Dina D'Malkhuta Dina (The Law of the Kingdom is the Law)

Leo Landman
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Abstract
A principle of Jewish law set forth in the Talmud is "the law of the kingdom is the law". The Talmud attributes this principle to the Amora, Samuel, and it is quoted in his name a number of times.¹

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CHAPTER I - THE TALMUDIC PERIOD

A principle of Jewish law set forth in the Talmud is "the law of the kingdom is the law". The Talmud attributes this principle to the Amora, Samuel, and it is quoted in his name a number of times.

The reference to it in the Talmud Gittin is the only direct statement made by Samuel himself. In all other cases, concerning his law, we find that it is others who quote the law in his name. The Talmud is troubled with the Mishneh which validates any document issued by a gentile court and witnessed by gentiles with the exception of a divorce and a bill of manumission. Apparently, no distinction is made between a bill of sale, which serves merely as proof that a sale occurred, and a bill certifying a gift, in which case the deed actually accomplishes the transference of the gift from the donor to the recipient. The Mishneh validates both types of documents issued by a gentile court. In the latter case, the Talmud questions the validity of such a document. Two solutions are proposed. One by Samuel, that "the law of the kingdom is the law" and as such it is by the king's law that such documents are to be considered valid. The second solution states that a document whose legal status is similar to a divorce is also excluded by the Mishneh. Accordingly, a gift transferred by a document issued by a gentile court and which is witnessed by gentiles would have no more value than a blank piece of paper.

While discussing yet another statement made by Samuel, namely, that the property of a gentile has the status of a desert, the Talmud finds this conflicting with the idea that "the law of
kingdom is the law”. Jewish law stipulates that a gentile relinquishes his rights upon receipt of the purchasing price, while a Jew who buys such property cannot acquire it until the deed comes into his hands. In the interim, the property remains without title. From the time that money changes hands until the deed is in the hands of the Jew, anyone may acquire this parcel of land.

Abaye properly questions R. Joseph: Is it possible for Samuel to maintain such a position? Did not Samuel state that "the law of the kingdom is the law"? And the law of the king is that title of anyone's property can only be transferred by means of a written deed. If the law of the kingdom is to be followed then there exists no interim stage whereby the gentile's property remains without title?

The Talmud also cites a case of a Jew who bought land from a gentile while another took possession of the land. R. Judah ruled that the one in possession of the land is now the rightful owner but the original purchaser may demand his money back. This decision also contradicts Samuel's law.

The Talmud arrives at no solution for this problem. Actually there is no contradiction at all between the two principles set forth by Samuel. An older law, which originated during Tannaitic times, states that real-estate may be acquired in one of three ways, i.e. with money, or by means of a deed, or by actual possession.

Samuel amended this law with regards to the property of a gentile. In order for anyone to acquire land, actual possession is necessary. Samuel did not introduce a new law, but rather amended the old Tannaitic law. When taxes are to be levied on properties, there must first be possession. It is for this reason that Samuel compared the property of a gentile to a desert.
The property does not become res nullius, rather, just as res nullius is acquired by means of possession only, so a gentile's property may only be acquired by actual possession. Consequently, the two principles of Samuel not only do not contradict each other, but rather support each other.

The rabbis of the Talmud, though they accepted Samuel's law, nevertheless found it a most difficult and puzzling legislation. They saw a number of apparent contradictions to the principle that "the law of the kingdom is the law" from earlier, Tannaitic sources.

In a Mishneh, we find that when a tax collector wished to appropriate fruits for the king's taxes, the Jew was permitted to make a vow rendering this fruit Terumah, even though afterwards, the fruit does not assume the sanctity of Terumah. The Mishneh apparently gives Jews permission to evade payment of taxes by means of this ruse. The Talmud wonders if the maxim which Samuel had proposed, namely, that "the law of the kingdom is the law" is not contradicted by this Mishneh? If Samuel's law held true then no Jew would be permitted to evade his obligations to follow the law of the kingdom? The Talmud concludes that Jews may evade payment of taxes whenever an unlimited tax is placed upon Jews by the government or else in the case of a powerful self-appointed tax collector who has no authority from the king. In such cases, the law of the kingdom does not apply.

Similar is the instance related in the Mishneh which forbids the exchanging of coins from a collector's purse. The Mishneh implies that the tax collector possesses stolen monies of which no Jew ought make use. Once more the Talmud queries, if Samuel's law is valid, then the law of the kingdom gives the tax
collector the right to appropriate these funds. They should not be considered as stolen monies.

The Talmud makes the same stipulations as were made in the tractate Nedarim; namely, that the law of the kingdom does not apply where an unlimited tax or a self-appointed collector is involved.

The Talmud also lists three cases, wherein Samuel's law is further developed by the later scholars of the Talmud.

Rabba (Rava), in the name of the Exilarch, Ukbah, refers to three things which were handed down to him in the name of Samuel concerning the principle of "the law of the kingdom is the law". (18)

A. Parthian law required that a period of 40 years of unchallenged possession elapse, before anyone may claim title to land. R. Samuel b. Meir in his commentary explains this in two ways. If anyone retains land for a period of 40 years, according to Parthian law he becomes its rightful owner. Since "the law of the kingdom is the law", no Jew may later claim that this property was stolen from him. Secondly, despite the fact that Jewish law demands only three years for "possession", Parthian law supercedes it and requires the Jew to wait for 40 years. (19)

B. This is another instance where Dina D'Malkhuta applies. Anyone who redeems land which was forfeited by the poor through failure to pay the taxes, becomes the rightful owner of the property since "the law of the kingdom is the law". Whosoever pays the taxes on the land, becomes its owner. (20)

C. - The third situation merely qualifies the above mentioned precept. Only property for which land taxes were not paid may legally be confiscated by the king.
However, land may not be taken away because of the failure to pay a head tax. In the latter case, the "law of the kingdom" does not apply.

It is readily understood that one owns land only as long as one pays the tax on it. The ownership of the land and the payment of the tax are linked together. Failure to pay the tax, renders the land forfeit. However, where one omits the payment of a head tax, the confiscation of the land is arbitrary. Any sort of fine could have been imposed. It is, therefore, outside the scope of Dina D'Malkhuta.

Rava further develops Samuel's law in the following instance. If a king demands that trees be supplied for the building of a bridge, he may confiscate anyone's property for this purpose. The method by which the necessary materials are acquired is left in the hands of the king's agents whose authority is equally recognized with that of the king on whose behalf they act. Consequently, even if the king demanded that an entire group supply the needs for this project, the agents may confiscate all supplies from one individual and that person has no recourse since "the law of the kingdom is the law".

Yet another reference to Samuel's law is when the Talmud speaks of a gentile, who failed to pay his head tax, and is acquired by a Jew as a slave when the required head tax was paid. R. Papa wonders whether the gentile has all the laws of a slave so that when he is to be emancipated he would require the customary bill of manumission. Rava in the name of R. Sheshes replies that it is the law of the king that he become the slave of the one who pays his head tax. "The law of the kingdom is the law" and as such requires the gentile to become a slave. Should he wish to marry a Jewess,
he would have to receive a writ of manumission and undergo conversion rites before he may do so. Should a Jew redeem the head tax of a fellow Jew, the slave would also require a writ of manumission. He could not be released by mere verbal emancipation.

Finally, though the principle itself is not mentioned, Samuel states that the acquisition of land bordering a river is governed by Parthian law. Obviously, the same principle is involved.

These sources tell little concerning Samuel's motivation for his principle. Actually, there appears to be but one direct statement made by Samuel himself. The other references are either statements made by others quoting Samuel, or else are statements made by the sages of a later date attempting to justify Samuel's law with earlier Mishnaic precepts.

However, one theory implies that Samuel was prompted to assert that "the law of the kingdom is the law" because of his great love, loyalty, and devotion to the Persian king, Shabur I. This is also the reason why Samuel was called Shabur Malka. Again, the name ARYOK given to Samuel alludes to his close relationship to the Persian government, the word ARYOK referring to ARYOK, king of Ellosor and having the connotation of one who is close to the king. Finally, the proponents of this theory claim that Samuel's great devotion to Persia was also demonstrated when he refused to mourn for the 12,000 Jews of Caesarea who opposed and were killed by the Persians. The resulting picture is of a man who had become so close to the Persian government that he allowed his loyalty to Persia supersede his love for his own people. Every instance, they would have us believe, confirms this fact. All references tend to
show that Samuel was motivated by a desire to increase the harmony between the Persian government and its laws, and Jewish life in that country.

It seems that far more was at stake and a far broader scope was encompassed in Samuel's law. It was more than the immediate devotion to a particular government which prompted Samuel.

It is difficult to determine to whom the term Shabur Malka (33) refers. Rashi noticed this difficulty and pointed to two different interpretations. Five references are made to Shabur Malka (34) in the Talmud. Three are made in connection with Samuel. However, in two places they cannot refer to Samuel. One is clearly indicated by Rashi at the end of the tractate Babba Metziah and the second is found in connection with Hermes(?) the mother of Shabur Malka referring to a mythical god and certainly not to Samuel. The writer is inclined to agree with the view of Rashi (36) and the Tosafists that the name merely implies authority and explicit knowledge rather than devotion to Shabur I. Samuel's position is paralleled to the position of the king. His authority concerning Jewish law is equal to that of the king. (37)

Similarly, the references to Samuel as ARYOK (38) are not to denote his close relationship to the Persian kings but again to show that he was like a king in the realm of Jewish law whose laws are obeyed. The reference in the Talmud makes absolutely no sense if ARYOK denoted close relationship to the Persian king. If the theory that ARYOK was given to Samuel because he was so influential a person in the king's court were true, why, then, would Levi say to Samuel that he would not sit down, i.e., remain, with him until the latter explain a certain law to him? The
reference to remaining with him cannot be associated with the awe or respect due to Samuel's position as the king's confidante. In fact the expression was used by Samuel himself when he wanted an explanation concerning a point in Jewish law from Abuah Bar Ihi. ARYOK refers to Samuel's position as a scholar and the authority which was his to decide Jewish law. That is why Levi, impatient to hear Samuel's explanation, threatened to remain with him until such a time when that explanation would be given him.

Finally, the assertion that Samuel, by refusing to mourn for the Jews killed by the Persians, showed that his loyalty to Shabur superseded even his love for his people, is not borne out by the sources. It was Samuel's contention that KERIAH (the renting of a garment) is not to be performed when evil tidings are heard unless it involved the majority of Jews. Furthermore, in this particular case, it was the rebellious spirit of his people who brought the attack upon themselves. The Romans were fighting the Parthians and the Jews of Caesarea joined the Roman forces but were defeated in battle. Naturally, Samuel, who lived under Parthian rule whose armies also contained Jews in their ranks, looked upon the Jews of Caesarea as members of a foreign army. This does not show a lack of love for his people at all. During World War I, when Jews fought on both the Allied and the Axis forces, the Jews of America or England did not mourn over the loss of Jews who fought on the German side and were killed in battle. They fought for their adopted land just as American, English, and French Jews fought for theirs. No periods of fasting or lamentations were in order as were in vogue during the atrocities committed by Nazi Germany.
Samuel occupied an important position in the king's court. However, the principle of the "law of the kingdom is the law" had little to do with that position. It is based upon Samuel's knowledge and understanding of the difficulties encountered in diaspora life. It provided the Jewish people with a modus vivendi in the Exile. Cultures differing from each other, when confronted with each other, are likely to clash. Jewish law and the law of the kingdom, wherever Jews might reside, may differ and be antagonistic to each other. Samuel tried, by his very flexible principle, to solve this problem. He tried to provide the Jews of all ages and all countries and all environments with a tool to operate, a principle which would allow existence to a "people scattered and dispersed among many nations."

As can readily be seen, it was Samuel who was given credit for this law. Since it also is obvious that this law played an essential factor allowing for the existence of the Jews in the diaspora, one would assume that the idea of this law preceded Samuel. After all, Jews lived in exile long before his period; in Babylon, Antioch, Egypt, Rome and elsewhere. Jewish law, civil or religious, must have come into conflict with the secular governments then as well. In fact, R. Moses Isserles during the 16th Century (42) definitely felt that this was so. Samuel merely articulated a law which had been in existence for many years, even centuries. Ezra and Nehemiah during the period of the Restoration, were appointed to office by Darius of Persia to rule in Judea, signifying that the authority of their rule stemmed from King Darius. Isserles concludes that their decisions were accepted and their power considered final by Jews because the "law of the kingdom is the law". In this case, it was the edict of Cyrus that established the law of the kingdom. Moreover, this very principle that the "law of the
kingdom is the law" is what gave the kings of the second Temple and afterwards the power to rule and provided for the acceptance of their rule by the Judeans. These kings were appointed by foreign governments. However, by virtue of the fact that a principle such as the "law of the kingdom is the law" existed in Jewish jurisprudence, their appointments, though made by foreign powers, were accepted even as far as Jewish law was concerned. Their authority would not and could not be challenged. Beginning, then, with the Post-Exilic period through the second Temple, and even beyond the time of its destruction, the principle of the "law of the kingdom is the law" was in existence.

The question of whether or not Dina D'Malkhuta Dina is applicable to Israel or to Jewish kings in and outside of Israel, a question which involves Isserles' position, will be discussed in a subsequent chapter. At this particular point we limit the discussion to the point at hand; namely, was the basic idea that the "law of the kingdom is the law" accepted prior to Samuel or was it the sole innovation of this scholar?

It must be stated at the outset that this concept is found nowhere in any form whatsoever prior to Samuel. Biblical or tannaitic sources are silent on this issue. As far as Ezra and Nehemiah or the kings of the Judean State or even those of a later period are concerned, that is, those who were appointed by foreign powers, there is no doubt that their authority was derived from these outside sources. However, it must be clearly understood that the concept of the "law of the kingdom is the law" never determined or regulated such authority. The foreign powers ruled by sheer force
and conquest. Their decisions were followed because of the power which they wielded. The choice was never left in the hands of the Jews. Whether or not the "law of the kingdom is the law" applies to any particular situation or not had absolutely no bearing upon the decisions of any foreign king. This was true later on during the Gaonic period, the Middle Ages, or even modern times. While Jews lived in the diaspora, the principle of the "law of the kingdom is the law" had no influence upon the laws and edicts issued by these monarchs. Why then worry about such a concept? The "law of the kingdom is the law" was a concept which operated within Jewish law. It governed the internal affairs of Jews in so far a their relationship with the outside world was concerned. If the "law of the kingdom is the law" was applicable, then a particular edict was considered lawful, or an officer or king recognized as the legal ruler and his decisions would be considered as binding even by Jewish law. Any property which would change ownership as a result of such an edict would legally change title. Any evasion or violation of such an edict would be punishable by Jewish law as well. Contrarily, when the "law of the kingdom is the law" was not applied, then Jewish law does not recognize the authority of the monarch, neither are his decisions considered valid by Jewish standards, while properties involved are considered as stolen goods. If a fellow Jew acquire them, he is the recipient of stolen goods.

The authority of Ezra and Nehemiah or of the other kings was derived of foreign powers. This in no way proves that the concept of the "law of the kingdom is the law" was the principle under which
they operated. On the contrary, though Ezra was appointed by Cyrus, it was only after a long struggle that the Sadducean view prevailed and that Judea became a theocracy headed by Ezra. The victory of the Sadducees decided the issue for the time being. The struggle was never given up by the Pharisees. If the principle of the "law of the kingdom is the law" was involved, the Pharisees hardly would have opposed Jewish law.

Again, in later years, the only group which acquiesced passively to any monarch in power was the Essenes. They believed that no man attains such an exalted position as the king of a State without the Divine Will. Opposing a monarch was tantamount to rebellion against God. The Essenes were the only ones with this attitude. Once more, if the principle of the "law of the kingdom is the law" applied to all kings of the second Temple who were appointed by foreign powers, the Pharisees would not likely be the ones to oppose them. As much as they might have been at variance with the kings' policies, they would have accepted their edicts as binding.

It was Samuel who not only articulated the principle of the "law of the kingdom is the law", but it was he who originated it as a means for Jewish survival in diaspora life.

What, then, may we say concerning the maxim the "law of the kingdom is the law" as it was known and applied during the Talmudic period?

First of all, it was Samuel who originated the law. He did so not out of loyalty to a particular government of a particular time, but proposed a *modus vivendi* for the Jew. He applied it to civil matters, such as deeds of sale or documents transferring a
gift from the donor to the recipient that were issued by gentile courts and witnessed by non-Jews. It did not apply to a bill of divorce or to a writ emancipating a slave. A century or so later, it was expanded to apply to regulating methods of sale with regards to the sale of properties. It also applied to the duration of Hazakah necessary for the acquisition of land as well as to taxes and other essential necessities needed for the successful operation of any government. Finally, the concept was extended to include all agents of a monarch so that they would have equal acceptance by virtue of the monarch's authority in whose behalf they acted. In fact, the details and methods by which the king's orders are to be carried out were left entirely to the discretion of the agents. This held true, even when they changed the edict of the king somewhat.

It is upon these cases enumerated in the Talmud that tremendous development ensued and upon which the concept was expanded during later ages. It is to these developments that we now turn.
CHAPTER II - THE GEONIC PERIOD

Samuel's principle, the "law of the kingdom is the law", is mentioned only a few times in the Geonic literature. There was little if any, further development of this concept during this period. The fact that it is referred to so infrequently shows the insignificant role it played in the life of Jewry during the centuries known as the Geonic Age. There was little need for the Geonim to invoke Samuel's law. A prefatory analysis of the extensive influence upon diaspora Jewry exerted by the scholars comprising the Gaonate enables us to better understand why this was true.

The Geonic period, stretching over five centuries, plays an important role in the history of the Jewish people. Information concerning this period and the life of the Jews during that time is derived from the responsa written by the Geonim. At the outset of this period, the influence the Geonim wielded was limited to Babylon alone. Perhaps, because of this, we find only a few responsa written by the early Geonim. With the conquest of large expanses of land by the Arabs, reaching as far west as Spain, the sphere of influence of the Geonim was also extended. As the authorized leaders of the Jews, their influence spread over a great number of countries. Their responsa were sent to the cities of Babylonia, Asia Minor, and North Africa. Some even were sent as far as southern France and Germany. Sura and Pumbedita, the headquarters of the Gaonate, became the spiritual center for all the communities where Jews resided. The outside communities continued to cement their ties with the academies. These ties reached their maximum intensity (1) with the last of the Geonim, R. Hai (998-1038).

The centuries between the close of the Talmud and the reappearance of intense Jewish culture in the western countries is
probably the most obscure stretch of time encountered in the history of the Jews. The Gaonate, with the exception of a handful of men, was not made up of top calibre scholars. Yet, the Geonim wielded great influence upon Jewry of many centuries.

We now ask, "From where did their power stem? What was the source for their authority?"

In early Amoraic times (c. 3rd century), the Exilarch was the temporal, as well as spiritual, head of Babylonian Jewry. It was within his power to set standards for weights and measures. He was able to order the arrest of anyone on various charges, even on apparently minor ones. The Exilarch had the right to appoint judges for the communities of Babylonia. A judge who did not wish to be held personally responsible in case of an error of judgement would have to accept his appointment from the Exilarch. However, the heads of the academies were not appointed by the Exilarch. On occasion, the Palestinian sages were asked for advice in the matter of choosing these men, but never the Exilarch. The heads of the schools of Sura and Pumbedita were selected by the members of the academies themselves, and it was they who ordained their students.

These two offices, the office of the Exilarch and the heads of the academies, with their separate powers, caused constant strife. Each vied to gain power for their respective office. Towards the end of the Amoraic period, almost all authority was snatched away from the Exilarchs. Civil authority was claimed by the heads of the schools by tracing their lineage directly to R. Judah, the Prince. Religious authority had gradually become theirs. In fact, the sages of that period ignored the Exilarchs. Only a few
of the names of the Exilarchs are recorded in the Talmud, which tends to show that the sages tried to minimize their importance.

When the Arabs conquered Babylonia, new life was given to the Exilarch. He now received complete authority to govern the Jewish community. He appointed the Geonim as the heads of the academies and was able to dismiss them whenever he so desired. In one instance, the Exilarch disliked Rab Aha and refused to appoint him to the Gaonate. Instead, he appointed Rab Natronoi, although he was far inferior in scholarship to Rab Aha. In anger, Rab Aha left for Palestine where he remained until his death. Rab Natronoi maintained his position for 13 years, showing that even though he was second in scholarship to Rab Aha, he nevertheless held his own.

During the early days of the Gaonate, only the head of the academy of Sura carried the title, Gaon. When he addressed the head of the academy of Pumbedita, he used the lesser titles of Resh Metibta or Rosh Yeshiba. However, the head of Sura was required to be addressed as Gaon even by the head of Pumbedita. As the power of the Gaonate gained, while the power of the Exilarch waned, the heads of the two schools both bore the title Gaon. Nevertheless, Sura still maintained its superiority. It became his right to appoint the head of the academy at Pumbedita. The title Gaon was not an empty one. In case the Exilarch died, and until another took his place, the Gaon of Sura held all powers. It is interesting to note that Sherira Gaon was silent concerning the superiority of Sura. Since he came from Pumbedita, he obviously
wished to glorify that academy.

By the eighth century, the Gaonate had gained sufficient authority to block the appointment of an Exilarch whose religious policies conflicted with theirs. In the tenth century, after the dispute between the Gaon of Sura and the Exilarch, the Exilarch's power was almost nil. No longer was it his prerogative to authorize judges. This power was now vested in the Gaonate. The Gaon, in the name of his court, gave authority to individuals to assume the position of judge.

Thus, we find that in the early days of the Geonom, when the Exilarch was appointed (approved) by the Caliphs, he did not require anyone's consent for his decisions. He was an officer of the king. His position was fourth in the royal hierarchy. His word was law. Anyone who violated his decisions was considered equal to one who disregarded or rebelled against the word of the king. His authority lay in the "law of the kingdom". Although, as a descendant from the House of David, he controlled the appointment of judges and thus, indirectly, controlled religious law as well, nevertheless, decisions of Jewish law was in the hands of the heads of the academies.

In fact, a number of the Exilarchs were not learned individuals. These judges derived their authority from the Exilarch's official position. Their decisions in law were considered binding not only because they were the sages of their day or because their decisions were based upon the Halakah, but more so because legal authority was bestowed upon them as appointees of the Exilarch. However, even though the authority of the Exilarch had its source in the "law of the kingdom", he could not appoint judges who were not excellent scholars. Scholarship was an essential prerequisite.

At the end of the Geonic period, the Geonom usurped almost all the powers of the Exilarch. Sherira and Hai emphasized their
descent from the family of David in order to elevate their leadership and maintain and develop their position of supremacy over the Exilarch. They claimed to possess all the essential and traditional prerequisites of the Exilarch and could easily fill his office. In fact, they overemphasized their claim so that the authorities arrested them. It was a group of Jews, obviously their enemies, who informed against them. The arrest was caused when their enemies, who were followers of the Exilarch, informed the government that the Geonim were rebelling against the official status of the Exilarch. The official position of the Exilarch was the last vestige of power left to him. The power struggle between the Exilarchs and the Geonim dated back many years. When the Geonim had almost all authority in their hands, how natural for them to deliver the coup de grace to an institution already standing on its last leg. The Geonim, Sherira and Hai, bitterly complained of the corruption found in that office and consequently desired its abolition.

The general status of the Jews towards the end of the Persian rule was precarious. These were the days of persecution and suffering. Magians made life unbearable for them. A tax was placed upon every home. Jews had to contribute to the Persian fire temples. When the Arabs came to power, the situation changed. The religious persecutions stopped to a great extent and the Jews fared far better. Jews gained influence in the court of the Caliph and many rich men were able to intervene on behalf of their coreligionists. With the rise of Arab power, the ecclesiastical authorities, the Bet Din, which was found in most communities and whose members were appointed by the Exilarchs or later on by the Geonim, had full autonomy and were able to decide and
to rule in accordance with the Halakah. To be sure, there were occasional exceptions to this rule. At times the Moslem rulers invaded the privacy of Jewish law which they otherwise respected. The Geonic responsa show that the rulers were extortionate with regards to the taxes which they imposed upon Jews. Often Jews were driven to take drastic means in order to avoid the exorbitant fines levied upon them. At times they were arrested and could not leave the town. Consequently, a man would issue a bogus document of divorce to his wife so that she would be able to assume possession of her husband's property in lieu of her dowry (Ketuba) and at the same time provide the means for her husband's escape.

The fact that the authorities did not confiscate the estate left by the husband upon his exit from the town, points to the legal recognition the divorce had in the eyes of the secular government. The wife was permitted to hold on to the estate even above the claims of the secular rulers.

In general, the Gaonate and the individual ecclesiastical courts enjoyed complete autonomy. They strongly disliked any attempt on the part of Jews to bring their disputes before non-Jewish courts. Jews who voluntarily testified before non-Jewish courts, were excommunicated. They vehemently opposed such moves although exceptions were made when circumstances warranted it. On the whole, the vast majority of Jews obeyed the injunction of the Geonim and preferred to settle their cases before a Bet Din. The Jews did not look favorably upon secular courts. The Geonim would not recognize the courts because these courts were not to be trusted. This decision resulted not from blind prejudice but rather because of the corruption found.
Wherever the courts were known to be honest and reliable, the Geonim recognized their decisions.

Whenever the Bet Din saw that their decisions were ignored or disobeyed, they would readily avail themselves of the power of the secular government. However, this was used only as a last resort. In order to enforce its own decisions, the Bet Din, in Geonic times, as well as long afterwards, had a number of means at its disposal. Among these penalties were excommunication, flogging, and the disqualification from testifying before a Bet Din.

Excommunication included two forms, a lighter, temporary exclusion for 30 days (ד"מ) and the more severe form of Herem.

Corporal punishment (ל'כ) consisting of 39 lashes could no longer be applied by the courts of the Geonic period. In order for a court to administer this punishment, Semikha was required, which the judges of this period did not possess. Instead, they utilized זכרת זכר, corporal punishment which consisted of lashes, the number of which was to be determined by the court.

Many communities had a prison to detain persons awaiting trial at the Bet Din. Public disturbances, physical violence resulting in damages, defamation of character, etc. presented a problem to the Geonim. These offenses belong to the category called חירפ (fines) and according to a Talmudic decision, these fines could only be imposed by the courts in Palestine. Were such offenders allowed to go unpunished, chaotic conditions would result. The peace of the diaspora communities would be threatened. If something were not done to curb such offensive activities, the victims might very well look elsewhere for protection and the authority of
the Gaonate and their appointed courts weakened. Consequently, the Geonim searched for some means whereby they could circumvent the Talmudic principle of סכונת שופטים. The Geonim found a way. Under the threat of excommunication they forced the guilty parties to compensate and conciliate their victims. The Bet Din still could not levy a fine, but at least they could suggest a settlement and coerce the offender to abide by it or else remain excommunicated.

