamot 63b offers a clear example:

במתניתא תנא אלו אנשי ברבריא ואנשי מרטנאי שמהלכין ערומים בשוק שאין לך משוקץ ומתועב לפני המקום יותר ממי שמהלך בשוק ערום רבי יוחנן אמר אלו חברים אמרו ליה לר' יוחנן אתו חברי לבבל שגא נפל אמרו ליה מקבלי שוחדא תריץ יתיב

> *It was taught in a* baraita *(about Deuteronomy 32:21), "these (the vile nation) are the people of Barbarya and the people of Martanai, who walk naked in the market. For there is none more despised and abominable before God than those that walk in market naked." Rabbi Yochanan said, "These are the* Habbarim*." They said to Rabbi Yochanan, "The* Habbarim *have come to Babylonia," and he shuddered and fell. They said to him, "They accept bribes." And he straightened up and sat.*

The *Habbarim* perhaps refer to Zoroastrian Priests, who rose with the Sasanian Empire and increasingly gained power.[116] Rabbi Yochanan's intensely physical reaction to the news of their arrival communicates his extreme fear and distrust of the *Habbarim*. Ironically, his negative reaction is both confirmed and mollified by the statement, "They accept bribes," trusting in the Jewish community's ability to use the *Habbarim*'s flaws to protect themselves. This text shows an extremely negative view of gentiles, in this case the Zoroastrian priests who will have power over them, both in their hatred of Jews and in their willingness to accept bribes.

However, most texts offer a more nuanced picture. In b. Baba Batra 173a-b, the *sugya* ultimately portrays a negative evaluation of Persian courts in the *stammaitic* layer, who do not have reasons attached to their ruling. Even if Secunda (cited earlier) is correct that this is not true, the attitude of the *sugya* remains negative. By separating the layers of the text we identified that Rav Nachman's initial reliance on the Persian law perhaps indicates a neutral or positive approach to their courts, demonstrating within one *sugya* the multiplicity of approaches.

b. Gittin 28b-29a

b. Gittin 28b-29a also offers a largely negative picture of gentile courts. This *sugya* is based on a statement in the *Mishnah* that "someone who is taken to be killed has the stringency of both life and death." A person who has been sentenced to death, or taken to be killed, is of unknown status. Until their death is confirmed, they could be alive, but they could be killed at any moment. The *Mishnah* discusses whether a woman can eat *terumah*,

[116] Adin Even-Israel Steinsaltz, *Tractate Yevamot, Koren Talmud Bavli: The Noe Edition, Commentary by Rabbi Adin Even-Israel Steinsaltz,* (Jerusalem, Koren Publishers, 2015), 423.

sanctified foods, if her husband is in this unknown status. For a daughter of a *kohen* who is married to an Israelite, she is forbidden from eating *terumah*, but can return to eating it the moment her husband dies. Conversely, a *bat Yisrael* married to a *kohen* can eat *terumah* until the exact moment of her husband's death. However, the law prohibits both from eating *terumah* when her husband is taken by the court, to prevent the *bat kohen* from possibly eating *terumah* when her husband is still alive (because the court didn't execute her husband), and to prevent the *bat Yisrael* from eating *terumah* after her husband died (because the court executed him immediately).

The *Gemara* then debates whether this is the case in Jewish courts, gentile courts, or both. There are two versions of the argument one after the other, each opening with Rav Yosef making opposite claims about Jewish and gentile courts. The two stories are presented here side-by-side instead of sequentially to demonstrate their structural similarity.

Table 3: b. Gitin 28b-29a

Argument Structure	**Jewish Courts**	**Gentile Courts**
Statement by Rav Yosef	Rav Yosef said, "This is only taught relating to Jewish courts but relating to gentile courts, once they decide to execute him (*d'gameir lei dina liktala),* they execute him.."	Some say that Rav Yosef said, "this is only taught relating to gentile courts, but Jewish courts, once the decision emerged to execute him (*d'nafak lei dina liktala)*, they execute him."
Challenge #1	Abaye said to him, "Also in a gentile court, because they accept bribes"	Abaye said to him, "Also in a Jewish court, it is possible they will see to acquit him."
Rav Yosef answers	He said to him, "When they take a bribe, it is before they seal the verdict (*pursei shenmag*, Persian*)*, but after they seal it, they do not take them."	He said to him, "They see fit to acquit him before they finish judging (*dina*), but after they finish judging, they do not see fit to acquit him."
What about a man who is sentenced to death by a	An objection is raised:	Let us say this supports him: Any place where two stand

Jewish court and turns up elsewhere?	Any place where two stand and say, "we testify about this man whose judgment was finalized in some court, and these two were the witnesses," he should be killed.	and say, "we testify about this man whose judgment was finalized in some court, and these two were the witnesses," he should be killed!
Response to objection	Perhaps one who flees is different.	Perhaps one who flees is different.
Challenge #3	Come and hear: If one heard from a Jewish court that said, "this man died," or "this man was killed," his wife can marry. From a gentile judicial register (*komentrisin,* Latin), "this man died," or "this man was killed," his wife cannot remarry.	Come and hear: If one heard from a Jewish court that said, "this man died," or "this man was killed," his wife can marry. From a gentile judicial register (*komentrisin,* Latin), "this man died," or "this man was killed," his wife cannot remarry.
Response to objection	What is meant by died and was killed? If we say died means actually died, and killed means actually killed, and the gentile court is similar, why can his wife not remarry? Don't we hold that all who converse offhandedly, he is deemed credible? Instead, is not "dead" mean taken to die, and "killed," taken to be killed? And it teaches, in a Jewish court she can remarry.	What is meant by died and was killed? If we say died means actually died, and killed means actually killed, and the gentile court is similar, why can his wife not remarry? Don't we hold that all who converse offhandedly, he is deemed credible? Instead, is not "dead" mean taken to die, and "killed," taken to killed? And it teaches, in a Jewish court she can remarry.
Support for Challenge #3	Actually, it means he actually died and actually was killed. And as for what you said, "Is it not similar in a gentile court? Don't we hold that all who converse offhandedly, he is deemed credible?" This is only for things that are not relevant to him, but for things that are relevant for him, it is common to strengthen their falsehoods.	Actually, it means he actually died and actually was killed. And as for what you said, "Is it not similar in a gentile court? Don't we hold that all who converse offhandedly, he is deemed credible?" This is only for things that are not relevant to him, but for things that are relevant for him, it is common to strengthen their falsehoods.

In the first version of this argument, Rav Yosef says that only in Jewish courts do these stringencies apply, but in gentile courts, once they announce the death, the person is killed. In this version, Abaye raises the possibility that gentile courts take bribes, and thus the announcement cannot be trusted (reflecting Rabbi Yochanan in b. Yevamot 63b). However, according to Rav Yosef, this is only possible before the verdict is sealed, but after it is sealed, they do not take bribes. While not a positive evaluation of gentile courts, this version does grant some validity and legitimacy to their rulings, allow gentile courts to be trusted in certain scenarios. The status of a Jew, the Jewish self, is defined by the Other, in this case the gentile court. In this version of the story, a Persian phrase, *pursei shenmag*, is used to refer to this step, likely a technical term borrowed from the Persian legal system. Given that this text is explicitly about the gentile court system, this indicates that the constructors of the text likely knew not just how the law functioned, but the proper procedure in such a court. A second example is raised, where two people come to testify in a Jewish court that a third person was convicted by a Jewish court in another place but was not executed. This example casts doubt on the reliability of the court's sentencing but is rejected because the person who flees is not a normal case and does not reflect on the court's reliability.

Then, a third challenge is raised. If the court makes a pronouncement that someone has died or was killed, can his wife remarry? If it was a Jewish court, yes, but if it was a gentile court, no (the reverse of Rav Yosef's statement in this first example). The *Gemara* questions this challenge by clarifying if "killed" means actually killed or taken to be killed. The question further includes the assumption that "the gentile court is similar," i.e. that both Jewish and gentile courts use the same language and mean the same thing. This question implies that the courts should be equally reliable in their statements. However, this logic is

rejected because, according to the *Gemara*, gentile courts and Jewish courts are *not* similar. Both mean "actually killed," but only the Jewish court is trustworthy. At the end of the first version of the story, the initial statement by Rav Yosef appears to be disproven: gentile courts cannot be trusted to say if they completed the execution, and thus the woman cannot remarry. Because these courts cannot be trusted, the stringencies of life and death are applied, and earlier defenses of the gentile court do not hold up.

In the second version of the story, Rav Yosef says the opposite statement, seemingly agreeing with the final challenge to the first story: the stringency in the *Mishnah* is only for those convicted by gentile courts. But when a Jewish court decides to execute a person, it follows through. Then, Abaye challenges Rav Yosef, suggesting Jewish courts are also untrustworthy because they might acquit the person between the announcement and execution. Rav Yosef answers that such evidence is only accepted before a verdict is finalized, but not after. This is followed by the same example of a person who flees, and the example is excluded for the same reason. However, it is introduced with a different word. Here, the story is brought as a support for Abaye, instead of as an objection to Rav Yosef. It directly continues the earlier conversation about a Jew who is announced to be killed by a Jewish court but ends up alive. Again, the *Gemara* rejects the comparison. The third challenge is identical in both version of the *sugya*.

