

Law Abiding Citizens *Dina D'Malchusa Dina*

“Jack, the founder and president of a once successful menswear company, was forced to put his company into corporate bankruptcy due to the soft economy. His creditors were instructed to divide the company’s assets, giving them a return of approximately ten cents on the dollar. Albert, an old friend of Jack’s, had extended him a line of credit throughout the previous year, and had shipped him raw materials amounting to the sum of \$340,000. Immediately after Jack’s company filed for bankruptcy, Albert informed Jack that he was waiting to be paid in full, and that he expected Jack to sell his private property to cover the debt. In beis din, Albert insisted that since Jack was an observant Jew, he was personally liable to pay and could not exempt himself by declaring corporate bankruptcy. Jack responded that although he did everything in his power to maintain his company, he was careful not to order any merchandise from Albert after he knew that he was closing. He had run an honest and upright operation and had never intended to hurt any of his creditors. Does Jack have to sell his home to repay Albert?” (Community, “Financial Stress,” July 1, 2009).

Torah law requires debtors to repay their loans. In a case like “Jack’s,” was he personally responsible for the debt, as “Albert” claimed? Or because Albert’s loan was extended to an entity – the company – was it subject to the arrangements put in place by the bankruptcy proceedings, in accordance with secular law?

As Jews, are we obligated to obey secular law? If so, does our obligation apply to all legislation without exception, instituted by any governing body? What happens if secular law conflicts with Torah law?¹

The answer to these questions can be summed up in a single statement of the *Gemara*: *dina d'malchusa dina*, “the law of the land is law.”

Why is *Dina D'Malchusa Dina*?

The *Gemara* and the *Rishonim* discuss the rationale behind the statement *dina d'malchusa dina*, and provide basic guidelines in understanding its practical applications.

“[The *Amora*] Shmuel said, *dina d'malchusa dina*: the law of the land is law.” As proof, Rava cites the following case. If the government confiscates privately owned palm trees in order to build a bridge with the wood, they are within their rights and can appropriate the trees for public works. We are permitted to use the bridge because it is not considered stolen property, even though the trees were seized without payment (*Baba Kama* 113b, *Tosfos*, “*haichie*”).

The *Rishonim*, among them the Rambam (*Hilchos Gezeilah* 5:11) and the *Tur*

¹ Secular law does not typically override halachic obligations. For example, if a government were to legislate against circumcision, kosher slaughter or Shabbos observance, we would still be obligated to keep these *mitzvos*. See Responsa *Minchas Asher*, vol. II, 122, for a detailed analysis of when *halachah* defers to secular law.

(*Choshen Mishpat* 369), as well as the *Shulchan Aruch* (*Choshen Mishpat* 104:2) and the *Rema* (several places in *Choshen Mishpat*), all agree that the law of the land is binding; their only debate is on the details of when it applies. In particular, they analyze two critical variables of *dina d'malchusa dina*. First there is the question of *dina*: which categories of law does it apply to? Second is the question of *malchusa*: which types of governments does it apply to?

The *Rishonim* suggest two main rationales for *dina d'malchusa dina*.

No. 1: The social contract: the people's acceptance of the authority of the government

The *Rashbam*² writes, “All taxes and levies and legislation which monarchs customarily institute in their kingdoms are law, because all those living in the country accept upon themselves the king's laws and legislation, making it a *din gamur* – an absolute obligation” (*Rashbam, Baba Basra* 54b, “*v'ha'amar Shmuel, dina d'malchusa dina*”). In essence, the *Rashbam* in the twelfth century put forth the concept of the “social contract” hundreds of years before it was advanced by Hobbes, Locke and Rousseau in the seventeenth and eighteenth centuries.

The *Chasam Sofer* elaborates. He writes that the concept of a consensus of the people granting legitimacy to the government is not limited to business transactions and contracts, where the citizens can appreciate the need for government regulation. It extends also to taxation, which they would rather do without. However, since they do understand that taxation is for the common good, they accept that aspect of the government's authority as well (*Responsa Chasam Sofer, Choshen Mishpat*, 44).

What if we personally did not “accept” the government, and in fact voted against it? The *Terumas HaDeshen*,³ based on the *Rashbam*, writes that since legislation is a normal function of governments, the very fact that we reside in a country establishes that we accept its laws (*Responsa Terumas HaDeshen* 341).