It now becomes clear that the Geonim were almost never in need of Samuel's law. They possessed almost complete authority to govern the religious, civil, and economic life of diaspora Jewry. We have seen how they exercised this authority in all fields. They jealously guarded this autonomy. The non-Jewish courts were considered off-limits for Jews. The Geonim were able to deal with all offenders within the scope of Jewish law and in the courtrooms of the Bet Din.

With the exception of taxation, which by its very nature involved the secular government, and to a certain extent trade between Jews and non-Jews, there were but a few occasions where Dina D'Malkhuta could apply. In fact, in one instance where Dina D'Malkhuta is mentioned, it was to restrict and to limit its scope rather than to develop it. In a responsum attributed to Saadya, the Gaon refused to validate a writ of transference of a gift issued by a non-Jewish court and witnessed by non-Jews. The Gaon ruled in favor of the opinion stated in the Talmud which equated such documents with divorces, where Samuel's law does not apply. The Gaon ignored the opposite opinion recorded in the Talmud, validating such a writ because such validation would have recognized the authority of the non-Jewish courts in yet another matter and would have given greater leeway to the concept of Dina D'Malkhuta. It simply did not concur with
their contemporary outlook which shied away from extending secular authority.

The Geonim could not help but recognize the authorities with regards to trade. The maritime laws of salvage declared that the rescuer of property from a sinking ship may only demand payment for the salvage operation. He does not assume ownership of the articles rescued. Despite the fact that this did not follow Jewish law, the "law of the kingdom is the law". No Jew was permitted to purchase the rescued cargo from the salvager.

This position did not conflict with the general view of the Geonim concerning the authority of the State. They were willing to grant the authorities the final say in such matters. The forfeiture of property (לכיד) is dependent upon the state of mind of the original owner. The court, in such matters, must determine whether or not the owner relinquished his possessions. Varied circumstances could alter the owner's hopes of recovery and consequently determine the court's decision. In the case where the "law of the kingdom" protects the original owner from salvage crews, no man would be ready to give up hope for the recovery of his goods. To be sure, the "law of the kingdom" is used, but merely because it affects the owner's state of mind.

We have, therefore, seen the very lukewarm attitude of the Geonim towards Samuel's law. They recognized the need for this principle but enjoyed enough power so that they were rarely forced to resort to it and avoided doing so.

During the Talmudic and Geonic periods, as well as long afterwards, the prevailing opinion was that no king could come to power unless God so willed it. Any individual who ascends the throne,
does so by divine will. An edict issued by the king expresses the desire of the king, and since the king himself is sanctioned by God, his laws have authority.

On the basis of this theory, the Geonim justified Samuel's law. Just as God rules over the kingdoms of the world, so it is the right of a king to rule over the property of man and to do with such properties as he pleases. He acts according to his will and his subjects must obey.

The Geonic theory appears to be in contradiction with their practice. We have seen how indifferent they were, and how at times, they ignored Samuel's concept. How can this be justified with the theory to which they subscribed, namely, the divine right of kings?

Actually there is no contradiction. The Geonim had no need to relinquish their autonomy. The kings, to a great extent, allowed them self-government. They were permitted to live according to the dictates of Jewish law. Consequently, their theory never came into conflict with life. They recognized only the need to support government law when it involved the welfare of the state and the welfare of the public. Towards this goal they wholeheartedly subscribed.

"Divine right of kings" was not universally recognized in theory or practice.
CHAPTER III - THE ORIGIN OF GOVERNMENT

In the previous chapter we discussed the Geonic theory for the origin of government. We determined that they saw the power of the king as emanating from the power of God. They believed in the theory of the "divine right of kings".

During the early part of the 12th century, R. Samuel b. Meir (RaSHBaM 1080-1158) issued the following statement: "All regular and special taxes, and all decrees promulgated by the kings are the law, because all the people of the kingdom willingly accept the statutes and ordinances of the king. These are therefore binding. No man may be accused of robbery if he holds money given him by the "law of the kingdom".

In a handful of words, R. Samuel expresses an idea which appears far too sophisticated for the 12th century; namely, rule by the consent of the people. R. Samuel enunciated the concept that a king's authority is based upon the acceptance of his reign by his subjects. It is government by the will of the people. It is the theory of government based upon the idea of the "social contract". The free will acceptance of the citizens, so basic to the theory of the social contract, does not demand that this be a formal declaration and neither does it require anyone to be present when a king assumes the throne. Whenever an individual takes up residence within the domain of a king, he does so with the express understanding that he accept the authority of the king and act in accordance with the prevailing laws. Maimonides also accepted the theory of the social contract as the basis for government. In order to determine whether or not a king has been voluntarily accepted, we merely must determine
or not his currency is utilized throughout the land. The fact that coins issued by a king are used by the citizens of a nation in their business affairs was "proof positive" that the king's authority is recognized. This was a well known and accepted method dating to antiquity and was still employed during the Middle Ages. It even found its way into the Codes of Jacob b. Asher (1269 - 1340) and Joseph Caro. Conversely, a lord who conquers a neighboring land and rules it with an iron fist and is not accepted by the conquered people, is not considered the rightful monarch of that land. His laws are not valid since neither his coins nor he are accepted.

A third theory of government, as articulated by the Tosafists, states that the "law of the kingdom is the law" applies only to non-Jewish kings because the land is their property. It is within their power to demand obedience for the law. Defiance would be met with expulsion. This privilege is denied to Jewish kings since the Land of Israel is owned by all Jews in a partnership.

Most modern scholars agree that the Tosafists took a dim view of Samuel's law. It expresses the thought that there was no other choice but to accept the "law of the kingdom". Refusal to do so, would mean expulsion. However, this interpretation does not take into consideration and does not explain the various limitations which the Tosafists put upon the concept of Dina D'Malkhuta. The fear of expulsion would have demanded they accept the laws of the kingdom without any reservations. It is the writer's opinion, that the Tosafists did not base their theory on an attitude of bowing to their overlords. It was not fear which led to the acceptance of the secular laws. Were it so, they would not have dared to circumscribe the authority of the king.
The Tosafists recognized that the power of the king stems from the fact that he owns the land. The land belongs to the king and he may do with it as he chooses. He rules by right of ownership. However, ownership is determined by the power of expulsion. Non-Jewish kings may expel anyone and therefore they own the land. Just as an individual, who owns a parcel of land, has the right to make any decision with regards to that land, to permit or to prohibit its use by others, so it is within the right of the king to rule over an entire nation, over the inhabitants of land which he owns. However, ownership granted such rights to the king only as long as he acted within legal bounds. It does not grant him the authority to overstep legal boundaries.

According to this theory, ownership was also determined by conquest. When a king invaded another country, he became the owner of enemy territory by virtue of his conquest. The law demanded that the property of those executed by the crown (גזרה פלונית) is to be forfeited to the crown. The conquered people deserve to be killed for their opposition to the king. It is only by the grace of the king that they are spared. The fact that a king spares a political criminal does not deny the right to the king to assume possession of the criminal's property.

Before an analysis of these three theories is offered, one other point of view must be presented. We refer to R. Tam who states that the "law of the kingdom is the law" because the Jewish court was given the express power to declare anyone's property res nullius. Just as the rabbis of the Talmud instituted various Takkanot by declaring property res nullius, so authority was granted to the kings as far as Jews were concerned to alter property rights. The Jewish courts were able to allow this because of their power to declare property res nullius. Thus, "the law of the kingdom is the law" is based
The above is not a justification for Samuel's law; it is merely a method whereby the laws of the kingdom may be enforced. There is considerable doubt whether the assumption of R. Tam that the concept of דינה דמלקת be operative when there is no prior justifiable claim. Many authorities ruled that the concept of דינה דמלקת can only be utilized by the courts when an already existant legitimate claim must be enforced. In cases of a debt, or the collection of a dowry (Ketuba) or forcing a husband to sustain his wife, all of which are legitimate obligations in themselves, the court may coerce the debtor by means of דינה דמלקת. However, without a prior justified claim, the courts have not this power. דינה דמלקת does not justify a claim, it merely justifies a court action. It would then follow that the "law of the kingdom is the law" cannot be explained by דינה דמלקת. The principle must first possess a legitimate reason for the courts to be able to enforce it by means of דינה דמלקת. The method whereby something is implemented is not the same as the justification for its origin. The view of the Geonim, R. Samuel, and the Tosafists explain the origin of government and thereby its authority. R. Tam merely points to a method by means of which, the ordinances of a king may be carried out.

One other distinction is to be made between the theories of the Geonim, R. Samuel, and the Tosafists on one hand and R. Tam on the other. R. Tam's approach incorporates Dina D'Malkhuta into Jewish law. It becomes part of the Jewish legal system. However, the other theories regard Dina D'Malkhuta as law for Jews, but not as Jewish law.
The Geonic theory follows the idea of the "divine right of kings". This is not a legal justification that is found within Jewish law. It explains that the source of a king's authority rests with God. It is supra-legal. Jews, as subjects of a king, must abide by the king's decisions for such is the Divine will.

Samuel's theory was that Jews, together with all the people of the nation, by their free acceptance of the ordinances set forth by the king, allow the government to do with their property as government law demands. This opinion is based upon the right of every man to do with his property as he chooses. Jews may accept the decisions of any power they select.

Similarly, the right of a monarch to do with his lands as he pleases, which is the view of the Tosafists, is based upon the rights of ownership. Again, it is not the Halakah that determines this authority.

It is only with R. Tam's theory that "the law of the kingdom" actually becomes part of Jewish law. On the one hand, the Halakah provides the secular government with the right to make any decision for its citizens. However, it is by means of Jewish law that these decisions are carried out for Jews. By means of rendering property res nullius, the Jewish court may grant the property to the king. He may then dispose of it in any way he cares to. Dina D'Malkhuta becomes part of Jewish law.

In fact, the entire question of whether or not royal decrees become incorporated into Jewish law as part of the Jewish judicial system or whether they remain merely as laws for Jews, has been debated by many rabbis of different eras. Does a violation of a law of the kingdom
automatically imply a violation of Jewish law? If the answer to this question is in the affirmative, does it then follow that the Bet Din must enforce these laws?

The consensus of opinion among rabbis throughout the ages has been that the "law of the kingdom is the law" does not imply that such laws enter the Jewish legal system. The laws of any nation must be obeyed, but they do not assume the status of Jewish law.

A few illustrations will demonstrate the extra-legal nature of Samuel's maxim.

In accordance with the views of a goodly number of rabbis, the Bet Din was required to enforce the law of the kingdom and to recognize documents issued by gentile courts only when an explicit decree of the king demanded such procedure. Should Jews be given the choice to follow either systems of law, then the law of the kingdom was to take second place. Only when there existed a requirement that the royal decrees be obeyed to the exclusion of all other systems, must the Jewish courts follow the secular ordinances. This can only be possible if Dina D'Malkhuta is not part of Jewish law, otherwise, the courts would have to follow the king's decisions at all times.

Furthermore, various documents issued by a notary public (appointed by the government, were validated by Nahmanides. They were acceptable if they contained the signature of the royal appointee even if they lacked the signatures of other witnesses. This is not in accordance with Jewish law. Nevertheless, the documents are valid because the "law of the kingdom is the law". Again we see, that
the specific regulations of the kingdom are extra-legal and are not (19) part of Jewish law, but must be obeyed by Jews.

Finally, in civil matters, even in instances where Samuel's (20) law would not be cited, nevertheless, it is within the rights of the parties concerned to subject themselves to the laws of the kingdom. In money matters, every man may make his own decisions or let any other authority decide for him what he should do. Consequently, if a document issued by a gentile court is not recognized by the Bet Din, if it is the express desire of the individuals involved to accept the law of the kingdom, then these documents are binding upon them even though Jewish law denies their validity. Once again, this can only be possible if the concept set forth by Samuel is law for Jews. It cannot (22) be so if it were part of Jewish law.

One exception might be cited to disprove the above thesis. A provocative phrase occurs in a responsum of the 19th century paralleling a decision rendered by Ibn Adret. A distinction was made between the decrees of a monarch recorded in the chronicles of the kingdom, and decisions handed down by an individual gentile court. It was said that the royal decrees have Biblical sanction (לַעֲמֹר) based on the principle of דינה דמלкова, whereas the decisions of gentile courts cannot be invested with greater authority that the decisions of the (23) Bet Din.

It is obvious that the term לַעֲמֹר was not used to imply that the concept of דינה דמלкова is Biblical. Furthermore, it ought not to be construed to mean that the concept of דינה דמלкова is part of Jewish law. It merely signifies the greater authority vested in the king's ordinances. The term לַעֲמֹר lends emphasis
to the greater power given to the king, above and beyond the authority of the courts of the land. The king’s regulations supersede even Jewish law. The decisions of the courts are no more binding than those of the Bet Din.

Having stated the three basic theories for the origin of government and thereby the reasons for the concept of Dina D'Malkhuta and having analyzed their relationship to Jewish law, we might now endeavor to find the political and social forces which inspired these theories. Nothing is formulated in a vacuum. The political and social status of the Jews in various countries of Europe caused certain definite reactions. Samuel's law, which deals directly with the relationship of Jews with their adopted state must be affected by the status of Jews.

During the 12th century, Jewish culture in Spain had reached its highest level. The Jews still were able to consider Spain as their home. Even while the Almoravides were the masters, they permitted the Jews to live in security and in peace. Only on rare occasions did the reigning powers attempt to interfere with their liberties or try to coerce them away from their faith. In these instances, numerous influential men were always able to intercede on behalf of Jewry and by offering bribes were able to avert all evil decrees.

In France, the beginnings of culture now could be seen. The liberal reigns of Louis VI and VII, of the house of Capet (1108-1180), were favorable to Jews. The Jews lived in ease and in comfort. They prospered and soon owned large tracts of land, homes and gardens. These were mostly cultivated by Christian servants, only rarely by themselves. The Jewish communities were recognized as independent
entities. Their own leadership had complete authority over the Jews and were even granted the power to arrest Christians who failed to pay their Jewish creditors and compel them to pay that which they owed.

The very same held true for Germany, at least until the time of the Second Crusade. The political and social status of the Jews was drastically altered by the Crusade. From this time and with increasing intensity, the Emperor was regarded as the protector of the Jews.

In Northern France, it was the last part of the 12th century that marked the change in the political position of the Jews. The monarch Philip Augustus, had little land of his own. Only Isle de France and a few other provinces constituted his entire estate. The rest of the land was controlled by powerful noblemen. Philip, a very ambitious man, planned to gain control of all land for the crown. For this purpose, he needed money; money for troops and their upkeep. The obvious solution to his problem was the wealth of the French Jews. He plotted all sorts of ways to extort money from them and ended by expelling them. Fortunately, for the Jews, the properties of the king and the provinces he controlled were few. The Jews thus expelled from his lands were permitted to settle elsewhere in France. Philip soon realized what an economic loss he sustained when the Jews were driven out. The king and the noblemen changed their attitude to the Jews. Suddenly they developed an extraordinary fondness for the Jews. They treated them as if Jews were so dear to them that they could not exist without their presence. The lords would not allow Jews to leave one province to settle in another. They began to place Jews under oath not to
by kings and princes, to live and to migrate to any place they desire. (32) No lord may deprive them of any of their belongings”. The right to freedom of domicile was stressed by many Spanish rabbis. (33)

It was stated above, that the kings often resorted to placing Jews under oath not to forsake their land. The Jews took the pronouncing of an oath seriously. Nevertheless, when they were forced to take an oath not to leave the province of a particular nobleman, the rabbis permitted them to silently add the word "today" (יֵּאוֹרֶה); that is; they qualified their oath to restrict their migration for that day only. Of course, this was only permitted when the oath was taken under duress. (34)

Similarly, in the 14th century, when Marranos were forbidden to leave their places of residence in order to return to their faith or when other regulations were set that intended to provide the government with a vehicle to confiscate Jewish property if they emigrated from their province, the kings were denounced. It was proclaimed that if such illegal ordinances were enacted, the Jews might utilize any means at their disposal to prevent the loss of their property or their freedom of domicile. They declared that Samuel’s law does not apply to such high-handed laws just as it does not apply when extortionate taxes are levied. (35)

The political position of the Jews of Spain during the 13th century, especially in comparison with other European lands, was quite tolerable. Indeed, nowhere in Christendom did they enjoy better treatment than in Spain. However, their status began to decline. The edicts of the Popes, the numerous public "discussions", the burning of the Talmud, all took their toll. The status of the Jews of Spain began to
assume different characteristics. The dense, dark clouds which were to engulf Spanish Jewry two centuries hence, could already be noticed in the distant horizon.

The 13th century played an important role in the political status of the Jews. It marked the dividing line between almost complete freedom, and their status as servants to the king. This was certainly true as far as the Jews of Germany and France were concerned. In Spain, the signs of decline were now visible.

In this setting, we may now better understand the views of R. Samuel b. Meir and the Tosafists. Up until the 13th century, we have seen that the Jews of Europe lived in freedom. They were treated well. Although their taxes were always exorbitant, nevertheless, their political status was not impaired. Whenever an individual nobleman mistreated the Jews of his domain, or when protective laws were enacted, they did not alter the political and social status of the Jews. They were momentary incidents. By and large, the Jews fared well. In consequence thereof, the Jews recognized the "social contract" of kingship. It was the theory of R. Samuel which prevailed and was accepted, not only in France and Germany, but in Spain as well.

When a turn of events altered the status of Jews, the Jews of Germany and France reacted to it. They no longer saw the "social contract" in existence. The king became the owner of their land. He had the final say or else they would be expelled. The "social contract" no longer had validity. It was the rule of the despot that now controlled their lives. Thus, the Tosafists' theory became prominent. The first mention of the Tosafist theory in Spain is found at the end of the 13th
century by Ibn Adret. It is fully accepted by Nissim Gerondi in the 14th century. Ibn Adret still wavers between the two theories, but as the conditions of the Jews became more desperate, the Tosafists' theory seemed more accurate and in keeping with the times.

As the noose slowly tightened about the Jews and as the pressures of the outside world became more severe, the concept of the "law of the kingdom is the law" underwent a great metamorphosis. It was broadened or narrowed as the living conditions demanded. Safeguards had to be placed. These shall be discussed in the next chapter.
The very nature of Samuel's law served, as well as threatened, Jewish jurisprudence. On the one hand it provides for the establishment of relations between Jews and Non-Jews. It offers the method whereby Jews living among non-Jews may observe their own law without defying secular law. On the other hand, the authority which is thereby granted to the kings and the secular governments of the diaspora might endanger the very existence of the Jew. Investing the king with powers which allow him to enact laws that also become the law for Jews, not only compromises the sole sovereignty of Jewish law, but also threatens the welfare of Jewry. Restrictions and safeguards to Samuel's law had to be placed in order to keep the powers of the king in check, to circumscribe such powers, lest Jews commit judicial, social, religious and economic suicide by means of their own principle.

We already encounter stipulations meant to curb the authority of a monarch in the Talmudic period. The king's powers were enumerated and limited to the matter of improving the welfare of the State. The king could not be extortionate in his demands for taxes. Only properly authorized tax-farmers appointed by the king could collect taxes. Otherwise, it was royal robbery. In Geonic times, further limitations were imposed. The gentile courts could not issue writs for all matters. Only deeds of sale were recognized. A gift could not be transferred by a writ issued by a gentile court and witnessed by gentiles. These restrictions were by no means sufficient to restrain the kings who ruled in a predominantly Christian Europe. A new series of safeguards had to be imposed.
A minority opinion, ignored by many medieval rabbinic authorities, stated that the "law of the kingdom is the law" applies only to matters involving real-estate and taxes. The land belongs to the king and he may keep or dispose of it in any way he desires. He may regulate all transactions concerning the land. The king may refuse entrance to his land or even refuse to allow anyone to traverse his land unless a tax is paid. Since the land belongs to him, it is legal for him to demand such taxes. He may expel anyone for refusal to pay such a tax. Samuel's law was not to apply to anything else. The king had no right to regulate other matters, such as commerce, loans and debts, etc. The fact that the king owns all land, and merely permits his subjects to till it or to build upon it, also gives the king priority to foreclose on property upon which he had a lien. This right was not extended to a commoner. If a Jew claimed that a gentile had a lien against all his property, it is not sufficient to evade other creditors.

In Turkey, a king's daughter wanted to buy a number of houses in Constantinople, but the owners refused to sell. The court ruled that the entire land belongs to the king, and the permission to use the land which is given to the people, is not sufficient cause to prevent the king's daughter from demanding these houses.

Similarly, regulations concerning building and construction are to be governed by the State and such laws are binding upon Jews. As in all such matters, the law of the kingdom supersedes Jewish law. Certainly when such construction jutted out into the thoroughfares, the law of the kingdom prevailed.
In a certain community, the Juderia, the Spanish Jewish quarter, was separated from the rest of the city by gates and fences. These were not considered sufficiently secure since an alley (\text{\textmu}n\text{\textmu}) opened directly into the city proper. At a meeting, some of the homeowners, with the approval of the king's agent, put a gate in the center of the alley, which inconvenienced the other members of the alley. They argued that the barrier would inflict hardship upon them. They were hindered from conveniently reaching their synagogue and ritualarium. They felt it was against Jewish law to erect the gate without the unanimous consent of all householders who were affected by it. However, since the king owns the streets, highways, and market places, it was within his, or his agents', power to erect such a gate. It is by his command that streets are opened and closed, or that streets are repaired or improved. These were considered every day occurrences. The right to erect such a gate was granted to those who so desired it. Thus, a group of Jews were able to make use of the law of the kingdom for their own purposes. If the law of the kingdom supports a Jew, he may make use of it, either to build or to prevent others from building.

Soon more restrictions came into being. A king's decree, which is considered theft or robbery when enacted for an individual, became law when it is common practice for all subjects. When a king, without cause, demands a share of an individual's income, it is robbery. Once he demands a share of every subject's income, it becomes a justifiable tax and is no longer robbery.

The authority of the king was not challenged when a legislation involved everyone. Any decree became law when it concerned and en-
Confiscation of an individual's property without just cause is regarded as robbery. When enough people were involved it becomes the law of the land. Finally, there emerged the theory that equality in law is required before any royal decree was recognized by Jews. They were willing to invest the king with power. They understood the necessity for any government to maintain full authority. However, they also were leery of such centralized power. They were fully cognizant of the terrible results of discriminatory laws. Consequently, they demanded that any law that is to be accepted by Jews, must first be a law that is equally applied to all subjects of the land. A law is not valid, even if it be equally applied to all people of one province. It had to apply to the entire land or else it was not acceptable.

Despite the king's right of taxation, he could not impose a head-tax upon rabbis. It was accepted law that the clergy be exempt from such taxes. Any change constituted a discriminatory law and was void. Local governments could not impose laws which were discriminatory either. Their laws, like the ones issued by the king, must encompass the entire population. Some rabbis pointed to the very words of Samuel's law - Dina D'Malkhuta Dina - the law of the KINGDOM and stated that it was only law when it became the law for the entire kingdom. Laws which were placed against any minority group, e.g. people belonging to one trade such as money-lenders, are not valid.

When a law includes all people, then full authority is granted to the king. No one may accuse the king, or anyone who purchases from the king, of theft. A community that rebelled against their king or
displeased him, could be punished by force. All property confiscated by the king at such a time is rendered *res nullius* and those, who purchase such articles from the king, become the legal owners. The king acted according to accepted procedure and his method of meting out punishment was a method which would be applied equally to all citizens who rise up against him. Consequently, it is not the duty of those who redeem such confiscated items, be they even sacred articles such as a scroll of the Torah, to return them to those who by chance escaped the wrath of the king.

That the demand for "equality in law" was based on the fear of discriminatory laws is best expressed in a responsum dealing with a *Ketuba* (dowry). The government demanded that certain conditions with regards to dowries be met by husbands (Jew or non-Jew), conditions which were not required by Jewish law. The rabbi, to whom this responsum was addressed, ruled that the government's demands must be fulfilled, since these demands were required of all people residing in their country. The rabbi stated:

"Nevertheless, we may deduce that in such matters (dowries) we follow the accepted custom, and the decisions of the king's judges do not matter unless it is established law of the kingdom for the entire nation, including the Jews, since the "law of the kingdom is the law".

The phrase toward the end of the quotation is of importance. The law is recognized only when it is "established law of the kingdom for the entire nation including the Jews". The law must be promulgated for the entire nation. It cannot be issued for Jews alone. The *Ketuba* as a document was no different than other documents, such as
bills of sale or promissory notes, that were valid when issued by a
gentile court. They were recognized provided all regulations that
the law required were regulations applicable to all subjects alike.
However the Ketuba was a document for Jewish women only, and any
secular law governing the Ketuba, would be a law directed to Jews
alone and to no one else. Such a law would not be considered binding,
for it is a law discriminating against the daughters of Israel.

Of special interest is the ruling attributed by Moses Isserles
to Joseph Colon, namely, that special taxes levied specifically for
Jews are within the rights of the government and must be paid. This
ruling appears to contradict the prerequisite of "equality" to which
everyone, including Colon, agrees and demands in order for any royal
decree to be valid on the basis of the concept of Dina D'Malkhuta Dina.
Perhaps, Colon, who lived in 15th century Italy, at a time when Jews
had been barred entree in many countries of Christian Europe, felt
compelled to accept the premise that Jews may be taxed more heavily in
order to find a haven of refuge. Or else, he recognized that Jews had
been forced to pay exorbitant taxes everywhere, by everyone and in
every century. As such, it had become the accepted norm and no longer
was considered as discriminatory by him. Exorbitant taxes had become
a prerequisite for Jewish existence in the diaspora so that Colon no
longer saw anything out of the ordinary in a governmental edict which
to all intents and purposes was discriminatory.

Along similar lines, with the same fears to guide them, the
rabbis imposed yet another limitation to Samuel's law. As we have seen
in the previous chapter, the 13th century marked a decline in the status
of the Jews of Europe. Times had changed drastically. Whereas heretofore
the kings had looked favorably upon the Jews, now their greed and ambition triggered a series of decrees, all well aimed to satisfy their never ending needs at the expense of the Jews. They needed the wealth of Jews to support their nefarious schemes to centralize the government and bring about the downfall of all powers save their own. The focal point of power was to reside with the king. The struggles which ensued between the noblemen and the king, plus the evermounting fear of Church influence over the monarchs of Europe, threatened to bring into being an ever increasing amount of new laws, all of which would be unfavorable to the Jews. The Jews did not want to deny the authority of the king. On the contrary, in this three-way struggle for power between the king, the nobility, and the Church, the Jews had more to gain if they remained loyal to the king. They needed his protection as well as his approval to settle in his land. They could ill afford to antagonize the crown. Nonetheless, in order to insure their greater safety, they limited the power of the king, so that they might prevent annihilation by means of the very powers they granted him. The earlier kings of all European countries had been much more liberal in their attitudes to Jews. Their edicts were far more favorable. The Jews were convinced that new legislation not within the spirit of already existing laws would prove harmful to them. Consequently, during the 13th century, the rabbis ruled that all new legislation enacted by a king must follow the traditions of the nation. The new laws must be in keeping and in line with the mood of laws enacted by earlier monarchs, or else, they are considered illegal. Here again, the rabbis pointed to the very words of Samuel's law "Dina D'Malkhuta Dina", the law of the kingdom is the law, and the concluded "Dina D'Malka lav Dina".
the law of the king is not the law. If a king issued a new law, one which was not in the spirit of the laws issued by his ancestors, such a law is not valid. These laws were required to be "known" statutes. A number of authorities even required that these laws be recorded in the chronicles of the kingdom. Any temporary edict issued by a king, or a fine levied without precedence, even if that fine is not to be repeated, such laws are considered royal robbery. Jews cannot consider these ordinances as valid. At the time when Jews fought the edicts which were intended to rob them of their right to move about freely from place to place, the rabbis cited the above mentioned restriction to the concept of Dina D'Malkhuta. "And the law of the kingdom provided that no lord may appropriate a Jew's property after he had moved away from his town. This was the custom throughout Burgundy." These were the words of the Tosafist, Isaac b. Samuel of Dampierre. The established laws of the kingdom could not be overruled by new edicts that a king might want to issue. In the 15th and 16th centuries, and in the Moslem countries where the monarchs had fixed laws of taxation, even a new tax law, that was not within the traditional concepts of taxation, would be disregarded. This was not true of Christian Europe where the kings had greater leeway.