Table 4: Summary of final opinions in b. Gittin 28b-29a

	Version 1		**Version 2**	
	Jewish Courts	**Gentile Courts**	**Jewish Courts**	**Gentile Courts**
Is the man presumed dead based on the sentence?	No (and therefore the stringencies are enacted)	Yes	Yes	No (and therefore the stringencies are enacted)
Is a bribe taken?		Yes, but perhaps only before verdict is sealed		
Can a verdict be overturned?			Only before it is finalized	
Can the wife remarry?	Once pronounced killed, wife can remarry	Even if pronounced killed, wife cannot remarry	Once pronounced killed, wife can remarry	Even if pronounced killed, wife cannot remarry

In analyzing what these two *sugyot* teach about Jewish and gentile courts, both believe a Jewish court that announces the death of a man convicted, but not a gentile court. However, until such an announcement is made (perhaps until a verdict is finalized or sealed), both courts have doubts: a Jewish court might find exonerating evidence, and a gentile court might take a bribe. While these doubts are limited by Rav Yosef, the gentile court remains untrustworthy at the conclusion of both versions of the debate. Ultimately, this *sugya* reinforced negative images about gentile courts. The identity of the rabbinic court is defined here in contrast to the gentile court. The same questions, "Does the court ever change its ruling? What does it mean when the court announces someone's execution?" are applied to both courts, and through the contrast between Jewish and gentile courts the *sugya* communicates core features of both. Here, the self is created by rejecting the legal Other, not by integrating their ways. This *sugya* emphasizes the differences between the two systems to craft the rabbinic legal identity as distinct from the gentile system.

This negative image is a different issue than the one presented by the principle of *lifneihem*. That principle relates to Jews who choose to bring their (civil) cases to gentile courts. Here, however, the Bavli recognizes situations where gentile courts put Jews on (criminal) trial, where the principle of *lifneihem* does not apply. *Dina d'malkhuta dina* also does not apply, as the Jewish courts ultimately do not rely on the gentile courts' determination of who is executed. Even without relying on the gentile courts, these texts demonstrate the impact of gentile systems on Jewish identity: the status of the woman, as defined by the Jewish community, changes based on the actions of the gentile court.

b. Gittin 9a-11a

In addition to judging criminal cases, both Jewish and gentile courts produce documents for legal proceedings. As was discussed in Chapter 1, a debate exists over whether documents that effect, rather than attest to, a status change are acceptable from gentile courts. That text exploring *dina d'malkhuta dina* on b. Gittin 10b is is part of a longer discussion of documents produced by Jewish courts for a divorce and the requirements for such documents.

The *Mishnah* on b. Gittin 9a compares divorce documents and documents that emancipate slaves when discussing requirements for bringing such documents overseas. A *baraita* brought shortly thereafter in the *Gemara* expands the similarities between these two documents compared to all other documents:

תנו רבנן בשלשה דרכים שוו גיטי נשים לשיחרורי עבדים שוו למוליך ולמביא וכל גט שיש עליו עד כותי פסול חוץ מגיטי נשים ושחרורי עבדים וכל השטרות העולים בערכאות של עובדי כוכבים אע"פ שחותמיהן עובדי כוכבים כשירין חוץ מגיטי נשים ושחרורי עבדים

In three ways divorce documents are the same as documents that emancipate slaves: (1) they are the same regarding the one who delivers it and the one who brings it

> *(from outside of Israel; they both must testify about the document); (2) And any document that has on it the signature of a* Kuti *witness are invalid except for divorce documents and documents that emancipate slaves. (3) And all documents that originate in gentile courts*[117]*, even though they are signed by gentiles, are valid, except for divorce documents and documents that emancipate slaves.*

The subsequent *Mishnayot* explore in greater detail the *Kuti* witnesses and the documents created by gentile courts. Here, it is sufficient to just notice that the *baraita* grants validity to *all other documents* produced by gentile courts, except for these two categories. Before addressing these, however, the *Gemara* explores why these three items are listed together. In rabbinic argumentation, when a list is introduced with a number, it excludes another item that might be included. The list in the *baraita* excludes an opinion of Rabbi Meir, who holds that there is a fourth category of similarities: someone who sent the document with a messenger can retract it before the document reaches his wife or his slave, but other documents cannot be retracted. Then, the *Gemara* identifies that Rabbi Meir's list of four items excludes a law from Rabban Shimon ben Gamliel about signatories unique to a *get* that doesn't apply for emancipating slaves or other documents.

Then, the *Gemara* asks why these three (or four) items are grouped together, but not other similarities. It concludes that this list is only derived from rabbinic laws, not from Torah laws. This opinion (which is ultimately upheld) is that *all documents* created by gentile courts are valid on a Torah level, and divorce documents and documents that emancipate slaves produced by a gentile court are only invalid on a rabbinic level. This reinforced Rav Mesharshya's position on b. Gittin 88, again showing that engagement with or rejection of

[117] The word for gentile courts here is *arkaot*. which Berman describes as dealing "exclusively with the archival function of the legal system, and not with either litigation or testimony in non-Jewish courts." See Berman, *Boundaries of Loyalty*, 5.

gentile courts is not an ideological matter, but a practical one: ideologically, according to the Torah, all these documents are valid, but they are prohibited for other reasons.

Then, the *stam* questions this conclusion, assuming that documents from a gentile court are *forbidden* at a Torah level. The subsequent debate involves a core conflict about what witnesses are needed to create a valid divorce. There are two elements needed for a valid divorce: the writing of a *get* and the delivery of the *get* to the wife. Witnesses are needed at each stage, but only one stage actually creates the status change. Therefore, the kinds of witnesses needed for that stage are the ones that must be valid: the witnesses on the secondary stage are less relevant, for they are not technically witnessing the divorce. According to Rabbi Elazar, the witnesses of transmission, who testify that the document was delivered to the wife, are the ones who witness the status change. If this is the case, then under Torah law a divorce with a *get* written by gentile courts would be valid because the witnesses on the document do not create the status change and their identity is irrelevant.

The *stam* reconciles these positions by positing that the *baraita* is only if the witnesses who effect the divorce are the witnesses of transmission, not the signatories on the document. If the document needs valid signatories, Torah law invalidates all the documents produced by gentile courts. At this stage, the *stam* argues that the author of the *baraita* believes that the witnesses of transmission create the status change. This assumption is then challenged: a later *Mishnah* (on 10b) contains an anonymous majority opinion that invalidates these documents written in gentile courts – just like the *baraita* – but Rabbi Shimon allows them. And Rabbi Shimon agrees with Rabbi Elazar that it is the witness of transmission that validate the divorce. Therefore, the author of the *Mishnah*, opposite of Rabbi Shimon, must believe that the document creates the divorce and needs valid witnesses,

rendering the *get* written by the gentile courts invalid on a Torah level. If this opinion holds, it nullifies the categorization of this list, weakening the status of gentile courts in Torah law.

Instead of accepting this logic, the *Gemara* provides an alternative explanation. Both Rabbi Shimon and the author of the *Mishnah* agree with Rabbi Elazar that it is the witnesses of transmission that create the divorce, not the witnesses on the document. And according to Rabbi Shimon, the author of the *Mishnah*, and the original list of three similarities, all documents produced in a gentile court are valid at a Torah level and *gets* are invalid at a rabbinic level. The *stam* clarifies that this debate between Rabbi Shimon and the author of the *Mishnah* is about unambiguous gentile names. In the case of a document produced in a gentile court with unambiguously gentile names, Rabbi Shimon permits the *get* to stand, but the author of the *Mishnah* and the rabbis disagree. These names are discussed more fully by the *Gemara* on pages 11a-b. Ultimately, this section concludes by affirming that these differences between all documents on one side and divorce and emancipation documents on the other are rabbinic laws, not Torah prohibitions – all documents produced by gentile courts are valid according to Torah law and according to Rabbi Shimon. The rabbis in the *Mishnah* and in the list of three similarities come to prohibit this category of documents because of a concern that having documents with gentile names (even though they are not the *halakhically* required witnesses) might lead Jews to think that gentiles are valid witnesses.

In this discussion, if divorce relies on the witnesses for the transmission of the document, not the witnesses for the writing of the document, then the documents produced by gentile courts for this purpose are valid according to Torah law. By categorizing divorce documents as not effecting a change, but allowing one to be witnessed, it allows for greater latitude under Jewish law for the gentile courts. However, rabbinic law in this case does not

wish to broaden the documents that are allowed to be produced in gentile courts, and thus restricts them. While ultimately not valid according to rabbinic law, these texts nevertheless open the door for some engagement with the courts, and the possibility of their authority within the context of Jewish law. This is especially significant in divorce, which might fall under "religious law" that was, according to some interpretations of *dina d'malkhuta dina*, supposed to be left entirely to religious authorities. Instead, these arguments invite the civil authorities into this realm of religious law, breaking down those barriers and increasing the fluidity between such institutions.

The next *Mishnah* continues the conversation about *Kuti* witnesses, or Samaritans, who practice some, but not all rabbinic law. The *Kutim* represent a middle ground between Jew and gentile in the Bavli, sometimes accepted as Jews, and other times restricted like gentiles, further blurring the categories of self and Other. The *sugya* explores whether *Kutim* are reliable followers of different rabbinic laws, and how that might impact documents where they serve as witnesses. Just as they are a middle ground, so too is the law concerning them a middle ground: the dominant opinion presented in this *sugya* here is that documents where a *Kuti* signed, followed by a Jew, is valid. In this instance, the Jewish signatory, by agreeing to be a witness, confers legitimacy onto the *Kuti* as a trustworthy and valid witness. Rabban Gamliel, however, has an even more lenient approach. He is quoted in the *Gemara* as saying, "all *mitzvot* that the *kutim* embrace, they are more exact in their details than Jews," and the *Mishnah* contains a story of Rabban Gamliel accepting a divorce document with two *Kuti* witnesses.

The third and final *Mishnah* in this trio deals explicitly with the divorce documents produced by gentile courts. The first part of this *Gemara* is addressed in the discussion about

dina d'malkhuta dina and continues the distinction between documents that are proof of a change and documents that effect the change. The *Gemara* introduces a rejection to the argument that if the witnesses of transmission confirm the divorce, it does not matter where the document was created or who was signed. Here, Rabbi Aba says that Rabbi Shimon agrees with Rabbi Elazar, who says, "if the document is falsified, it is invalid." This means that they would deem a *get* valid with no witnesses because it is the witnesses of the transmission that need to be valid. However, if a *get does* have witnesses, they need to be valid witnesses in order for the document to be valid.