The rulings of both the Rambam and the *Shulchan Aruch* are based on the principle that the agreement of the people to be governed establishes the authority of the government to impose binding legislation. Proof of the people's agreement is the existence of a commonly accepted currency issued by the government. The Rambam writes, “When does [*dina d'malchusa dina*] apply? In the case of a king whose currency is in circulation in those countries. This testifies that the people of those countries have accepted him, and acknowledge that he is their master and they are his subjects. But if his currency is not in circulation, he is like a strong-arm bandit, similar to a band of armed robbers whose laws do not have the status of law. So too, this type of king and all his servants are like thieves in every way” (Rambam, *Hilchos Gezeilah* 5:18; *Shulchan Aruch Choshen Mishpat* 369:2).

No. 2: The entire country is the king's property

² Rav Shmuel ben Meir (ca. 1080-1174) was Rashi's grandson and one of the great early French *Rishonim*. He wrote a major commentary on *Chumash* and completed Rashi's commentary on *Baba Basra* after Rashi's death.

³ Responsa of Rav Yisrael Isserlin (1390-1460), one of the great *Chachmei Ashkenaz*, a *rav, posek*, and *rosh yeshivah* whose halachic rulings are frequently cited by later *poskim*.

Some *Rishonim* suggest another rationale for *dina d'malchusa dina*: the country belongs to the king, and he has the power to expel anyone who does not obey him. As king, he has the right to dictate the terms for those residing in his territory (see *Chiddushei HaRashba*, *Nedarim* 28a, citing *Maharam MiMitz*; *Ran* *ibid.*, citing *Tosfos*; *Rosh* *ibid.*, 3:11).

The *Shitah Mekubetzes*⁴ explains this on a very practical level. Any property owner can legitimately insist on the standards of behavior required of those present on his property. The same is true of a government, which can impose laws on the residents of the country (*Shitah Mekubetzes*, *Nedarim* 28a).

We find examples of this principle on a smaller scale in a variety of settings:

- *Some shuls post signs stating that any articles left on the premises are considered hefker.*⁵ *They are acting within their rights by doing so, because on the shul grounds, the administration makes the rules.*
- *Different homes and different locations have their own standards and norms. For example, in Toronto social etiquette requires removing one's shoes before entering a home, and it is proper for a visitor to abide by the homeowner's rules.*
- *My daughter, aged seven, invited a friend over to play. Her friend asked for a drink of water and my daughter informed her, "In our house, we say, 'Please!'"*

Is *Dina D'malchusa Dina* Torah Ordained?

According to the majority of *Rishonim*, *dina d'malchusa dina* is a Torah ordained commandment (*d'Oriosa*). They suggest a number of rationales for this opinion. Rashi (*Gittin* 9b, "chutz") writes that this is because non-Jews are obligated to obey the seven Noahide laws. One of them is the requirement to establish an orderly legal system (*dinim*). Because of this obligation, the laws they legislate are binding upon society, including the Jews living under their jurisdiction.⁶

The *Meiri*⁷ (*Nedarim* 28a) and the Vilna Gaon (*Choshen Mishpat* 369, 34) rule that *dina d'malchusa dina* is *d'Oriosa*, based on *Parashas HaMelech* in the Book of *Shmuel*. When the Jews requested a king, the prophet Shmuel warned them of the consequences: a king would rule over them in an autocratic, high-handed manner, forcing their children into his service, taxing them and confiscating their property (*I Shmuel* 8:11-18). This list of prerogatives is the subject of a dispute in the *Gemara* (*Sanhedrin* 20b): would a king truly be entitled to exercise these powers, or was Shmuel only attempting to dissuade the people from desiring a king? According to many *poskim*, Shmuel was outlining the prerogatives of a king. The *Meiri* and the

⁴ An early compilation of the commentaries of the *Rishonim* on *Shas* with the author's own notes by Rav Betzalel Ashkenazi (ca. 1520-1594), *rav* in Egypt and Jerusalem and author of *responsa* and other works.

⁵ Ownerless property.

⁶ See *Responsa Tzitz Eliezer*, vol. 13, 105.

⁷ Rav Menachem HaMeiri (1249-1315), a *Rishon*, was one of the "Torah Sages of Provence." He wrote a number of works on Torah topics, including *Beis HaBechirah*, a commentary on the Talmud.

Vilna Gaon say that the powers enumerated in *Parashas HaMelech* apply to both Jewish and non-Jewish kings, so that practically speaking, *dina d'malchusa dina* is relevant to both.