The two restrictions circumscribing Samuel's law, namely, the requirement for "equality in law" and that no "new" laws may be enacted unless they are in the spirit of tradition, may quite conceivably come into conflict with each other. A law that is newly formulated by a king, one which is not in keeping with established precedence, but is a law which is equally applicable to all subjects residing within a
nation, presents the problem of whether or not such a law is valid. Are both points to be fulfilled ere a law be recognized?

Two opinions are cited. One demanded only that the law be alike for all people; the other opinion requires the law to be within the spirit of tradition as well. The latter opinion sees in these limitations a means of curbing the powers of the king. They felt that Samuel's law provides too much authority for the monarchs. Any stipulation which was designed to limit such powers must be fulfilled ere a law was to become valid.

The other opinion saw these restrictions placed in order to combat discriminatory laws. Consequently, if such a threat is averted by any one of the restrictions, there was no further need to comply with both stipulations. A law which is to be binding upon everyone, even if it is an entirely new law, is not discriminatory.

The Jews feared powerful, local rulers, whose greed was boundless, especially where the influence of the Church was strong. Their fear shifted from fear of the king to fear of the nobility and the Church. The emphasis now was not so much on restricting the king from issuing new laws, as it was to prevent random confiscation by individual, powerful noblemen and church officials. In consequence thereof, the rabbis ruled that only the known, established, constitutional statutes of the land were to be obeyed, but under no circumstance would Jews recognize the ravenous fleecing of Jewish property by greedy local rulers or bishops. Any Jew who purchased such articles is the recipient of stolen goods.

Alongside these restrictions, others were developed. The law of the kingdom was operative whenever the welfare of the nation was at stake. If conditions warranted it, the king had absolute power. He
could deprive his subjects of their money and grant it to anyone else. It was considered theft only when the welfare of the State was not involved. When the king needs taxes to improve, or erect new public projects, such as city streets, he may levy them at any time. It was considered that the people made up the nation and when their welfare was at stake, the king was granted unlimited powers.

Two opposing views arose as to whether or not secular law may be invoked when the case at hand does not involved the king directly, when the matter neither concerns nor benefits the monarch. One view held that it is absolutely essential that the king be involved and/or accrue some benefit are the concept of Dina D'Malkhuta becomes operative. The king's law could not overrule Jewish law if the situation did not directly concern him. Issues which involved individual disputes and are of a private nature are not to be tampered with by the king. Only in that which has direct bearing upon the crown, may the law of the kingdom prevail.

A wide variety of things were included in the definition of "concern and/or benefit" to the king. Any financial revenue for the king was considered as sufficient reason to invoke Dina D'Malkhuta. When the king demands that a writ, which assigns property to the crown in the event it is left without heirs (WAKOF - מנהל), be issued only by Gentile courts, such a decree is valid for it directly involves and benefits the king. The king may insist that specific documents be issued by his courts if he in turn receives a specific tax for each document so issued. Should the king become part heir to property left by a deceased, that is considered a matter involving the king.
One opinion even considered the mention of the king by name and the year of his reign in any document as being ample grounds to consider this a matter of concern for the king.

Whenever a government changed the value of its currency, or else issued new coins, there resulted a problem concerning payment of debts or payment for articles purchased. When the nation's currency was devalued, the extra amount which was now required for payment, might be considered the taking of interest. When the two parties involved were Jews, this might constitute a violation of Jewish law. However, since this was a problem for Jews and non-Jews alike, the question was raised whether or not the law of the kingdom should be invoked. Even those medieval authorities who required the involvement of the king were divided. According to some, there is nothing that be considered of greater concern to the king than his currency. Accordingly, they ruled that even if by Jewish law the additional payment is considered interest, nevertheless, the law of the kingdom is to be applied provided the king specifically demands that payment must be achieved in this manner. There were others who disagreed. They stated that no king is concerned with the amount that is paid. He does not demand that a greater value be repaid. He is merely insistant that the new currency be used. Consequently, any amount that is paid beyond the value of the loan or business transaction constitutes a violation of taking interest. The problem was never solved. In later years, many rabbis did not know which of these views to accept.

A number of medieval authorities agreed that the king may issue edicts concerning all affairs even if he is not directly involved or derives any benefit therefrom.
The authorities who demanded that there be direct involvement, concern and/or benefit to the king were also the ones faced with another difficulty which this requirement solved for them. The Talmud questioned why the Mishneh validated a writ transferring a gift issued by a Gentile court and witnessed by gentiles, when this writ is used not merely as evidence of a transaction but achieves the actual transferrence. Two solutions were proposed. The first validated such a writ by invoking Samuel's law; the second, denies the application of Samuel's law and equates such a writ with a divorce which is excluded by the Mishneh. Many authorities concurred with the second solution. However, this seems to deny the concept of Dina D'Malkhuta, a position which was impossible to maintain. The later Amoraim (e.g. Rava, R. Ashi, Jannai, etc.) accepted Samuel's law without a doubt. In addition, all of the medieval authorities accepted Samuel's law while at the same time ruling in accordance with the second solution. It must, therefore, be concluded that the second answer is not in opposition to Samuel's law. His law is only in effect when it involves the king directly and/or is beneficial to the king. Wherever the king is not involved, as in the case of a gift which involves only the donor and the recipient, and is of no concern to the government, Dina D'Malkhuta is not operative. Nonetheless, should the parties involved accept upon themselves to abide by the law of the kingdom, regardless of Jewish law, they may do so. In money matters, man may act as he pleases. Jewish law may deny the validity of a writ issued by a Gentile court and the concept of Dina D'Malkhuta may be irrelevant, nonetheless, the acceptance of two individuals validates such writs as far as they are concerned. In those nations where the kings insisted that all documents of the Gentile courts be accepted, it was considered by many authorities, as the
concern of the government and the law of the kingdom was to be fol-
(66) lowed. All agreed that at a time, when such writs served no greater
purpose than to prove the transferrence of a gift, either because the
actual title to a property was transferred by other means, or else
the secular courts merely issue such documents as proof, then Samuel's
law is in effect.

In Spain, the fear of individual lords and the Church reached
great heights at the end of the 14th century. The Jews increased their
confidence in a centralized government and would not recognize any other
authority besides the king. City governments could not issue laws that
conflicted with the laws of the nation. In Alfredo, the law demanded
that a creditor could force a debtor to beg in the streets in order to
repay his loan. Barfat ruled that the debtor is not required to obey
such a law since neither Jewish law permits such a degrading demand,
nor is it permitted by the law of the kingdom or of the king. It is
only the law of the city of Alfredo, and no city can counteract the
law of the nation. The law of the kingdom is the law, the law of the
city is not the law. Only where it is to the benefit and concern of
the king is Samuel's law cited.

Another of the powers of the kings, which of necessity had to
be held in check, was their right to confiscate property and to evict
individuals from such property. If used properly, this right provides
a tool for the king to maintain justice and assure the development of
the land. If misused, it can prove to be the weapon that destroys the
morale and cohesion of a nation. We have cited the protest of Jewry
when the threat of confiscation was utilized to deprive them of their
right to move about from place to place at will. The Jews fought
bitterly to retain their freedom of domicile. They refused to be re-
stricted and frozen in one place. When monarchs confiscated their pro-
perty, Jewish law called it royal robbery. They termed such confiscation an illegal act, albeit, it was the king who performed it.

Of course, this did not deny the right of a king, nobleman, or burgher to permit, or to exclude from settlement any Jew or group of Jews. More than this, he could appoint a Jew who was to determine all settlement privileges. No Jew may request such right of selection of the burghers, and surely may not bribe a nobleman to grant him the right to say who may or may not reside in the city. Only when the nobleman initiated such a situation, does the law of the kingdom apply. Often these rights were in the hands of the Jewish community (Kahal). It was they who granted or denied permission to others to settle in a city. They enforced their decision by means of the "oath of settlement" (Herem Hayishub). No secular authority could interfere in such a matter by nullifying such a vow. The power to abrogate or void an oath of another was granted only to a father when it involved a vow made by his daughter or to a husband with regards to his wife. No one else can assume such power.

The right to confiscate all properties was given to a king only when said confiscation is permitted by the law of the kingdom. Only in situations which have traditionally allowed the king to take the property of others is it not considered royal robbery. Any Jew who purchases such property becomes the rightful owner and does not have to return it to those from whom it was taken by the king. Should a community fail to pay their taxes, the king has the right to confiscate the property of one individual of the community for his loss, who in turn may demand of the entire community that they reimburse him.

No king had the right to random confiscation. When, by a
whim, the king decides to seize properties, it is royal robbery. Confiscation by the king of property for failure to pay a loan was considered illegal since it was no concern to the king. Despite the fact that such confiscation was illegal, nevertheless, a Jew who purchases such property becomes its owner, not because of the concept of Dina D'Malkhuta but because such illegal seizures automatically cause the victims to resign themselves to their loss. (\textit{הời}) and \textit{מלכ} (81).

Restrictions were also placed upon the authority of the secular government when it came to trade competition. (\textit{חרד ממלכ}). No secular authority has jurisdiction over such matters and Jews were not bound to abide by their regulations in such matters. However, this was only true when the king was not directly involved. When \textit{A} negotiates with the king to purchase a contract to work a mine and \textit{B} outbids him, the king may award the contract to \textit{B}. Although this would constitute a violation of Hasogat Gevul when an ordinary gentile is involved, with regards to the king himself, he may determine all trade competition.

The heretofore mentioned restrictions applied only during ordinary times. However, in times of stress or war, the king has the authority to commandeer all property, to quarter soldiers, to evict and even to destroy buildings and homes. This falls under the principle of the "law of the kingdom is the law". (84)

The Jews, in every age, did not allow themselves to be strangled by the secular authorities and certainly not be means of their own principle. The law of the kingdom was the law, but when they found that the power thereby extended to the monarchs threatened
to hurt them, they consistently and logically limited and curbed such power. Perhaps their protests were not heeded, since the king's authority and force did not depend upon the approval of the Jewish community. Nevertheless, public opinion and the principle of Dina D'Malkhuta was one to be reckoned with.
CHAPTER V - AGENTS OF THE KING

"The agents of the king are like the king". With these words the Talmud expands the king's powers and recognizes Samuel's principle of Dina D'Malkhuta Dina. Dina D'Malkhuta pertains not merely to the king, but to his agents and emissaries as well. Among such agents are included the tax collectors, individuals delegated by the king to look after the civic welfare of his state, concessionaires and lessees, and other officials. In the Spanish communities, the application of Dina D'Malkhuta Dina to agents of the king was further broadened to include the acceptance of secular and religious community leaders appointed by the king. This latter position was not accepted by the Franco-German communities. They, too, accepted Samuel's principle and recognized the authority of the king and his agents, but they vehemently opposed governmental interference into their internal affairs.

Dina D'Malkhuta Dina encompasses all agents of the king provided they fulfill the aims and goals of the king. These aims cannot be altered. However, the details in carrying out their missions are left to the discretion of the agents. If the king requires wood for the erection of bridges, then the officials of the king may decide by which method to requisition the lumber. The detail of whether to acquire it from all or anyone of the king's subjects is left in their hands.

The rights and privileges possessed by the king could be delegated by him to any agent of his choice. Samuel's Law would apply to the highest courtier as well as to a minor official. For example, according to Jewish Law, the Jews living in a bounded area may pool their properties by means of the Erub and be permitted to
move and transport objects on the Sabbath from house to house throughout the city. The property of the gentile must be purchased or rented by the Jews. It cannot be pooled as can be done when the area is inhabited solely by Jews. The problem arises when a community wishes to erect an **Erub** for an entire city. There is the difficulty of approaching each non-Jewish home-owner individually, as well as the added possibility of failure by having to gain the consent of each. The king, who is considered the owner of all properties, either actually or potentially, may delegate this right to any agent. The turnkey may act on his behalf and the right to set up an **Erub** (**Reshut**) may be purchased from him. Therefore, the gatekeeper (turnkey) of a city wherein Jews and non-Jews reside, a comparatively minor official, may be the one from whom **Reshut** is purchased in order to erect an **Erub**.

Just as the king could not enact laws which were counter to the spirit of the statutory laws of the kingdom, so the agents of the king are similarly limited. The agents must be appointed by the king himself and not by any of his advisors.

Concessionaires and lessees, in a way, are the agents of the king. Privileges granted by a king which according to Jewish Law could not be transferred, may be acquired by means of **Dina D'Malkhuta**. For example, a king bestowed a grant upon a Jew which entitled him to receive a certain share of meat each day. According to Jewish Law, the recipient cannot acquire something is not yet in existence. However, by authority of the king, Jewish Law is set aside and the king's law prevails. Although there is nothing tangible which is transferred by such transactions, since it is but a right to obtain or a license to sell certain items, nevertheless, it was equated to
the Heskat ha-Yishubim, the rights of settlement which could be purchased from any nobleman, a right which could be transferred because of Dina D'Malkhuta. Furthermore, these intangible rights are not different than any ordinary rental of a home. All such concessions, be they the right to farm taxes, liquor traffic, etc., are valid since the "Law of the Kingdom is the Law".

In time, concessions were taken for granted. It was not questioned. The concessionaire was an agent of the king. A rented an Aranda from the land owner, who ordered all to purchase drink from this Arandar. B bootlegged whiskey to the peasants and was brought to the Bet Din by A. Since the land owner stipulated that whiskey may only be bought from and sold by A, the "Law of the Kingdom is the Law". The actions of B are considered to be theft. It is stealing from the tenant, A, who is the agent of the land owner. The agency of the Arandar is not questioned. In fact, it is said that the bootlegger steals from the authorized concessionaire, because, as a tenant, the latter is the agent of the landlord.

The authority for Jewish lay and rabbinic leadership in the Middle Ages may be questioned. From whence came their authority? Was this authority derived from the secular governments or was it rooted in the Talmud and the chain of tradition going back to Moses? Did the lay leaders' powers emanate from the dictum Dina D'Malkhuta Dina or were they the results of community approval and community confidence bestowed upon them? Who appointed the rabbinic authorities and judges? What say had the rabbis in their appointments?

It appears that no uniform system was found in Europe of the Middle Ages. As so often was the case, differences existed between the communities of Spain and those of France and Germany.
In the Franco-German communities the authority held by kahal over its individual constituents goes back to a very early period when Jews first came to France. They modeled their community structure on the communities of Palestine from which they stemmed. The Palestinian traditions and customs became theirs as well. Their religious life was directed by their teachers. Such was the case until the 11th century. Until this time, the community life was controlled by the secular leaders and even the sages were dependent upon them. Takkanot that were issued required the consent of the community. On the other hand, R. Tam acted independently of the community. In conjunction with others of a Synod, he issued his regulations. The title of Rab and Rabbi were also appended to their names. Their spiritual authority was derived from an unbroken chain from Hai Gaon, who in turn derived his authority from an unbroken chain directly from Moses. The sages also held authority by the fact that they were appointed to their position by the communities. This dual source of power strengthened the rabbis in their position of leadership even over the secular life of the community. Semikhah was practiced in Palestine and later on in the Franco-German communities but not in Babylonia. Thus, in Spain, whose communities were of Babylonian origin, Semikha was unknown. They modeled the structure of their life after that of Babylonian Jewry. Their leaders held their position due to their appointment by the rulers of Spain. Samuel ha-Nagid had authority over the Jews because he held an important position in the government. Recognizing this basic difference in approach, we shall now show the role Dina D'Malkhuta Dina played in these respective countries with regards to the secular and religious leadership.
The Jewish communities of Spain governed themselves according to Jewish law, but the authority for that power rested in the temporal power of the secular government. It must be emphasized, that the rules and regulations that governed the procedures of the Aljama followed Jewish law. Jewish law recognized the lay and rabbinic leaders as representing the community and granted them the right to set up ordinances for the welfare of the group. "The majority of every city is to the individual what the Sanhedrin was to all Israel". Furthermore, "Every community within its borders has the same prerogatives that the Geonim once possessed".

They had the right to institute Takkanot. The penalty for violating a Takkanah was usually incorporated into the text of the Takkanah itself. They generally consisted of fines, physical punishment, or the Herem. Although these were the powers which the leaders of the Aljama wielded, an avenue of appeal was left open to any individual. A clause was made part of the Takkanot allowing anyone, without fear of excommunication, to appeal to the king or his agents. It is not merely sanction which was required. On the contrary, it stated that the "court of last resort" was the king in whom all powers were vested and from whom all powers emanated. The Herem could not be issued without the authority of the king. The king, however, could not misuse this power. "If a king or ruler or tax collector ordered the Aljama unjustly to pronounce the ban of excommunication, and it is dangerous not to comply with the request, the excommunication thus pronounced is null and void and one is not to heed it". Similarly, no man is required to reveal the possessions of a fellow Jew when the king demands these funds unjustly. Even if the Crown commands that
an excommunication be pronounced against anyone who had in his possession money belonging to the victim, no one need pay any regard to this Herem. It merely confirms the position that the rights of a king are nullified if they are misused. In the above cited instances the king unjustly demanded sums of money and tried to misuse the power vested in him. This he was not permitted to do.

The king often permitted the selection of officials who were to keep a close watch over the conduct of the Jews. A system of fines was enacted and were to be collected by the king's officials. In Lerida, the Jewish officials were required to inform the local representative of the king of all charges it chose to investigate. These officials had the choice of refusing to investigate an alleged offense, but once they initiated such an investigation, they were required to report the charge to the king's agent so that no fines would be lost to the king. Anyone swearing falsely before this board of inquiry must pay one hundred sueldos to the king. A Jewish official may receive a percentage of all fines he collects on behalf of a feudal lord for all robberies, theft and murders. The lord may rule in his province in any manner he chooses because the "Law of the Kingdom is the Law". He may receive the fines and then pay a Jewish agent for his labors; or else, the agent may receive his share directly from the Jewish offender. "The Law of the Kingdom is the Law" and the right of the Jewish official to his revenue cannot be challenged.

In these countries, not only the lay leaders of the Jewish communities but also the spiritual leaders were appointed by the government. A rabbi, so appointed, enjoyed full authority because the "Law of the Kingdom is the Law". Just as the Jewish spiritual and
secular leaders during the Persian era ruled by the authority vested in them by the Persian kings who had conquered Judea, so did the rabbis during the Middle Ages who were appointed by the king, have full authority. Their official position is not to be questioned for the "Law of the Kingdom is the Law". Two prerequisites were demanded ere such appointments were to be honored. The first required that such rabbis be acceptable to the community; and secondly, they have to be well versed in Jewish law, virtuous in their conduct, and their integrity unquestionable.

Otherwise, no official appointment would be recognized.

Despite these demands, we find that in practice, these prerequisites were ignored. Many of the rabbis appointed by the Crown were men of ignorance. Many were themselves unable to read. It was the practice of the government to ignore these deficiencies in their appointees, and to whitewash them. Their ignorance was not held against them. The government insisted they were fit to hold these positions. Despite the cry of the Jewish communities, and the men of stature against anyone seeking such rabbinical appointment, men still sought such appointments and disregarded certain Takkanot made by the communities against appointments made without the consent of at least the majority of the community. Rabbis went so far as to bribe the officers of the king, or Gentile courts, in order to secure the appointment of Hakam. These men forfeited the honor of being called Hakam but their decisions must be upheld. Perhaps their social status was impaired but not their official status. If a community had taken an oath not to accept a particular candidate for the position of Hakam, and if afterwards, he is appointed by an officer of the government, the townspeople must abide by their oath. They cannot accept the appointment. The "Law
of the Kingdom is the Law", but it cannot set aside the oath already made. Furthermore, a rabbi of greater scholarship could prevent a man from becoming a rabbi but he could not remove from office a rabbi already holding a royal appointment. No rabbi could oppose the authority of the royal appointee for it stemmed from the law of the Kingdom. If the documents issued by a Gentile court are valid because of Dina D'Malkhuta, then equally, the decisions of a Jew appointed by the king should have complete acceptance as long as a man is suitable. Should a rabbi dare issue Takkanot opposing the royal decrees, he is considered a rebel. In 14th century Spain, no rabbi had authority without the king's support. The rabbi's greatest weapon, that of the Herem, could not be issued unless it came by the authority of the king.

The controversy of Barfat and Duran in Algiers concerning the royal appointment of Barfat as Chief Rabbi of the Spanish-Jewish community in North Africa, does not contradict the theory that the Spanish Jews accepted their authority from the secular authorities. When Barfat came to Algiers, he made his presence felt. His outstanding reputation as a scholar gained for him the powers to lead the Jewish community. However, as a result of antagonism and animosity towards him, his position was undermined. When Barfat put a ban on those who refused to admit refugees, the community lay leaders tried to restrict such a ban from taking effect by demanding the consent of lay leaders. As a result, the brothers Saul and David Astruc used their influence and procured a royal appointment for Barfat.

This appointment aroused tremendous opposition, headed by Simon B. Zemah Duran. This opposition was not based on the same
grounds as the opposition to such appointments in the Franco-German communities. The major reason for their opposition was that the entire affair took place without the sanction or knowledge of the community. The appointment was sought and obtained solely by individuals. Furthermore, the appointment as it was made, gave Barfat all-embracing powers. No one was permitted to engage in any judicial function save he. The penalty for disobedience was a considerable fine. Duran maintained such appointments to be illegal. The rabbinic dictum of Dina D'Malkhuta was inapplicable in this case since it was unconstitutional. The king had no such rights when the community was not consulted. The exclusive power of Barfat to act as judge would preclude anyone from adjudicating in litigations in which those associated with Barfat were involved. Who, then, would judge such cases? What of all the rabbis who held positions prior to Barfat's appointment? What of cases which could only be tried by a minimum of 3 judges? Why were no provisions framed for these exceptions? Finally, we find that at no time was a judge permitted to compel litigants to try their case before him if they selected another judge. Duran insisted that governmental intervention in matters of this kind be ignored by the Jewish community. He stated that the appointment of Barfat marked a deviation from the policy of non-intervention in the internal affairs of the Jews, a policy hitherto in practice and affirmed by the kings of Tlemcen. Such new policies were not in accord with the principle of Dina D'Malkhuta Dina. In addition, this new policy being in effect in Algiers alone, is discriminatory in nature, whereas Dina D'Malkhuta Dina did not apply to measures which were enacted for one locale alone.

When the exclusive powers of Barfat's appointment were abrogated, and all rabbis, provided they receive Barfat's authorization,
were once again permitted to function, Duran ceased his opposition.

The main grievance was removed. The fact that Duran refused to seek to obtain the office himself after Barfat's death only points to the reluctance to seek such appointment, but not that they refused it when it was made.

The Jewish community, as well, derived its power from the secular authorities. Its edicts were authorized by the government and it was by the "Law of the Kingdom" that they derived their power. Individual rabbis could not oppose their edicts. Should an attempt be made, even by the greatest scholars, it was considered rebellion against the Crown and the rabbi's life was forfeit.

In the Jewish literature of Germany and France we cannot find that the community leaders would claim powers over the people of their community on a basis that such authority had been given them by the secular government. They constantly averred that their authority stemmed from the chain of tradition going back to the Talmudic scholars and even to Moses. It was the authority granted them by Talmudic law and not the privileges emanating from the king. The kings merely allowed community autonomy by their non-interference. For example, they permitted them to adjudicate their problems according to Jewish law, but it was not the king who instituted their power.

The Franco-German scholars had two-fold authority over the members of the community. First, by the chain of tradition that went back to Moses, and second, by election of the community. R. Gershon B. Judah, "the light of the exile", based the secular powers of the community leaders on the principle that those elected by the community have the status of a Bet-Din and that even if they are not learned they may wield the same authority as Shamai and Hillel. They possessed
the right of confiscation of property based on the Talmudic principle of "מַעַלָּה מַעַלָּה" (confiscation of private property by a court is valid). The titles of the spiritual leaders, Rab and Rabbi showed the source of their two-fold powers. Rab is a Babylonian Title, Rabbi a Palestinian title. The title Rab was first given to Abba the student of Rabbi Judah, the prince. All his successors in Babylonia bore the same title of Rab. This title indicated position and authorization (Semikhah). Anyone who possessed scholarship but had no position bore the title rabbi.

To preserve integrality of the communities a Takkanah was ordained that no Jew could accept a position in a community either spiritual or secular, from the government. On many occasions the German kings and Polish government tried to appoint rabbis but without success. The Jews adhered to their old tradition of retaining autonomy in the management of their social and spiritual life and they alone could choose their leaders. In one instance, the majority of the members of a community wanted to engage a cantor but encountered the opposition of a few members. The duke intervened and forced his appointment. R. Meir ruled that they did wrong. "In our country matters such as this are dealt with in strict measure. A similar situation arose in Cologne during the time of R. Eliezer b. Joel. A Jew, wanting to honor the newly elected cantor, intervened so that the bishop would invite the cantor to his house. The bishop removed his mitre and put it on the rabbi (cantor) and said, "Here, take the office of cantor." The cantor became enraged and shouted, "Sir, our law does not permit me to accept the office to worship our Lord from your hands." He then resigned the post which he originally had accepted. I believe he fined the Jew (Jews) who was responsible for the bishop's actions.
R. Meir considered Talmudic Law as the only law binding for the Jews. The king could not interfere with religious autonomy by delegating powers to a chief rabbi. The king possessed no legal powers over the life or conduct of the Jews and therefore could not delegate powers to a chief rabbi. The position of a chief rabbi was not possible in these centers. Thus, the Franco-German Jewish communities were firm in their fight to maintain their absolute sovereignty in ministering to their religious needs. Even with the consent of the majority of the Jewish communities, no rabbi could hold office if the secular authorities interfered with their appointment. They would permit no outside interference whatsoever.

