The Law of the Land is the Law

Introduction

3,500 years ago, on the first Shavuot, the Jews received the Torah on Mount Sinai. Then they lived for 1,000 years in the Land of Israel, masters of their own destiny, under the laws of the Torah. Then they were defeated and exiled to Babylon. What to do in a foreign land? The prophet Jeremiah told them in a letter:

And seek the peace of the city where I have caused you to be carried away captives, and pray to the Lord for it, for in its peace shall you have peace. [Jeremiah 29:7]

They came back 70 years later and rebuilt the Temple, and for some 500 years they continued to live in the Land, but under foreign domination. Nevertheless, the Mishna told them:

Pray for the welfare of the government, because without the fear of the government, each man would swallow up his neighbor alive. [Avot 3:2]

Law and order are needed even if from malevolent and oppressive rulers.

(Prayers for the government are the norm in Jewish services. In Egypt, we prayed for Nasser, in the presence of the official spy who came to services! And when the rabbi concluded with "HaNasi Gamal Abdel Nasser", everyone lustily responded "Amen!!")

Nevertheless, the occupiers allowed us to rule ourselves according to Jewish law. But after the Bar Kochba revolt in 135 CE, the Romans expelled most Jews from the land and the Diaspora began. The Jews were now living in foreign countries. New rules were needed. In the Talmud, 2nd-century Rabbi Shmuel of Nehardea in Babylonia (165-254 CE) laid down the principle:

דינא דמלכותא דינא
Examples in the Talmud

Four (and only four) examples are mentioned in the Talmud:

1. Taxes
   Mishna: One may tell murderers, robbers or tax collectors that the produce they want to take is teruma [food offering to be eaten only by kohanim] even though it is not teruma, or that it belongs to the house of the king, even though it does not belong to the house of the king. [Nedarim 27b]

   Gemara: But didn’t Shmuel say: The law of the kingdom is the law? Since one must pay the tax determined by the kingdom, how did the Sages permit one to lie in order to avoid paying? ... A Sage of the school of Rabbi Yannai said: The Mishna is referring to a self-appointed [fraudulent] tax collector, not one appointed by the kingdom. [Nedarim 28a]

   So you must pay the taxes set by the lawful authorities:
   - Evading payment of tax is considered robbery. [Tashbez, 3:46]
   - Contemporary Rabbi Joseph Soloveichik: Do not shop at a store if owner known to not pay taxes (because you are being lifnei iver -- Putting a stumbling block “before the blind”, or assisting him to sin).

2. Gentile legal documents
   Mishna: All documents produced in gentile courts are valid [in Jewish courts], even though they are signed by gentiles, except for bills of divorce and bills of slave release. [Gittin 10b]

   It was deemed important that husband or master have full control.

3. Eminent domain laws (power of the state to take private property for public use)
   Shmuel says: The law of the kingdom is the law. Rava said: Know [that this principle is true from the fact] that [the municipal authorities] cut down palm trees [without the consent of their owners] and build bridges [from them], and [yet we allow ourselves to] cross over them [even though Jewish law does not allow us to benefit from stolen property]. [Bava Kamma 113b]

   Maimonides’ Mishneh Torah summarizes:
The general principle is: Any law that a king decrees to be universally applicable, and not merely applying to one person, is not considered theft. But whenever he takes from one person... arbitrarily, it is considered theft.

[Mishneh Torah, Robbery and Lost Property 5:14; Sh. Ar. HM 369:8]

-[In the case of] a king who cut down trees belonging to individual property owners and made a bridge out of them, it is permissible to cross the bridge. So too if he destroyed homes to make a path or a wall, [a Jew] is allowed to benefit from it. And so it is for all similar circumstances, for the king's law is the law. [Mishneh Torah, Robbery and Lost Property 5:17]

The Shulchan Aruch, Code of Jewish law, adds:

It is forbidden to benefit from something that was stolen, even after the owner gave up the ownership. This applies when one knew that this specific thing was stolen. How?

-If he knew that this animal was stolen, it is forbidden to ride it or thresh with it.
-If he stole a house or field, it is forbidden to go through it or enter it on a sunny day for protection from the sun, or on a rainy day for protection from the rain.
-If one inhabits it one owes rent to its owners if it was made for renting
-If he stole palm trees and made a bridge with them, it is forbidden to cross it, and so on.