The *Gemara* then introduces the same suggestion made previously, that this debate is really about unambiguous gentile names, defined by Rav Papa as those "like Hurmiz, Abudina, bar Shibtai, bar Kidri, Bati, and Nakim Una." If these names clearly belong to gentiles, then Rabbi Shimon is not worried they will be relied upon for the act of transmission, and thus their unnecessary signatures on a *get* do not matter. However, the other rabbis hold that these invalid witnesses, even if the document does not actually create the divorce, would invalidate the document. The *Gemara* includes that ambiguous names similarly invalidate the document.

The *Gemara* (b. Gittin 11a) then brings another similar debate between Rabbi Akiva and the rabbis:

> תניא אמר ר' אלעזר בר' יוסי כך אמר ר"ש לחכמים בצידן לא נחלקו ר"ע וחכמים על כל השטרות העולין בערכאות של
> עובדי כוכבי' שאע"פ שחותמיהן עובדי כוכבים כשרים ואפי' גיטי נשים ושחרורי עבדים לא נחלקו אלא בזמן שנעשו בהדיוט שר"ע מכשיר וחכמים פוסלים חוץ מגיטי נשים ושחרורי עבדים

> *It's taught, "Rabbi Elazar son of Rabbi Yosi, said this is what Rabbi Shimon said to the sages in Tzidon, 'Rabbi Akiva and the sages did not disagree on all documents that came from gentile courts, and even thought they were signed by gentiles they are valid, even divorce documents and documents that emancipate slaves. They only disagreed when the document was prepared by* hedyot*, Rabbi Akiva made them valid*

and the sages invalid, except for divorce documents and documents that emancipate slaves.

According to this *baraita*, Rabbi Akiva and the other rabbis of his generation agreed that all the documents created in gentile courts, even though they are signed by gentiles are valid, even if they are for divorce or emancipating slaves. They disagree on if they were made by *hedyotot*, or common people not part of an official court system.[118] Rabbi Shimon ben Gamliel limits this disagreement to places where Jews are not allowed to sign documents. In that case, there is no fear of confusion because any signature would be gentiles. While the suggestion is raised that perhaps there should be an additional restriction because of places where Jews can sign court documents, this suggestion is rejected because the places won't be confused for each other.

Here is it significant that earlier generations, like Rabbi Akiva, were more lenient than subsequent generations, perhaps due to the lack of strength of rabbinic Judaism at the time, and the more intense persecution by the gentile rulers. This furthers the idea that self-interest or preservation was a key factor in determining the strength of the prohibitions according to *halakha*. Rabbi Akiva, in b. Baba Kama 113a, also ruled against using trickery against gentiles, holding a more accommodating position on these two issues. The shift over time demonstrates that Jewish law has fluctuated to be responsive to the current situation of the Jewish community and their ability to engage with gentile courts. The same is true with Rabban Gamliel's distinction of places where Jews can sign documents and places where they are forbidden from doing so. However, in each generation there were rabbis who believed divorce documents made by gentile courts were valid, even if that goes against the

[118] It is interesting to note that this is the same kind of court, *hedyotot*, that is the subject of the debate on b. Gittin 88b and one version of the *midrash* on the word *lifneihem*. In both places, the text raises up official courts and diminishes untrained, unsanctioned, or lay judges.

principle of *lifneihem*, which does not appear at all in this debate. There was awareness in each generation that gentile courts are producing these documents at the request of Jews, and some opinions that wanted to validate those documents.

The *Gemara* then introduces a series of other cases related to this topic. Ravina wanted to validate a document written by "a group of *arma'ei*," (Aramaic speakers, but used here to refer to gentiles) but Rafram rejected him, because this group was not a court. Then, Rava introduced a case about a Persian document that was transferred in the presence of Jewish witnesses that allowed a creditor to seize non-leined property, which is usually prohibited. The *Gemara* limits this law as applicable only when the witnesses know Persian, and thus understand the contents of the document. Then the *Gemara* brings two challenges to using Persian documents: that it is possible for the document to have been forged, and that the document does not include a summary statement at the end of the document. Each time, the *Gemara* answers that if the document meets these requirements (it was written in a way that it could not have been forged, included a summary line, and was transferred in front of valid Jewish witnesses who knew Persian), then it was valid. They leave the door open for documents produced by gentile courts to be valid according to rabbinic law, refusing to erect a strict barrier of separation between them.

Lastly, the *Gemara* questions why this document cannot allow the creditor access to leined property, like a document produced by Jewish courts. The answer is that it is signed by gentiles, and therefore not publicized among Jews like documents from Jewish courts. Thus, even though these documents are nearly identical, a distinction remains between the two courts and the documents they produce.

The discussion concludes (b. Gittin 11a-b) by returning to the questions of ambiguously gentile name.

מיניה ריש לקיש מר' יוחנן עדים החתומין על הגט ושמותן כשמות עובדי כוכבים מהו אמר ליה לא בא לידינו אלא לוקוס ולוס והכשרנו

ודוקא לוקוס ולוס דלא שכיחי ישראל דמסקי בשמהתייהו אבל שמהתא אחריני דשכיחי ישראל דמסקי בשמהתייהו לא

איתיביה גיטין הבאים ממדינת הים ועדים חתומים עליהם אע"פ ששמותיהן כשמות עובדי כוכבים כשירין מפני שרוב ישראל שבחו"ל שמותיהן כשמות עובדי כוכבים

התם כדקתני טעמא מפני שרוב ישראל שבחוץ לארץ שמותיהן כשמות עובדי כוכבים ואיכא דאמרי כי מתניתא בעא מיניה ופשט ליה ממתניתא:

> *Reish Lakish came before Rabbi Yochanan, Witnesses that signed a divorce document and their names are like gentile names, what is the law? He said to him, "Once a document came before us with only the names Lukos and Los and we made it valid."*
>
> *This is specifically about Lukos and Los, for it is not common to find Jews called by those names, but other names, common for Jews, it is not allowed.*
>
> *An objection: divorce documents that come from abroad and witnesses signed them, even those they are the names of gentiles, they are valid, because a majority of Jews outside of the land have names like gentiles.*
>
> *There, because it teaches the reason: because the names of most Jews outside the land have the names of gentiles. And some say, he asked about the case, and he resolved it from the baraita.*

In this case, Rabbi Yochanan validated documents signed by the names Lukos and Los, because they are not common Jewish names, and thus was more confident that a Jew signed them. However, with names that are common for Jews and non-Jews alike, such a document would not be allowed, unless it comes from outside Israel because of the naming customs. This case about naming customs, especially relevant for the Bavli, perhaps reflects the surrounding culture of the editor, that many Jews had gentile names and could not all be disqualified from witnessing documents.

The series of debates in b. Gittin 9a-11a includes a variety of opinions, and an awareness of the changing customs of both Jews and gentiles. It opens by affirming that documents, even those signed by gentiles, that originate in gentile courts, *including* for documents of divorce and documents that emancipate slaves, are valid according to Torah law. According to rabbinic law, they only prohibit documents of divorce and of emancipating slaves. It affirms the position that the witnesses who create the status change are those who witness the transmission of the document, not the ones who sign on the document, which gives greater latitude for how the document is prepared. The opinion by Rabbi Akiva and other earlier rabbis to validate these documents, including divorce documents, furthers this position. Considerable evidence is presented across these pages that many rabbis across different generations and places validated such documents, blurring the lines between rabbinic and gentile courts. The focus on the type of witnesses, the names of the witness, and the laws around Jews signing documents, demonstrates the importance of local context in validating or invalidating these documents, introducing the possibility of change over time. Instead of relying on certain principles, the validation is case-by-case, which allowed greater engagement with gentile courts.

b. Baba Kamma 114a

To conclude this chapter, we return to the material in b. Baba Kama 113a-114a. Earlier in this chapter, and in Chapter 1, we saw how gentile officials' actions were validated under Jewish law. However, much of the material in between these sections is about the validity of lying to, taking advantage of, or stealing from a gentile. And even though it is disparaging of gentiles and the gentile court system, Beth Berkowitz notes, "in the course of

doing so it allows for legal fluidity between non-Jewish and Jewish courts."[119] The *sugya* (b. Baba Kama 113b-114a) concludes by applying this to the court system:

מכריז רבא ואיתימא רב הונא דסלקין לעילא ודנחתין לתתא האי בר ישראל דידע סהדותא לכותי ולא תבעו מיניה ואזל ואסהיד ליה בדיני דכותי על ישראל חבריה משמתינן ליה

מאי טעמא דאינהו מפקי ממונא אפומא דחד ולא אמרן אלא חד אבל בתרי לא

וחד נמי לא אמרן אלא בדיני דמגיסתא אבל בי דוואר אינהו נמי חד אמומתא שדו ליה

אמר רב אשי כי הוינא בי רב הונא איבעיא לן אדם חשוב דסמכי עליה כבי תרי מפקי ממונא אפומיה ולא איבעי ליה לאסהודי או דלמא כיון דאדם חשוב הוא לא מצי משתמיט להו ומצי לאסהודי תיקו

> *Rava declared, and some say Rav Huna declared, "All who make* aliyah *to Israel and those who leave for Babylonia, hear this: if a Jew knows evidence about a gentile and (the gentile) does not demand from him (the testimony), and he goes and testifies for him in a gentile court against his fellow Jew, we excommunicate him.*
>
> *What is the reason? Because gentile courts will award money to the plaintiff on the word of one witness. This applies when there is only one witness, but for two, we do not excommunicate him (for this is how it is done in Jewish courts).*
>
> *And even for one witness also, this is only true for a court of villagers (*magista*), but in a courthouse, they also make one person swear an oath (just as Jewish courts do).*
>
> *Rav Ashi said, "When I was in the house of Rav Huna, the dilemma came before us: In the case of an important man who is relied upon like two witnesses, (and therefore his testimony alone can award money), should he not testify? Or maybe because he is important, he cannot avoid (the court's demand) and should testify?* Teiku *– it is unresolved.*

The initial statement by Rava represents a harsh approach, preventing Jews from testifying in gentile courts. However, each further line limits this ruling more and more, until it is only if there is a court of villagers who rely on the testimony of only one witness without making them swear an oath. Saul Berman notes that the restriction of this law to only voluntary testimony was included by a Christian censor to force more Jews to testify in non-Jewish

[119] Beth Berkowitz, "Approaches to Foreign Law," 145.

courts, as no earlier quotation of this passage or earlier manuscript contain this phrase.[120] He identifies a four-stage process for the development of this passage: Rava's initial statement that a Jew who testifies in a non-Jewish court against Jews should be excommunicated, followed by two limitations, first based on the number of witnesses, and then by the type of court, and then smoothing the passage over.[121] The possibility for this construction over time is heightened by the debate brought by Rav Ashi. It shouldn't matter if a person was important or not, because the earlier text allows for one witness to testify regardless of their status as long as they swear an oath.[122] Ultimately, the restriction placed by the rabbis from Israel was significantly limited, thereby allowing Jews to testify in these gentile courts.