The ideology of the Franco-German communities came into conflict with the ideology of the Spanish centers in the clash between R. Meir Halevi of Vienna and Barfat. The real core of this conflict was the status of a rabbi who held his position by virtue of a royal appointment. The issue was not the reinstitution of Semikah by Meir Halevi as some maintained.

This controversy began after the death of the Chief-Rabbi of France, Mattithiah, when his son, Johanan, had served for five years. Johanan had succeeded his father with the approval of the communities and the sanction of the secular government. Joshua (Isaiah), a student of the deceased Chief Rabbi, opposed Johanan. He did so on the basis of a Takkanah which ruled that no Jew may accept a religious position with the sanction of the secular authorities. Barfat supported Johanan, whereas Meir Halevi gave Semikah to Joshua and ordained that no man in France could wield any authority over religious matters without the express consent of Joshua.
Barfat's support of Johanan was based upon four reasons. First, Johanan's father held the position with the consent of the Jewish communities and the approval of the secular government. As such, Johanan has claim to the office by right of descent. His father held it and according to law he should succeed him. Again, Johanan had already been established in the position. It would not be proper to either expect the incumbent to resign in favor of another aspirant for the position or else remove him and appoint another in his place.

Third, Johanan was named Chief-Rabbi with the consent of the Jewish communities. According to law, as their rabbi, he could be removed by no one. Lastly, the appointment by the secular authorities is binding upon the Jewish communities for the "Law of the Kingdom is the Law".

Barfat also investigated the practice of Semikah in France and Germany and came to the conclusion that this practice had no basis. The Semikah as was known in earlier days had been abrogated. The Franco-German Semikah had no validity.

It has generally been accepted that the controversy centered around the acceptance of the Semikah or authority, reinstated by Meir Halevi of Vienna, and which he bestowed upon Joshua. He deputized him to supervise the spiritual affairs of the Jews of France. This, of course, was resented by Johanan and the controversy recorded in the Responsa of Barfat ensued. According to this opinion it was Meir Halevi who reinstated Semikah and who initiated the title of Morenu antedates Meir Halevi. For example, Meir of Rothenburg was known as Maharam, i.e., Morenu ha-Rab Rabbi Meir. There were others such as Maharil, Maharash, and Maharap. Accordingly, Semikah was not reinstated by Meir Halevi, but was already in existence at his time. Furthermore, Barfat speaks of Semikah in France and Germany as being in
existance for a long time.

Aside from the above stated argument, other pertinent questions were posed. Is it conceivable that Meir Halevi would choose an avaricious man such as Joshua and bestow Semikah upon him and authorize him to dethrone another rabbi who had been in office for a number of years? He certainly could not have them removed merely because they had not been sanctioned by him. Third, it is incomprehensible that Johanan writes but two letters, one to Barfat and the other to a Catalanian rabbi, wherein he utilizes magnificent phrases and masterfully denounces his opponents, but fails to mention even one source from the Talmud that could prove his point. Finally, why would Johanan refrain from calling on the government, which appointed him to his office, to help maintain him as Chief-Rabbi? It appears as if Johanan was not able to ask for government aid.

It is far more understandable if we take the controversy to revolve on an entirely different issue. The old Takkanah mentioned earlier, dating to the time of R. Tam, R. Samuel b. Meir, and R. Eliezer b. Nathan, stipulated that no Jew, under threat of the Herem, may accept a religious position in the community with the appointment of the government. The real issue in the conflict of Meir Halevi and Barfat was the status of a rabbi who had accepted his position by a royal appointment. Meir Halevi felt that the old Takkanah should be observed. Johanan turned to Barfat, than whom he could find no better lawyer to defend his cause. Barfat, himself, accepted the position of rabbi in Algiers by appointment from the king of Tlemcen.

To this must be added one other, and perhaps more important reason for Barfat's strong support of Johanan. In defending the rabbinical position in France, he was "really defending the ideology
of Spanish Jewry. Isaac bar Sheshet, in upholding Johanan, not only opposed Franco-German ideology, but tried to justify the ideology of Spanish Jewry, under which a rabbi appointed by the government was considered the lawful Jewish spiritual leader.

Some have objected to the above mentioned theory on the following grounds:

1. If it be true that the controversy revolved about the validity of a royal appointment to a rabbinical office, then most of what Barfat argues is beside the point. The greater part of his responsum deals with the meaning and scope of Semikah in vogue in the Franco-German communities.

To this we must answer that the problem of Semikah was not beside the point. It was a vital part of the issue. As has been pointed out, Semikah had been in vogue in France and Germany without a break. These communities based their religious authority on this transference of power from teacher to disciple and also upon a rabbi's election by the community. Thus, when one deals with the source of a rabbi's authority, the question of Semikah must enter the discussion. Consequently, in the nations where Semikah existed, no other authority would or could be recognized. Hence, the Takkanah, so often repeated afterwards, prohibiting the acceptance of a religious position at the hands of the secular government. In the Spanish communities such authority did not stem from its religious leader. There was no Semikah. Hence, there was no conflict at all when a rabbi was appointed by the king.

2. It was also asked: "Did Barfat know the underlying causes,
the motive which prompted Meir Halevi to oppose Johanan? Did he know the arguments advanced by the other side? If he did, we cannot escape the conclusion that there was a deliberate attempt on his part to becloud the issue. Barfat clinches his arguments in favor of the incumbent with the statement that he had been confirmed in his office by the king. If the pivotal question was the right of Johanan to retain his position after having been appointed to office by the government, then Barfat cannot use that appointment as an argument to sustain his views.

3. A third objection was raised. Why did Meir Halevi wait for five years before raising his voice in protest against the royal appointment of Johanan?

This objection could be raised no matter what the issue at hand was. Furthermore, methods and speed of communication were not the same as in our day.

4. The responsum of Meir of Rothenburg which deals with the refusal of a hazzan to accept the position at the hands of the bishop cannot be cited as proof of the Franco-German position. It is quite different than the case at hand. The act of removing the mitre and handing it to the hazzan was tantamount to bestowal of office, whereas the royal appointment in the case of Johanan was but a formal recognition of the action taken by French Jewry. Furthermore, in the case of the hazzan only a majority favored his appointment while he was opposed strenuously by a minority. It was the outside influence that persuaded them to change their attitude. Johanan, on the other hand, had been appointed by the French communities, so far as
we know, without a dissenting voice.

In answer, we challenge the basic premise that Johanan was merely confirmed in his office. This assumption comes as a result of differentiating between an unanimous election or election by majority. Nowhere may we find such a distinction with regards to the election of a religious office. Whether there is or is no minority opposition makes absolutely no difference. The communities elected their clergy by a majority. On the contrary, we find Takkanot which forbade the royal appointment of rabbis in Spain unless at least a majority of the community consented to the appointment.

There is no doubt that two philosophies existed with regards to the government-appointed rabbis. These philosophies were divided between the Franco-German and the Spanish centers. The controversy of Meir Halevi and Barfat high-lighted their differences.
CHAPTER VI -- TAXES

No state can exist without collecting taxes. The king may demand and legally collect taxes for all civic projects necessary for the improvement of the nation. This includes national or city projects, highways and streets, etc. (1) The Jews recognized the need and the obligation of every resident to pay such taxes. This was included in Samuel's dictum. However, as has been stated previously, Jewish Law did not recognize the right of kings to extort taxes and to levy exorbitant amounts. Religious books or scrolls of the Torah could not be taxed. The "yoke of the kingdom" does not fall upon the Torah. (2) The "law of the kingdom" is not valid in such matters. A tax farmer could only collect the amount to which the king was legally entitled. He was also not permitted to add to the amount for his own benefit. To some, this regulation was applicable to Jewish or non-Jewish tax farmers alike. The legality of their claim depended upon whether or not the amounts were padded. (4) Others maintained that all non-Jewish tax farmers were automatically disqualified because they were never content with the legal amount. They always added to the figures. Thus, all forms of extortion with regards to taxes initiated by the king or by a tax farmer were considered royal robbery. Extortion is not only illegal when it affects an entire community. If an individual who is not required by law to pay a tax is forced by the king to do so, he is not obliged to pay. Samuel's law of Dina D'Malkhuta is not invoked. (7)

When was a tax considered exorbitant? The Talmud apparently equated this with an amount that had no limit. In the Middle Ages the rabbis concluded that it had nothing to do with the amount itself. A
tax was considered exorbitant when the amount was "unheard of" or a preposterous amount for a specific situation. It had nothing at all to do with being fixed or unlimited. If under normal circumstances and for a normal function the king requires an unlimited amount for the time being, this was considered legal and Samuel's law was invoked. If a king levies a specific amount but has no apparent reason or valid need for the tax, other than his personal desires and greed, this was absolute extortion despite the fact that the tax was of a limited amount. The tax farmer who purchases the right to collect a fixed amount of taxes may earn a legal rate of profit for his services to the government. It does not render the collection invalid and the full amount collected by him is not considered exorbitant. The tax farmer was disqualified from testifying in the courts. He was so disqualified because his testimony could not be relied upon. By the nature of his profession he treated various people in different ways. He was lenient and obsequious to the rich, treating them with honor and respect, while condescending and harsh to the poor. Consequently, his testimony would be biased and as such was disqualified. The Talmud also disqualifies a self-appointed tax collector. Any strong armed officer or feudal lord who issues new laws to collect new taxes is considered as acting beyond the law. Even if later on the king becomes aware of this act, and by his subsequent silence, appears to consent to such highhanded action, it not considered as part of the law of the kingdom. It is royal robbery. The phrase "�ךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךךך� - self-appointed" refers to someone who is unauthorized by the government. It does not mean someone who himself sought
the position of tax collector or tax farmer. Should a Jew seek out such a position of his own accord, he may collect for the king and all his collections are legal. Were he not to assume this task, someone else would.

The taxes were collected by the Kahal. The Kahal of one province was not permitted to tax someone of another province. It was the right of the king to divide his land into provinces and to grant it to various nobles. The Jews could not force payment under the above mentioned conditions even by means of the Herem. However, they were permitted to boycott or refuse to do business unless such taxes were paid. Such sanctions were permissible to the Kahal because the king could refuse to allow foreigners to enter his land for the sake of transacting business unless they paid taxes. Consequently, the power of the Kahal to collect the taxes for the king was closely linked with the power the king himself wielded in such matters.

One of the ways kings rewarded those who had found favor in their eyes was by exempting them from taxes. This was a prerogative which kings enjoyed without asking the consent of the communities. However, such exemptions presented problems to the communities who usually had to bear the brunt of the burden created by a king's magnanimity. The Talmud makes the following distinction. An individual who seeks an exemption for himself, must pay his taxes even if his attempts are successful. If, however, the exemption is granted him without his express request or else is merely the oversight of a careless collector, he reaps the fruits thereof. The Geonim re-interpreted this Talmudic ruling. The Talmud states that the validity of an exemption hinges upon who initiated it. If the privilege was
secured, it is not valid. If it was granted, it is valid. The Geonim permitted such an allowance only if it was made prior to the time this tax was levied upon the community. If the individual had already been assessed his tax together with the rest of the community, then no special dispensation could be made for any individual whose burden must now be carried by the other residents of the city. In fact, once a community negotiated its tax and agreed to pay a certain sum, those who leave or flee the town afterwards are equally obligated to pay their share. Their departure from the community does not alter or cancel their debt. The focal point became the time a new tax law took effect. Prior to such a law it makes no difference who initiated the exemption since in any case no additional burden was put upon the community. However, after the law went into effect, should even the king forego collecting the tax from one taxpayer, it was considered royal robbery since the community had to make good the king's magnanimous gesture. Two points emerge from the statements of the Talmud and Geonim. The Talmud does not permit an individual's selfish scheming to benefit him at the expense of the community, whereas the Geonim look at whether or not the man once became partner to the community's responsibility of paying their taxes. If, however, the exemption was of such a nature as not to cast a burden upon the other members of the community, then it makes absolutely no difference how the dispensation was secured. (21)

A very similar instance is recorded in the Tosefta wherein partners were relieved of their tax payment. The exemption does not apply to them individually, but is reckoned to the partnership. However, if the tax collectors on their own state that the exemption is
The rabbis of the Middle Ages wondered as to how this allowance was secured. One opinion held that if both partners requested the exemption, then the ruling of the Tosefta is obvious and thereby superfluous. If the request was granted to both partners, then, of course, it is the partnership that ought to benefit. Therefore, only when one of the partners requests the exemption does the Tosefta make sense. Partnerships operate on the principle that all that is done by one of the partners is done for the good of the entire partnership. Even if one partner, through his efforts, obtains a tax dispensation, it is the partnership that accrues the fruits of his labors. It is only when the tax collector on his own specifically grants the exemption for one partner that he and he alone reaps the benefits. An actual occurrence was related by R. Simha concerning his uncle, Kolonymus, the Parnas, who after the tax quota was issued by his community requested and received an exemption of the bishop but afterwards returned the money to the community. At first, the act was considered one of generosity or charity on the part of Kolonymus. However, we see that repaying the burdens of the community is more than an act of charity. It is the law.

Another opinion interprets this Tosefta in a different light. The Tosefta only deals in a situation where a request was made by one of the partners. However, there is a difference as to how the grant was phrased. If a blanket dispensation was granted then the entire partnership stands to gain. If one partner was named specifically in the grant, it is he alone who gains. It then follows, that if a tax quota had been set and a request for a tax allowance had been specifica-
ly granted to one individual, he alone benefits thereby. This of course, is only true when the loss of revenue is not to be made good by the rest of the community. If, however, such is the situation, then the individual taxpayer may negotiate his own terms with the collector or overlord if the tax quota for the community has as yet not been set. At such a moment it is the right of each lord to stipulate who shall and who shall not pay taxes. This right belongs to the secular officials for the "law of the kingdom is the law". However, once the community negotiations have been concluded and a tax quota had been set, even the lord himself may not stipulate any changes which involved casting additional burdens upon others. The overlord who attempts to change the law is guilty of royal robbery. It is not the law of the kingdom.

The two opinions expressed with regards to the interpretation of the Tosefta cited, are in essence the two points of view as expressed by the Talmud and the Geonim. There is absolutely no difference between a partnership and the community which is but a partnership on a large scale.

There is yet a third opinion which denied the right of exemption to a king if that exemption caused the burden to fall upon the rest of the community. One was neither permitted to plead relief for himself under such circumstances, nor was the king granted the freedom to exempt anyone, even prior to the time that a tax was negotiated for the entire Jewish community. Such powers were not granted the king and should he deviate from the accepted ways, it was considered a breach of the "social contract" which this opinion considered the basis for Samuel's law. As a result, illegal exemptions of any kind
were not the law of the kingdom but royal robbery. No community would accept such changes of their free will.

These regulations came as a result of the community's desire to strengthen its unity and to negotiate as one body rather than that each individual be at the mercy of the overlord. Furthermore, it was ordained to prevent individual negotiations which would benefit some at the expense of casting an added burden upon the communities. As a consequence, an additional stipulation was made; namely, no individual may separately negotiate his tax assessment with the overlord without the express consent and permission of the Kahal.

It was resolved by the community of Saragossa that no one be exempt from royal taxes to which they were liable according to the quota fixed by the Mukdamim. Should anyone seek exemption, or even seek aid of non-Jews to this end, or protest against a duly levied assessment, he should be placed under the ban of excommunication. In Valladolid in 1432 the Jews strengthened their efforts against private exemptions. "In general no one shall take advantage of any letter obtained...to free himself from taxes, imposts, loans or any other demands which our lord, the king, may make on the communities." If a community, because of fear of the authorities, made an agreement with a resident to reduce his taxes, such an agreement is void. Any person involved in the violation of the above regulations is to be declared anathema and excommunicated. Any change in these matters constitutes royal robbery. The king on his own accord may free any individual even without the approval of the Kahal. Furthermore, if a man does no business in the community, he may be freed of all taxes, regardless upon whom the burden falls. This is true whether the man is a pauper or wealthy.
Everyone agreed, however, that if an individual residing in one nation had received directly or through his ancestors an exemption from a king of another nation and by a turn of fate that king now rules the nation in which he resides, such a one should automatically be freed of all taxes.

It is to be clearly understood that matters of tax negotiations varied with the times and with the place. What might be true for one generation could be altered when circumstances were changed. Consequently, the opinions of the Talmud, the Geonim, or of the rabbis of the 13th century, were valid for their day when comparatively few Jews lived in small towns. If one Jew was exempt, the burden fell upon his coreligionists residing in the same town. However, in other days, the custom varied. For example, in 16th century Salonika there were many who were not required to pay taxes but no one of the community was affected by it. In the same city a century later, a Jew bought the tax farming rights to cattle. The custom was that tax farmers were themselves free of all taxes, not only of the ones they bought. Since such was the law of the kingdom, Samuel's law freed this Jew from having to share the tax burdens of the community. Of interest is the reasoning employed in addition to Dina D'Malkhuta; namely, that in such matters we may learn from Gentile law which exempts the privileged individuals.

By and large, the gamut of Jewish history in the diaspora shows that the taxes levied upon Jews were enormous. One could hardly blame the Jew if he tried to evade payment. The burden was so great. Nonetheless, the rabbis specifically forbade the evasion of tax payments. No Jew may attempt to escape paying a legally insti-
tuted tax by means of swearing falsely or by any other method. 
(50)
Doing so is considered outright robbery. Even when there existed
no debtors' prison, the community was able to jail the Jew who evaded
paying taxes. Unless the king levies an unauthorized tax, no legal
loophole (odia x), such as an oath or a vow is permitted
in order to release himself of the burden to pay his tax. If the
tax is legal, such methods are not permitted should the king even
use force to implement his regulation. When someone was caught and
was to be fined for tax-evasion, even though this fine was without
limit, it was not permissible to utilize the ruse of an oath in order
to escape payment of the fine. Such leniency with regards to an oath
was sure to lead to mistrust and would minimize in the eyes of the
public the importance of one's word.

Not even mental reservations were permitted while uttering
an oath in order to invalidate it. When an oath was administered as
a result of a legal procedure, the Mishnaic ruling was not applicable.
Only with regards to extortionists whose demands were unlawful were
such evasions permitted. Should Jews be permitted to disregard their
oaths, the resulting consequence would be the firm distrust of any
Jews' word. No gentile would ever again believe the statements of
(55)
Jews. However, in 14th century Spain, when special taxes or fines
were levied upon Marranos who desired to leave their cities in order
to reside in places where they could openly embrace their faith once
again, the rabbis protested. Equally loud was their protest when laws
were enacted to confiscate their land for failure of payment. Under
these circumstances, all means available to the Jew to protect his
property, even to the extent of uttering a false vow, were permitted
him. "The Law of the Kingdom is the Law" did not apply.
We have already mentioned that a tax farmer or tax collector, who is extortionate in his demands, has no legal rights. In 16th century Turkey, the question was raised whether a tax farmer who pads his demands and whose requests are limitless loses his entire status so that anyone may evade the entire amount demanded, or else, does one have to pay the part for which the collector had legal claim?

Two opinions arose. One claimed that the duty to pay taxes stems from the concept of Dina D'Malkhuta Dina. However, a Jewish tax collector who increases the tax rate of his own accord is established as a robber, as one who defies the "law of the kingdom". Consequently, Dina D'Malkhuta does not apply to him and his entire demand is no more than extortion. Another opinion stated that two wrongs do not make a right. Although the collector attempted to steal by increasing the king's rates it does not give anyone the right to steal from the collector. As a result, the part to which he has legal claim must be paid to him.

Evasion of governmental law was denounced by Jewish law whether it involved taxes or any other civil or criminal edict. The shaving or clipping of coins was considered a violation for which the perpetrators were to be flogged. It was a crime comparable to robbery or theft. Once when Jews were caught clipping coins and an oath was administered on the scroll of the Torah that they would not shave coins again, their mental reservations with regards to the oath did not void their actual utterances. The law of the kingdom made it illegal to shave coins and mental reservations did not permit them to break their solemn oath to their burghers. With regards to the royal
currency, it is legal and quite proper for a monarch or his delegates to prohibit the shaving of coins. Such acts presented a serious matter. It endangered not only the people involved in the actual crime, but also causes harm to other Jews, the innocent recipients, who will unknowingly pass these defective coins and who may be accused of the crime itself.

Whether or not it was permissible for a Jew to take a country's currency out of its borders, was another problem discussed. The Talmud records the following dispute with regards to currency which was voided by the king. Rab states that debtors must make good their debts by paying the currency in use at the time of payment. Samuel rules that as long as currency has value anywhere at all even if they are valueless in this nation, the debtor may still repay with such coinage. R. Nahman, however, stipulates that the creditor have the opportunity to go to wherever the coins have value or else the decision of Samuel is meaningless. Some have questioned Samuel's law. If the "law of the kingdom is the law", how can Samuel rule that the debtor may force the creditor to violate the command of the king, who forbids taking currency out of the land? How can Jewish law demand he cash his coins out of the country? In answer it was said that when the king disapproves of the nation's currency being exported from his borders, then it is as if the creditor is unable to reach the place where the coins have value, a stipulation which renders Samuel's law invalid.

Actually, Samuel's law, as well as R. Nahman's addition have been misunderstood and as such led to a number of problems. Samuel and R. Nahman merely require potential value for the coins
and the potential capability of the creditor to cash his coins. Neither requires the creditor to actually do so. He must be capable of taking the currency out of the country to a place where this currency has value. Rab demanded that currency must have actual value in the nation in question for it to be considered legal tender. However, neither Samuel nor R. Nahman order the creditor to violate the law of the kingdom. The creditor is not required to leave the land. He must only be capable of doing so.

In all matters dealing with currency changes, the "law of the kingdom is the law" regardless of Jewish law. In a particular case, a change of currency was ordered to take place by the first of the year. However, because of the impending change, the present currency immediately began to decrease in value. Jewish law would charge the loss to the creditor, if payment is made prior to the first of the year and with old currency, and to the debtor if payment is made after the first of the year and with the new currency. However, if the law of the kingdom demands that payment be made with the currency in use at the time a note is due, regardless of when the debt was actually discharged, the law of the kingdom must be obeyed.

In any religious or civil transaction wherein Jewish Law requires currency to be "acceptable to everyone" (אֶחֶזֶק לְכָל), it is not only silver coins that are good. "Acceptable to everyone" means to everyone who deals in or with a nation. A country's paper money or banknotes are valid as long as they are acceptable to everyone in the meaning described.

The instability of currency at times involved a conflict with the laws against usury and interest. A person in need of ready
cash might be anxious to borrow money from his fellow Jew and be tempted to repay that loan with currency of a more valuable mintage. Amounts which are in excess of the loan and that came as a result of such a transaction were stamped usurious and Jewish law forbade such an agreement to be fulfilled. Nevertheless, the law of the kingdom may demand the use of the new and superior currency. This is not a violation of usury. The law of the kingdom, in this instance, does not really overrule the Jewish law prohibiting usury. The rabbis ruled that a violation of the prohibition against usury only occurs when there is intent to violate by the parties involved. In the case at hand, neither party had any intention of giving or collecting interest. They merely tried to fulfill the wishes of the government.

There were many objections raised by the rabbis, but in actual practice, we find that the public paid no heed to these objections. The people justified their practices partly because the "oppressive taxes to the kings and noblemen allow their profits barely to sustain their lives", and partly also because "living among the nations we come in constant contact with them in our business dealings for we cannot earn a livelihood unless we deal with them", so that the reason given for the prohibition of taking usury from gentiles, namely in order to prevent intercourse with them, no longer applies. It has no greater meaning with regards to money lending than it has to any other kind of business. Theoretically, the taking of interest or usury violated principles adhered to by the Church. However, the circulation of monies became an essential requisite towards developing commercial empires. Without ready
money available it would not be possible for the kings to build up great armies and Europe would have been doomed to stagnation under feudalism.

In as much as Jews were considered to be outside the pale of the Church, the ban on interest was eliminated from them. The Jew was to play the role of the moneylender which allowed him to function as a partial architect in the economic structure of Europe, but which also left him vulnerable to the inevitable antipathy which this function brought about.

Let it equally be said that the profession of moneylending was practiced by both sides. The biblical prohibition against usury was also interpreted to be binding on Jewish coreligionists only. Thus, loans with interest were usually transacted between people of dissimilar faiths.

Should a royal edict forbid all loans on interest, then the "law of the kingdom is the law". However, let it be understood that such laws were rare and when they occurred were usually aimed at Jews alone as an attempt at royal theft. Such laws, being discriminatory in nature, were not binding.
CHAPTER VII -- COURTS AND JUDGES

Throughout the centuries of Jewish life in the diaspora the Jews were able to maintain Jewish law as the basis for their system of jurisprudence and were able to keep the Jewish Courts as the tribunals that administered justice. In matters of religion and in their internal legal problems, the Jews applied Jewish law within their own courts.

The Jews developed an aversion towards frequenting non-Jewish Courts. In fact, according to the principles of medieval Jewish Law, the jurisdiction of the Bet Din was exclusive. Based upon the interpretation of a Pentateuchal verse, R. Tarfon forbade the Jew from seeking judgments of a non-Jewish Court, even if the decisions of that court coincided with Jewish Law. Continuing in the Tannaitic spirit, the Geonim, too, eschewed any attempt on the part of Jews to bring their disputes before non-Jewish Courts. They objected because of the corruption which was rampant there. Wherever the courts were known to be honest and fair, the Geonim recognized their decisions. Witness the testimony of one Gaon: "Because in the city in which we live, (Bagdad) the courts accept as witnesses only such persons as are trustworthy and reliable, those who are of outstanding prominence in the community by reason of their wealth or culture and those who have never been suspected of robbery or falsehood, who are faithful followers of their religion...The same is true of nearly all Babylonia; and for that reason, it is a daily occurrence with us to accept their validity..." The Geonim also granted permission to a plaintiff to seek justice in a secular tribunal if the
defendant refused to appear before the Bet Din and the court feared (6)

This jurisdictional status prevailed in Europe throughout the Middle Ages. The Jewish Court was by far the most distinctive and characteristic institution of Jewish self-government in the Middle Ages. It was the purpose of the medieval rabbis to keep litigations between Jewish parties before Jewish tribunals in order to strengthen Jewish judicial power and their autonomy. Their fear of unjust treatment by the non-Jewish Courts, which so often was well founded, served as an additional deterrent. We may trace the gamut of Jewish history of the medieval Jewish communities from Spain to Palestine, from the Barbary Coast to Poland, and in almost every century we find at least rabbinic affirmation of this aversion to allow disputes between Jewish litigants to be heard in a Gentile Court.

