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woman who was not given a *get* by her husband, although they were divorced civilly. However, other than in such matters, where both civil and Jewish laws play a role, it is difficult to imagine many areas where there would be a conflict between Jewish and secular law. Rather, in purely financial matters, the issue that may arise is that Jewish law provides a higher standard, so that what may be permitted under civil law would not be permissible under Jewish law.

Certainly, despite opinions expressed to the contrary in recent blog postings, both American civil law and Jewish law prohibit the types of transactions that recently came to light in New Jersey, in which prominent members of the Sephardic community were charged with crimes ranging from money-laundering to the illegal sale of body parts. And yet, expressions of allegiance with the accused, many of whom are rabbinic leaders of the community, are to be found in articles and blog postings. Religious followers of the accused rabbis assume that there must have been a good reason, even one based upon halakhah, for the alleged criminal behavior. Any argument that Jewish law should govern in these matters, which would result in a different outcome concerning the accused, is specious. Jewish law forbids the alleged behavior of these accused individuals. In fact, there would be no need to apply the principle of *dina de-malkhuta dina* to the New Jersey case and doing so would only serve to discredit halakhah and the Jewish community. One thing is clear: the principle of *dina de-malkhuta dina* cannot insulate those who commit acts of wrongdoing, whether under the standards of civil or Jewish law.

National and International Law, and Jewish Law

MICHAEL J. BROYDE

The obligation to obey local law has a long Jewish tradition; it is part of the very fabric of Jewish law. The Talmud (Gitten 10b) recounts, in the name of Rabbi Samuel (a first generation *amorah* c165 to 257 CE), that the "law of the land is the law." While this obligation is typically invoked to comment on the relationship of halakhah to national or local law, it is really about the obligation to obey secular law generally. The halakhic doctrine of *dina de-malkhuta dina* provides, in certain circumstances and for particular purposes, that secular law is legally effective under Jewish law, as the talmudic sages mandated that Jews obey secular law just as Jews must obey Jewish law. A survey of the scope of the obligation to obey secular law generally is well beyond the scope of this article.[1] However, a brief review of the relevant theories is required to appreciate how *dina de-malkhuta dina* impacts the acceptance of secular law in the Jewish tradition.

If the underlining theory of *dina de-malchuta* is to build a safe society, secular law is generally valid only when the rules protect us against others, but might not be binding, for example, when secular law merely protects us from ourselves.

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There are at least five principal perspectives explaining why *dina de-malkhuta dina* is a binding doctrine in Jewish law:

- R. Samuel b. Meir (Rashbam, France, c. 1080/85-c. 1174), posits that the ruler of a country governs with the consent of the governed, and law is a form of social contract binding on the community because all agree to a process that creates law, even if they do not agree with the content of the final law.[2]
- R. Solomon b. Isaac (Rashi, France, 1040–1105), posits that the ability of society to make law is a fulfillment of the Noahide obligation to legislate, the results of which are generally binding even on Jews, except in specific cases (such as divorce).[3]
- R. Jacob b. Meir Tam (France, 1100–1171), posits that the obligation to obey secular law is grounded in the ability of secular authority to transfer property through eminent domain (*hefker beit din*).[4] A related theory assumes that secular law has the same general power as Jewish kings or Jewish courts.[5]
- R. Shlomo Luria (Maharshal, Lithuania, 1510–1573) posits that the ordered structure of society requires that law exists, and that law cannot be solely defined by religious faith. "If this is not the case, the nation will not stand and will be destroyed." Communities need law; without it, society will collapse into anarchy.[6]
- R. Nissim b. Reuben Gerondi (Spain, approximately 1310–1375), posits that the people (perhaps only the Jewish people) reside where they do solely by the grace of the king or government that owns that land. Just as one must obey the wishes of one's host when one visits in another person's home, so, too, one must obey the wishes of one's host nation when one resides in a country.[7]

Each of these theories gives rise to a particular stance concerning the limits of the duty. A social contract theory, such as Rashbam's, limits the rule of law within Jewish law to those areas of law where implied or actual mutual agreement is the basis of law. Secular law is binding on individuals in the same way as any mutually agreed upon rule; it is not the geography that makes the law, but the acceptance. On the other hand, while Rashi's theory — that secular law is a fulfillment of the Noahide obligation of *denim*, laws — provides a much clearer theological basis for obedience to secular law, it would limit such a rule to those secular laws that are not inconsistent with Noachide law. Similarly, those whose theory of *dina de-malchuta dina* is grounded in property law might limit the need to obey secular law to laws about money, but not (for example) a law prohibiting adopted siblings from marrying. If the underlining theory of *dina de-malchuta dina* is to build a safe society, secular law is generally valid only when the rules protect us against others, but might not be binding, for example, when secular law merely protects us from ourselves. Those who limit the law's binding authority to its coercive authority to expel might claim that the duty to obey the law only pertains to the Diaspora, and not to the land of Israel or her laws.[8]