The *Tzitz Eliezer*⁸ writes that based on the *Rashbam*'s ruling concerning "the social contract," *dina d'malchusa dina* is Torah ordained. If the people have accepted a monarch's rule, they effectively renounce certain personal rights and privileges, and accept his authority. In financial matters, this type of agreement has the status of Torah law – this is why the *Rashbam* says it is a "*din gamur*," an absolute obligation.⁹

On the other hand, according to the *Beis Shmuel*¹⁰ (*Choshen Mishpat*, 28:3), *dina d'malchusa dina* is not *d'Oriasa*, only *d'rabbanan*, but the majority of the *poskim* disagree with this opinion.

Which "Dinim" Are Included in *Dina D'malchusa Dina*?

Machon L'Horaah in the United States was asked the following question. *The questioner was receiving prank calls, disturbing his own and his family's sleep night after night. The calls were anonymous, with the caller ID blocked, and on his own the questioner had no way to trace them. Was he permitted to file a complaint with the police in order to put a stop to the calls? Once the complaint was made he would not be able to withdraw it, and the caller could face fines, possibly even imprisonment. Would this be forbidden mesirah¹¹ or was he permitted to complain, as the only way to end the harassment?*

The Machon responded that the calls were a violation of dina d'malchusa dina, and the caller was liable for punishment. Under a government operating in keeping with halachah, he would also be fined (Kissei Mishpat 46, citing Responsa Chasam Sofer, Choshen Mishpat 44).

"The law of the land" is a very broad term. Which of the innumerable laws which make up a country's legal code fall under the heading of *dina d'malchusa dina*? There are a number of opinions among the *Rishonim* concerning this question.

No. 1: *Dina d'malchusa dina* applies to laws related to real estate

⁸ Twenty-two volume work of responsa by Rav Eliezer Yehudah Waldenberg (1915-2006), *rav, dayan*, and *rosh yeshivah* in Jerusalem.

⁹ The *Devar Avraham* offers another rationale for defining *dina d'malchusa dina* as Torah ordained. He explains that *dina d'malchusa dina* is based on the same Scriptural sources which grant a *beis din* the power to confiscate private property and declare it ownerless (*hefker beis din hefker*). These same sources, the underpinnings of *dina d'malchusa dina*, also apply to non-Jewish governments (*Devar Avraham*, vol. 1, p. 12a; see also *Avnei Nezer, Yoreh Deah*, 312: 46-52).

¹⁰ Commentary on *Shulchan Aruch Even HaEzer* written in the late 17th century by Rav Shmuel ben Uri Shraga Feivush, *rav* of Shydlow, Poland and Furth, Germany.

¹¹ A major consideration in such cases is the question of *mesirah*, the prohibition against handing over a fellow Jew to the secular authorities. See Chapter 20, "Working for the Government: The Prohibition Against *Mesirah*," for a detailed discussion of this topic.

The *Beis Yosef*¹² cites the *Re'em*, who writes that *dina d'malchusa dina* applies only to laws related to the land. As an example he cites a head tax levied by a king on those who reside or pass through his country. This opinion is in keeping with the second rationale suggested by the *Rishonim*: the legislation is legitimate, because the king owns the country and can establish conditions for residence or passage through his property (*Beis Yosef, Choshen Mishpat* 369).

No. 2: *Dina d'malchusa dina* applies to all financial matters

Other *Rishonim* rule that *dina d'malchusa dina* applies to all legislation related to financial matters. In the words of the *Rashbam*, “All taxes and levies and legislation which monarchs customarily institute in their kingdoms are law.” The *Beis Yosef* cites a similar ruling by the *Ra'aviah*, who writes that according to some opinions, *dina d'malchusa dina* applies to all financial matters.

No. 3: *Dina d'malchusa dina* applies to matters usually legislated by the kingdom

The *Rashba*¹³ writes that *dina d'malchusa dina* applies to matters which are usually under the king's jurisdiction. He points out, however, that Chazal specified *dina d'malchusa* – the law of the *malchus* (kingdom), and not *dina d'melech* – the law of the *melech* (king). Matters which are normally legislated by the kingdom and which are of practical benefit are part of *malchus*. The king's own preferences, or personal matters not ordinarily subject to legislation, are not.

He writes that the decisions of the secular court system are not considered part of the jurisdiction of *malchus*. The courts and their legal decisions are a separate realm and are not included in *dina d'malchusa dina*. If we do not take this view of the secular courts, writes the *Rashba*, we abolish Jewish law, G-d forbid.

The *Rema* on *Dina D'malchusa Dina*

There appears to be a contradiction in two *pesakim* of the *Rema* concerning *dina d'malchusa dina*. He first writes that despite dissenting views, *dina d'malchusa dina* applies across the board, to everything (“*b'chol davar*”) (*Choshen Mishpat* 369:8).