In the 12th Century, R. Tam initiated the following takkanah:

"We have voted, decreed, ordained, and declared under the herem, that no man or woman may bring a fellow Jew before Gentile Courts or exert compulsion on him through Gentiles, whether by prince or a commoner, a ruler or an inferior official, except by mutual agreement made in the presence of proper witnesses." (7) Herein, R. Tam reiterated the prohibition against taking Jewish disputes to non-Jewish Courts. There is, however, one additional and very pertinent ruling mentioned in this takkanah; namely, if both parties agree to submit their litigation to a non-Jewish Court, then permission is granted them. (8) No such exception was ever made by Talmudic Law. However, the Talmud did recognize a principle which went beyond the law; namely, that in
all civil matters, a person may do with his money as he chooses. R. Tam, in the above mentioned takkanah, applied this principle and permitted litigants to accept the decision of a Gentile Court, provided both parties agree to this procedure. It was the prerogative of the litigants to submit their dispute to any court they desired, since in money matters, people may do as they please.

The communities were very strict and dealt severely with those who violated this takkanah. In the 13th century, in Germany, anyone who summoned his fellow Jew to a Gentile Court was to be publicly flogged unless he had received express permission of the Bet Din or the Kahal to do so. Once such permission was received, the plaintiff could not be accused of betraying the autonomous rule of the Jewish communities. Even the threat to appeal the decisions of a Bet Din to a non-Jewish tribunal subjected the offenders and his accessories, advisors and supporters to the ban of excommunication.

So jealous were the Jews of that era and of that locale of their religious and judicial autonomy, that should a Jew even wish to enforce a decision rendered by a Bet Din, or force the appearance of a defendant before a Bet Din by bringing a complaint to a Gentile Court, he was deemed an "informer". In order to prevent such an offender from fulfilling his evil designs, he may be maimed or even killed while on his way to the Gentile Court.

If witnesses testified to the effect that A threatened to denounce B to the gentiles, and subsequently B suffers at the hand of the gentiles, it may be assumed that A carried out his threat. On the basis of such circumstantial evidence A is to be held liable for all damages incurred by B. Furthermore, it was not even justified to inform against an informer. Should B, the intimidated party,
attempt to revenge himself by denouncing to the gentiles, the second informer, too, was to pay all damages to the man who suffered through denunciation. In general, indignation or revenge for any sort of wrong done did not justify resorting to the Gentile Court. Once, a son saw his father bleed because of a blow given him by another. While enraged, the son denounced the attacker to the authorities. The son was required to indemnify the assailant for any loss he might have sustained. He had no right to inform against the attacker regardless of what had been done to his father.

How different was the situation when the Kahal itself was involved. In a dispute between the Kahal and a minority group, the Kahal or its duly authorized officers may coerce the minority to abide by its decisions. Compliance with any decision of the Kahal may be enforced by a court order, be that an order of the Bet Din or a Gentile Court. If this power was granted to Kahal when opposed by a group of people, then it certainly possessed the same rights with regards to the opposition of an individual. How ironic it appears, when Kahal, in order to preserve its power, utilized the very means that threatened its autonomy; namely, the Gentile tribunal.

A noteworthy phenomenon of Jewish history must be mentioned. It appears as if neither the Kahal, nor individual Jews ever availed themselves of the powers of the German secular courts. No record at all is handed down of cases where both parties to a dispute were Jews. The records of literally thousands of cases handed down by the Oberhof of Magdeburg, Germany, contained not a single instance of a Jew bringing suit against a fellow Jew, although there are a number of cases involving a Jew and a gentile. We even find that Jews engaged at-
Torneys to represent them in the Jewish and secular courts. There are no records even of cases where the Jew could have obtained the sanction of Jewish law to seek recourse in a Gentile Court. This was true from the 13th to the end of the 16th centuries. The jurisdiction of the Jewish Courts was exclusively established, so that even in cases of physical violence and the resultant damage suits which, in their day, were no longer under the jurisdiction of the Bet Din, Jews were not permitted to hail their coreligionists before the secular courts of law.

In fact, German influence was felt in other lands as well. R. Baruk b. Isaac of Worms, on his way to the Holy Land, stopped off in Crete. The Jewish population of this island was not of a scholarly nature and they were lax in many observances. The German rigorist was appalled by what he beheld. For example, no member of the German communities would work on Friday towards sunset, thereby possibly violating the Sabbath. However, this was common practice in Crete. Perhaps a mid-day quitting hour for the eves of the Sabbath and holidays was too difficult for the Jews of Crete, many of whom were employed by gentiles who refused to release them so early. The Jewish islanders saw no harm in conducting their litigations as well on Friday or on the eves of holidays. Under the influence of Baruk b. Isaac, regulations were drafted which at least restricted the Jew from presenting their disputes before Gentile Courts on such days, although they still continued doing so on other days of the week. In fact, this takkanah has little, if anything, to do with the prohibition to go before Gentile Courts. The takkanah was promulgated because the communities were fearful that a Jewish defendant might be "prevented from enjoying the festival", and so forbade anyone from
hailing his fellow Jew before a court, Jewish or Gentile alike, so that "he may also prepare the needs of the Sabbath for the Lord, and that the community of the Lord may not be like sheep which have no Shepherd."

Apparently this all exclusive power of the German Jewish tribunals of the Middle Ages was challenged in the 17th century. The Jews had suffered immensely at the hands of offenders who refused to obey Jewish Law and compelled litigants to present themselves before Gentile Courts. The community finally passed a severe takkanah in the hope of rectifying some of the ills of their day. The offender was not permitted to marry, to be called to the Torah, and in general was to be separated from the community. Even should the Gentile Court decide in his favor, the plaintiff must release the defendant of all charges against him. If the defendant incurred any expenditures, the plaintiff must make good the expense.

If the transgressor of this takkanah was a rabbi, then his title was forfeit. Anyone who afterwards granted him that honor was also punished. Secular leaders of a community, teachers, or those holding any other community office were to be removed if they violated this takkanah.

So strong were the communities set against this offense, that they even set up central district courts to have their seat in Frankfort, Worms, Fulda, Friedburg and Ginzburg. These courts would handle all cases in which the local courts feared to intervene because powerful individuals rendered the local courts ineffective.

We may then conclude that the medieval German Jews recognized only Jewish law and Jewish law Courts. Just as they would not tolerate any outside interference with regards to the appointment of
rabbits, so they gave their full support to all ordinances aimed at making the jurisdiction of the rabbinic tribunals all encompassing. Obviously, such support provided the communities with the autonomy they so jealously guarded.

Such unanimity did not exist in medieval Spain. The Jewish Courts did not receive the same support for exclusive jurisdiction as did their counterparts in Germany. Jews often had recourse to the secular tribunals. Jewish litigants in Spain did not experience the same severe fidelity and the strong necessity to bring their disputes before Jewish tribunals as did their German brethren.

This attitude developed despite the continued teaching of the Spanish sages that Jewish law prohibited Jews from bringing their suits before Gentile Courts of law. In fact, it is precisely the continued repetition and reaffirmation of ordinances and takkanot prohibiting the use of Gentile Courts which leads to the conclusion that these regulations were not successful or else why the need for constant repetition. [Let the overwhelming evidence speak for itself.]

On the basis of the Talmudic Text mentioned above and the ordinances of the Geonim, we find that the Spanish Jewish authorities as early as the 11th century subjected an offender to the ban of excommunication. It was forbidden to frequent gentile courts even when their law coincided with Jewish Law. In the 12th century, one codifier labels the offender as a "wicked one who blasphemes and rebels against the Torah of Moses, our teacher". Should the decisions of the Gentile Court coincide with Jewish law and the defendant be a powerful individual who refused to subject himself to the Bet Din, the plaintiff may bring suit against him in a non-Jewish Court of law. Permission of the Bet Din was required before such action might be undertaken.
Again, the 13th century sages were vehement in their denunciation against such violators. Dina D'Malkhuta Dina is not operative with regards to taking a dispute to a Gentile Court. Only in matters involving the statutory laws of the kingdom may Samuel's law be invoked. In one situation involving the property of a woman who died without leaving any children, the sages ruled that such property became the estate of her father. The Jewish laws of inheritance, even though in conflict with secular law, must prevail. Were the litigants to institute suit in a Gentile Court, they would transgress the Talmudic admonition against such a practice. The "law of the kingdom is the law" does not apply or else Jewish Laws of inheritance would disappear. Daughters would be required to inherit equally with sons, the law of primogeniture would be voided, etc. Anyone permitting this is not only in error but is guilty of robbery. However, not only where Jewish and secular law conflicted were Jews prohibited from engaging these secular courts, but even where secular law was identical with the law of the Torah, it was forbidden.

One authority of this century bitterly bemoans any attempt at such legal suicide. He warns:

"In general under such a provision, all the laws of the Torah would be uprooted. What need would we have of all our holy writings such as were composed by Judah, the prince, and by Rabina and R. Ashi after him? We might just as well teach our children the laws of the gentiles and build our "high places" in the sanctuaries of the non-Jews. May God forfend that such come to pass in Israel; may God forbid that we cause the Torah to be girt in sackcloth."

And again he writes:
"Among all the nations there are certain fundamental rights and privileges which belong to a sovereign. Within this scope, the commands of the king are law. This does not hold true of the judgments rendered in their courts. The laws which the courts apply are not part of the essence of royalty. Rather they are based upon legal precedent found in the writings handed down by the courts. You cannot dispute this distinction, for otherwise you would void, God forbid, the laws of the Jews." (37)

Another sage stated: "God forbid that the holy people shall walk in the ways of the gentiles and according to their statutes." (38)

Here we find that the "law of the kingdom is the law" had no bearing upon the decisions of the Gentile Court, since they are not based upon the statutory laws of the kingdom. They are but the innovations or interpretations of law made by individual judges. The decision rendered by one judge may be modified or even altered by another justice of another time. The sovereign is not affected nor concerned by such decisions unless they involved the known statues of the kingdom. Concerning such laws, the courts have no choice in the matter. They must follow them. (39)

The Spanish sages, as did the authorities of earlier generations, also granted permission to a plaintiff to seek justice in a Gentile Court if a powerful defendant refused to appear before a Jewish Court and the Bet Din hesitated to interfere, but they would not allow anyone to seek intercession of the Gentile Courts to force a defendant to appear in a Bet Din. (40) Even so, when the parties involved in a dispute agree to submit to the jurisdiction of a secular tribunal, they may do so. In civil matters, any defendant may decide what to do with his money. It is only his concern if he chooses to
pay without being legally obligated to do so according to Jewish Law. Such an agreement was valid only as long as both litigants chose to remain under the jurisdiction of the Gentile Court. Whenever they changed their minds and resubmitted their dispute before a Bet Din, it was the Jewish Court which now had full jurisdiction. For example, at first two individuals agree to abide by the stipulations of a Gentile Court with regards to a document issued by that tribunal. If later they chose to submit to a Jewish Court, the Bet Din is to try the case on the merits of Jewish law even if such law contradicts their agreement previously made before the Gentile Court.

The attitude of the Spanish legalists concurred with that of the German rabbis. They too, branded an individual as an informer who aired his grievances or sought redress from the secular courts rather than the Bet Din. The offender desecrates the Name of Heaven even where the decisions of the secular courts are not different than those of the Bet Din. Concern was expressed for those living in areas where learned men were not available. What were they to do with their disputes? If no solutions were found for them it would surely cause them to submit their cases to the Gentile Courts. Such a state of affairs would only lead to extortion and robbery. No defendant was permitted to suggest a change of venue to a Gentile Court of law while the case was being heard by a Bet Din. The Jewish Court may prevent the plaintiff from instituting such a change. The effrontery of such litigants may be punished by placing them under the ban of excommunication.

Not only the decisions of the sages but also communal ordinances stressed the quarantine of the Gentile Courts and the consequence
of any breach. "He who brings suit against his neighbor before the
Gentile Courts and thereby causes him to suffer financial losses shall
be excommunicated and remain in this state until he shall render full
compensation for the loss sustained." (49)

The sages of the 14th century reiterated and reaffirmed
similar sentiments. Excommunication was the weapon used to insure
obedience. Neither was there silence in this matter in the 15th
century. A takkanah enacted in Valladolid at the Synod of 1432
stated: "No Jew or Jewess shall bring his or her neighbor whether a
Jew or Jewess before any judge, ecclesiastic or secular, who is not
of our faith, although such a judge should decide in accordance with
the law of Israel, unless it be a matter of payment of taxes or im-
posts or coinage or other rights of our lord, the King, or of our lady,
the Queen, or the money or rights of the Church or of a lord or lady
of a place. Whoever transgresses this law is to be declared anathema
and excommunicated, and no one shall have any dealings with him; he
shall not be buried among Jews, his bread shall be like that of liba-
tions to the idols. For each transgression he shall pay one thousand
maravedis to the Jew who suffered by the defamation or to whomever the
Rabbi of the Court will order that it should be paid. But if any Jew
refuses to come to a Jewish Court after being summoned three times,
the rabbi and the judges of the community may give the plaintiff per-
mission to apply for redress to the Gentile Courts." (51)

Furthermore, in all disputes the Bet Din was obligated to
institute a temporary truce. Both parties were obliged to abide by
this truce. Whoever broke this agreement would be subject to a suit.
However, should the Bet Din refuse to interfere in such a matter, the
petitioner had the right to proceed before a Gentile Court.
The evidence shown displays the abhorrence felt by the religious and lay leadership towards bringing litigation to the outside courts. By communal ordinances as well as by religious teachings the ancient doctrine was well expressed that forsaking the Jewish Courts in favor of the more expeditious outer judiciary was tantamount to perfidy.

However, the Jewish authorities of Spain were not successful. As so often happens, the pressures and forces of everyday life exerted greater influence than the teachings of the sages or the desire to preserve self-rule. Expediency often won out. The Gentile Courts were far more effective and often Jews resorted to the courts especially when physical constraint was required. The secular authorities could even force Jews to stand trial before the Bet Din as long as they didn't interfere with the true process of law. The Jews of Spain were prone to bring their suits to the non-Jewish tribunals. Such was especially the case when belligerent Jewish litigants, in defiance of the Bet Din, reinstituted suit in the secular courts after a decision of the Bet Din went against them. At times, such adverse decisions and the resultant spite suits, brought violence and danger to the Jewish community and certainly always threatened the foundation of the Bet Din.

The kings often interfered with the procedure of the courts. In a number of instances, especially when litigation continued for a long time, the monarchs personally communicated with Jewish authorities urging them to settle the matter in accordance with the demands of truth and justice. At times the kings ordered the secular judges to adjudicate according to Jewish law when the opposing litigants were Jews. Their decisions were valid because of Dina D'Malkhuta but
should the judges on their own accord adjudicate by law other than (58) Jewish, their decisions were not accepted.

So prevalent was this practice among the Spanish Jews, that they found it necessary to engage attorneys to direct and process (59) their disputes in the Jewish or in the secular courts.

In fact that the Jewish courts of Spain were not the exclusive bodies to solve the disputes of Spanish Jewry may be attributed to the legal situation existing in Spain. Although the Jewish Courts received recognition from the secular authorities, royal policy did not permit them entirely to negate the right of jurisdiction of the Crown. As a result, confusion existed since the areas of jurisdiction were not clearly spelled out. At times these areas overlapped and invariably the Jewish courts were forced to relinquish their prerogatives. Such rival jurisdiction weakened the authority of the Jewish Courts and the trust of Jewish litigants.

On the other hand, medieval German Law strictly recognized (60) the Jewish Courts. They gave support to these seats of justice and helped make their jurisdiction exclusive. The policy of non-interference in such matters was strongly in favor of Jewish communal autonomy. No confusion with regards to jurisdiction existed. The Jews were permitted to operate within their own legal system. Without any outside intervention, the Jewish Courts ruled supreme.

Italy presents a dual picture. Prior to the end of the 15th century when Italy was under the influence of the German rabbis we find a rigorous attitude with regards to frequenting a Gentile Court. Even the appeal of a Jewish plaintiff that the Gentile Court,
with its superior power, coerce a reluctant defendant to stand trial before a Bet Din was forbidden. The offender was to be placed under the ban since he was considered an informer. Nonetheless, the continued refusal on the part of the defendant, exempted the plaintiff of any guilt and he was permitted to seek redress even in the Gentile Courts.

However, towards the end of the century as the status of the Jews of Italy gradually began to decline and with the influx of Spanish Jews we find a different attitude developed.

On August 3, 1484 the community of Pesaro elected to put a stop to bringing religious articles such as Tephilin, or one of the books of Scripture before a Gentile Court whenever an oath was to be administered. They felt that since the Gentiles do not realize the holiness which is attached to the Tephilin and look upon them with contempt and consider the straps of the Tephilim as they do shoelaces, the Name of God is profaned. As a result, the community of Pesaro ordained that such practices be no longer followed but that any future oath be taken over the "pen". Should the plaintiff be dissatisfied with such an oath, the parties ought to come before a Jewish judge for the administration of the oath.

Here the community of Pesaro expressed nought with regards to litigants going to a Gentile tribunal. The concern was the desecration of holy objects. Their cry was against the desecration of the Name that cheapened the importance of Tephilin by bringing them before a Gentile Court where they were held up to ridicule. There appears no objection to the litigation itself which was submitted to a Gentile Court.

Seventy years later a similarly mild takkanah was enacted in Ferrara. The ordinance was declared on Thursday, June 1, 1554.
It prevented any person compelling his neighbor to defend before a secular court without the permission of the Kahal or the rabbi of his city, from hereafter bringing the matter to a Jewish court.

By mid-sixteenth century the authority of the Jewish communities had so far deteriorated, that perhaps they were no longer capable of prohibiting Jews from appealing to the Gentile Courts. The takkanah of Ferrara had none of the sanctions previously attached to such enactments. They now resorted to this rather mild refusal to hear any case after it had been considered by a Gentile Court. The form of earlier takkanot was still observed, but the severity with regards to dealing with any breach was no longer feasible.

In North Africa, the ordinance of R. Tam apparently was not in effect. Cases wherein Jewish litigants availed themselves of non-Jewish courts were a daily occurrence. In Majorca the Jewish Courts did not function since the crown did not permit them to adjudicate their disputes. Only by special requests submitted by the litigants could a court be convened. However, at the end of the 14th, beginning of the 15th century, action was taken to place under the ban all litigants who sought the secular tribunals to settle their internal disputes. Some authorities thought that to frequent a non-Jewish court was tantamount to "following in their ways", a practice which was prohibited by Jewish law. However, it was forbidden to do so even where Jewish law and the law of the non-Jewish courts were identical. "Let such a thing not occur in Israel...for did not our Torah demand that our disputes be placed exclusively before Jewish courts?"

The situation in the Middle East during the 15th - 17th centuries was somewhat similar to the conditions prevalent in Spain
during the earlier centuries. This should not be at all surprising since the Jewish inhabitants of this area during these centuries were predominantly the exiles from Spain and Portugal or their descendants. Here too, we find a discrepancy between daily life and the wishes of the spiritual and lay leaders of the communities. Perhaps here too the constant protest of the religious authorities against Jews taking their disputes to Moslem courts are in themselves evidence of the prevalence of such acts in the daily life of the communities.

At the end of the 15th, beginning of the 16th century, the religious authorities curbed the extent of Samuel's precept. "The law of the kingdom is the law", but not the law as formulated or initiated by the Moslem Courts. These authorities reiterated the stand expressed centuries earlier by one of the well known Spanish authorities. No Moslem Court could overrule Jewish law or else it would mark the destruction or end of the Jewish system of jurisprudence. One figure who dominated the life of 16th century Jewry of Salonika, looked with great disfavor and alarm at this breach of Jewish solidarity. "Is there no Law (Torah) in Israel", he cried, that Jews must seek justice elsewhere? The Moslem Courts were not in power to do away with the religious laws of any other group, be they Jews or Christians. In fact, Dina D'Malkhuta is only applied to those laws of the kingdom that have no basis in the religious system of those who are in power. The religious laws of the Moslems are not binding upon Jews.

These decisions had little effect upon the Jews of that day. The rich of Cannea wanted the estates left to them in wills as well as dowries (Ketubot) to be adjudged by Turkish law and in secular
tribunals rather than by a Bet Din. Apparently the processing of wills and documents dealing with dowries in the secular courts was a common practice. To stem the tide, the Jewish community leaders on Wednesday, Tebet 9, 1557-8, gathered in the synagogue of the Catalonians in Salonika and passed a resolution forbidding such practices. "Therefore we have resolved that no Jewish man or woman may process a will or Ketuba in a non-Jewish court. Anyone who violates this haskama shall be deemed an informer...and shall be separated from the community. This haskama shall be proclaimed in every synagogue on each Sabbath preceding the festival of the New Moon as in the case with the herem against informers."

The rich of Cannea were not to be stopped by this haskama and a few individuals informed the secular authorities that Jacob b. Samuel Samut, their spiritual leader, forbade them to frequent the secular tribunals. They informed that he did not recognize the courts of law of the land. Samut was in danger of his life and his enemies forced an oath upon him forbidding him to enter Cannea for a period of ten years. Samut, for safety's sake, assumed a smaller position in Calabria.

Thus, despite the efforts of the religious community leaders, the economic forces won out. Nonetheless the religious authorities ruled that the decisions of a non-Jewish court had no validity for Jews. Dina D'Malkhuta Dina is operative only where legal procedures were followed. Thus, a king only has the right to collect such taxes to which he is legally entitled. A Jew who hails his fellow Jew to a non-Jewish court follows illegal procedures and to him, just as to a king who attempts to collect an illegal tax, Samuel's law is not applicable. More than that, the offender is to be placed under the
ban of excommunication. The defendant who was coerced to appear before a non-Jewish tribunal may even swear falsely to protect himself, especially if there is the threat of bodily harm.

Again we find that towards the last quarter of the 16th century the offenses got out of hand in the city of Constantinople and in 1576-7 that community passed a resolution in the hope of stopping these transgressions.

From the time when Jews settled in Turkey, it had been recognized that no Jew might trespass or ignore the rights of "possession" (hazakah) with regards to the homes, property, or business of another Jew. However, the avaricious tendencies of some brought about countless disputes, to the point where the secular authorities severely criticized and complained with regards to such property rights.

Obviously, the authorities became aware of these disputes because the Jews hailed their coreligionists to the non-Jewish tribunals. In the year 1576-7, the communal leaders agreed to set up their own agency of duly appointed members who would hear and decide these litigations. A system of rules and regulations were to govern such altercations. To prevent interference by the secular authorities, they declared:

"No Jew may seek aid of the secular authorities or even to have them interfere with the tax of the duly appointed of the community (Memunim). Nor may any one reveal that these Memunim are engaged in settling property disputes in order that no resentment of these secular authorities directly or through informers be invoked. Offenders of any portion of this haskama shall be excommunicated and thereby lose all their rights."

Indeed the situation in the Turkish centers appeared to have been similar to that found in the earlier Spanish centers. This con-
flict of the spiritual leaders and the daily practice of the general populace also existed in Palestine of the 15th and 16th centuries.

When Obadiah Bertinoro arrived in Jerusalem he found chaotic conditions in existence. He introduced a series of takkanot which were engraved on a tablet in a synagogue. Among them was one which stated: "No man may hail his coreligionists to a secular tribunal unless the defendant had been summoned three times and refused to appear before the Bet Din." The clause which demanded that at least three refusals be required before further action may be instituted shows how chaotic indeed were the conditions of the Jewish community and it indicates the lack of authority of the Bet Din of that time. The Jews of that era obviously did not have the same autonomy that the Jews of Germany or even Spain enjoyed.

In the 16th century Safed as well, we find the religious authorities opposed to Jews frequenting the non-Jewish courts. The decisions of a Moslem Court were considered valid only if the king specifically demanded their use by everyone. It is then that the "law of the kingdom is the law". A litigant who takes his dispute over property to a Gentile Court was to be excommunicated and remain under the ban until he restores the situation to the status it had prior to his illegal suit in the Gentile Courts and is ready to submit to the Bet Din.

However, one legal authority of Safed complained of the prevalent violations. He referred to this practice as "the evil custom that voids Jewish laws. In all their disputes, Jews are obligated to settle them in accordance with Jewish law and before Jewish tribunals." It had become "the evil custom" for Jews to submit to outside authorities even though it was in defiance of the sentiments
of their own religious authorities.

On the other hand, the religious authorities, too, recognized the right of a Gentile to summon a Jew to the secular tribunals. All decisions handed down by these courts for such disputes, as long as they are within the laws of the kingdom, are binding. Dina D'Malkhuta is applicable to all judgements be they even contrary to Jewish law. If a Jew purchases a property held by a gentile as a result of such litigation, the original owner has no claim upon the property at all.

In general, quite another story presented itself with regards to litigations involving a Jew and a non-Jew before a Gentile tribunal. Testimony rendered in favor of a gentile and against a fellow Jew was permissible provided such testimony did not aid in arriving at a judgment which contradicted Jewish law. The Talmud ruled: "A Jew who testifies that his coreligionist owes money to a non-Jew is to be placed under the ban of excommunication." The testimony of one witness was not recognized by Jewish law to extract money from another. The Jew, therefore, is not permitted to testify since the Gentile Courts, in this instance, contradict Jewish law. However, two Jews may testify in favor of a gentile since Jewish law as well would accept their testimony. In the Middle Ages, R. Tam extended this Talmudic decision to include the testimony of one witness in favor of a gentile, when such testimony substantiates the claim of the gentile that he does not owe anything to the Jew. Jewish law as well would demand that the burden of proof fall upon the alleged creditor. Such testimony was permitted only when a Jew-Gentile litigation was involved. However, when the disputants are Jews, none may testify in their behalf.
It is considered aiding and abetting offenders in their transgres-
sions.

As time passed and Jews mingled far more freely with the non-Jewish world the power of the Bet Din waned. Today, very few Jews would institute suit in a Jewish tribunal if, indeed, they are aware that such tribunals still exist. A once powerful and significant institution in Jewish life has all but disappeared except in areas dealing solely with religious law. How have the mighty fallen!
CHAPTER VIII -- DOCUMENTS OF A GENTILE COURT

"All documents drawn up in a Gentile Court, even if witnessed by gentiles, are valid except for divorces and bills of manumission releasing a slave from his servitude." So reads a Tannaitic ruling. The Talmud distinguishes between documents that serve merely to substantiate a transaction such as bills of sale and notes of indebtedness, etc., (where it may be understood why they are valid even if issued by a secular court), and documents that actually effect a transfer, such as deeds for a gift (which should not be recognized under such conditions.) Two conclusions are mentioned in the Talmud. The first, by making use of Samuel's law, validated all such documents except those specifically excluded by the Tannaim. The second, recognizes the distinction previously made by the Talmud and emends the text of the Mishneh to exclude all documents that in themselves effect a change of condition.

The Geonim, as we have seen, ruled strictly according to A2. Just as they limited Dina D'Malkhuta Dina in general, so they limited the type and number of documents to be recognized when issued by a Gentile Court. The early Spanish sages continued in the path trodden by the Geonim. They, too, ruled according to A2.

The first change and innovation came during the 12th century when one codifier dissented from the opinion of his teachers and recognized, albeit with some reservation, the notes of indebtedness issued by a secular tribunal. This presented the first deviation from the prevailing attitude and was not permitted to pass unchallenged. The traditional view was defended. At this time, the approach to the Talmudic passage still was the same as in earlier days; A1 and A2
conflicted with each other. Al ruled in accordance with Samuel's law and validated all civil documents of the non-Jewish courts; A2 accepted only such affidavits that served no greater purpose than as proof of a previous transaction.