But if it was a king who cut trees belonging to house owners and made a bridge with them, it is permitted to cross it. It is permitted even if the king had ordered his servants to cut trees from every one, and it is known that they cut all trees from just one. And the same applies if he destroyed houses and made a way or a wall, it is permitted to benefit from it, and so forth, since the judgment of the king is judgment. And this applies as long as [the king's] coin is used in all those areas, since the dwellers of those areas all agreed, and it is clear to them, that he is their lord and they are his servants. If this is not the case, behold, he is like a robber and user of force. [Shulchan Arukh, Choshen Mishpat 369:2]

4. Time when ownership is acquired

Rav Yehuda quotes Shmuel saying: [If a] gentile sells property [to a Jew for money], it is [nevertheless ownerless] like a desert [until the Jew performs an act of acquisition]. Anyone who takes possession of it [in the interim] has acquired it. Why? The gentile relinquishes ownership of it when the money reaches his hand, [while the] Jew does not acquire it until the deed reaches his hand. Therefore, [in the period of time between the giving of the money and the receiving of the deed, the property] is like a desert, and anyone who takes possession of it has acquired it.

Abaye said to Rav Yosef: Did Shmuel actually say this? But doesn't Shmuel say that the law of the kingdom is the law, and the king
said that land may not be acquired without a document? [Therefore, taking possession should not be effective for acquisition. Rav Yosef] said to him: I do not know [how to resolve this contradiction], but there was an incident in Dura… where a Jew purchased land from a gentile by giving money, and in the interim another Jew came and plowed it a bit. The two Jews came before Rav Yehuda for a ruling, and he decided the property belonged to the second individual. This accords with Shmuel’s ruling that the property is ownerless until a Jew performs an act of acquisition. [Bava Batra 54b]

Where does the law come from?

- The Meiri [13th-century Provence] (and later the Vilna Gaon [18th-century Lithuania]): It is a biblical (d’Oraita) not a rabbinic (d’rabbanan) law. (The former take precedence and are more strictly enforced.) It is based on what the prophet Samuel told the Jews, in God’s name, when they requested a king:

  And Samuel told all the words of the Lord to the people who asked him for a king:
  This will be the customary practice of the king who shall reign over you:
  He will take your sons, and appoint them for himself, for his chariots, and to be his horsemen; and some shall run before his chariots. And he will appoint for himself captains over thousands, and captains over fifties; and will set them to plow his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots. And he will take your daughters to be perfumers, and to be cooks, and to be bakers. And he will take your fields, and your vineyards, and your olive trees, the best of them, and give them to his servants. And he will take the tenth of your seed, and of your vineyards, and give to his officers, and to his servants. And he will take your menservants, and your maidservants, and your best young men, and your asses, and put them to his work. He will take the tenth of your sheep; and you shall be his servants…
  And the people refused to obey the voice of Samuel; and they said: No; but we will have a king over us, that we also may be like all the nations, and that our king may judge us, and go out before us, and fight our battles. And Samuel heard all the words of the people, and he repeated them in the ears of the Lord.
  And the Lord said to Samuel: Listen to their voice, and make them a king. [1Sam. 8:10-22]

[Meiri on Nedarim 28a; Vilna Gaon Choshen Mishpat 369:34]

The Meiri held that the prophet was discussing the legitimate rights of a king, not just building a scare scenario to discourage the people from wanting a king.
-Rashi [11th-century France]: It stems from the Noahide code. Gentiles are required to observe 7 commandments, including “establishing courts of laws” [dinim], so Jews living in their society are bound by those laws. [Rashi on Gittin 9b]

-Rashbam [12th-century France]: It’s contractual -- derives from the fact that all citizens accept to live in the king’s land of their own free will, and so must follow the king’s laws. [Rashbam on Bava Batra 54b]

-Rambam [12th-century Egypt]: These courts are only to enforce the other 6 Noahide laws.

-Ramban [13th-century Catalonia]: These courts are a general command to legislate laws for an orderly society.

To what extent does it apply?

A commentator called it the "pragmatic recognition of brute force". Vigorous debates took place through the centuries on how far it extends. Some thoughts:

-Conflicts with Torah law. Some say civil law is binding only when it does not oppose Torah law. [Shul. Ar. Chochen Mishpat 49; Hatam Sofer, Resp. ḤM 44]. Unclear, since halakha is supposed to cover everything.

-Tashbetz [15th-century Spain and Algeria]: Does not apply to religious or ritual observances. (This is considered so obvious that it is hardly ever mentioned.) [Tashbeẓ, 1:158]
   E.g., don’t have to obey: Must convert out, can’t teach Judaism, can’t circumcize, no Jewish services, no Shabbat, must eat non-kosher, no divorce... (No shechitah? OK, but can import; if not, go vegetarian.)