Conclusion

Beth Berkowitz' comment on b. Baba Kama 113 rings true not just for that *sugya*, but for most of the texts present in this chapter: there is a fluidity across time and location for engaging with gentile courts, even when portrayed negatively. In b. Baba Metzia 73b, Rava applied gentile law to Rav Mari bar Rachel to help him benefit. In b. Baba Batra 173b, Shai Secunda identified a change in the *stammaitic* layer, with the *Amoraic* layer of Rav Nachman's statement evaluating Persian law positively. b. Yoma 77a identified that some Jews paid taxes in Persia and others didn't, ascribing this reality to incidents up in heaven. b. Baba Kama 113a-114a requires Jews to follow authorized government actions and grants proper actors on behalf of the government wide latitude, while also allowing Jews to manipulate the law to take advantage of gentiles, relying on either Jewish law or gentile law

[120] Saul Berman, *Boundaries of Loyalty,* 16.
[121] Berman, 27.
[122] Berman, 122-4.

to do so. b. Gittin 28b-29a has multiple contradictory opinions about gentile courts, but they are mostly viewed as self-interested and willing to take bribes or lie. b. Gittin 9a-11a also contains multiple opinions over time, with Rabbi Akiva permitting more documents from gentile courts than later generations, while later generations allow for differentiating based on the types of names Jews have and where they live. It also introduces the possibility that while Torah law might allow them, the rabbis sought to prohibit these documents. Lastly, as Berman articulates, Rava's initial prohibition of Jews testifying in gentile court about other Jews is restricted over time, into the Middle Ages. The courts are sometimes distrusted, but ultimately Persian law is used to determine Jewish actions, and some opinions permit and trust the decisions reached by gentile courts.

Some of these *sugyot* are connected to *dina d'malkhuta dina*, especially those around tax law. While the principle is mentioned in three of the *sugyot* discussed in this chapter, it is not relied on for most of these debates. Further, even in the *sugyot* where it is included, other reasons are also given. None of the *sugyot* refer to *lifneihem*. It is possible that those in the *Amoraic* layer of the Bavli did not know of these teachings, but the final editors of the Bavli most likely did. It is significant that these *sugyot* are much more dependent on the specific situations not just of the Jewish case law, but the kinds of courts they witness in their community, the standing of the Jewish community, and the unique situations each generation and each community finds themselves in. Talmudic principles, while important, appear to be lowered in importance compared to the reality on the ground for Jews. The construction of rabbinic legal identity is guided by self-interest in their time and place, with many texts demonstrating engagement with the gentile legal system when advantageous or necessary.

CHAPTER 3: LIMITS OF RABBINIC AUTHORITY

Introduction

Babylonian rulers granted limited authority to minority communities to rule themselves according to their own laws. As much as the rabbis wish to cast themselves as the ultimate legal authority, they only do so with the permission of the king, who prescribes the limits to their power. While previous chapters explored the contours of the *halakhic* limits of Jewish and gentile judicial authority, this chapter narrows in on the attempt to actualize such authority in courts.

Within Sasanian Babylonia, the rabbis were not the only Jewish group attempting to exercise authority over the community. The *Reish Galuta*, or the Exilarch, was another locus of power with connections to the royal administrative state that represented and claimed authority over Jewish communities in Babylonia. The connection between the Exilarch and the Sasanian regime is a central question on the history of the Exilarch and one with myriad answers.[123] This chapter analyzes six texts across two categories that explore authority granted, or not, by the gentile authorities to Jews: two about the triangular relationship between the rabbis, the Exilarch, and the Babylonian authorities, and four stories that center conflict between rabbis and gentile authorities, who ultimately grant rabbis the authority to judge and punish. These texts likely portray relationships both real and imagined, evidencing a real connection between Jewish and gentile judicial authorities while developing the image of the rabbi as wiser and more powerful than gentiles.

[123] Herman, *A Prince without a Kingdom,* 11.

Rabbis and the Exilarch

As Geoffrey Herman argues in his book *A Prince without a Kingdom*, "the formal interrelationship between rabbis and Exilarchs defies a simple explanation. One cannot speak merely of alliances or discord, but rather of differing approaches to the diverse and shifting relationships."[124] The Exilarch has some impact on the Jewish judicial system, perhaps with their own courts and locus of authority separate from the rabbis.[125] Herman's analysis finds three texts that appear to explicitly link the Exilarch to the Persian legal system: one instance of *dina d'malkhuta dina*, as we saw in Chapter One (b. Baba Batra 54b-55a), a story about competing rulings in b. Baba Kama 58b, and an allusion to gentile government authority in b. Sanhedrin 5a. Herman argues that central to claims of the Exilarch's power are its supposed connections to Persian law and its legal system, which he seeks to cast doubt on through these texts.[126] Ultimately, while Herman is more focused on the power dynamic between the rabbis and the Exilarchate, my analysis centers on the how the stories in the text, whether historical or imagined, portray relationships and connections between gentile authority and Jewish courts, whether they are courts of the rabbis or the Exilarch.

In b. Baba Kama 58b, a *halakhic* anecdote is brought concerning a man who cut down his neighbor's palm tree. When the Exilarch rules, the offender replies, "Why should I be judged by the Exilarch, who rules like Persian law?" Herman emphasizes the differences between *parsa'ah* פרסאה, which he claims refers to the law of a Persian palm tree, not Persian law, *parsa'i*, and both are attested to in different manuscripts.[127] This reading is rooted in the Tosafot on this page and if correct, the man could be objecting to the method by which the

[124] Herman, 209.
[125] Herman, 194.
[126] Herman, 194.
[127] Herman, 208.

Exilarch calculated the damages, not the gentile origins of such calculations.[128] Shai Secunda similarly notes the various readings of this *sugya,* concluding as Herman does that it is not about Persian law, but rather about the palm.[129] Ya'akov Elman argues that this text contains a negative opinion of Persian law, but that it is likely redacted later, and the negative opinions were not actually voices in the original text – similar to the text with Rav Nachman in Chapter 2.[130] Another challenge with these readings is on the definition of *kashba*, the kind of palm this story is about. Tosafot argue that it is a Persian date palm.[131] If so, then the response as Secunda and Elman read it makes no sense, and the man really is charging the Exilarch with relying on Persian law.

Regardless of which way the text is read, the next part of the *sugya* is that the man went before Rav Nachman, who offered a different assessment of the damages. Rav Nachman was often associated with the Exilarch in the texts, and as we saw in Chapter 2, has positive associations with the Persian legal system. This overlap makes the fact that he ruled different from the Exilarch unusual. As the story unfolds, what becomes clear is that the Exilarch had his own independent court system that could disagree with rabbis; people knew different courts existed and could change venues to try to get a favorable ruling. They were not locked into one system based on loyalty or competition. At the end of the *sugya,* the *Gemara* concludes that the *halakha* is different based on the kind of palm it is, and Exilarch is followed for Persian date palms. This clearly later interpolation demonstrates that the assessment of the damages in this case was an unresolved question for some amount of time. The *halakhic* decisions that use *v'hilkhata* are among the latest layers of the Bavli, perhaps

[128] Tosafot on b. Baba Kama 58b.
[129] Secunda, *The Iranian Talmud,* 97.
[130] Elman, "Middle Persian Culture and Babylonian Sages," 185.
[131] Tosafot on b. Baba Kama 58b.

even adding them in after the Bavli was by-and-large closed.[132] The *halakha* also indicates a compromise without any clear reason or agenda of why it is necessary. It is noteworthy, even if only linguistically, that the Exilarch is associated with the *Persian* date palms, even if the connections to Persian law are tenuous. This is one example of the "a lack of cohesion or institutionalization of the Jewish legal system [w]ithout imperial backing or an enforceable hierarchy."[133] The Babylonian legal system did not grant a single Jewish court the authority to oversee communal affairs, nor did within the Jewish community a single leader emerge. Instead, overlapping systems coexist and vie for control. Perhaps connection to, or knowledge of, Persian law and legal systems (if the text is to be read that way) is one factor in differentiating the two courts. If it is read without reference to Persian law explicitly, it further demonstrates the muddiness of these overlapping systems.

In the second text, b. Sanhedrin 5a, the limits of rabbinic power are tested vis-à-vis the Exilarch's court. As Herman describes, the two issues in this *sugya* are rabbinic judicial power without Exilarchal authority, and how far the Exilarch's power extends into Palestine, where Patriarchal authority supposedly takes over.[134] In this *sugya*, a judge that makes a mistake in judgment is exempt from having to pay a fine. Earlier statements by Rav and Shmuel qualify this exemption only in the case where they have received permission from the Exilarch to judge. However later *Amoraim* (quoted in the *sugya*) say this exemption extends to judges not explicitly authorized by the Exilarch, because the parties both accepted this individual as a judge. Notably, this reduces the status of such a judge to that of *hedyot*, or layperson, but resolves the conflict to allow the judges to appear equally authoritative. No

[132] David Halivni, *The Formation of the Babylonian Talmud*, 8.
[133] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests,* 114.
[134] Herman, *A Prince without a Kingdom,* 197.

evidence exists to corroborate the function of the Exilarch as an authorizer of rabbinic courts, but Mokhtarian, based on Herman's analysis, writes that because the Exilarch was a Jewish communal leader with ties to the throne, he must have had influence on the Jewish legal system to grant such authority.[135]

The second issue the *sugya* addresses is the balance between the Exilarch and the Nasi, who was the Jewish communal head in Palestine. The *sugya* grants the Exilarch authority over Palestine, but not the Nasi over Babylonia, thus supporting the Exilarch's supremacy in certain matters. Tosafot explains that the Exilarch's authority is over monetary matters because of their imperial backing.[136] The text reaches this conclusion with a *midrash* on Genesis 49:10, "The scepter shall not depart from Judah, nor the ruler's staff between his feet until Shiloh comes."