A problem arose with regards to those authorities who ruled according to A2. On the one hand, they fully endorsed the acceptance of Samuel's dictum whereas at the same time, by denying the validity of all civil documents issued by the Gentile courts, they ruled against Al, which accepted Dina D'Malkhuta Dina. From Al it would appear that if Dina D'Malkhuta is operative then no document could be excluded and no legal instrument of the secular courts could be challenged. How could the sages of Spain accept both simultaneously? Of course, the same may be asked of those expressing A2 in the Talmud. After all, Samuel's law was an accepted norm in Talmudic times. How could A2 deny this accepted precept?

It becomes obvious that the dispute of Al and A2 concerns not the basic law of Samuel. Both opinions adopted his law. The dispute revolved upon the limitation to Samuel's law. Was it to include all or only some documents? It was to this question that the Geonim and the early Spanish authorities addressed themselves. They saw Dina D'Malkhuta Dina in a limited light and would validate only bills of sale.

It was not until the next century that an entirely different approach developed. As commerce developed and relations between Jews and gentiles became more intertwined, a new approach to the notary documents of the Gentile Courts was necessary. The two opinions of the Talmud were re-evaluated. They no longer were considered as con-
flicting views. They were but two phases of one idea. When a specific
decree of the king demanded the use of Gentile Courts for all civil
documents, then they were to be recognized as valid. The law of the
kingdom is the law. However, even when no such decree existed, some
documents, such as bills of sale and promissory notes were accept-
able. In accordance with this new approach, these authorities vest-
ed documents such as those transferring a gift or those that formally
acknowledged an obligation (Hoda'ah), and those that release a debtor
from payment (Nehila) with juridic status and binding powers. Even
oral business transactions made by a Gentile Court were binding.

What caused this change with regards to the documents issued
by the Gentile Courts? Why did the religious authorities of Spain
from the 13th century accept the validity of all such documents here-
tofore rejected by their predecessors? An expanded system of commerce
cannot be the reason since bills of sale had been acceptable for cen-
turies and even promissory notes became valid by the 12th century.
What then caused this change?

It appears that in the 13th century, Jews and non-Jews of
Spain alike, began to look upon all notary documents in a different
light. Heretofore, some documents were the ones to actually effect
a transference of property or right. As a result, such instruments
were likened to divorces which were excluded by Tannaitic rule. In
this century, the Jewish and secular tribunals no longer vested these
documents with such power. Acquisition required means other than the
document itself. The document was relegated to serve merely as proof
that a transaction had occurred. In other words, all documents now
had the same status as bills of sale. As a result, Dina D'Malkhuta
now included all civil documents issued by a Gentile Court with only
those excluded by the Mishneh left out. Thus, deeds for a gift,
will, documents that admit to a loan or release a debtor from payment, were recognized as legal no matter which court, Jewish or Gentile, issued them.

Documents issued by a Gentile Court had equal validity with the ones issued by a Bet Din. They were equally binding and were vested with equal power. A bill of indebtedness that was lost and was ordered re-written by a gentile judge was sufficient to collect a loan. Such documents placed a lien on the property of a defendant even if said property was no longer in his possession but had been sold subsequent to the loan. However, if a flaw is detected in a document which would invalidate it before a Jewish Court, even if it had the full support and recognition of the Gentile Courts, the document is rendered valueless. The issue at hand would have to be settled as if it had been an oral transaction. The documents of a Gentile Court are equal to those issued by a Bet Din but they are not better nor have they greater power than those issued by the Jewish tribunals. The documents must meet all conditions required by Jewish law as if they were actually issued by a Bet Din. An example would be, if the Gentile Court issued a document for the sale of something not yet in existence, (which presented no obstacle to the Gentile Courts but which would be sufficient cause to invalidate the sale according to Jewish law), such a document is void. If such a bill of sale had been issued by a Bet Din, it would be no more than a meaningless piece of paper. Accordingly, the same document issued by a Gentile Court under the same conditions can have no greater power or validity. No king is concerned with the details concerning deeds and documents. A monarch may demand recog-
nition of documents issued by his courts. *Dina D'Malkhuta Dina* applies to the courts and their right to issue such documents which must be accepted by Jews. Samuel's law is not to be applied to the specific forms and the details of these instruments.

Jewish law governing the validity of such documents also came into conflict with regards to regulations involving interests. A responsum relates the following incident: "For the sum of one hundred sueldos A "sold" B an annual tax of one maravedi, which became a lien on his land. In effect, B then held title to the land - it was so recognized by Spanish law which imposed the feudal transfer tax, known as *luismo*, on the lien. B continued in the possession of the field and the produce as long as he met the annual tax. The "sale" was revocable, however, and A had the right to free himself from the tax and to regain free title to his property by refunding the original sum to B."

Spanish law recognized such a document and considered the transaction as a legitimate "sale". Jewish law refused to recognize the transaction as anything more than a disguised interest bearing loan. *Dina D'Malkhuta Dina* could not alter the situation and could not invest the document with greater power than had it been issued by a Bet Din. In that case, too, it would not be recognized as a sale.

The reverse situation was also true. A document issued by a Gentile Court which contained a flaw according to the standards of the secular law, was not acceptable even if according to Jewish law the document was valid. In other words, Jewish law would not accept a document which was not acceptable according to the "law of the kingdom". Jewish law will not go beyond the secular law.
The 15th and 16th centuries brought no change in this basic attitude. The communities of North Africa or the Middle East recognized the documents of the Gentile Courts when the king specifically demanded their acceptance, but granted them only equal but not higher status. The details governing a transfer of ownership had to meet the strict requirements of Jewish law or else the document was ignored. Dina D'Malkhuta Dina granted recognition to these documents as long as they recorded methods of transfer considered legal by Jewish law.

In Italy a difference of opinion arose with regards to the witnesses who signed such documents. On the basis of the above mentioned principle, namely, that the documents of a Gentile Court had to conform with Jewish law in all matters of detail and could not exceed the authority of those documents issued by a Bet Din, it was stipulated that witnesses to such documents could not be related to each other or to either of the litigants involved. Thus, a receipt for payment of a debt (מ"ש) issued by a Gentile Court which had signatories who were related to each other was not recognized by three of the sages. One dissenting opinion is recorded. This stated, since gentile witnesses, normally disqualified by Jewish law, are recognized when signing documents drawn up in a Gentile Court, because of Dina D'Malkhuta Dina, the Jewish law disqualifying relatives' testimony is similarly waived. Once a distinction has been made between witnesses acceptable in a Jewish Court and in a Gentile Court, a witness cannot be disqualified because of his inacceptability to a Jewish Court. We rely on the Gentile Court and the secular judge to determine the truth. Dina D'Malkhuta Dina granted gentile judges this authority. The veracity of a document which passed the scrutiny of a Gentile Court cannot be challenged on these grounds.
The rabbis of Poland also accepted such documents. However, they, too, stipulated that in order to accept such documents a specific demand on the part of the king was required, or else **Dina D'Malkhuta Dina** is not operative. Poland of that era had no such decree. As a consequence, only bills of sale or promissory notes issued by the secular tribunals were acceptable provided they did not counter Jewish law. In areas which were only sparsely populated by Jews and where Jewish Courts or scribes could not be readily found, Jews were permitted to avail themselves of the Gentile Courts and utilize their services with regards to all documents. Such a situation is comparable to a requirement made by the **State** that the royal courts be accepted since no other courts were accessible. Of course, here too, the rabbis demanded that the documents of a Gentile Court were not to exceed in authority those issued by the Bet Din. In the 17th century in Holland it was agreed that although Jewish law allowed the creditor to release a debt even after he sold the note he was holding, it could not be done with a note issued by a Gentile Court. **Dina D'Malkhuta Dina** does not recognize such manipulations and as a result, the document cannot be set aside.

A century later still another question was raised with regards to documents not valid according to the law of the kingdom. Do such documents maintain their validity according to Jewish law? Does the law of the kingdom destroy their validity completely?

Jewish law believed the debtor who claimed to have paid his personal note even if he did not reclaim his I.O.U., a view not shared by the secular law of 18th century Hungary. Government law recognized no such claim against a creditor who held a valid I.O.U.
The practice of their day was to write such promissory notes in the manner prescribed by the secular law (Wechsel). Dina D'Malkhuta Dina validated this practice even though Jewish law itself would have disallowed the creditor's claims in the event the debtor claimed prior payment. This held true as long as the I.O.U. was a valid one, fulfilling all the requirements made by secular law. If all conditions were not met, the perpetrator could be fined by the court. A creditor who accepted a post-dated promissory note, could not present the I.O.U. before a Gentile Court, lest he be fined. When he presented the note to the Bet Din, one authority ruled that since Dina D'Malkhuta Dina would not be operative, the note should now be adjudged according to Jewish law. The claim made by the debtor that he had paid the note would then be honored. The respondent who was asked to examine the above mentioned ruling came to the same conclusion; namely, that the note was valueless. However, he arrived at this ruling by another method of reasoning. He concluded that this note was but a scrap of paper because "the law of the kingdom is the law" and secular law completely invalidated a post-dated promissory note. Jewish law could not invest this note with new powers.

The will and the Ketubah stand out in rabbinic literature as the two documents which Jews most often submitted to the Gentile Courts. To be sure, the Geonim, Alfasi, Maimonides, Ibn Daud of Posquieres, Meir b. Todros Halevy Abulafia considered wills on a par with the other documents that were disqualified when issued by a Gentile Court. However, in the 13th century, wills were included among such documents that were recognized even when issued by a Gentile Court. Of course, not everyone recognized this lenient point of view. Some authorities strenuously protested any such recognition. Dina D'Malkhuta Dina had
no place with regards to inheritance laws or else the laws of the Torah would be nullified. In the 14th century, the question was still open and one authority cited Maimonides as also permitting wills to be issued by Gentile Courts. They argued that the transference of the property to be inherited took place by word of mouth and that the document of the will merely serves as proof. This would make the will similar to the deed of sale which is to be recognized even when issued by a Gentile Court. Despite this change in attitude a haskama was issued in the 16th century involving the communities of Salonika, Safed and Constantinople forbidding anyone to subject an inheritance or a Ketuba to a Gentile Court.

The Ketuba at times consisted of two parts; the basic requirements necessary for every marriage and the Tosafot Ketuba, the voluntary additions to the Ketuba which were determined by the wishes of each husband and the customs of each community. In 13th century Spain it was recognized that the voluntary aspect of the dowry may be determined by the custom and law of the land. Thus, Dina D'Malkhuta determined the law for these additions to the Ketuba. In later days, when checks came into use, the additional parts of the Ketuba could be paid by means of a check which was validated by the "law of the kingdom".

The Ketuba itself, when written by a Gentile Court, even if written in a foreign language, has validity and is similar to any other promissory note. It is valid even if the secular tribunals insert conditions not acceptable to Jewish law, e.g., that the wife inherit half her husband's property after his demise or that the
wife's children inherit the property. Even when a marriage was performed by a secular court, although it was not recognized by Jewish law, nevertheless the Ketuba issued by the court was a valid document. In any case, the prevailing secular customs regarding dowries were binding upon Jewish husbands as well, whether or not they specifically incorporated these conditions into the Ketuba they offered their wives. It was the accepted practice that all marriages were consummated upon the basis of contemporary custom. The Ketuba and its clauses, recorded or not, were thus affected by secular practices. The "law of the kingdom is the law" had bearing upon all such matters.

In North Africa, the Jews adopted another instrument that was in use in addition to the Ketuba. The sadak was a document issued by the Moslem Court granting a wife a marriage settlement. The purpose was to grant the wife additional means to collect her due allotment. The sadak could be collected in a secular tribunal. It was also payable during the husband's lifetime, whereas the Ketuba came due only upon her husband's death or in case a divorce was issued. However, the amount collected by means of the sadak was to be deducted from her Ketuba. If she collects her Ketuba, she must at the same time surrender the sadak.

Whenever the Jew was granted permission to make use of the Gentile Courts, be it for litigation, or for the use of documents issued, it was only when such courts did not accept bribes. Bribes were common and were even included in the total expenses of a litigation.

Some authorities demanded direct testimony to prove a specific Gentile Court immune to bribery. Only when there is direct evidence that this court never accepted bribery may it be endorsed. If this
opinion were to be followed it would completely eliminate the use of Gentile Courts as a force in Jewish life. No court could ever be cleared in so definite a manner, no matter how honest it be. No witness could testify that a court never took bribes. Other authorities concluded that the average Gentile Court does not take bribes, and their judges do not lie. A Gentile Court is disqualified only when there is evidence or testimony of its having accepted bribes. Direct evidence was necessary to disbar a court. Rumor of bribes alone was not sufficient.

Interesting is a third view found in the 15th century in North Africa. This view reached an interesting conclusion. The average non-Jew is ready to accept bribes at all times. "Their mouths speak falsehood and their right hands are filled with bribes".

Even so, their courts are to be recognized and their legal instruments accepted because the "law of the kingdom is the law" and the law demanded that these courts be accepted, albeit their decisions are influenced by the bribes that are offered them.

Judges who were paid well and who had much to lose by changing bribery were accepted as honest. The stakes were too great for them to risk their positions for the sake of a quick, illegal profit. Nonetheless, the practice in 16th century Palestine was to test the honesty of these judges by purposely offering them bribes to see their reaction.

The same prerequisites were required of gentile scribes. Although the Talmud excluded a group of laymen who set themselves up as arbitrators from exercising any legal or juridic powers, nonetheless, the scribes who stood near the outskirts of the cities or
those who wandered through the streets were recognized to the extent that their documents were valid if they were granted permission to act as scribes by the king and if they were known to resist bribes. Certainly, if one was appointed to a city as the official scribe, he would not allow false documents to be issued. In all civil matters, we follow the ways of the country and its customs. A notary public, that is, a scribe appointed by the king, may issue a document even if it contains the signature of only one witness. This document is to be honored. "The law of the kingdom is the law" and the king insists that these notaries be honest in their tasks. It appears that a more careful selection of the calibre of men was made when they were appointed by the king to the post of public notary. Only trusted men were accepted and only their decision was to be considered binding. They stood on an equal plane with the secular courts. However, those scribes who were appointed by the courts and not by the king were not as well screened. As a consequence, such scribes were accorded status equal to that of the secular courts only when they performed their duties before such a court. They merited no endorsement of their own. Their work had to be corroborated by a court. In conclusion we may say that the religious jurists, while often showing a tendency to be hesitant in recognizing gentile legal instruments, continually accepted more and more of these documents as the situation demanded. They soon recognized the full validity of most documents issued by Christian Courts or notaries. Sometimes when it was noticed that a particular notarial practice was worthwhile, the Jewish community accepted and emulated the practice found in the Gentile Courts. Thus, necessity and business expediency paved the way to greater acceptance of all Gentile legal instruments. Today, with the exception of religious documents, the instruments of the secular courts are fully accepted.
CHAPTER IX -- KINGS OVER ISRAEL

As the years went by and Jewish history unfolded, the land of Israel and the people became one. History records many exiles, many conquests of the land, but the Jewish people never relinquished its special feeling for the land and never considered the land outside its possession. The rabbis of Talmud considered the land to be in Israel's possession even prior to their entrance to its borders.

During times when the Land of Israel or Judea was conquered by foreign powers, the laws of the conquerors were obeyed. The conquered Jews obeyed Rome but would never admit to the legitimacy of Roman rights to the Holy Land. They certainly would not consider establishing a principle that the "law of the kingdom is the law" as was later set forth by the Amora, Samuel. This maxim is never mentioned in the Tannaitic sources nor in the Palestinian Talmud. Samuel's law could only see the light of day in the diaspora. In Judea, Jews would never willingly acknowledge foreign rule.

Some modern day scholars, although in agreement that Dina D'Malkhuta Dina was not known nor accepted in the Land of Israel, are equally convinced that the rabbis of the Babylonian Talmud extended Samuel's law to include Israel as well. Their arguments reduce themselves to the following three.

First, the Talmud finds a contradiction between Samuel's precept that the "law of the kingdom is the law" and R. Akiba's ruling that evasion of the taxes demanded by the Romans was permissible. If Dina D'Malkhuta Dina, why should such evasions be permissible? The scholars concluded that Dina D'Malkhuta Dina included
Judea as well as the diaspora, or else the Talmud could have solved the contradiction by stating that R. Akiba's permission to evade taxation involved Judea, which was not affected by Samuel's law. Since the Talmud did not make such a distinction, it is evident that the Babylonian Amoraim considered *Dina D'Malkhuta Dina* also binding in Judea.

(6)

Secondly, another Mishneh is explained by the Talmud on the basis of Samuel's law. The Mishneh originated in Judea, yet the Talmud makes no distinction between the application of Samuel's law in the diaspora or in Judea. Again the conclusion was reached that the Babylonian Amoraim extended *Dina D'Malkhuta Dina* to Judea as well.

Finally, the following passage recorded in the Palestinian Talmud in the name of R. Yohanan was cited: "Ere the Romans came, it was permissible to bribe the officer in charge of quartering soldiers so that he would settle them in the homes of others. However, the same practice was forbidden after the advent of the Romans". It is the opinion of these scholars that here we find evidence that *Dina D'Malkhuta Dina* was valid even in Israel. What other reason would there be for forbidding the act, except that it be against the law of the kingdom?

We shall now examine these arguments seriatim. Regarding R. Akiba's permission to evade government taxes, it is obvious why he ruled so. Akiba lived during the time of the Bar Kokhba revolt and was a staunch supporter of the rebellion. It is hardly likely that such a man would urge the Jews to pay their taxes and support the very conquerors whom he, and the rebels, attempted to drive out from their borders. It is inconceivable that at such distressing times, *Dina D'Malkhuta Dina* should be invoked. The Talmud did not question
Akiba's stand with regards to tax evasion, a stand which needed no justification. The problem facing the Talmud is how to justify Samuel's law which apparently is in opposition to Akiba's ruling. Even if the Babylonian Amoraim projected Dina D'Malkhuta Dina to include Judea of their day, as these modern scholars claim, it would not alter Akiba's position. He, living earlier than they, had no knowledge of Dina D'Malkhuta Dina. The concept had not yet been established. Let us then assume that the Babylonian Amoraim did project Dina D'Malkhuta Dina to include Judea. The Talmud still could have made the distinction that R. Akiba's permission does not contradict Samuel, since R. Akiba, himself did not accept Dina D'Malkhuta Dina in Judea, whereas, he would certainly grant equal permission in the diaspora, where Dina D'Malkhuta Dina was operative. Nothing may be proven from this Talmudic passage. The problem facing the Talmud, as we have stated before, is to justify Samuel's law which cannot oppose the views of the Tannaim.

Similarly, we cannot conclude that the Mishneh was based upon Samuel's law simply because it was explained by means of his law. On the contrary, we see that another opinion emended the text. Furthermore, it was not the Mishneh which needed justification, it was Samuel's law which cannot be in contradiction to a Mishneh.

There were some who were of the opinion that the principle "the law of the kingdom is the law" originated prior to Samuel. They argued that there is ample proof that the law long antedated Samuel who merely re-affirmed it and gave it its legal formulation. The same Mishnaic texts are cited to substantiate their position. They argued: "How can the Amoraim attempt to explain these laws of
the Mishneh established so many years before Samuel by means of a principle he originated? It must be that this principle was not new."

Again it must be said that the question of the Talmud is not how is the Mishneh understood. The Mishneh requires no justification. If there is a contradiction, then it is Samuel's law which cannot be allowed to contradict the Mishnaic precepts. Also since in one instance the Talmud proposes two different explanations for the Mishneh, we may conclude that the original reasoning and basis for this Mishnaic law was no longer known.

Lastly, the passage of the Palestinian Talmud has nothing whatever to do with Dina D'Malkhuta Dina. The ruling concerns itself with the communal burdens that must be shared by everyone within a city's borders and the prohibition against any attempt on the part of an individual to shirk his responsibilities. When there is no specific obligation that a community has, it was permissible for an individual to anticipate such demands to his own benefit. He could not do so post facto, that is, he cannot exclude himself from a communal burden once that burden has become a fact for the entire community and all its residents, including himself.

We conclude that during the Tannaitic and Amoraic periods, not only the rabbis of the Palestinian Talmud but also those of the Babylonian Talmud considered Samuel's law not binding for Judea. It was operative for diaspora Jewry alone. Furthermore, the Geonim, as well, excluded Israel from Samuel's precept.

The twelfth and thirteenth centuries brought a change of attitude. Differences of opinion arose with regards to this matter. The discussion, largely academic, continued for centuries. It may be
divided into three parts, each of which will be discussed separately
(1) Does Dina D'Malkhuta Dina apply to gentile kings or foreign powers
who successfully invaded and conquered the Land of Israel? (2) Does
Samuel's law affect a Jewish king or the government in the Land of
Israel? (3) Finally, does a Jewish king or official enjoy the powers
granted by Samuel's law if he rules outside of the Land of Promise?

The first explicit statement concerning any of these
questions was made by the Tosafists. As we have seen, they contend-
ed that "the law of the kingdom is the law", but only when it concerned
non-Jewish kings. They own the land they may at will expel anyone
who disobeys their decrees. The Tosafists maintained that no Jewish
king in Israel has that right. The Land of Israel is owned cooperative-
ly by all Jews. As a consequence, no Jewish king in Israel may legis-
late in accordance with his own understanding. He cannot contradict
Jewish law.

The exclusion of a Jewish king from enjoying Samuel's law
holds true to the Land of Israel only. Israel is the land which all
Jews own in partnership. The rights to the land are an inheritance
bequeathed to all, the common Jew and the Jewish king alike. This
is not so when a Jewish king or officer reigns in the diaspora. In
this instance, the Jewish and gentile kings enjoy equal status. In
the diaspora, it is the ruler who owns the land and enjoys the power
to expel anyone who does not live up to his ordinances.

This dichotomy between a Jewish king ruling in or outside
of Israel is possible only when Dina D'Malkhuta Dina is viewed in the
light of the Tosafist opinion. The two central features, according
to this view are the exclusive ownership by the king of all the land
within the borders of his nation and the power of expulsion and deportation held by the sovereign. Neither of these rights are part of the powers granted a Jewish king in Israel. However, no such distinction can be made if the opinion of R. Samuel b. Meir regarding Dina D'Malkhuta Dina is accepted. This opinion focused its attention upon the "free will acceptance of a monarch" by the subjects of a country. Hence, it would appear that the location of the kingdom, be it the Land of Israel, or elsewhere, has no bearing upon the situation. Dina D'Malkhuta Dina is a law which applies to all kings if they are freely accepted by their subjects.

The opposite becomes evident when we deal with a gentile king who conquered the Holy Land. The Tosafists would recognize Dina D'Malkhuta Dina as operative in the Land of Israel since the right of deportation is his, signifying his ownership of the land. Samuel b. Meir would disagree. No foreign king was ever really accepted by the conquered people of the Land of Israel. No foreign king could claim Dina D'Malkhuta Dina under such conditions.

One other pertinent fact must be mentioned which has bearing upon this discussion. The powers of a Jewish king were delineated in the book of Samuel of the Bible. Nonetheless, in Tannaitic days, it was not clear to the rabbis whether the Bible by enumerating the various powers of a king in this passage hereby granted these as the inherent rights of all kings, or whether the listing of such powers was merely a method to discourage the people of Israel from choosing a king. The prophet cited all the burdens that would be cast upon their shoulders if a king assumed the leadership instead of the judges who had been in power. Most of the authorities of the Middle Ages
decided in favor of the former opinion. They equated the Tannaitic and Amoraic decision which granted a Jewish king the powers enumerated by the Bible to the concept of Dina D'Malkhuta Dina applicable to a gentile King. The two were identical. If the king has rights, and we see that he has, then it is because Dina D'Malkhuta Dina applies to Jewish kings in the Land of Israel as well. In fact, some authorities looked upon Dina D'Malkhuta Dina as applied to a gentile king as an extension and corollary of the primary law; namely the rights granted a Jewish king.

The dissenting minority opinion had a number of difficulties to contend with. Firstly, according to the accepted rules of the Talmud, in a dispute between the rabbis here involved, the decision should go in favor of granting these rights to Jewish kings. Secondly, some of the authorities appeared to waver in their decisions. At times they ruled one way and at other times they ruled in opposition to their own view.

By the 15th and 16th centuries distinctions were no longer made between the kings of Israel, the land of Israel, or the diaspora. A number of rabbis stated that the kings of ancient Judea, when the State was under foreign domination, ruled the land by means of the concept that the "law of the kingdom is the law". The Persians, the Syrians, the Romans, and others, appointed some kings of Judea, who ruled Judea by the powers vested in them by the laws of the kingdom.

Even the Palestinian sages of these centuries held that Dina D'Malkhuta Dina was applicable to Palestine as well. The question was posed concerning the Jewish refugees of Tiberias. They had fled Tiberias because of the dangers threatening them and remained in exile
in the city of Sepporis for over a year. The native residents of Sepporis demanded that the refugees share their tax burdens. Any individual who resides in a city over one year must pay taxes to this city. The exiles refused to allow themselves to be taxed twice. They claimed that their responsibilities to the king were fulfilled when they remit their taxes to the people of their home town, Tiberias.

A recognized authority of Safed, as well as another authority of Salonika, ruled that the "law of the kingdom is the law" and that law demands they fulfill their tax duty in Tiberias. No man must pay double his taxes and neither must these exiles pay again in their city of refuge. In addition, should the king demand double his amount, that is, payment from two residences, it is considered royal robbery. Thus*Dina D'Malkhuta Dina* was applicable in Palestine not only to force a positive act of tax payment, but also to justify the evasion of an unjust, extortionate tax.

In another responsum we also find that*Dina D'Malkhuta Dina* was operative in Palestine. Many of the Jewish authorities of the sixteenth century Turkish Empire agreed that Jews were obligated to accept and abide by the Turkish law forbidding them to purchase and own slaves. It was the "law of the kingdom" and because of Samuel's maxim must not be violated. Others disagreed with this ruling. They felt that the law restricting Jews from owning slaves was discriminatory and*Dina D'Malkhuta Dina* is only valid when it applies equally to all people of the kingdom. Furthermore, slave trade is not of direct concern to the monarch but is a private matter involving individual Jews. With whatever opinion we may agree is not relevant to our discussion. Suffice it to say, that none excluded*Dina D'Malkhuta*
Dina because the situation occurred in the Holy Land. They accepted that Dina D'Malkhuta Dina applies to Palestine as well.

The Talmudic concept of "rebellion against the king" (Mored be'Malkhut) must be discussed at this point. How is this concept different from Samuel's law of Dina D'Malkhuta Dina? If we should reach the conclusion that these are but two technical terms for the same principle, then we must again conclude, that Dina D'Malkhuta Dina was operative with Jewish kings in the Land of Israel.