However, later he also writes that *dina d'malchusa dina* applies only to matters beneficial to the king or for the good of the people, with the exclusion of going to the non-Jewish courts, for the same reason as the *Rashba*: “For if [Jews would do] so, all of Jewish law would be abolished” (369:11, citing *Maharik, Shoresh* 187).

We see that the *Rema* first rules that *dina d'malchusa dina* is all-inclusive, and then limits it to legislation for the benefit of society or of the king himself. Two reconciliations are suggested for this apparent contradiction.

¹² An exhaustive commentary on the *Tur* written by Rav Yosef Karo (1488-1575); the precursor of his definitive *Shulchan Aruch*.

¹³ Rav Shlomo ben Avraham Aderet (1235-1310), a great Spanish *Rishon*, renowned *posek* and *rosh yeshivah*, the author of numerous halachic works, including thousands of responsa. The *Rashba* was a student of the Ramban and Rabbeinu Yonah, and the teacher of many of the Torah authorities of the next generation, among them the Ritva and Rabbeinu Bechayye ben Asher.

No. 1: Court decisions are not included in *dina d'malchusa dina*

According to the *Sema*,¹⁴ the *Rema* is differentiating between government legislation and secular court cases: the king's law is backed by the Torah, but secular court decisions are not. In other words, the *Rema*'s language “*b'chol davar*” (369:8) means only that *dina d'malchusa dina* is broader than personal and property taxes, but does not include literally “everything.” Court decisions are definitely excluded (*Sema* 369:21).

No. 2: *Dina d'malchusa dina* does not apply to personal matters

In *Igros Moshe*, Rav Moshe Feinstein¹⁵ cites the contradiction in the *Rema* and the *Sema*'s reconciliation, but disagrees with the *Sema*. In his opinion, certain types of court cases would fall under *dina d'malchusa dina*. He explains his understanding of the *Rema* in a responsum concerning a bankruptcy case.

A company went bankrupt, and one of the creditors misappropriated company assets to cover his debt. His actions were illegal, because once a company files for bankruptcy there is a freeze on its assets. The court determines the distribution of funds; no one can come in and unilaterally seize assets to cover his own share of the debt, clearly to the detriment of the other creditors.

Rav Moshe writes that even according to those authorities who rule that *dina d'malchusa dina* applies to “everything,” this means that it applies where standard legal practices are necessary for the benefit of society. When the government has a legitimate interest in the existence of standardized laws, for example, established procedures for doing business and purchasing property, with bankruptcy as an obvious example, both legislation and court decisions on these matters are included in *dina d'malchusa dina*.

On the other hand, there are personal issues which are not a matter of national interest, for example, marriage, divorce and inheritance. Court decisions and legislation on such issues are not covered by *dina d'malchusa dina*.

In the case of a bankruptcy, when a party owes money to creditors and is unable to pay, the court appoints a trustee to divide his assets among the creditors. The distribution will be based on the amount of the assets and the priority of the creditors. Rav Moshe concludes that although this is a court decision, standard practices for the handling of the payment of debts in bankruptcy is a matter of national interest for the benefit of all citizens, so that according to the *Rema*, *dina d'malchusa dina* applies (*Igros Moshe, Choshen Mishpat*, vol. 2, 62).

Which “*Malchus*” Is Included in *Dina D'malchusa Dina*?

¹⁴ *Sefer Me'iras Einayim*, a major commentary on *Shulchan Aruch Choshen Mishpat* known as “the *Sema*,” by Rabbi Yehoshua HaKohen Falk (1555-1614), one of the great Polish *Achronim*.

¹⁵ Rav Moshe Feinstein (1895-1986) was a revered and world-renowned *rav* and *posek* who led American Jewry for decades. Born in Russia, Rav Feinstein moved to New York in 1936, where he was *rosh yeshiva* of Mesivta Tifereth Jerusalem. He was the author of *Igros Moshe*, a nine-volume work of responsa, *Darash Moshe*, and *Dibros Moshe*.

In terms of *dina d'malchusa dina*, what makes a king? Are the elected governments in our times also considered a *malchus* in this respect?

The different rationales presented by the *Rashbam* and the *Ran*¹⁶ for *dina d'malchusa dina* are critical in defining which “*malchus*” is included under the heading of *dina d'malchusa dina*. Initially it might seem that the term *malchusa* specifically implies a *melech* – a king per se. However, this is not necessarily the case. There are several reasons to say that it applies to a democratically elected government.