כדתניא {בראשית מט} לא יסור שבט מיהודה אלו ראשי גליות שבבבל שרודין את ישראל בשבט ומחוקק מבין רגליו אלו בני בניו של הלל שמלמדין תורה ברבים

> *As it is taught, "The scepter will not leave from Judah" (Gen 49:10). These are the Exilarchs in Babylonia, that subjugate Israel with a scepter. "Or the staff from between his feet" these are the grandsons of Hillel, that taught Torah in public.*

By comparing the Exilarch with a scepter, which has greater authority than the staff that represents the Nasi, the *midrash* elevates the Exilarch's authority over the Nasi. Rashi interprets this *midrash* to mean that "they have the power and authority of the Persian kingdom" to rule.[137] In both *sugyot*, the distinction or preference of one court or ruler to another is not based on soundness of argument, scholarship, errors, or any other merit-based reason. Instead, the Exilarch's power and affiliation with the Persian government is the key

[135] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests*, 113.
[136] Tosafot on b. Sanhedrin 5a.
[137] Rashi on b. Sanherdrin 5a.

factor. However, no single court's power was absolute: the Persians, the Exilarchs, and the rabbis all appear to have authority over different areas of jurisprudence.

Rabbinic Authority to Punish

Jason Mokhtarian writes,

> "The authority to punish criminals, including in cases of capital crimes, is at the center of questions of rabbinic judicial power. Several Talmudic stories express anxiety over rabbinic judicial authority in cases of corporal or capital punishment. One typical narrative trope for these tales depicts a rabbi punishing another Jew and being caught by the imperial government for wielding authority, before then being saved from punishment and in fact receiving authority from them to carry out the punishment."[138]

He identifies four such stories, b. Berachot 58a, b. Ta'anit 24b, b. Baba Batra 58a-b, and b. Gittin 14a-b, but only analyzes one of them. No one has analyzed this group of stories as a collection to see what they have to offer about the Talmudic approach to judicial authority and punishment. This analysis is taken up below. In each of these stories, the rabbis' power to judge and punish is granted to them by the gentile authorities, often based on their cleverness or connection to God's power. Many of these stories also employ elements of trickery, a tool used by the less powerful actor to gain the upper hand. As was demonstrated in b. Baba Kama 113a, some rabbis approved of trickery against gentiles in court, while Rabbi Akiva disagreed. The inclusion of trickery in both *halakhic* and *aggadic* material demonstrates, like the discussion about lying to tax officials, that perhaps unethical methods of cheating gentiles is valid, because their laws and behavior does not demand fair play. In the *halakhic* material these actions are rejected, while they are celebrated in the *aggadic* material. The dissonance

[138] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests*, 114.

between the two highlights the imaginative act of recording these stories, where the rabbis perhaps play out their fantasies that cannot happen in real life.

b. Berachot 58a

רבי שילא נגדיה לההוא גברא דבעל מצרית אזל אכל ביה קורצי בי מלכא אמר איכא חד גברא ביהודאי דקא דיין דינא בלא הרמנא דמלכא

שדר עליה פריסתקא כי אתא אמרי ליה מה טעמא נגדתיה להאי אמר להו דבא על חמרתא אמרי ליה אית לך סהדי אמר להו אין אתא אליהו אדמי ליה כאיניש ואסהיד

אמרי ליה אי הכי בר קטלא הוא אמר להו אנן מיומא דגלינן מארעין לית לן רשותא למקטל אתון מאי דבעיתון עבידו ביה

עד דמעייני ביה בדינא פתח רבי שילא ואמר {דברי הימים א' כ"ט} לך ה' הגדולה והגבורה וגו' אמרי ליה מאי קאמרת אמר להו הכי קאמינא בריך רחמנא דיהיב מלכותא בארעא כעין מלכותא דרקיעא ויהב לכו שולטנא ורחמי דינא אמרו חביבא עליה יקרא דמלכותא כולי האי יהבי ליה קולפא אמרו ליה דון דינא

כי הוה נפיק אמר ליה ההוא גברא עביד רחמנא ניסא לשקרי הכי אמר ליה רשע לאו חמרי איקרו דכתיב {יחזקאל כ"ג} אשר בשר חמורים בשרם חזייה דקאזיל למימרא להו דקרינהו חמרי אמר האי רודף הוא והתורה אמרה אם בא להרגך השכם להרגו מחייה בקולפא וקטליה

> *Rav Sheila ordered the flogging of a man who had sexual relations with a gentile woman. He went and told the king, saying, "There is a Jewish man who judges without the authority of the king."*
>
> *He sent a messenger to him. When he came, they said to him, "What is the reason you ordered the flogging?" He replied, "He had relations with a female donkey." They said to him, "Do you have witnesses?" He said, "Yes." Elijah came and appeared like a person and testified.*
>
> *They said to him, "If so, he should be executed." He replied, "Since the day we were exiled from our land we do not have the authority to execute, but you, act as you wish."*
>
> *During their consideration of the judgment, Rav Sheila opened in prayer and said, "To you, God, is greatness and might," etc. (1 Chronicles 29:11). They said to him, "What are you saying?" He replied, "This is what I said, 'Blessed is God who gives kingdoms on earth a sliver of the sovereignty of heaven and gives to them dominion and merciful judgment.'" They said to him, "The honor of the kingdom is precious to you." They gave him a staff and said to him, "you have the authority to judge."*
>
> *As he was leaving, that man said to him, "Does God make miracles for liars like you?" Rav Sheila responded, "Wicked one! Are they (gentiles) not donkeys? As it says, "Whose flesh is the flesh of donkeys" (Ezekiel 23:20). He saw that the man went*

> *to go tell them that he called them donkeys. Rav Sheila said, "He is a* rodef*, and Torah says, 'if he comes to kill you, kill him first.'" Rav Sheila hit him with his staff and killed him.*

In this story, Rav Sheila judges and punishes a man for having sex with a gentile woman. The man is unhappy with him and seeks revenge by reporting Rav Sheila to the gentile authorities. It is unclear if the man's claim that Rav Sheila did not have the authority to judge is valid or not. When the authorities question Rav Sheila, he lies, telling them that the crime was bestiality, not sexual relations with a gentile woman. This response, in addition to concocting a scenario to get Rav Sheila out of trouble, furthers a rhetorical move by the Talmud to compare gentiles to animals, a comparison used to debase the gentile Other and separate them from Jews.[139] Elijah's miraculous arrival to verify Rav Sheila's false claim indicates God's approval of such deception. It also facilitates Rav Sheila's move from one who is defying gentile judicial authority to one showing deference to it. According to the story, the crime of bestiality is punishable by death. However, as is widely accepted, the Jewish courts did not have the ability to enforce capital punishment, and thus Rav Shiela "cannot" kill him for this crime and only flogged him instead.

While the gentile messengers deliberate, Rav Shiela offers a prayer for God's greatness and power. When questioned, however, Rav Sheila again changes his answer, offering a prayer for God's bestowal of power to gentile kingdoms. The gentiles are sufficiently mollified that Rav Sheila is a friend of the crown and grant him the authority to judge and punish, including the death penalty. However, Rav Sheila does not actually need such power, as no capital crime was committed. He now has more power than when the story began.

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[139] Wasserman, *Jews, Gentiles, and Other Animals*, 114-118.

When the messengers leave, the debate continues between Rav Sheila and the man he punished. Rav Sheila defends his actions by doubling down on the comparison between gentile women and animals, a defense meant to be humorous, allowing Rav Sheila to outwit the gentiles. The man moves to start the cycle again, complaining to the authorities that Rav Sheila does not in fact respect their authority, considering them lesser. Rav Sheila then kills the man, but not using his newly granted authority by the gentile governments. Instead, the story ends with calling the man a *rodef*, someone who seeks to kill. That then grants Rav Sheila the ability to use lethal force *halakhically*. While Mokhtarian argues that the killing of the man is done under the authority granted to Rav Sheila by the gentile authority, a killing in self-defense (how the text frames Rav Sheila's action) does not require the gentile authority to grant judicial power to Rav Sheila.[140] Instead, this story demonstrates how Rav Sheila acts with impunity, doing whatever it takes to get, and hold onto, power, tricking gentiles to do so.

Mokhtarian, based on the work of Urbach and Neusner, identifies the editing this text has gone though, particularly in uncovering where it takes place: initially a story about Babylonia, the rabbis set it in Rome (the preceding stories place these events under Roman rule). However, later censors remove the references to Rome in the printed versions, in some ways restoring the original context while further corrupting the story. However, most scholars agree that this has Babylonian roots, and reflects an early Sasanian anxiety toward Jewish judicial authority.[141]

This story demonstrates that Jewish courts did have some measure of authority to judge and punish, if granted by the gentile authority. The anxiety appears in the text over the limits of this authority. It further highlights the imagined rabbinic ability to circumvent the

[140] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests*, 116.
[141] Mokhtarian, 114-115.

gentile authority and exert their own power over Jewish communities. The man's ability to be judged by Jewish courts, but then appeal to gentile authority, emphasizes the fluidity and interaction between Jewish and gentile communities and courts that characterize many of the *sugyot* in the Talmud on related subjects.