First, a word about the concept of Mored be'Malkhut. The Talmud arrives at this concept by citing the Biblical verse "Whoever that doth rebel against thy commandment, and will not hearken unto they words in all that thou commandest him, he shall be put to death". Herein they affirm the power of a king to bid his subjects according to his will. He may tell anyone what to do and what not to do and disobedience could be met with death.

The Talmud and the later day scholars limited this power so that a king may exercise this right only as long as he does not expect the subject to violate Jewish law in fulfilling the king's commands. It appears as if at first no difference was made between the two concepts. They were freely interchanged. However, in the nineteenth century a clear distinction was made based upon the above mentioned limitation. In all decrees that do not involve Jewish law, that is, where Jewish law is silent, then the subject must obey his king or else be considered a "rebel" (Mored be'Malkhut). The concept of Dina D'Malkhuta Dina is required only when the edict countermands Jewish law. Of course, no Jewish king was permitted to do so. Dina D'Malkhuta Dina was applied only with gentile kings.

In conclusion, we may summarize our finds as follows:
Samuel's law of Dina D'Malkhuta Dina was not to include the monarchs of Judea. From the Amoraic times to the fifteenth century, no one explicitly states that Dina D'Malkhuta Dina would include the Holy Land. This was true of Jewish kings and certainly was the case of non-Jewish kings. The Jews of Palestine or of the diaspora would not recognize any foreign power. However, from the fifteenth century on, no distinction was made. The rabbis looked back into history and saw that the power of Ezra and the kings of Judea rested upon the authority vested in them by the foreign conquerors.

As far as Jewish kings were concerned, by and large the rabbinic literature agrees that Dina D'Malkhuta Dina has no meaning for such a king. The land is not his alone and he, too, must abide by the laws of the Torah. However, in the diaspora quite a number of scholars granted a Jewish king equal status with any other monarch. He, as any other king, was the secular head and his word was law.

It is worthy of comment, that the very principle which provided the "modus vivendi" for the Jew to live outside the Land of Israel also helped preserve his attachment to the land to which he refused to give up his title. The "law of the kingdom" presupposed legal title; i.e., the prevailing authorities must first be recognized as the legal ruler of the land. By not allowing Dina D'Malkhuta to be operative with regards to the conquerors of Palestine, the Jews silently proclaimed that legally this land can never be taken from them.
CHAPTER X -- CIVIL AND RELIGIOUS LAW

The students of rabbinic literature, as well as modern day scholars have concluded that Samuel's precept "the law of the kingdom is the law" was, and can, only be invoked in connection with civil law. Such a conclusion seems quite evident from the Talmudic sources that cite Dina D'Malkhuta Dina. The Talmud mentions this concept only in connection with civil matters. It is invoked in the question of the validity of gentile instruments prepared, signed and issued by non-Jewish tribunals. It is also cited with regards to the sale and purchase of real-estate, the collection and payment of taxes, and a number of other civil matters. Nowhere in the Talmud may this principle be found in connection with religious law. Of course, the fact that it was not applied to religious law is not conclusive evidence that such application is ruled out.

The Geonim specifically approve the right of kings to demand obedience to their edicts. Just as the Divine Being rules over the entire universe, so do kings govern the subjects of their land. However, such power is granted to the crown in civil matters only, and is not to be extended to religious law.

The rabbis of France and Germany and the sages of Spain agreed that only in civil matters may Dina D'Malkhuta Dina be cited. In the 11th century, Rashi declared: "the law of the kingdom is the law even if those involved are Jews, with the exception of divorces, because gentiles are excluded therefrom by Jewish law but are commanded to establish all civil laws." Rashi's grandsons continued in the same tone. The elder, Samuel b. Meir, averred that Dina D'Malkhuta Dina applies to "the payment of regular and special taxes and
to all decrees promulgated by the government. No one may consider property or money held by another Jew as stolen goods and when such holding is permitted by the law of the kingdom." The entire discussion dealt only with regards to civil law. The younger grandson, Jacob b. Meir Tam, who based the entire principle as formulated by the Amora, Samuel, upon the general Talmudic power granted to the Bet Din to declare private property as res nullius, certainly limited Dina D'Malkhuta Dina to civil law for only in civil matters does the Bet Din enjoy such powers.

In Spain, during the same century, Maimonides came to the very same decision. "In all civil matters, we act in accordance with the laws of the king". Similarly, a century later, Ibn Adret concurred with the above mentioned conception of Dina D'Malkhuta Dina. "The basic principle is that in all economic matters we follow the decisions of the kingdom and its customs". Adret ruled that Dina D'Malkhuta Dina was binding in civil law even if such law contradicted the decisions of Jewish law.

The general rule may be stated that Dina D'Malkhuta Dina is only operative in civil matters but is never to be invoked when religious law is at stake. No king, no officer, and no government was given the power to legislate when such ordinances nullified Jewish religious law.

There appear to be numerous exceptions to this general statement. Quite a number of responsa and other rabbinic sources of the Middle Ages and of modern times, at first glance, seem to expand Samuel's law to include religious law as well. Sources of Franco-German and Spanish origin will be cited which apparently breached the fences that contained Samuel's maxim within the confines of
civil jurisprudence and although misinterpreted, nonetheless served as supports and sources of quotations for later day reform Judaism.

Let us examine these sources collectively and individually.

It must be recognized that in Jewish jurisprudence purely civil matters are non-existant. All matters of economics are inter-twined and interwoven with religious law. Intentional misappropriation of funds or property or other devious business methods leave the culprit guilty not only of civil violations that may be punished by nullification of the particular transaction and by payment of losses as well as fines, but also guilty of violating the religious command "Thou shalt not steal". It is a crime and a sin. Despite such indirect involvement of religious law that arises as a result of civil cases, Dina D'Malkhuta Dina is applicable. If as a result of a civil dispute, a Jew was summoned to a Gentile Court and was required to take an oath, he was permitted to do so despite the fact that the taking of an oath involves a religious matter. If Dina D'Malkhuta Dina decides a civil matter, then all religious laws that are thereafter determined as an indirect result of the civil matter are included in Samuel's precept.

Now let us examine a number of responsa and see how this principle was applied. Two opinions are recorded in one responsum concerning a Jew who purchased grape juice from a gentile ere it fermented into wine. The Jew left the wine in the domain of the gentile with proper precautions, but no actual guard was standing. The question was, was the wine permissible for use or was it ritually unfit (S'tam Yaynom)?

One opinion prohibited Jews from partaking of the wine since
it was purchased without the proper methods of acquisition necessary according to Jewish law. Even though, according to secular law a transfer of ownership was properly effected, this opinion stated that Dina D'Malkhuta Dina was not applicable in this matter. The wine was forbidden unless a guard was stationed to properly supervise it.

However, another authority ruled that Dina D'Malkhuta Dina does apply, and the method of acquisition has validity and as such the wine belongs to the Jew. The wine is permissible since according to Jewish law wine owned by a Jew, albeit in the domain of a non-Jew, is permissible when proper precautions are taken even if a guard is not stationed.

Those who deny the effectiveness of Dina D'Malkhuta Dina in this matter do so because the case fails to satisfy the requirements where Dina D'Malkhuta Dina may be invoked. However both decisions agree that Dina D'Malkhuta Dina does not directly determine the religious status of this wine. It is not Dina D'Malkhuta Dina that rules whether or not the wine is permissible for use. Dina D'Malkhuta Dina openly declares who the rightful owner of the wine is, the Jew or the gentile. Subsequently, the status of the wine is not decided by Dina D'Malkhuta Dina, but by religious law. Thus, according to the first opinion, since Dina D'Malkhuta Dina is not invoked, the wine belongs to the gentile. Henceforth, all requirements necessary in order to allow such wine to be used must be fulfilled. Equally so, is the situation if Dina D'Malkhuta Dina rules the wine to be owned by the Jew. Then, the more lenient requirement must be fulfilled. The indirect consequences of Dina D'Malkhuta Dina, even if they be part of religious law, may be determined by Samuel's maxim.
The same principle is true with regards to another responsum written at the end of the 15th or the early part of the 16th century. A Jew was given permission to pick *etrogim* in the groves of a Moslem and was permitted to use these fruits of a goodly tree to fulfill the commandment prescribed for the holiday of Succot. The fruits or the land while in the hands of the Moslem were not considered stolen goods (גַּם), which would disqualify them from use in the performance of the holiday ritual, even though the Moslem or his ancestors had robbed the land years ago. The "law of the kingdom is the law" and the law stated that anyone who possessed a valid deed was the proper owner of the land.

Here, too, the indirect consequences of applying *Dina D'Malkhuta Dina* may involve ritual or religious law. However, this is but the secondary application to Samuel's principle. Primarily, *Dina D'Malkhuta Dina* decides the proper ownership of the land and once that is established, then the permission or the prohibition with regards to the *etrogim* naturally follow.

In 16th century Palestine, yet another responsum was penned. It, too, falls into the category now discussed. Joseph Caro granted permission to the Jews of a city to purchase the right to set up an *Erub* (Reshut) from the king or his appointee and did not require them to do so from each and every non-Jewish home owner who lived in the city, as did some earlier authorities. The purchase of *Reshut* permitted the Jews of the city to carry things on the Sabbath which would otherwise be prohibited. Caro based his ruling on the precept that *Dina D'Malkhuta Dina* and the king has definite claims to the land and to the homes of all his citizens.
Once more, it must be clearly understood that Joseph Caro does not permit or prohibit carrying on the Sabbath, which belongs to the realm of religious law. Reshut must be purchased from non-Jewish home owners. The question Caro had to resolve was— is or is the king not to be considered a rightful owner or at least as someone who has definite rights and claims to all homes of the city? Caro concludes that Dina D'Malkhuta Dina definitely gives the king such powers. This aspect of the question deals with civil law alone. The consequence which permits carrying on the Sabbath is but a natural and indirect result of this decision. It is not Dina D'Malkhuta Dina which is applied to religious law.

In some instances where at first glance it would appear that Dina D'Malkhuta Dina was applied to religious law, further investigation reveals that other considerations play their role. A very good example is the case of the Spanish king who devalued his currency and by a specific government ordinance stipulated the exact rates which were to be operative when repaying a loan. If currency fluctuation brings this rate up above the value of the original loan, one authority of 13th century Spain ordered the payment of the higher rate, even though ordinarily this would constitute "increase". By no means does this mean that Dina D'Malkhuta Dina was applied to religious law. Quite to the contrary, the ruling defines the prohibition against "increase" as depending upon the intention of the participants involved. In this particular situation there was no intention for "increase" on the part of the creditor or the lender.

Quite similar was the ruling of another authority who stated that a creditor is not obliged to hold a security (ד"ל נ) longer than one year. Once the year is over, he may sell the security in order to receive payment for his loan. This is true no matter if
the value of the security exceeds the amount of the loan. It is not considered "increase" for "the law of the kingdom is the law".

Here, too, Dina D'Malkhuta Dina is not applied to religious law. The security a debtor gives to his creditor is given in its entirety and against the entire loan. It matters nought what the value of the security might be. It might be worth only a fraction of the loan or it may be far in excess of its value. By giving the security, the debtor barters the loan for the security. This is the ruling of this authority. It has nothing whatever to do with applying Dina D'Malkhuta Dina to religious law.

An individual's or a community's oath or Herem could not be set aside or disqualified by the civil authorities. Even should a king stipulate that no vow may become final and binding unless it be affirmed and approved by a certain appointed individual, be he even a Jew, such edict is not to be accepted. "The law of the kingdom" is not operative in religious matters. No one can nullify or affirm another's vow except a husband for his wife and father for his minor daughter. It is absolute nonsense to rule that a vow may not violate a Mitzvah, the Mitzvah, in this case being, the maxim of Dina D'Malkhuta Dina. Samuel's law cannot abrogate Jewish religious law.

Slavery, still quite common by the 16th century, presented another problem. According to Jewish law, slavery was not merely a civil and economic matter, but entailed religious law as well. To cite but one area involving religious law, we might point out that the status of the non-Jewish slave determines whether or not he may marry a Jewish mate.

Prior to the 16th century the Spanish authorities ruled that the non-Jewish slave may not convert except with the consent of his
Jewish master and then only after he was granted a "bill of manumission". Even the non-Jew who failed to pay his taxes was to remain in servitude, by order of the king, to him who paid the tax for him. Should he desire to free himself from servitude, it was required of him to obtain a "bill of manumission". "The law of the kingdom is the law" and by order of that law the tax delinquent becomes a full fledged slave that requires a "bill of manumission" should he desire to convert to Judaism. Without such a release he could not marry a Jewish spouse.

During the sixteenth century, under Turkish rule, many authorities continued this policy. In Egypt, one authority stated that it was the accepted practice since the days of the early Negidim, to deny the secular powers the right to supersede Jewish religious law. Dina D'Malkhuta Dina could not be applied to religious law. A "bill of manumission" was not recognized when issued by a Gentile Court because slavery belongs not only to civil but to religious law as well.

Up to this point, Dina D'Malkhuta Dina was operative only insofar as the status of ownership of the slave was concerned. Dina D'Malkhuta Dina allowed the individual who paid the tax to become the master of the delinquent. Similarly, the king may allow a soldier of his army to become the master of any war captive, be that captive Jewish or non-Jewish. "The law of the kingdom is the law" is applicable in this matter. However, there appears one dissenting and very difficult view expressed in the responsum of this century in Salonika. The case involved a non-Jewish female slave whose Jewish master wished to marry her. Since the "law of the kingdom" was that Jews may not own slaves in the Moslem countries, the decision was
rendered that the marriage could take place even without granting the 
slave a "bill of manumission". Accordingly, it appears that this 
authority applied Dina D'Malkhuta Dina even to religious law. It 
would be one thing had this master purchased the female slave in 
Turkey. Perhaps then, it might have been ruled that because of the 
law of the kingdom, the individual in question never assumed the 
status of a slave. Dina D'Malkhuta Dina would be applied to owner­ 
ship which is purely civil law. However, the case in question in­ 
volved a woman who was brought by her master from other lands where 
the label of slavery as far as she was concerned had already been 
placed upon her. According to this decision, Samuel's principle re­ 
moved her status of being a slave which involved religious law. 

The 17th and 18th century, in the countries under Ashkenazic 
influence, brought to light yet another aspect where Dina D'Malkhuta 
Dina was applied to determine a particular fact, no matter what the 
consequences were after the fact. The identity of a deceased may be 
established by means of Dina D'Malkhuta Dina even though a "constrain­ 
ed woman" (Agunah) will thereby be released for marriage. A Mishnaic 
ruling deemed testimony to a hanging as insufficient to allow the wife 
to remarry. Testimony must include witnessing death itself. Nonethe­ 
less, in the 17th century, the rabbis accepted the fact of death even 
if the testimony only described the Jew hanging from the gallows. The 
death penalty was carried out by the secular authorities and secular 
law demanded that the victim's neck be broken. Dina D'Malkhuta Dina 
was sufficient to establish the fact of death. It determined this 
fact and had nothing whatever to do with the religious aspect of per­ 
mitting the widow to marry.
In the same manner, we find that a Jew identified the murdered body of a fellow Jew by means of his clothing. However, the garments were by the side of the body and at the time the witness arrived at the scene were not worn by the deceased. An 18th century rabbi ruled that the "law of the kingdom" demanded a coroner's examination in the case of death by unknown causes and in order to comply with this ordinance, the deceased's clothing must be removed. Jewish law accepted the fact that the clothing found belonged to the deceased and their identification was tantamount to the identification of the person. The widow would be permitted to marry. Here again, it is a procedural fact which is accepted on the basis of Dina D'Malkhuta Dina. Samuel's law does not determine the consequences resulting after the fact. It is not applied to religious law.

A death certificate sent to the family of a Jewish soldier by the Army officials is recognized as evidence of death. This certificate is equal in legality to the documents issued by a Gentile Court. The fact of death is established by Dina D'Malkhuta Dina. The consequence of this fact has nothing to do with religious law.

A Jewish doctor, descended from the priestly family (Kohen) was prohibited from performing such an examination. Biblical law does not permit a Kohen to come in contact with the dead. The secular law demanding that such an examination be conducted, cannot abrogate Jewish religious law. The Jewish doctor of priestly decent must decline to perform such an examination. The same ruling would apply if the government does not permit burial at all without a doctor's certification.
In modern days when post offices exist even in the most remote places of the world, a missing man can always get in touch with his family by letter. The newspapers are an excellent medium of communication which missing persons or their families may utilize. The Austria-Hungarian courts estimated twelve months to be sufficient time for anyone to respond were he alive. Jews could not accept this as proof of death, but utilized the law of the land whenever it might free the Agunah.

The Ashkenazic rabbis also recognized that Dina D'Malkhuta Dina at times might bring about indirect consequences that would determine religious law. Legal tender which has this status only because of Dina D'Malkhuta Dina may be used to betrothe a woman. This may be done whether or not the currency actually is worth as much as the government states it is. However, with regards to the redemption of the first born, actual value is necessary. To be sure, a woman must be aware of the amount she receives. However, people in general recognize currency with the value stipulated by the government. This is not so with the redemption of that which belongs to the Almighty.

In this period, it was also recognized that Dina D'Malkhuta Dina establishes the ownership of property. The resultant consequences, be they even religious in nature, were considered the indirect results once ownership was established and Dina D'Malkhuta Dina had no bearing upon this effect. A legal dispute arose when Jews of Moravia informed against their brethren, accusing them of tax evasion. Each time they made out a "bill of sale" for the transfer of "leavened products" prior to the Passover holidays, they ignored the government regulation
requiring a tax-seal to be placed upon all legal documents. The Austrian Emperor exempted Jews from complying with this demand stating that everyone knows that such sales are not effected for business purposes but are concluded for religious reasons. Some authorities argued that the "law of the kingdom" demands that tax-seals be part of every document or else the document be considered invalid. The exemption that such bills of sale were for religious purposes should not be acceptable since Dina D'Malkhuta Dina. Others stated the documents are valid since the law only demanded payment for the seal and such a tariff maybe excused by the Emperor.

Our concern, at the present is not with the decision in this matter but rather with the religious consequences resulting from applying or not applying Dina D'Malkhuta Dina. We must emphasize that Dina D'Malkhuta Dina is not invoked with regards to determining if the Jew transgresses the Biblical law against having "leavened products" in one's possession. Dina D'Malkhuta Dina merely determines the validity of the bill of sale which in turn determines whether or not the Jew owns "leavened products".

In another instance, the religious problem of redemption of a first born is dependent upon ownership. A woman sold an animal to a gentile. After paying for the animal, the gentile left it in the possession of the Jewess. In the meantime a "firstling" was born. Although Dina D'Malkhuta Dina decides that the animal was acquired by the gentile by means of the payment made or even a handshake, it is but an indirect consequence that the firstling born has no sanctity of a first born and requires no redemption.
The questionable areas are those where religious and civil laws are intertwined. In such cases which first involve ownership by a Jew in order for him to fulfill or violate a religious law, such as the redemption of first born, etrogim, slavery, leavened products on Passover, wines of a gentile, etc., the question is if Dina D'Malkhuta Dina may be applied. Nowhere can it be found that any authority was even remotely doubtful that Dina D'Malkhuta Dina could not be invoked if the secular authorities demanded that Jews violate a strictly religious law. Some matters appear to be civil law because they deal in economic gains and losses but with regards to Jewish thinking are religious in nature. Trade competition may involve monetary consequences. However, Jewish jurisprudence places the matter entirely within the realm of religious law. "A was pursuing his craft in town T when B began to pursue the same craft. A demanded that a ban be issued against anyone beside himself who will engage in that craft. B, however, restrained him from such action until a decision, as to the legality of such a ban, be issued by a rabbi. Subsequently, A bribed the ruler of the town who issued a decree forbidding anyone, but A, to pursue that particular trade. A again demanded the issuance of a ban, claiming that the Jews are bound to abide by the law of the secular government". The decision came forth that the secular government, according to Jewish law, has no jurisdiction over trade competition. Jews are not bound to abide by their decree since the "law of the kingdom is the law" is not applied to religious law.

To conclude, the Talmudic, Geonic and later day authorities throughout the centuries stood guard with a watchful eye to prevent the invasion of the secular governments upon their religious beliefs.
Although in civil law there were differences of opinion to be found in various eras, and differences to be found between Sephardic and Ashkenazic centers, the Jewish authorities were predominantly united against permitting any intrusion in so far as religious law was concerned. There were forceful invasions of their religious rights but the Jews never recognized these to be legal. Some authorities, especially of the Spanish school, were quite liberal in civil matters. They readily harmonized the law of the kingdom with their own way of life. None, however, extended such acceptance directly into the realm of religious law.
CHAPTER XI — MODERN QUESTIONS OF DINA D'MALKHUTA DINA

With the political emancipation of the Jews and the granting of citizenship to the Jewish residents of specific nations, numerous problems involving the concept of Dina D'Malkhuta Dina arose.

Among these were questions concerning civil marriages and divorces, the problem of military duty that was and is required of all citizens, and questions involving criminal law and civil ordinances.

These problems were a major concern to Jews, especially in the eighteenth century when the thinking of the non-Jewish world changed and Jews were included within the total concept of citizenship. The emotional wave of liberty, equality, and fraternity, begun in France, spread over the continent and Jews everywhere began to feel the need to define their peculiar position of living under a dual system of law. The principle postulated by Samuel rose to the foreground and old and new interpretations flourished. The Jews recognized their new obligations to the State and also reaffirmed their loyalty to their own law. They maintained that the two systems did not conflict. They did not detract from each other. Quite to the contrary, many felt that they enhanced each other, allowing the Jew to live as a better citizen of his adopted land, and at the same time, live as a better Jew.

The Jews of that era were aware that such synthesis could not and would not come about overnight. Greater awareness of the problems before them would help, and education and perhaps revision of thought might be necessary. Here are the words of a Jewish dignitary who wrote to his brethren after the Rights of Active Citizens of France were granted to the Jews in 1791: "At length the day is arrived when the
veil, by which, parted from our fellow-citizens, we were kept in a state of humiliation, is rent;...We must then, dear brethren, strongly bear this truth in our minds, that till such a time as we work a change in our manners, in our habits, in short, in our whole education, we cannot expect to be placed by the esteem of our fellow citizens in any of those situations in which we can give signal proofs of that glowing patriotism so long cherished in our bosoms. God forbid that I should mean anything derogatory to our professed religion, or to our established form of worship; far from me the idea of proposing any innovation in them. I should consider as monsters those among us, who, from the prospect of some advantages they might expect from the new constitution, would presume to alter the dogmas of their religion...No, I shall not believe any of my brethren capable of this...But I cannot too often repeat to you how absolutely necessary it is to divest ourselves entirely of that narrow spirit, of Corporation and Congregation, in all civil and political matters, not immediately connected with our spiritual laws; in these things we must absolutely appear...as Frenchmen...; to know how to risk our lives and fortunes for the defence of the country...;

One of the problems with which they had to come to grips was the problem of civil marriage and divorce.

The French Jews at the Assembly of Deputies were faced with this situation. The second and third questions proposed by the Emperor involved just these problems. Here is the text of these questions:

**Question 2:** Is divorce allowed by the Jewish Religion? Is divorce valid when not pronounced by Courts of Justice by virtue of laws in
contradiction with those of the French code?

**Question 3:** Can a Jewess marry a Christian and a Jew a Christian woman? or does the law allow the Jews to intermarry only among themselves?

The answer to Question 2 by the Assembly stated that "repudiation is allowed by the law of Moses but it is not valid if not previously pronounced by the French code". The Assembly referred to the "Principle generally acknowledged...that, in everything relating to civil or political interests, the law of the state is the supreme law." The members of the Assembly affirmed a position which actual practice had already established, that no divorce could be valid except it be a double divorce - that pronounced by the law of the state and that prescribed by the law of Moses.

The delegates to the Assembly obviously would not apply *Dina D'Malkhuta Dina* to the process of divorce itself. They recognized the requirements of the State so that a civil divorce would be necessary in addition to the Get. In fact, the civil divorce necessarily had to precede the issuing of a Get. As far as this additional requirement was concerned, *Dina D'Malkhuta Dina* demanded that Jews comply with the law of the land. However, *Dina D'Malkhuta Dina* was not sufficient and was not operative to allow the civil divorce to take the place of the Get. The Jews would not recognize such a civil document alone to be the substitute for the Get. These were religious in nature and the "law of the kingdom" could not apply.

Similarly, the answer of the Assembly to the third question regarding intermarriages stated that marriage "requires religious ceremonies called *Kidushim*, with the benediction used in such cases,
no marriage can be religiously valid unless these ceremonies have been performed. This could not be done towards persons who would not both of them consider these ceremonies sacred; and in that case the married could separate without the religious divorce; they would then be considered as married civilly but not religiously.

Here, too, the express opinion of the rabbis was that marriage is a religious matter. It is sanctification and is not a civil issue. However, they did recognize and make the dichotomy between religious and civil marriages. Although they recognized the powers of the state with regards to civil marriages, they did not allow this power to extend to religious marriages. In reality, of course, it spelled out the fact that the civil marriage was of a different nature and let no one mistake the two. The Jews of that epoch did not regard marriage itself as a civil matter.

The French minister of the Interior in his report to the Emperor on August 20, 1806 understood the dual aspect of marriage as recognized by the Assembly. In his comments to the answer given by the Assembly to question 2, he wrote: "But this repudiation form of divorce affects only the religious bond, the civil bond remaining intact; moreover the first can easily be made subordinate to the second in dissolving a marriage, as it already is in bringing it about."

Utilizing the answers formulated primarily by R. David Zinzheimer on behalf of the Assembly of Jewish Notables, the Grand Sanhedrin one year later, by virtue of its authority also made it a religious ordinance that from that time forth no divorce should be issued except after the marriage had been dissolved by a competent civil court and according to the forms prescribed by the civil code. No rabbi might
lend his services to the granting of a divorce without first requiring a civil divorce decree; otherwise, the rabbi would be regarded as unworthy of performing future functions. Furthermore, marriages between Christians and Jews though not invested with religious sanctity, shall not entail any anathema (Herem).

At the gate which lead the Jew into modern life, the possibility of a synthesis between religious and civil laws became a great problem. Harmonization was impossible. All they did and all that could be hoped for was for Jews to live by a dual code, the one religious and the other the laws of the State.

Towards the end of this century, an Englishman wrote: "We acknowledge the principle laid down in the Talmud: "The law of the country is binding upon us," but only in so far as our civil relations are concerned. With regard to religious questions our own religious code must be obeyed. Marriage laws include two elements, civil relations and religious duties. As regards the former, we abide by the decision of the civil courts of the country. We must, therefore, not solemnize a marriage which the law of the country would not recognize; we must not religiously dissolve a marriage by Get unless the civil courts of law have already decreed the divorce. On the other hand, we must not content ourselves with civil marriage nor civil divorce. Religiously neither civil marriage nor civil divorce can be recognized unless supplemented by marriage or divorce according to religious forms. Furthermore, marriages allowed by civil law but prohibited by our religious law, e.g., mixed marriages, that is, marriages between Jews and non-Jews cannot be recognized before the
tribunal of our religion. Such alliances are sinful..."