No. 1: The citizens accept the authority of the government

The *Rashbam* writes that a king’s rights are derived from the people’s acceptance of his authority. This acceptance makes adherence to “the king’s laws and legislation... an absolute obligation.” In essence, this is an excellent description of a democracy. According to the *Rashbam*, then, a system where the people vote for an executive who acts on their behalf is a government where *dina d'malchusa dina* applies.

*Pis'chei Choshen*¹⁷ (*Hilchos Geneivah*, p. 14) writes that we learn from the Rambam and the *Rashbam* that in our times, *dina d'malchusa dina* applies to a properly elected government, but not to a ruler who seizes power. He suggests that it is possible that *dina d'malchusa dina* may also apply even if the ruler was not elected, as long as he acts for the benefit of the people and not solely for his own interests.

No. 2: The laws have force because they benefit society

Government and legislation, whether by a monarch or an elected executive, is essential for an orderly society: “Rabbi Hanina the Deputy of the *Kohanim* says, pray for the welfare of the government, for if not for the fear it inspires, man would swallow his fellow man alive” (*Avos* 3:2). Even if a government was not democratically elected, *dina d'malchusa dina* could still apply if it does maintain order.

Nearly all the *poskim* agree that *dina d'malchusa dina* applies to democratically elected governments. They were elected by the people and implement legislation for the orderly operation of the country, including taxes, essential for the functioning of any country (see Responsa *Pe'as Sadecha*, 165; Responsa *Yaskil Avdi*, vol. VI, *Choshen Mishpat* 28; Responsa *Yechaveh Daas*, vol. V, 64).

Based on the *Ran*’s understanding of *dina d'malchusa dina*, it seems reasonable that it would not apply to an elected government.¹⁸ The *Ran* writes that *dina d'malchusa dina* operates because the country belongs to the king, and he can threaten his subjects

¹⁶ Rabbeinu Nissim ben Reuven of Girona (1320- 1380), a Spanish *Rishon*, was born in Barcelona. He was considered the greatest halachic authority of his generation, and responded to questions from all over the Jewish world. He wrote responsa, *derashos*, and commentaries on the Talmud, the *Rif* and *Tanach*.

¹⁷ Nine-volume work on the laws of *Choshen Mishpat* by Rav Yaakov Bloy (1929-2013), a Jerusalem *rav* and *posek*, renowned for his expertise in the field of halachic issues related to finance.

¹⁸ See Responsa *Mishneh Halachos*, who offers a rationale that *dina d'malchusa dina* does not apply to elected governments (vol. V, 112 and VI, 277), but maintains that it does in fact apply to governments which treat their citizens fairly, for example the United States (vol. VI, 288).

with expulsion if they do not obey him (*Ran, Nedarim* 28a). This is true of monarchies, but not of democracies, where the elected government does not own the country. However, *Pe'as Sadecha* (165) writes that even according to the *Ran, dina d'malchusa dina* applies to democratically elected governments. In a democracy the country belongs to the people, and their elected representatives have the same power as a king to legislate.

Local Governments and Government Employees

Does *dina d'malchusa dina* apply only to an actual king, president or prime minister? Or does it also apply to government employees acting on the government's behalf such as policemen and other officials, and to lower level elected rulers like governors and mayors?

The *Rashba's* language is critical in answering this question. He writes that "every ruler appointed in his city and who rules in his area" is included in *dina d'malchusa dina*. As long as he rules in keeping with local law, he is comparable to the king, "and this is clear." As proof, he cites the case in *Baba Kama* (113b) of government agents who are permitted to appropriate trees on behalf of the government to build a bridge (*Responsa Rashba* 1:637).¹⁹ There is a difference of opinion among the *poskim* as to whether the *Rashba* was referring to appointees of the king, or to lower level elected officials.

Royal Appointees

The *Maharik* concludes that based on the *Rashba, dina d'malchusa dina* also applies to a government official who is only an appointee, even though he personally was not directly elected or accepted by the people (*Responsa Maharik* 194).

The *Knesses HaGedolah* cites the *Rashba* and the *Maharik* concerning government officials, and adds another point from the *Shiltei Gibborim*. The appointee or official has this status as long as he conducts himself in keeping with the laws of the land, even if he did not adhere precisely to the king's orders. The *Knesses HaGedolah* does make an important distinction: he only has this status if he was specifically appointed and authorized by the king himself, and not if he is merely employed by the government. Even if the king would not have protested against his actions, he is not considered an emissary of the king if he was not expressly appointed by the king (*Knesses HaGedolah, Choshen Mishpat* 369, *Haghahos HaTur* 10).