This complex conversation among Jewish law authorities on the type of legislation that may be implemented though *dina de-malkhuta dina*, occurs on the pages of the *Shulkhan Arukh* itself. Three theories again predominate. First, R. Caro (Sefad, d. 1585) rules that secular law is halakhically binding only to the extent that it directly affects the government's financial interests. Thus, secular laws that impose taxes or tolls would be valid under Jewish law, but laws for the general health and safety of society would not.[9]

Second, Rema (Kracow, d. 1583) agrees that secular laws directly affecting the government's financial interests are binding, but adds that secular laws that are enacted for the benefit of the people of the community as a whole are also, as a general matter, binding under Jewish law. In this model, all health and safety regulations would also be binding.

Finally, R. Shabbetai b. Meir ha-Kohen (Shakh, Lithuania, d. 1662), disagrees with Rema in one respect. He believes that even if secular laws are enacted for the benefit of the community, they are not valid under Jewish law if they are specifically contrary to indigenous halakhic precepts.[10] Thus, general health and safety rules would be binding. Where, for example, Jewish law rules that rooftop railings must be about a meter high, a secular law setting a lower height would not be accepted as halakhically valid.

There is substantial debate among halakhic authorities as to which approach to follow. Nevertheless, it seems that most modern authorities agree that, at least outside of the State of Israel, Rema's view should be applied, and such has been the view of all four of the halakhic deans in America from the previous generation: Rabbis Moses Feinstein (Minsk, 1985–1986), Joseph Elijah Henkin (New York, 1880–1973), Joseph Baer Soloveitchik (Boston, 1903–1993), and Joel Teitelbaum (New York, 1888–1979). In this view, almost all applications of secular law are valid under Jewish law, at least when they address matters of finances, health, and safety.

Furthermore, as international law expands its jurisdiction and legal framework, there is no reason to assume that this same halakhic ruling would not also apply to it; that is, broad doctrines of law would be binding as the law of the land. Therefore, international law — law of a single sovereign authorized by many nations to create binding law — would be no less binding as a form of *dina de-malkhuta*. This would seem no different than the origins of the federal government in the U.S., which derived its authority from a ratified treaty (constitution) of thirteen sovereign states. Such a federal authority would seem valid from the view of halakhah.

To conclude: Jewish law has strong religious doctrines compelling those who obey Jewish law to obey the fair and just laws of the land. The thrust of contemporary Jewish law as it has been understood in America is that secular law in America is religiously binding as a matter of halakhah in every situation in which the secular government (local, state, national, or even international) creates rules and regulations for the betterment of the society we live in.

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[1] R. Shmuel Shilo's encyclopedic *Dina de-Malkhuta Dina* is an excellent resource.

[2] Commentary of Rashbam to B *Bava Batra* 54b, *s.v. ve-ha'amar Shemuel dina de-malkhuta dina*. A similar view is taken by Rambam, *Gezela va-Aveda* 5:18, and others.

[3] Rashi, B *Gittin* 9b, *s.v. kesherin, hutz*. See also R. Hayyim Hirshenson, *Malki ba-Kodesh* 2:2.

[4] Responsa of *Tosafot* 12; this *teshuvah* is sometimes cited in the name of R. Jonah b. Abraham Gerondi (Spain, c. 1200–1263).

[5] R. Isaac Caro cited in *Avkat Rokhel* 47 and discussed in R. Shmuel Shilo, *Dina de-Malkhuta Dina* and R. Abraham Dov Ber Kahana-Shapiro, *Devar Avraham* 1:1.

[6] Yam Shel Shlomo, B *Bava Kama* 86:14.

[7] Commentary of R. Nissim to B *Nedarim* 28a, s.v. *be-mokhes ha-omed me-elav*. The explicit limitation on *dina de-malkhuta* not applying to a Jewish government is first noted by R. Eliezer b. Samuel of Metz (France, c. 1115-c. 1198).

[8] As R. Nissim b. Reuben Gerondi suggests and a small number of contemporary authorities in Israel speculate; see Vilozhny v. The Great Rabbinical Court, judgment 36(2) 733) (Israeli HCJ 323/81) per Justice Menachem Elon.

[9] *Shulkhan Arukh*, op. cit., 369:6, 11.

[10] *Siftei Kohen (Shakh)* on *Shulkhan Arukh, Hoshen Mishpat* 73:39. Thus, for example, according to *Shakh*, secular law can require that one return lost property in a case that halakhah permits but does not mandate that it be returned, but cannot permit one to keep a lost object that halakhah requires be returned.