This story demonstrates the tension between rabbinic "reality" and "imagination," if those terms can be applied accurately to Talmudic texts. In the legal *sugyot* the principle of *dina d'malkhuta dina* and acquiescence to gentile authority pervades many rabbinic decisions. In this story, however, the script is reversed, and the rabbinic courts end up with the upper hand and increased authority. It is not the gentiles who get their way, but Rav Shiela manipulating the system to exercise his power against the gentiles. It is a further warning to other Jews who might seek to overrule rabbinic authority by appealing to gentile authorities. The rabbis too can play that game, and ultimately will get their way, so Jews are best following Jewish law and remaining within their own community. This is a trope that emerges in the other three narratives as well.

<u>b. Baba Batra 58a-b</u>

Like the story in b. Berachot, b. Baba Batra 58a-b contains a story of a clever rabbi, initially reported on by someone he judges, who ultimately is granted the authority to judge. Rabbi B'na'a is established by the text as someone who solves riddles, especially related to inheritance. The story begins,

ההוא גברא דשמעה לדביתהו דקא אמרה לברתה אמאי לא צניעת באיסורא הך איתתא עשרה בני אית לה ולית לי מאבוך אלא חד כי שכיב אמר להו כל נכסי לחד ברא

לא ידעי להי מינייהו אתו לקמיה דרבי בנאה אמר להו זילו חבוטו קברא דאבוכון עד דקאי ומגלי לכו להי מינייכו שבקא אזלו כולהו ההוא דבריה הוה לא אזל אמר להו כולהו נכסי דהאי

There was a man who heard his wife saying to her daughter, "Why are you not modest with your indiscretions? That woman (I) has ten sons, and I only have one from your father (the other nine were from extramarital relations)." As he died, he said to them, "all my property to one of my sons."

They did not know which he meant. They came before Rabbi B'na'a, who said to them "Go and strike your father's grave, until he arises and reveals to you to whom he left his inheritance." They all went, but the one that was his son did not go. He said to them, "All the property goes to him."

In this part of the story, the one son who cared about his father did not go, thus revealing himself as only legitimate child of this man and inheritor of his belongings. However, the other sons are not so pleased.

אזלו אכלו קורצא בי מלכא אמרי איכא גברא חד ביהודאי דקא מפיק ממונא מאנשי בלא סהדי ובלא מידי אתיוהו חבשוהו

They went and informed on him in the king's house, saying, "There is a man, one of the Jews, that takes money from people without evidence." They brought him and imprisoned him.

When the other sons go to the king's house, they claim that Rabbi B'na'a rules without evidence, because he awarded the inheritance before the father arose from the grave to give testimony. However, as the reader is aware, the test of Rabbi B'na'a was not about having the father speak, but about who is willing to desecrate the grave. That was the evidence he needed, thus allowing him to issue a ruling. Unlike the story with Rav Sheila, there is no initial dialogue between Rabbi B'na'a and the king's messengers who imprison him. In the first story, Rav Sheila produces Elijah as a witness to affirm his claims, while no such miraculous witness or evidence appears for Rabbi B'na'a. It is also important to note that in both stories, the Jewish litigants and the rabbis are aware of, and implement, a standard of evidence. The gentile court agrees to let Jewish courts adjudicate certain

monetary issues because they practice a certain normative approach to evidence, necessary for a well-functioning legal system.

The story continues:

אזלא דביתהו אמרה להו עבדא חד הוה לי פסקו לרישיה ופשטו למשכיה ואכלו בישריה וקא מלו ביה מיא ומשקו ביה לחברייא ולא קא יהבי לי דמי ולא אגריה

לא ידעי מאי קא אמרה להו אמרי ניתו לחכימא דיהודאי ולימא קריוהו לר' בנאה אמר לה זרנוקא אמרה לכו אמרי הואיל וחכים כולי האי ליתיב אבבא ונידון דינא

> *His wife went and said to them, "I had one servant. They cut off his head, they skinned him and ate his flesh, they fill him with water and their friends drink from him, and they have not paid me his worth and they have not rented him."*
>
> *They did not know what she said to them. They said, "Bring the wise man of the Jews and let him say. They called to Rabbi B'na'a and he said to them "She spoke to you about a water skin." They said, "Since he has all the wisdom, let him sit at the gate and judge cases."*

When his wife brings a riddle too challenging for the gentiles to solve, they call upon "the wise man of the Jews." The story implies that the gentile authority knew the caliber of man they had imprisoned, allowing the reader to understand more fully the dynamics of his imprisonment. It was not that he ruled without evidence, but his ruling, and his knowledge, might have been viewed as a threat to their power. However, like Joseph who successfully interprets what others cannot, his stock rises, and he is now authorized as a judge by the gentile authority, perhaps with greater authority than before. The text then concludes with two stories of laws written on the gate that Rabbi B'na'a interprets and finds flaws in, causing the gentile authority to amend the text and add, "the elders of the Jews say."

The conclusion of this story further demonstrates that Jewish courts and judges are allowed to operate, even by separate laws: one for gentiles and one proclaimed by the elder of the Jews. Rabbi B'na'a was allowed to rule, both at the beginning and end of the story,

within the boundaries set by the gentile authorities. He, like Rav Sheila, outwits and triumphs rhetorically over the gentile authorities, interpreting riddles and laws that they cannot. This story furthers the rabbinic imagination of the superiority of rabbinic judges to gentile ones, where the gentile authority ultimately sees their wisdom and cedes power to the rabbis.

b. Ta'anit 24b

Perhaps the most researched narrative in this collection is the story of Rava and Ifra Hormiz in b. Ta'anit 24b. This story is the final story in a series of four stories where rabbinic fasts fail to bring rain, a "self-critical assessment of rabbinic power and piety."[142] As Belser notes, this story touches on many themes, including rabbinic prayer, miracles, and relationships between rabbis and Babylonian rulers. For the sake of this chapter, we will focus more narrowly on how the story fits the trope of rabbinic authority overstepping and the relationship between rabbinic and gentile judicial authority.

ההוא גברא דאיחייב נגדא בבי דינא דרבא משום דבעל כותית נגדיה רבא ומית אשתמע מילתא בי שבור מלכא בעא לצעורי לרבא אמרה ליה איפרא הורמיז אימיה דשבור מלכא לברה לא ליהוי לך עסק דברים בהדי יהודאי דכל מאן דבעיין ממרייהו יהיב להו

אמר לה מאי היא בעין רחמי ואתי מיטרא אמר לה ההוא משום דזימנא דמיטרא הוא אלא לבעו רחמי האידנא בתקופת תמוז וליתי מיטרא שלחה ליה לרבא כוין דעתך ובעי רחמי דליתי מיטרא

בעי רחמי ולא אתי מיטרא אמר לפניו רבונו של עולם {תהלים מ"ז} אלהים באזנינו שמענו אבותינו ספרו לנו פועל פעלת בימיהם בימי קדם ואנו בעינינו לא ראינו אתא מיטרא עד דשפוך מרזבי דצפורי לדיגלת

אתא אבוה איתחזי ליה בחלמיה ואמר ליה מי איכא דמיטרח קמי שמיא כולי האי אמר ליה שני דוכתיך שני דוכתיה למחר אשכחיה דמרשם פורייה בסכיני

There was a man who was required to be flogged by the court of Rava for sexual relations with a gentile. Rava flogged him and he died. This matter was heard in the house of King Shapur, he wanted to afflict Rava. Ifra Hurmiz, mother of King Shapur, said to her son, "Do not meddle in the affairs of the Jews, for everything they request from their Master, God gives to them."

[142] Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity*, 137.

He said to her, "What does God give them?" "They pray and rain comes." He said to her, "This is because it is the time for rain. Instead, if they pray for mercy now, in the season of Tamuz, let rain come now." She sent to Rava a message, "Focus your attention and pray for mercy so rain will come."

He prayed for mercy, and rain did not come. He said before God, "Master of the Universe, 'God, with our ears we have heard, our fathers told us of Your works in their days, the days of old" (Psalms 44:2). But our eyes have not seen." Now, rain came until the gutters of Mechoza flowed to the Tigris.

His father came to him in a dream and said to him, "Who troubles the heavens this much?" He also said to him, "Change your place." He changed his place, and the next day he found out that his bed was slashed with knives.

In this story, like in b. Berachot 58a, a Jewish court punishes a man for sexual relations with a gentile woman. Neusner articulates that the similarities between these two stories indicates that "the Sasanians, as soon as they took power, checked up on Jewish courts which administered physical punishment," and attempted to curtail actions that infringed on Sasanian authority.[143] The man being punished dies. While Belser states that Rava "claims the right to exercise capital punishment," death was not the goal of the punishment, but an unintended consequence. Because the King had a negative reaction and sought to punish Rava, it might be inferred that minimally the King viewed this as an intrusion into his sole right to administer capital punishment, whether or not that was Rava's intent. King Shapur's mother, Ifra Hurmiz, steps in to save him. Both this story and others "preserve a memory that Shapur II's mother did believe Jews were supernaturally powerful, therefore tried to wing their favor…and even warned her skeptical son against interfering in their affairs."[144] Shai Secunda suggests that Ifra Hurmiz's statement is a reference to disputations that King Shapur II attempted to hold with various religious minorities, using an Iranian loanword, *paykar*. If

[143] Neusner, *The Age of Shapur II*, 37.
[144] Jacob Neusner, "Babylonian Jewry and Shapur II's Persecution of Christianity from 339-379 A.D.," *Hebrew Union College Annual* 43 (1972): 95.

true, this provides one piece of evidence suggesting a willingness to engage in interreligious conversation – but with Sasanian rule ultimately on top.[145]

Rava is initially unsuccessful in bringing rain, aligning this story with others about faulty rabbinic power, where rabbis struggle to perform the miracles they desire. This story is about rabbinic power and relationships in two directions: between Rava and God and between Rava and the gentile government. In both cases, Rava gets his way, but neither are without struggle. He ultimately succeeds in bringing torrents of rain upon the city. The dream with his father brings two critiques of Rava, suggesting that both God and King Shapur did not appreciate this demonstration of power. Rava narrowly escapes death after interpreting the dream and sleeping where those who wished to kill him could not find him. Rava indeed confirms Ifra Hurmiz's statement of God's granting of their prayers for rain but does not win the favor of King Shapur. Thus, Rava is not granted any additional power to judge or administer capital punishment, unlike Rav Sheila and Rabbi B'na'a. Nevertheless, he is permitted to continue to judge and act in his previous capacities.