I asked Rav Tzvi Rotberg, shlita, rosh yeshivah of Yeshivas Beis Meir in Bnei Brak, if zoning laws fall under the heading of dina d'malchusa dina. For example, is it permitted to build a basement or change ceiling heights contrary to the building code? Rav Rotberg responded that zoning laws are not included in dina d'malchusa dina. He told me the story of problems encountered by the yeshivah with the city engineer in Bnei Brak when they built the dormitory. This engineer insisted that they build sizable porches off the dormitory rooms. From the yeshivah's perspective the porches would be wasted space, better used to build larger dorm rooms. The engineer had his way, and over the years the porches have in fact been little used, if at all. The

¹⁹ See above, "Why is *Dina D'Malchusa Dina*?"

law has since changed, but renovations to expand the rooms after the fact would now cost the yeshivah a fortune. While the yeshivah had no choice at the time, Rav Rotberg is of the opinion that the decisions of a city engineer do not qualify as *dina d'malchusa dina*. The engineer is no more than a lower level municipal employee, and does not have the halachic authority to impose decisions on behalf of the government (the “malchus”).

Low Level Rulers

Not every ruler is the king or president of an entire country. In former times dukes, counts and the like were sovereigns in their own territory, and today we have governors of states and mayors of cities. The *poskim* discuss the status of these lower ranking rulers in terms of *dina d'malchusa dina*.

The *Knesses HaGedolah* (ibid.) explains that the language of the *Rashba*, “every ruler appointed in his city and who rules in his area,” refers to lower level rulers appointed by the people, and not to appointees of the king. Even if these lower level rulers are not actual kings, they are rulers in their own realm and have the status of *melech* in terms of *dina d'malchusa dina*.

According to *Machon L'Horaah*, contemporary elected rulers have the full authority of *dina d'malchusa dina*. They need not be kings per se, because they were elected by the public (*Kissei Mishpat* 45, citing *Responsa Chasam Sofer, Choshen Mishpat* 44).

Based on the opinions of the Rambam, *Rashbam* and *Shulchan Aruch*, it appears that an elected ruler on any level – district, municipal, or state – has the status of a ruler as far as *dina d'malchusa dina*.

Dina D'malchusa Dina in Eretz Yisrael

There is an additional major difference of opinion between the *Rashbam* and the *Ran* regarding the application of *dina d'malchusa dina* in Eretz Yisrael.²⁰

The *Chasam Sofer* cites the *Rashbam*'s rationale for *dina d'malchusa dina*: “All those living in the country accept upon themselves the king's laws and legislation, making it a *din gamur* – an absolute obligation.” The *Chasam Sofer* writes that based on the *Rashbam*, both non-Jewish and Jewish kings have the same status. In the case of a Jewish king in Eretz Yisrael, the land is not the king's property, because Eretz Yisrael was divided up among the Tribes. Even so, he continues, while the land belongs to the various Tribes, the people have accepted the king's authority and legislation and renounced their privileges in this respect. According to the *Rashbam*, then, *dina*

²⁰ *Parashas HaMelech* is an additional major source concerning the rights of a king, whether Jewish or non-Jewish, in Eretz Yisrael. When the Jewish people asked for a king, the prophet Shmuel tried to dissuade them with a formidable list of the powers wielded by a monarch. There is a difference of opinion in the *Gemara* (*Sanhedrin* 20b) as to whether this means that these are actually a king's legitimate prerogatives (see *Meiri, Nedarim* 28a), or alternatively, if Shmuel only intended to warn the people about the dangers of having a king (see *Nimukei Yosef* ibid.). See above, “Is *Dina D'Malchusa Dina* Torah Ordained?”

d'malchusa dina applies in *Eretz Yisrael* as well (Responsa *Chasam Sofer, Choshen Mishpat* 44).

The *Ran* rules differently, citing *Tosfos*: “It is specifically concerning non-Jewish kings that it says ‘*dina d'malchusa dina*,’ because the country is his property, and he can tell [his subjects,] ‘if you do not obey my laws, I will expel you from the country.’ However, this is not the case with Jewish kings, because the entire Jewish nation shares ownership of *Eretz Yisrael*.” *Dina d'malchusa dina* does not apply to *Eretz Yisrael*, because it is the shared property of the people (*Ran, Nedarim* 28a, “*b'mochess ha'omed me'eilav*,” citing *Tosfos; Rosh*, Chapter 3, 11; *Rashba*, citing Rabbi Eliezer MiMetz, and other *Rishonim*).

