

כל דבר שבמנין צריך מנין אחר להתירו

מבוא

What is the status of rabbinic decrees that were made generations ago? Will these decrees still apply even if the reason for the decree isn't intact? The גמרא in ביצה ה' דף ה' says that any decree that was made by a בית דין needs a different בית דין to revoke the decree. What is the source for this? Would any בית דין today really be able to uproot decrees made by the חכמים generations before?

מקור

One of the sources that the גמרא ביצה ה' brings for this comes from the topic of כרם רבעי. The פרשת קדושים in תורה says that when one takes ownership of a field the crops that grow during the fourth year are קדש הלולים לה' and belong to ירושלים. While one could either physically bring his fruits to ירושלים or redeem the monetary value of his fruits in ירושלים, The משנה מעשר שני¹ states that in an effort to beautify ירושלים with fruits the Rabbis made a decree that if

¹ פרק ה' משנה ב'

you lived within a day of walking distance to ירושלים you had to bring your fruits to ירושלים. The גמרא in ביצה records that רבי אליעזר who lived within one day of ירושלים had כרם רבעי. Even though רבי אליעזר lived during the time of the חורבן and the rationale to beautify the city of ירושלים didn't apply, nevertheless because of this Rabbinic decree רבי אליעזר thought he was obligated to bring his fruits up to ירושלים. Instead of bringing his fruits, רבי אליעזר decided to just make his fruits הפקר making it the responsibility of the people who collected his fruits to bring to ירושלים. His תלמידים alerted him that the decree had been nullified by רבי יוחנן בן זכאי and he was no longer obligated to bring his fruits to ירושלים. The גמרא proves from this episode that we see even if the reason for a rabbinical decree doesn't apply anymore one is still subject to the decree. If it wasn't for רבי יוחנן בן זכאי uprooting the decree the decree would still be in place even though ירושלים was in a state of חורבן.

שיטת תוספות

ביצה² in a number of places seems not to be consistent with the גמרא presented above. The משנה תרומות brings the rabbinic decree that one can't drink פרק ה:ד water, wine or milk if they were left uncovered because a snake might have made the משקה poisonous. Additionally, the משנה ביצה ל"ו says that one can't dance on שבת because of the concern of שיעור כלי יתקן. However, תוספות says

² דף ל. ד"ה תגן ודף נ. ד"ה והאידנא

that these rabbinic decrees don't apply anymore. The decree of מגולין מים doesn't apply anymore because snakes are no longer common. Additionally, תוספות also says that the decree of dancing on שבת is no longer enforced because the concern of כלי שיעור doesn't apply anymore, as we are not proficient in fixing instruments. The question becomes how are we to understand this opinion of תוספות? Even if the rationale for these decrees don't apply based on the גמרא in ביצה we would still need a בית דין to uproot these decrees.

תירוצים לתוספות

The בית יוסף³ answers that the גזירות of מגולין מים and dancing on שבת fall under a unique category of גזירות. The גזירה by the topic of מגולין מים⁴ says that the גזירה wasn't made for all Jews. Rather, the גזירה was only made in certain places that had snakes. Therefore, since snakes are not found today, no places would fall under the requirements of the גזירה. The בית מאיר⁵ continues to explain the גזירה by saying that also the גזירה of dancing on שבת was also only for a few select cities where people were proficient in fixing utensils. Therefore just like the decree of מגולין מים was only for a few places and since snakes aren't common the decree goes away the same logic would apply to the decree against dancing on שבת. The שו"ת תורת

³ אור החיים שלט:ג

⁴ עבודה זרה דף לה. ד"ה חדא

⁵ סימן שלט:ג

⁶חסד is bothered by this approach because תוספות never said that the גזירה of dancing on שבת was only for a few select cities and תוספות only mentioned this detail about the decree of מים מגולין.

Some suggest that תוספות is holding like the רא"ש כלל ב סימן ה. The רא"ש there explains that “ דכיון שטעם האיסור ידוע, אם “ נתבטל הטעם בטל האיסור ממילא if the decree has the reason in the decree itself and that reason doesn't apply anymore we can uproot the decree. Therefore, since the decrees of מים מגולין and dancing on שבת had the reason placed in the decree and these reasons don't apply anymore we don't have to be concerned. However the רא"ש explains that when it came to כרם רבעי the reason was to ensure ירושלים had fruits and therefore even though רבי אליעזר lived during the חורבן the גזירה would still apply.

שיטת הרמב"ם

The רמב"ם in הלכות ממרים ב:ב holds that in order to uproot a decree the current בית דין has to be greater in numbers and in wisdom. The ראב"ד is bothered by this requirement of being greater in wisdom and says if this is true how are we to understand the רבי כרם רבעי where גמרא ביצה ה' regarding

⁶ אורח חיים יז:

גזירה was the one who uprooted the גזירה. was he greater in wisdom than the בית דין before?

The answers for the רבי יוחנן בן זכאי רמב"ם that was greater in wisdom than the previous בית דין and therefore able to uproot the גזירה. The משנה להם suggests that when it came to כרם רבעי the משנה itself provided a way out. The משנה there said in a case where there was too much fruit already in ירושלים not everyone had to bring fruits to ירושלים. The משנה להם explains that because the משנה had a קול already placed in the decree the רמב"ם would say you can be more מקל in releasing the גזירה even if the normal qualifications of being greater in wisdom and numbers didn't apply.

סיכום

To conclude the status of Rabbinic decrees is a discussion up for debate. Based of the רא"ש (and potentially תוספות) if the reason for a Rabbinic decree is mentioned in the decree itself and that reason no longer applies we might be able to get rid of that decree. However according to the רמב"ם even if the reason doesn't apply anymore the decree would still be intact unless you have a בית דין that is greater in numbers and wisdom. One נפקא מינה to highlight these different approaches can be the topic of dancing on שבת. According to the רא"ש since the reason the Rabbis made this decree was because of שיעור כלי יתקן כלי שיעור and that doesn't apply anymore it would potentially be מותר. However according to the רמב"ם the decree would still be intact. Whether one

holds like the ר"א"ש or the רמב"ם one can't underestimate the importance of גזירות made by בית דין. The תורה says עשו משמרת לז"ל which means משמרת את משמרת לז"ל and gives לז"ל the ability to make גזירות to protect the תורה. Just like one understands why a sacred place would have security around it we must embrace the גזירות made by לז"ל to guard our spiritual life.