There are many texts that refer to King Shapur I, King Shapur II, and Ifra Hurmiz. Sometimes, they can be specifically connected to the correct Sasanian ruler, but other times, the name King Shapur is generically used to refer to a Persian ruler.[146] The presence of such character becomes an opportunity to define the boundaries of the rabbinic self against the gentile authority in Babylonia. As Jason Mokhatrian articulates, "the rabbis conceived of Babylonian rabbinic identity as also being shaped by how others, including a Persian imperial king, categorize and understand a Jew's actions."[147] This story employs the Persian

[145] Secunda, *The Iranian* Talmud, 62, 128.
[146] Mokhtarian, *Rabbis, Sorcerers, Kings, and Priests*, 74-5.
[147] Mokhtarian, 92.

king and his mother as two stock characters with different external perspectives on the supernatural powers of Jews and their connection to God. By placing doubt in the mouth of an Other, not the self, the rabbis preserve their self-critique, highlighting the tenuous nature of their connection with God and the care they must take in not upsetting gentile authorities.

This story highlights the tenuous position of the rabbis and their judicial authority present throughout this chapter: they had some power over certain areas of jurisprudence, but only functioned that way based on the authority granted to them by the gentile authority. Different parts of Jewish judicial society had interactions and relationships with the king or other parts of gentile governance. And even so, the relationship was a strained and imbalanced one, with the rabbis in a precarious position to exercise their power.

b. Gittin 14a-b

In this final story, Rabbi Dostai ben Rabbi Yanai and Rabbi Yosei bar Keifai are tasked by Rabbi Achai to collect and bring back silver vessels that he had lent to people in Nehardea. They are Palestinian rabbis venturing into the world of the Babylonian Jews, setting up this story as a conflict between the two Jewish communities. According to the previous discussions in the *Bavli*, the sender (in this case the borrower) maintains full responsibility for the object until it reaches the owner, Rabbi Achai. Here is the story as it is told in the *Bavli*:

ר' אחי בר' יאשיה הוה ליה איספקא דכספא בנהרדעא אמר להו לר' דוסתאי ב"ר ינאי ולר' יוסי בר כיפר בהדי דאתיתו אתיוה ניהלי אזול יהביה ניהליה אמרי להו נקני מינייכו אמרי להו לא אמרי להו אהדריה ניהלן

ר' דוסתאי ברבי ינאי אמר להו אין ר' יוסי בר כיפר אמר להו לא הוו קא מצערו ליה א"ל חזי מר היכי קא עביד אמר להו טב רמו ליה כי

אתו לגביה א"ל חזי מר לא מיסתייה דלא סייען אלא אמר להו נמי טב רמו ליה א"ל אמאי תיעבד הכי

א"ל אותן בני אדם הן אמה וכובען אמה ומדברין מחצייהן ושמותיהן מבוהלין ארדא וארטא ופילי בריש אומרין כפותו כופתין אומרין הרוגו הורגין אילו הרגו את דוסתאי מי נתן לינאי אבא בר כמותי

א"ל בני אדם הללו קרובים למלכות הן א"ל הן יש להן סוסים ופרדים שרצים אחריהן א"ל הן א"ל אי הכי שפיר עבדת

Rabbi Achai, son of Rabbi Yoshiya, had a silver vessel in Nehardea. He said to Rabbi Dostai, son of Rabbi Yannai, and Rabbi Yosei bar Keifar, "When you come, bring it to me." They went and it was given to them. The borrowers (current custodians) said, "Acquire it from us (so that you will be responsible for the vessel)." The rabbis said to them, "No." They responded, "Give us the vessel back.

Rabbi Dostai, son of Rabbi Yanai, said, "Yes." Rabbi Yosei bar Keifar said, "No." They made Rabbi Yosei bar Keifar suffer. He said to Rabbi Dostai, "Master, do you see what they are doing to me?" He replied, "Good, hit him."

When they came before Rabbi Achai, Rabbi Yosei bar Keifar said to him, "Masster, he did not support me, he even went as far to say, 'Good, hit him.'" Rabbi Achai said to Rabbi Dostai, "Why did you act this way?

He said, "Those people are a cubit, their hats are a cubit, they spoke from their middle, and their names were terrifying: Arda, Arta, and Pili B'reish. If they were to be told, "Capture," they would capture. If they were to be told, "Kill," they would kill. If they had killed Dostai (me), who would give my father Yannai a son like me?"

He said to him, "Are these people close to the government?" He responded, "Yes." "Do they have horses and mules that run after them?" He responded, "Yes." "He said to him, "If so, you have acted properly."

In this story, Rabbi Dostai and Rabbi Yosei bar Keifar disagree about how to handle the situation with Rabbi Achai's borrowers. While neither are willing to do the acquisition to become responsible for the silver vessel, Rabbi Yosei bar Keifar wanted to take it anyway, while Rabbi Dostai was willing to leave without the object because of the borrowers' threats. In the story immediately preceding this one in the Bavli, Rav Yosef bar Hama initially agrees to do the acquisition but ultimately escapes with the object, without performing the act of acquisition. He is praised for his trickery by Rav Sheshet.

However, this case presents the opposite scenario: trickery is not the way out. Rabbi Dostai explains that the people are a cubit, their hats are a cubit, they spoke from their middle, had terrifying names, and would capture or kill anyone if ordered to. Rashi interprets that this means they were very large and had deep, terrifying voices.[148] Rabbi Dostai was fearful for his life and thus wished to comply with their orders. The final and most significant line is when Rabbi Achai asks his final two questions, "Where they close to the government? Did they have horses and mules that run after them?" Herman argues that

> mention of horses and mules suggest that some Jews were part of the elite, perhaps filling a role in the military makeup of the region. Indeed elephants, typically associated with the army, might also be hinted at. More generally, the allusion to those in close contact with the ruling authorities suggests a striking degree of confidence and autonomy. The Babylonian villains of the story have usually been identified with the Exlirachate.[149]

This story portrays the Babylonians that Rabbi Dostai and Rabbi Yosei bar Keifar encountered as acculturated in dress and name, connected to the Exilarch and thus close to the government, and able to wield judicial power to both capture and kill people on behalf of the court. In the Yerushalmi version, the Babylonian court is explicitly mentioned while in the Bavli it is only implied.[150] Similar to the texts in b. Baba Kama and b. Sanhedrin addressed earlier in this chapter, the Exilarch is portrayed with significant power and ties to the gentile authority. However, this text is unique among those in this chapter in its complete and unchallenged endorsement of the Exilarch's ability to capture and kill. In all the previous texts the Exilarch had power over some internal Jewish communal matters and in all the other courts the rabbis are portrayed as infringing on Babylonian judicial authority. While

[148] Rashi on b. Gittin 14b "These people were very tall, their voices were deep and it appears as if their speech comes from their stomach."
[149] Herman, *A Prince without a Kingdom: The Exilarch in the Sassanian Era*, 69.
[150] Herman, *A Prince without a Kingdom,* 68-69.

these internal mechanisms are different, the story concludes affirming the rabbinic imagination of a powerful Babylonian Jewish court, with power to judge and enforce their rulings.

Conclusion

Each of these texts demonstrate familiarity between gentile and Jewish courts and outline the tensions and imbalances between them. The Exilarch is portrayed with a special connection to the gentile rulers and wielding that power over Jewish communities and courts. The four stories about rabbinic power and authority demonstrate this subservience to the gentile structure while finding their own ways to exert their authority. In the rabbinic mind, they can find a way to outsmart the governing officials and rule over the Jews, using idealized rabbinic traits such as miracle-making, ingenuity, and other intellectual tricks. These texts demonstrate the uneasiness the rabbis had with the limits placed on them by gentile authorities. The initial trope is only somewhat upheld: in two cases the rabbis end up with increased power, while in two others their powers remain unchanged. All four of them describe subservience to gentile judicial authority and are wary of encroaching on their authority or even angering them even if they are acting within their rights. Just as the *halakhic* texts demonstrate a familiarity and engagement with gentile laws, these stories recognize the balancing act required of the Jewish courts, which have some power, but ultimately must answer to the gentile authorities.

CONCLUSION

Throughout this study multiple perspectives about the gentile legal system in the Bavli. Many of the texts analyzed contained themes that were analyzed separately, hampering our ability to combine these perspectives. Each text is reviewed briefly here, combining analyses from all three chapters.

Texts that demonstrate the use of both gentile and rabbinic courts

b. Gittin 88b – This *sugya* debated the validity of a *get* compelled by Jewish and gentile courts. It includes the *halakhic* principle *lifneihem* supporting Rabbi Tarfon prohibiting Jews from using gentile courts, even though this principle is not cited anywhere else in the Bavli. It further contained the much more lenient position of Rav Mesharshya, that a *get* compelled by a gentile court is valid by Torah law, but invalid by rabbinic law to dampen their authority. His statement, while ultimately rejected, points to the important conclusion that the tension between Jewish and gentile legal authorities surrounds questions of authority and power as much as religious law.

b. Gittin 9a-11a – The discussion encompassing three *Mishnayot* in b. Gittin centers on documents produced by gentile courts or with gentile witnesses. Echoing Rav Mesharshya in b. Gittin 88b, the prohibition on using gentile courts for a *get* is a rabbinic-level prohibition, not rooted in Torah law. It includes an opinion by Rabbi Akiva that further validates documents produced by *gentile* courts. This series of texts demonstrates that Jews used gentile courts, sometimes in places where Jews couldn't sign documents and other times for other reasons, including using witnesses with gentile names. Many opinions validate this

approach, even while ultimately the *sugya* rejects the validity of such a *get*. This extended section demonstrates multiple approaches to relying on gentile courts and how concerns about rabbinic authority and power impact the development of religious law.

b. Berachot 58a – This story, the first of four analyzed in Chapter 3, continues the narrative of Persian courts having influence over rabbinic courts (perhaps evidenced by the text about the Exilarch in b. Sanhedrin 5a). Even as this power is accepted by Rav Sheila, the story undermines the wits and power of the gentile court. When Rav Sheila kills the man, he relies not on the power granted to him by the gentile authority, but because of his ability to circumvent their power. This story, like the one in b. Baba Batra 58a and others, reinforces the reality (or concern) that Jews have access to and rely on gentile courts to override the attempted exertion of rabbinic authority.

b. Baba Batra 58a – This story similarly involves a Jew appealing to a gentile court. His complaint involves the lack of evidence used in Rabbi B'na'a's decision. This complaint stands in contrast to the portrayals of gentile courts in b. Gittin 28b-29a and b. Baba Batra 173b, which both suggest the lack of evidence used in gentile courts. Ultimately, Rabbi B'na'a proves his mental agility and is granted permission by the Persians to offer judgment and differentiate Jewish and gentile law. Rather than harmonizing Jewish and gentile law, as might be the case in b. Baba Batra 54b-55a, b. Baba Batra 173b, and b. Baba Metzia 73b, this story elevates the differences between the courts.