While this *pesak* of the *Ran* is very well known, practically speaking, we do not rule like the *Ran* in this regard. The Rambam (*Hilchos Gezeilah* 5:11), *Tur* and *Shulchan Aruch* (*Choshen Mishpat* 369:6) all rule that “a king’s law is law, whether the king is a non-Jew or a Jew.”

This is the opinion of a number of recent *poskim* as well.²¹ Rav Ovadiah Hadayah,²² author of Responsa *Yaskil Avdi*, writes that there is no difference in any way between non-Jewish and Jewish kings concerning *dina d'malchusa dina*. He writes that we need not look to differentiate between them, because in any case, we do not rule like the *Ran* on this question.

Rav Asher Weiss, *shlita*,²³ writes, “*Dina d'malchusa dina* applies also in *Eretz Yisrael*. This is the opinion of the Rambam, and of the majority of the *poskim*. Apparently, this is based on the people’s acceptance of the government, and not because of the government’s ownership of the country” (*Parashas Chukas, B'inyan Dina D'malchusa Dina*).

Practical Applications

Practically speaking, the basic principles of *dina d'malchusa dina* could apply to innumerable cases. In the workplace, questions of *dina d'malchusa dina* can arise in a variety of ways: human resources issues; workplace safety; product safety; business licensing; bankruptcy; truth in advertising, and more. Another major related area is taxes.²⁴ A *rav* should be consulted about the specific circumstances of every individual instance.

²¹ *Poskim* in recent generations differ on the question of whether *dina d'malchusa dina* applies to the secular government of the State of Israel. On the one hand, it is an elected government, and according to some halachic authorities, *dina d'malchusa dina* applies. Other halachic authorities rule that *dina d'malchusa dina* does not apply in *Eretz Yisrael* in general, and certainly not to a government whose conduct is contrary to Torah law. See Chapter 24, “Filing, Reporting and Paying: Taxes and *Dina D'malchusa Dina*.”

²² Rav Ovadiah Hadayah (1890-1969) was a *dayan* and *rosh yeshivah* of Yeshivas Beis E-l, and *rav* in Petach Tivkah. He was the author of *Yaskil Avdi*, an eight-volume work of responsa, and many other *sefarim*.

²³ Rav Asher Weiss is an American-born *rav* and *posek* in Jerusalem. He is the *av beis din* of *Badatz Darkei Horaah*, *rosh kollel* of *Machon Minchas Asher*, and the author of *Minchas Asher*, an extensive series of commentaries on Talmud and *Chumash*, responsa, and other topics.

²⁴ See Chapter 24, “Filing, Reporting and Paying: Taxes and *Dina D'malchusa Dina*.”

Rav Asher Weiss was asked three questions related to *dina d'malchusa dina*.

1. Schools in the United States are obligated by law to install fire extinguishing systems for the children's safety, an especially important requirement because many buildings are made of wood. The installation of these costly systems is a heavy financial burden for the schools. Are they obligated to install them?
2. Are traffic and sanitation laws also considered part of *dina d'malchusa dina*?
3. Some governments require inoculations for high-risk groups during an epidemic. From the standpoint of *halachah*, are these inoculations mandatory?

In his response, Rav Weiss writes that while the cases of *dina d'malchusa dina* cited in the *Gemara* all relate to financial matters, we need to look at their common underlying principle. A king is responsible to enact legislation for the benefit of the country, not only concerning finance but, as the *Rema* writes, “*b'chol davar*,” in all matters relevant to the benefit of society. If so, then, *dina d'malchusa dina* would apply in these three cases as well (*Parashas Chukas, B'inyan Dina D'malchusa Dina*. see also *Responsa Minchas Asher* vol. II, end of 121). In another responsum, Rav Weiss applied *dina d'malchusa dina* to consumer protection laws as well (*ibid.*, 124).

Another question presented to the *Machon L'Horaah* illustrates a similar approach. In the United States, some businesses require a government license. In certain instances the licenses are exclusive, and a license will only be granted to a competing business in the same district if the original operator agrees. A proverbial “Reuven” had an exclusive liquor license, and one day “Shimon” opened a competing business – without a license. Can Reuven inform the relevant authorities that Shimon is operating an illegal business?

Citing the *Sema* and the *Beis Yitzchak*,²⁵ *Machon L'Horaah* ruled that Reuven would be permitted to file a complaint, because the licensing laws were instituted to regulate commerce for the public good (*Kissei Mishpat* 45).²⁶

Some highly ethical business owners are careful to conform with the licensing laws even when they could not possibly be caught. My friend “Ephraim” was in Toronto on business. He was invited out for dinner there, and wanted to bring his hosts a bottle of wine as a gift. Buying it from the kosher restaurant where he was having lunch seemed like the easiest option. He asked the owner to add the bottle to his bill, and he would take it with him. The owner explained that the sale of alcohol is heavily regulated in Canada – he was not allowed to sell him the wine, as the restaurant was not an approved liquor store.