-Rambam [12th-century Egypt]:

-The law of the land must apply equally to all citizens. [Mishneh Torah, Robbery and Lost Property 5:14; Sh. Ar. HM 369:8]
-If you don’t know who the ruler is (different factions, civil war, unrest), follow the laws of the government whose currency you use. [Rambam, Laws of Theft and Loss 5]

-**The Rema** [16th-century Poland]: Applies to anything designed to promote the well being of general society.
  Examples [Rabbi Elyahu Fink]: Criminal law, minimum wage laws, environmental laws, child labor laws, traffic laws, etc.

-**Ruler not necessarily an actual “king”**. Any leader backed by the authority of the people (to whom the land belongs) triggers dina d’malchuta dina. Example: Democratically elected leaders. [Keneset ha-Gedolah, Tur, H'M 369; Kissei Mishpat 45, citing Responsa Chatam Sofer, Choshen Mishpat 44].

**Does it apply to Land of Israel?**

-**The Ran** [14th-century Catalonia]: No, since it belongs to God, not to the temporal ruler there:
  [God:] The land is mine, for you are strangers and sojourners with me. [Lev. 25:23]
  [Ran on Nedarim 28a] Since all Jews are entitled to live in Israel, no dina d’malchuta dina there.

  -Later overruled: “A king’s law is law, whether the king is a non-Jew or a Jew.” [Tashbetz, 4-1:14; Shulchan Aruch [Choshen Mishpat 369:6]; also Rambam [Hilchos Gezelah 5:11] and Tur]. It is because the source of the authority is the agreement of the people (e.g., in modern Israel). [Rambam, Hilchot Gezelah v’Aveda 5:18; Rashbam on Bava Batra 54b]

-**Rashba** [14th-century Catalonia]:

  -Laws must be recognized, but not necessarily customs, or "non-Jewish ways":
    The law of the king is binding for us, but the laws of his people are not binding for us. [Rashba 6:149; Bet ha-Beḥirah, BK 113b]

  -It says “dina d’malchuta – the law of the kingdom -- and not “dina d’melech” – the law of the king. So it applies only to laws normally enacted for everybody’s benefit, not to laws enacted only for the king’s personal benefit.

  -Does not apply to the rules of inheritance. [Rashba 6:254]
The secular laws of intestacy (dying without a will) generally contradict halacha, so non-halachic beneficiaries who agree to benefit from them are guilty of theft. The deceased violated halacha if he died without a will that follows halacha.

**Kippa.** No head covering allowed in certain settings (e.g., military). But it’s a custom: Jewish law does not require it. So must comply.

**Military draft.** Jews must serve in the military of their country when called upon to do so, even though this will necessarily entail eating non-kosher food, desecrating Shabbat, killing people, etc. -- all acceptable under pikuach nefesh.

**Rav Moshe Feinstein** [20th-century Belarus and US]:

- The law must be followed only as practiced, not as written. Example: if the law says the speed limit is 60 mph, but only “above 65 mph” is enforced, Jews may drive close to 65.
  - However, if you get a ticket for going 65, you have to pay it!
- Examples of laws that are not enforced:
  - In Massachusetts, it is a crime to spit on the street.
  - In California, it is illegal to have caller ID.
  - In Denver, it is illegal to mistreat rats
  - In Hawaii, it is illegal to place coins in one’s ears
  - In Chicago, it is illegal to go fishing in pajamas
  - In Los Angeles, it is illegal to bathe two babies together in the same tub.
- But how do you know what’s enforced and what isn’t? But Rabbi Aharon Soloveichik [20th-century Russia and US]: You must stop at a stop sign, even at 2 am, when there’s no one within a mile.

- Don’t report someone violating secular law to the authorities if the secular punishment is greater than the Torah punishment, or if the violation is not a Torah violation.
  - Does that entail not reporting theft in Muslim countries? (Punishment there is to cut off hand of thief.)

**The Chazon Ish** [20th-century Belarus]: When a case is between two Jews [ben adam l’chavero], we judge it with Jewish law only. [Chazon Ish C.M. Likkutim 16:1]

- Appeals to secular law are frowned upon in Orthodox circles. Talmud: Rabbi Tarfon used to say: In any place where you find non-Jewish law courts, even though their law is the same as the Jewish law, you must not resort to them. [Gittin 88b]
-Allowed doesn’t mean forced. Just because the law of the land allows us to do something, doesn't mean we Jews should do it.
  -Smoking, drinking alcohol to excess, disrespecting parents, blaspheming, not observing Shabbat, worshiping idols, etc.

Conclusion

We will be good citizens and follow the law of the land. But this law must allow us to teach and worship and conduct religious rituals in our own way.