Texts that demonstrate a reliance on or acquiescence to gentile law

b. Yoma 77a – This story, offering an angelic explanation for why Jews had to pay taxes in Persia, again demonstrates the conformity of Jews to Persian tax law. Similar to the cases brought in b. Baba Kama 113a-114a, the Jews could not avoid paying these gentile taxes.

b. Baba Batra 54b-55a – This *sugya* focuses on land ownership and the attempts to reconcile multiple statements of Shmuel, including *dina d'malkhuta dina*. In it, multiple versions of gentile law appear: Abaye says gentiles acquire land with a document and that whoever pays the tax profits from and owns the land. If *dina d'malkhuta dina* applies, it appears to contradict Shmuel's other teaching that during the window of time between the gentile receiving money for the land and a Jew receiving a document, the land is ownerless, and anyone who take possession by working the land acquires it. While the *sugya* concludes by siding seemingly against *dina d'malkhuta dina*, the final line is a repetition of this line in the mouth of Ukvan bar Nechemia, the Exilarch. This *sugya* demonstrates knowledge of gentile law by the rabbis and an interest by some in following such law. It also introduces the Exilarch as a third locus of power, in addition to the rabbis and the gentile legal system.

b. Baba Metzia 73b – Similar to b. Baba Batra 54b-55a, this *sugya* shows two rabis, Rav Mari bar Rachel and Rava engaging with gentiles, and utilizing gentile law to their advantage instead of relying on Jewish law. This story is followed by two others that rely on the gentile law to determine property ownership through the paying of taxes, and the right of the one who pays taxes to force into servitude the people they paid for. Rashi makes the connection to b. Baba Batra explicit, using *dina d'malkhuta dina*, but the connection is absent from the

sugya itself. Both rely on gentile law to determine property ownership and demonstrate a willingness to act according to those laws when it is beneficial for them.

b. Baba Batra 173b – While also discussing Persian law, the editing of this *sugya* across time mixes multiple perspectives with different approaches to gentile laws. As was shown, the *Amoraic* layer had a neutral or positive approach to relying on Persian law, while the *Stammaitic* layer turned "This is the Persian law" into an objection and debates what the Persian law is before leveling a likely false charge to undermine the Persian law's validity. Unlike the previous cases, the negative attitude toward gentile law is first noted here, but out of place.

b. Nedarim 27b-28a – This *sugya* is repeated entirely in b. Baba Kama 113a-114a.

b. Baba Kama 113a-114a – This extended discussion on the relationship between Jews and gentiles opens with a discussion on three *mishnayot* that are all limited by *dina d'malkhuta dina*. In each situation, Jews are prohibited from deceiving customs officials unless they are acting outside of the law. When they are authorized representatives of the government, they must be followed. Other debates follow about whether a Jew may use trickery against a gentile in court or can steal from a gentile. Importantly, one opinion arises that allows Jews to use gentile courts if their laws would be advantageous to the Jew, echoing the texts in b. Baba Batra 54b-55a and b. Baba Metzia 73b. The *sugya* also uses *dina d'malkhuta dina* to affirm that the king and his messenger took trees lawfully to build a bridge, negating their status as stolen property. It concludes with a discussion about the ability of Jews to engage in

the gentile court system, limiting the prohibition to a very specific kind of course, a court of villagers who relies on the testimony of one witness alone without an oath. This extended discussion shows Jewish engagement with gentile court by both force and choice, knowledge of gentile law related to both taxes and courts, and limitations on various prohibitions on engaging with gentiles.

Texts that negatively portray gentile courts

b. Yevamot 63b – This *sugya* portrays the *Habbarim* as immoral, walking naked in public and accepting bribes. The fact that their courts accept bribes provides an ironic comfort to Rabbi Yochanan, who is mollified that the Jews can leverage this to their protection. This story, while negatively portraying gentile courts, underscores the reality that Jews had to navigate those systems, unable to avoid them entirely.

b. Gittin 28b-29a – Gentile courts that take bribes appear also in this *sugya*, as one reason not to trust them when they announce the execution of an individual. This text portrays gentile courts as self-interested, untrustworthy, and negative. It does include one opinion that after a verdict is sealed, the court will no longer take a bribe, suggesting a limited sense of fairness or justice. While it introduces similar doubts about rabbinic courts, those doubts come from a place of virtuosity: the rabbinic court might change its verdict based on exonerating evidence.

Texts that demonstrate rabbinic reliance on gentile authority

b. Sanhedrin 5a – This text raises up the influence of the Exilarch to have authority over judges in Palestine, run its own court system, and mediate the power granted to other Jewish courts, perhaps by the Persian government.

b. Baba Kama 58b – Similar to b. Baba Batra 54b-55a, the Exilarch is demonstrated to have a connection to something Persian, either the Persian palm or Persian law. This text, in conjunction with the statements in Baba Batra and Sanhedrin 5a, portrays the Exilarch as intertwined with the Persian legal system, either interested in upholding Persian law or leveraging their law to exert authority over other Jewish courts. This portrayal might bely a negative association between the Exilarch and Persians, but due to ambiguities in the text, a specific value judgement cannot be placed on this collection, rather a description (either real or imagined) of the ties between them.

b. Gittin 14a-b – This story reinforces the connection between the Exilarch and the Persians through the acculturated henchmen they meet when collecting leined property. This story emphasizes the trickery rabbis were allowed to employ and the limitations of such trickery in the face of judicial power. Whereas rabbinic cleverness allows the rabbis to escape in the other three stories analyzed, here raw power wins out. Uniquely, this text portrays the court of the Exilarch with the power granted by the Persians to capture and kill individuals, a claim unconfirmed by other texts.

b. Ta'anit 24b – While not connected to the Exilarch, this story shows another rabbi, Rava, who had a relationship with the Persian rulers, this time the mother of King Shapur, Ifra

Hormiz. Rava unintentionally oversteps the limits of rabbinic authority when a man dies during a punishment meted out by his ruling. Rava survives an attempt on his life and continues to rule, but is not explicitly granted such power, like the rabbis in b. Berachot 58b and b. Baba Batra 58a.

Across many of the texts, the gentile courts and laws are negatively portrayed. Gentile actions are compared to stealing, courts are accused of taking bribes, they are untrustworthy, and exert their authority over Jews in a variety of ways. Even so, the rabbis demonstrate an awareness of Persian law, a willingness to use their courts and laws when advantageous to them, and a recognition that Jews use gentile courts both when forced to (either on trial or summoned as a witness) and by choice, to draw up a *get* and complain about rabbinic courts. The phrase "Persian law" is used twice in the final construction of *sugyot* as pejorative (b. Baba Batra 173b and b. Baba Kama 58b), but other times the gentile law (or "their law") is used to benefit the rabbis or Jews in their dealings with each other and with gentiles.

Only a few of these texts directly relied on Talmudic principles such as *dina d'malkhuta dina* to support engagement with gentile laws and courts. Other texts, like parts of b. Gittin 9a-11a, removed the barrier of engagement by changing which witnesses were responsible for witnessing the status change of a divorce. Then, the debate centered around discouraging Jews from using the gentile courts or relying on gentile witnesses for fear of other, prohibited engagement. Other sources used the facts on the ground, like a rental agreement already in place or gentile tax law to justify Jewish actions. Lastly, rabbinic courts often confronted gentile authority and power, acquiescing to their demands in the case of

witnesses and leined property, or finding ways to outsmart them. Even with the negative portrayal of gentile courts, these texts demonstrate the ability to use them or justify engagement with them.

All of these contextual factors highlight the fluidity between the courts and the responsiveness of rabbinic law to the specific situations at play. A core element in these discussions is self-interest. Not an inherently positive or negative approach, different interests in the rabbinic world guide decision making. While certainly there was an interest in the rabbinic world to distinguish the rabbinic legal self from Others, that interest sometimes conflicted with the authority of the more powerful gentile system, the actions of Jews at that time, or the desire to gain an advantage by using the gentile court system. Instead of focusing on a specific principle or approach to gentile laws, each of these factors was weighed, resulting in a porous boundary between rabbinic and gentile legal systems.

Living in the diaspora as a minority group, the rabbis navigated such boundaries not by building strict walls of separation, but deftly weaving the two systems together. By accommodating the power of the gentile court and not fighting it, the rabbinic courts continued without threatening gentile power. The rabbis further recognized that Jews already used and relied on gentile courts and restricting their access to such courts risks losing their influence altogether. Paradoxically, by ceding some power, the rabbinic legal system grew, carving our unique areas of influence while never rejecting the gentile system wholesale. The Bavli, therefore, generates rabbinic legal identity by constantly engaging with the gentile court, changing the level of acceptance based on generation, location, power, current behavior, and other factors. This approach privileges reality over ideology, accommodating the reality of diasporic Judaism while creating a distinct Jewish legal identity.

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