²⁵ The *Beis Yitzchak* discusses the question of unauthorized reprinting of a *sefer* after another party received a government license for the printing, similar to a copyright. He rules that the second printer cannot reprint the *sefer*, based on *dina d'malchusa dina*.

²⁶ A major consideration in such cases is the question of *mesirah*, the prohibition against handing over a fellow Jew to the secular authorities. See Chapter 20, “Working for the Government: The Prohibition Against *Mesirah*,” for a detailed discussion of this topic.

The liquor stores were all closed at that time of day, so Ephraim asked if he could take the wine and pay cash for it. There would be no record of the sale, and it would not cause any problems for the restaurant owner. The owner still refused, saying that would be illegal and he could lose his license.

As Ephraim prepared to leave, the restaurant owner insisted that he take the wine as a gift – he could not sell liquor, but there was no regulation against giving a present. Back home in Los Angeles, Ephraim sent the restaurant owner a check to reimburse him for the wine, but even then, the owner refused payment and sent back the check.

When the Law is Not Enforced

What of laws which are on the books, but are not enforced? While living in Los Angeles, I watched as a friend started crossing Pico Boulevard in the middle of the street, rather than at the crosswalk. Then he noticed a policeman, and quickly stepped back up to the curb. The policeman gave him a ticket for “attempted jaywalking!” When I later worked in Manhattan, I was amazed to see pedestrians jaywalking in droves, in full view of the NYPD. Clearly, the laws against jaywalking were not being enforced in downtown New York. Nevertheless, since the laws do exist, are we obligated to obey them?

Numerous countries, states and cities have laws which no longer seem relevant. For example, in Massachusetts it is officially a crime to spit on the street (Massachusetts General Laws, Part IV, Title I, Chapter 270, Section 14, “Spitting”). Considering that this law is not enforced, would we really be forbidden to spit outdoors if we live in or visit this state? In California it is illegal to have caller ID; in Denver, to mistreat rats; in Hawaii, to place coins in one’s ears; in Chicago, to go fishing in pajamas, and more. Need we take such laws seriously?

A similar question was submitted a number of years ago to Ohr Somayach’s “Ask the Rabbi” website: “According to Jewish Law, can you go 65 miles per hour in a 55 mph zone?”

The question was presented to Rav Chaim Pinchas Scheinberg, *zt”l*.²⁷ Rav Scheinberg responded, “Speeding is prohibited because of the concept *dina d’malchusa dina* – civil law is *halachah*.” He pointed out that it might even be considered a Torah-ordained prohibition. However, Rav Scheinberg said, the definition of “speeding” depends not on what is written in the traffic code, but on how the law is enforced. If the authorities are not so strict – for example, they do not issue tickets for doing 65 mph in a 55 mph zone – it would be halachically permitted to do 65. It should be noted, though, that Rav Scheinberg did *not* advocate exceeding the *posted* limit. If, on the other hand, the authorities do enforce the 55 mph limit strictly, it would be forbidden to do more than 55.

In Rav Scheinberg’s opinion, the authorities in the United States are generally not so strict about people going 65 mph in a 55 zone, and therefore it would be permitted.

²⁷ Rav Chaim Pinchas Scheinberg (1910-2012), raised in the United States, learned in the pre-war Mirrer Yeshivah in Poland. He moved to Jerusalem in 1965. Rav Scheinberg was a renowned *rav* and *posek*, *rosh yeshivah* of Yeshivas Torah Ore, and the author of numerous *sefarim*.

An added word of caution: “This does NOT mean that if you get a ticket for going 65 you don’t have to pay it!”

Based on this answer, the criterion for applying *dina d’malchusa dina* would be the way the laws are enforced, and not the way they appear on the books. If the government is lax, we can also be lax. Where they are strict, *dina d’malchusa dina* requires that we be strict as well. Even if numerous people are not strict about adhering to the law, as long as the government enforces the law, we need to adhere to the law.

The requirements of *dina d’malchusa dina* can come up in many situations, but there is one special field which is unavoidable for just about anyone in the workforce: paying taxes. This major ramification of *dina d’malchusa dina* is the subject of the next chapter, “Filing, Reporting and Paying: Taxes and *Dina D’Malchusa Dina*.”