The authorities hitherto cited, attempted to cope with the modern problems facing the Jew. As a citizen of his country, certain duties were required of him. These civic duties combined with his duties as a Jew provided the impetus to many scholars who tried to harmonize the two. As we have stated above, a dual role with dual responsibilities was the result. No particular change in the concept of Dina D'Malkhuta Dina occurred.

However, during this same century, the first seeds which eventually lead to a complete reversal of the concept of Dina D'Malkhuta Dina were planted. One scholar in 1837 urged that efforts be made for the rabbinical authorities to assume the power granted by the Talmudic rule: "Whosoever contracts a marriage, does it on the condition that the rabbinical authorities are in full agreement with the act". Just as the rabbis of the Talmud, by virtue of the above mentioned rule, annulled marriages which lead to evil consequences, so let the modern rabbis do the same with marriages dissolved by the civil court.

If the above mentioned point of view is compared to the planting of the seed, then that which followed may be likened to the watering of the ground, albeit drowning might be more apropos. In 1843 another scholar quite readily agreed to the generally accepted condition that Dina D'Malkhuta Dina is applied to civil law alone. The state has not the power to set aside religious law or the religious principles of Jews. However, the laws of the state must be permitted to govern marriages, because marriage is not a religious but a purely civil matter. That is to say, the state of matrimony is a religious institution.
However, the acquisition of, and the separation from a wife is achieved by a purely civil process. The Torah and Rabbinic law regarding matrimony are rejected. The entire process is claimed only for the modern State.

These conclusions are reached after citing a number of Tannaitic and Amoraic statements concerning the method of acquiring a wife. The three Mishnaic ways of acquiring a wife, \( \gamma \epsilon \), \( \beta \delta \), \( \delta k ' s \) were equated with the three methods of acquiring any other object, \( \gamma \nu s h \), \( \gamma \epsilon \), \( \beta \delta \). Matrimony was a transaction similar to any other purchase. There was absolutely no difference between "buying" a woman or any other commodity. That which the Bible calls "acquisition" (\( \gamma y j \)) was termed "sanctification" by the rabbis. Nonetheless the idea of marriage consumated by means of "money" (\( \beta \delta \)) was described as an "acquisition". Furthermore, a woman of Israelitish descent, who was betrothed to a Kohen was permitted to partake of Terumah because she was "owned" by the Kohen. Finally, the marriage formula "\( \gamma y j \) \( \lambda n \) \( \gamma n \) - Be thou acquired by me" was a legal substitute for the more common "\( \gamma y j \) \( \lambda n \) \( \gamma n \) - Be thou consecrated unto me". The fact that a father was permitted to sell his daughter in her minority or give her in marriage to any man he chose for her shows without a doubt that a wife was considered no more than a "thing".

The second method of acquisition by means of a "document of marriage" (\( \gamma \epsilon \)) was constantly compared to deeds of sale concerning real-estate, slaves, and cattle. The rabbis of the Talmud at first wanted to ignore this method because it did not compare fully with the instruments drawn up regarding other sales where the seller writes
My field is sold to you", whereas in marriages the purchaser, the groom, writes - Your daughter is consecrated unto me".

The third method, cohabitation, was outlawed by the Talmudic rabbis themselves. However, the prohibition against this method did not alter its inherent validity as a legal means of acquisition. There were measures taken against its practice but no attack against its efficacy.

That the consent of the woman was required before her acquisition could take place does not alter the situation. The woman plays a passive role. Once her consent was given she renounces her own will and becomes, in effect, as a thing without an owner, then to be swallowed by the groom's power of acquisition.

This scholar then concludes that love, sanctity, etc., play no role in marriage at all. It is a civil matter. The acquisition of a wife takes place as a consequence of a man purchasing a woman upon the payment of at least one Perutah regardless of the feelings and emotions involved. Even physical possession of the woman, is devoid of the emotional emphasis. Just as eating of the fruits of a field constitute "possession" with relation to the field, so physical usage of the woman constitutes "acquisition". In fact, marriage was forbidden to take place on the Sabbath or holidays because the acquisition of any commodity was forbidden on these days.

The conclusion reached by this scholar was that marriage and divorce are civil processes and must be governed by the laws of the State since Dina D'Malkhuta Dina. However, the overwhelming
scholarly opinions reject this entire hypotheses. The methods employed in the process of ḥalāl are equal and akin to civil purchases. Perhaps in olden times it was strictly a business matter. Nonetheless, the content of the marriage rites are based upon moral, spiritual law, rather than upon civil law. The husband cannot forgive the willful infidelity of his wife. Were marriage but a civil matter, were matrimony but the ownership of an object, the husband would have been within his rights to "forgive and forget" if he so desired. If a wife is but another item owned as are many other possessions, it would be the prerogative of the husband to do and to decide concerning his "belongings". The act of infidelity goes beyond the realm of "acquisition" (יִשָּׂרֵאֵל) and, for that matter, is a sin that reaches beyond the status of the husband. It is a sin against morality per se. Furthermore, it is inconceivable that marriage be considered as merely an "acquisition". No husband could rid himself of his wife by selling her to another. Only one method was available to any man during his lifetime, by means of which he could dissolve his marriage, and that was a legal writ of divorce. These writs of divorce were explicitly excluded from the concept of Dina D'Malkhuta Dina by the Talmud. The laws of marriage and divorce are not civil in nature, and no government was given the right to interfere with them. Dina D'Malkhuta Dina does not apply.

Despite their rejection of the thesis put forth by the above mentioned scholar, Reform Judaism, nonetheless, accepted the idea that marriage and divorce are civil processes. Here are the words that helped formulate the approach of Reform Judaism: "Still more expressive of the modern spirit are the resolutions concerning
divorce and remarriage, of which the one declares divorce to be also from the Mosaic and rabbinical point of view only a civil act devoid of any religious character and therefore, valid only when it proceeds from the civil courts, whereas the so-called ritual Get is in all cases invalid and ineffective."

The thesis that marriage and divorce are civil matters cannot be accepted as we have stated earlier. The statements of the Mishneh which confirm the civil nature of marriage belong to an early period of Jewish history. The first Mishneh of the tractate Kiddushin is a very old one. Herein the term "א"פ"א" was still used. The second chapter of this tractate makes use of the more recent concept of sanctification - "ן"פ"א"ב"א ו"א".

It is also of great significance to note the moral and social attitude to marriage that developed among the sages of the Talmudic period and the Middle Ages. Their sayings reflected either the prevailing attitude to marriage or at least the goals towards which these teachers aimed. The above mentioned authorities would have us believe that marriage was devoid of love and consideration. Yet many Talmudic statements, even if Agadic in nature, nonetheless, reflect a far superior philosophy of marriage. While the father still maintained his legal right to give his daughter in marriage it was also true that "it is forbidden to give a daughter in marriage while she is in her minority until she matures and can herself choose her mate".

It would be very difficult to look upon marriage as a business transaction and also maintain that they are "made in heaven", for such was the approach of the same sage when he said: "Forty days prior to the formation of the embryo, a heavenly voice is heard saying: "This
daughter shall be married to that man". Marriage should not be based upon ulterior motives. Marriage for money was looked down upon and would beget unworthy children. The sages advised against marriages wherein the ages of the partners are greatly apart.

Love and honor were essential to marriage for they brought bliss and contentment to the mates. The blessings recited at the marriage ceremony itself gives thanks to the Almighty for the love that exists. No relationship formed a closer union than that of husband and wife. Human beings may be comforted at the death of all relations even at the death of parents, brothers, and sister, and children, but not the death of a mate.

The Middle Ages continued in the same tone. The authorities who maintained that it was modern times that emancipated woman should refer to a statement made by Rashi. The Talmud states: "He who said to his wife, be thou a free woman, said nothing to her". Whereupon Rashi comments: "The expression of freedom is meaningless in connection with divorce since a wife is free all the time." The essential feature of love so necessary to marriage and to the sex act was further developed by Nahmanides in his work Hupat Hatanim, a work far advanced and one which could hold its own with the modern day marriage counselling.

These attitudes express marriage on a loftier plane than a mere business or civil transaction and were ignored by some authorities. Marriage is a religious act and tolerates no interference on the part of the State. That even today one is required to wait for the issuance of a license for marriage in no way contradicts our thesis. Those officiating comply with the demands of the State. Sim-
ilarly in cases where Jewish law permitted the issuing of a divorce even against the wife's will (e.g. when the marriage after ten years did not yield any children), the Bet Din can only do so if the government permits such a divorce. However, should a marriage be consummated without a license having been issued, no matter what the legal consequences, the marriage is valid and is recognized fully by Jewish law. The government cannot set it aside.

Up to this point, we have dealt with cases in which the civil and religious laws do not conflict, and marriages which the civil law permits and which are forbidden by religious law, e.g. mixed marriages. What of the reverse? What is the Jewish attitude to marriages prohibited by the State but permitted by Jewish law?

Under Queen Elizabeth, in 1563, a table of prohibited marriages became the law for the Anglican Church. Later in 1603, Henry VIII listed prohibited marriages between relatives "in the ascending and decending line ad infinitum and in the collateral line to the third degree". Later, these laws were modified and adopted by the American States. However, there are marriages considered incestuous by the State that are not only permissible but some even urged by Jewish law, e.g. the marriage between uncle and niece. Does Dina D'Malkhuta Dina apply in these matters?

Despite the scientific approach of some scholars who would set aside such marriages because they are considered injurious to the offspring and who erroneously cite the Talmudic ruling and interpret it to mean that "questions of physical danger put the question of ritual law in the background", such mar-
riages are valid. In the first place, the meaning of the Talmudic
maxim is that we are to react to matters of physical danger (מְדִינָה מְדִינָה)
in more stringent ways than to matters of ritual law, but not that
Sakanah sets aside ritual laws. Secondly, the state law which denies
Jews the right to marry a niece, interferes with the religious pre-
cepts of Judaism, where such marriages are regarded as a Mitzvah.
Dina D'Malkhuta Dina would not apply since a religious question is
involved. The fact that Jews will abide by the laws of the State
does not mean that Dina D'Malkhuta Dina is effective. It merely
means that as citizens of the country, Jews will not violate the
laws of the nation.

The Jews of America are faced with yet another problem. Any
group of federated states are governed by federal as well as
state laws. As one scholar put it; "The confusion among the vari-
ous States on questions of marriage and divorce is simply appalling.
When you say, "The law of the land is the law", you cannot apply it
to the national law...In as much as the regulations of marriage and
divorce are in the power of each sovereign State, we learn that the
law of each State shall be our law. We thus have sectional sanctions:
Dina D'Malkhuta Dina must be given only a State interpretation. In
other words, we must say, Dina Dimedina Dina".

This by no means is an innovation of Reform Judaism. Many
rabbinic authorities of the Middle Ages dealing with the different
feudal states within a kingdom had decided that each landowner, each
duke or officer in his own province had the same power as the king.
This was especially true where the powers were specifically delegated
to the individual provinces. Thus, the laws which are left in the
hands of the individual states are surely powers included in Dina D'Malkhuta Dina. This, of course, would not include marriage and divorce laws which are religious in nature.

Even though, as we have said, all authorities agreed that Dina D'Malkhuta Dina applies only to civil law, the attempts to convert the process of marriage and divorce into a purely civil act lead others to misinterpret Samuel's law, and to apply it to strictly religious measures. The breaking down of the traditional interpretation and the mood of 19th century Germany to diplomatically win equal rights for Jews brought about such misunderstanding.

In November of 1842, the provisional head of the rabbinate in Sachsen-Meiningen, Germany, permitted, nay, urged Jewish students to write their school-lessons on the Sabbath. In response to this question, this scholar cited Samuel's law. Jews are to ignore the laws of the Sabbath where the law of the kingdom demands it. Jews are to accept government posts even though they entail the violation of the Sabbath just as they are to serve in the military when called upon. To serve one's country and to fulfill one's duties as a citizen are the obligations of every Jew since "the law of the kingdom is the law".

Opposition to such misinterpretation came forth mainly by the chief-rabbi in Dresden who vehemently pointed out the errors of such conclusions. Dina D'Malkhuta Dina is invoked only when the loyalty of the citizenry is at stake or the welfare of the State is in question. It was in this sense that the Talmud postulated its maxim, but never at the expense of religious law. Let the student attend school, if he must, but he may not violate the Sabbath.
Other opponents went even further. The student who attends classes on the Sabbath and does not write, perhaps does not violate the Sabbath but surely does not fulfill its purposes. He is like the man who spends his entire Sabbath sleeping. He violates nought, but neither does he live up to the meaning of the Sabbath. The student in attendance at a secular school does not violate the letter of the law, but neither does he fulfill the spirit of the law.

Modern times and the recognition of the Jew as a full-fledged citizen of his country also brought about a number of responsibilities and duties incumbent upon every citizen. One of these duties was and is to serve the military upon the request of the government. During the Middle Ages, because of mistrust and hatred of the Jew, and the non-recognition of his equal status, he was excluded from partaking in the defense of his nation. Modern times, however, created problems for Jews who wanted to abide by the precepts of Jewish law while at the same time discharging their obligations to their country.

Practically speaking, Jews did serve honorably in the defense of their homeland whenever called upon to do so. Jews distinguished themselves with their loyalty and heroism, and the numerous casualties and dead bear proof of their uncompromising devotion and patriotism to their adopted lands. This was true in 18th century France, during all wars of the United States, in Germany, and in many other countries.

Theoretically, the question was asked each time war broke out and always when peace-time conscription was the law of the land. Are Jews required to readily answer their nation's call to arms?
May they set aside, if necessary, the laws ordinarily governing the Sabbath and holidays? What of the dietary laws? Is there a difference between the standing armies of peacetime and the fighting armies during a state of war? All these questions have been dealt with and it is not our purpose to resolve them from a halakhic standpoint; that is, to either permit or to prohibit any phase for practical purposes. The purpose is to merely show the application and development of Dina D'Malkhuta Dina in these matters which evolved in the modern age.

Speaking in connection with waging a defensive war, the Talmud states: "Foreigners who attack the cities of Israel to extort money from them are not to be countered on the Sabbath. Should the city be situated at the borders of Israel, even if the attack came as a result of demands for straw, it is to be defended even though the Sabbath be desecrated". (51)

In the Middle Ages, Maimonides added: "It is the duty of every Jew able to come to the aid of his besieged brethren to do so and to help save them on the Sabbath and not to delay his assistance until the Sabbath has concluded". (52) Furthermore, based on the Talmud he adds: "Once their brethren are rescued, they may return to their homes on the Sabbath while still carrying their weapons in order that they not weaken their defenses for a future time". (53)

In the 16th century, even an attack initiated with the intent for fiscal extortion demanded immediate and prompt defense even on the Sabbath. The brigands of their day were not satisfied or appeased, especially when they met with resistance to their demands for money, so that any attack was one which involved the lives
of Jews. In modern times any attack permits the violation of the Sabbath.

An offensive attack must begin at least three days prior to the Sabbath. However, once begun, the attack may proceed on the Sabbath as well. Not only the Sabbath may be set aside but other religious commands as well. Soldiers on the battlefield in enemy territory who are hungry and have nothing to eat may partake of forbidden foods and drink forbidden wines. The degree of hunger or the question of effort to be expended in the search for permissible food was debated in the 16th century.

The above mentioned passages all referred to Jewish soldiers either defending the land of their forefathers or else attacking in its behalf. Are the same rules and regulations to be in effect when the citizens of the Jewish faith are called upon to serve in the military of their nation?

The opinion of the scholars was and is that it is the solemn duty of Jewish citizens to fulfill these duties in their adopted lands. That which was true for the ancient Judean or the modern Israeli when his State is involved, is true for the Jews the world over when their countries are involved. This is true in all nations that require Jews to share the duties of all citizens and grant Jews equal rights and privileges in their armies. Dina D'Malkhuta Dina obligates all Jews to defend their nation.

Of course it must be understood, that the laws of the Sabbath or Kashruth may not be set aside merely because one finds himself in the Army. In peace-time or in nations like the United
States where many provisions are made for Jewish soldiers to allow the fulfillment of their religious precepts, *Dina D'Malkhuta Dina* is not sufficient to waive these requirements.

Hitherto the discussion centered about the positive obligations of citizens. The law-abiding citizen also must refrain from committing acts in violation of government restrictions. This, of course, is not the innovation resulting from modern times except that perhaps the areas involved have expanded.

There was an old *takkanah* enacted by the Jews of Jerusalem while under Turkish rule forbidding the purchase of stolen articles. People would buy these articles below their normal cost and reap a healthy profit when they were re-sold. The government forbade such dealings and the Jewish community affirmed this prohibition by instituting a *takkanah* to the same effect. Once on the eve of the Jewish New Year when this *takkanah* was to be renewed, the people refused to do so. In fact, one merchant, a Jew, who had come from the diaspora and whose name was Judah, seeing that his business was not successful, began to engage in such illegal activities. The authorities apprehended the culprit and danger loomed over the entire community. The leaders of the city urged the reinstitution of the *takkanah*. One of the leaders pleaded: "If your intentions are honorable, then you must forbid the sale of saffron and the purchase of stolen goods which was forbidden by a royal decree and the "law of the kingdom is the law". The businessmen of Jerusalem refused to heed these warnings. Many religious leaders were involved in their dispute until Elijah Mizrahi was able to bring the matter to a proper
solution. Nonetheless, a century later, the following rule was incorporated into the code of R. Joseph Caro of Safed: "It is forbidden to purchase stolen goods, for such an act is a great iniquity. It encourages crimes and causes dishonesty. If there were no receiver, there would be no thief... Any article concerning which there is even a presumption that it is stolen, must not be purchased. Sheep from a Shepherd, household goods from servants must not be accepted, for the probability is that the property belongs to their masters... It is prohibited to rob or to cheat anyone, even to the smallest extent and the same law applies to the case of a Jew and non-Jew alike".

Well founded was the antipathy of Jews to summon one another before any but their own courts. Yet, one of the chief medieval formulators of Jewish custom delivered up, of his own initiative, a Jew to justice if he had robbed a non-Jew. In fact, the authorities of the early centuries made it their practice to denounce to the government Jews who bought stolen goods.

Various laws which are instituted by a government for the protection of its citizens or to protect the underdog fall into the category of Dina D'Malkhuta Dina. Thus, laws, such as the various controls, that were enacted in the United States during the war and post-war years are binding upon Jews. The ordinances against black-marketing, rent-control, smuggling, copyrights, bootlegging, etc., are fair and just enactments and even though they seem to put a burden upon some, as upon the landlord in the case of rent-controls, they are binding. Only laws which are discriminatory in nature were invalidated but not enactments intended for the protection of the majority of citizens. These are valid.
With modern times, and modern problems, modern applications of Dina D'Malkhuta Dina were made. The conclusions to be reached, however, are that Dina D'Malkhuta Dina is not to be applied when secular law infringes upon religious matters, although in instances where secular and religious law can co-exist, e.g., the requirement of marriage license, prior to marriage, the Jew is required to do so. The Jew is not to violate civil or criminal law or those ordinances intended to protect the majority of citizens. The Jew must serve his nation readily and go to its defense. This synthesis of the religious and secular systems of law provided the Jew with the proper religious attitude, as well as the proper channel to live as a law abiding citizen of his land.
1. Gittin 10b, B.K. 113a, Ned. 28a, B.B. 54b.
2. "Was it not Samuel who has said ...\]
3. Gittin 10b
4. Ibid.
5. Ibid.
6. B.B. 54b
7. Kid. 26a
8. Ibid.
9. Ibid.
10. Kid. 26a
11. The phrase \( \text{"res nullius" (Hefker).} \) is explained by RaSHBaM as referring to "res nullius" (Hefker). It is difficult to accept this explanation for it does not explain the contradiction of Samuel's two laws. Accordingly, there is no answer given by the Talmud. RaSHBaM's attempt to find an answer in \( \text{H. Joseph's plea of ignorance is not acceptable. See the commentary of R. Hannanel, who refuses to accept Samuel's law of Dina D'Malkhuta on the basis of this apparent contradiction. However, Dr. Zeitlin's interpretation solves the problems at hand.} \]

It seems that the reason stated in the Talmud, which is not part of Samuel's law, .. \( \text{is what brought about all the difficulties. Samuel's statements are clear.} \]

12. The phrase \( \text{does not mean "first come, first served" as the phrase \( \)} \) It has a literal meaning. Whosoever has possession is the one who acquires the land.
13. Mishneh, Ned. 3:3

14. פַּרְשַׁת הַרְפָּעָה לִבְרָא מְדִינָה לא יִנָּאָמָנ

15. פַּרְשַׁת הַרְפָּעָה לִבְרָא מְדִינָה לא יִנָּאָמָנ

16. פַּרְשַׁת הַרְפָּעָה לִבְרָא מְדִינָה לא יִנָּאָמָנ

17. B.K. 113a

18. B.B. 55a

19. Ibid.

20. Differences between the two applications will be discussed in a subsequent chapter.

21. B.K. 113b

22. Yeb. 46a - שְׁמַעְתָּם אֲשֶׁר מְלַמְּדְתָם אֲשֶׁר מְלַמְּדָּה שְׁמַעְתָּם אֲשֶׁר מְלַמְּדָּה

23. נִכְבֶּדֶנִים אֲשֶׁר מְלַמְּדְתָם אֲשֶׁר מְלַמְּדָּה שְׁמַעְתָּם אֲשֶׁר מְלַמְּדָּה

24. Different opinions are found as to whether the one who fails to pay the head-tax was a Jew or a Non-Jew. Rashi, the Tosafists, and others are of the opinion that the one redeemed is a gentile, whereas Maimonides and others maintain that both individuals involved are Jews.

25. B.M. 108a

26. See note 2.

27. B.B. 55a

28. B.K. 113a; Ned. 28a

29. J. Z. Lauterbach

30. B.B. 115b, Pes. 54b, etc.


32. M.K. 26a

33. B.M. at the end.
34. B.B. 115b, Pes. 54b, M.K. 26a
35. B.B. 10b
36. B.M. at the end
37. Kid. 39a, Hul. 78b, Men. 38b, Shab. 53a
38. Rashi, Men 38b; See also Ozar Tob, 1878 p. 67 - Samuel Ibn Nagdela in his letter to Hananel on the death of his father, Hushiel, eulogizes the rabbi for having merited such a son as Hananel. He refers to him as ARYOK and SHABUR MALKA among other complimentary titles such as ρ'ουν γίνομαι. These titles referred to Hananel's scholastic prowess and his eminence as a recognized talmudic scholar. These epithets would not have been used, were the meaning of these phrases to connote "closeness to the royal court" as Lauterbach would have us believe.

See also JQR Vol. 9, p. 166.

39. Men. 38b
40. Nazir 24b
41. M.K. 26a - The text of the Talmud appears to be corrupt. The phrase γίνομαι is vague and is a later insertion into the text. We do not find this phrase applied except with reference to an assembly of Jews (e.g. for a quorum necessary for a religious service). This difficulty was noted by the rabbis of the Middle Ages. Maimonides, Mishneh Torah, Ebel 9, requires that a majority of Jews would actually have to be killed ere Keriah be required. Nahmanides, merely requires a majority of Jews to be present when any number of Jews are killed for Keriah to be mandatory. They did not know what the phrase γίνομαι meant. Terms such as ἔπαινος ἦν ἡμᾶς would refer to individuals, whereas γίνομαι refers to an assembly.
42. Moses Isserles, *Responsa* #123

43. See subsequent chapter for greater elaboration

44. Whether or not this was accepted will be discussed in subsequent chapters.
NOTES TO CHAPTER II

1. Abraham Ibn Daud, *Sefer haKabbala* and Zacuto, *Sefer haYohasin*, ed. Shulem ...

2. S. Zeitlin, "Rashi and the Rabbinate", *JQR* Vol. 31, 1940

3. B.B. 89a

4. B.K. 59a - ...

5. Sanh. 5a - ...

6. Ber. 64a, Hor. 14a, ...

7. Erub. 11b - When the head of the academy differed with the Exilarch he was fearful of the Exilarch. Once, the head of the academy cautioned a colleague not to reveal to the Exilarch that their opinions clashed.

8. Sanh. 5a

9. Sherira, "Letter" - ed. Hyman ...

10. Sherira, "Letter" 3:6 - ...

Also, Abraham Ibn Daud ...

11. Nathan the Babylonian in *Sefer haYohasin*...
12. Ibid. - Freilich schweigt Scherira darüber, und wie es scheint geflissentlich, weil Scherira nur die Metibta von Pumbedita verherrlichen wollte.

13. Ibid. - Again, 1010 saying, I will tell you something.

14. Graetz, Vol. V, Note 13 - "Freilich schweigt Scherira darüber, und wie es scheint geflissentlich, weil ... Scherira nur die Metibta von Pumbedita verherrlichen wollte".

15. Abraham Ibn Daud, Sefer haKabbala - ...

16. Sherira "Letter" - ...

17. Harkavy - ...

18. Nathan, the Babylonian, in describing the appointment of the Exilarch states that he was chosen and approved by the heads of the academies. Nathan wrote in the 10th century and his narrative describes the inauguration of the Exilarchs when their authority had greatly diminished. The Geonim had already assumed great authority.


20. This was also true later on during the rule of Islam. See Sherira,
Better - He uses the phrase "משה ה to", a phrase synonymous with "משה ה" used frequently to connote the concept of Dina D'Malkhuta. See also Hashi, R. Joseph Ibn Habib to Sanh. 5a - וליהי ומשה ה נא לכו למשה ה: רדımız ומשה ה See also Maimonides, Mishnah Torah, Sanh. 4:13-

The phrase "משה ה" refers to the kings of the nations of the diaspora.

See also R. Solomon Duran, Responsa #353 - [text]

Also, Barfat, Responsa #271.

In the dispute between Saadyah and David b. Zacca1 the latter was deposed. Although, the effects of this dispute greatly diminished the authority of the Exilarch, nevertheless, his official position was still significant. Using the authority of the secular government, David was able to remove his brother Josiah, whereupon Saadyah had to flee for his life. -- See Ibn Daud - Sefer HaKabbala.

See also Sherira Letter - 3:4 [text]

21. Sherira Letter - 3:1* - Based on Sanh. 5a - והיהי ומשה ה נא לכו וליהי ומשה ה Sherira writes:

22. The office of the Exilarch was often bought from the kings. See
Sherira 3:4 - 

Also, see Ibn Daud, Sefer haKabbala -

Again, 

23. The Exilarch was able to order the confiscation of materials essential for his use. See Sukkah 31a.

24. See Sanh. 5a Where מִיְּנָא are required, also 2b; Maimonides Mishnah Torah Sanh. 4:15 - רַּבִּים יְּשֻׁרִין גְּדוֹלִים וְגָדְלִים יְּשֻׁרִין לְאַלְמָנִי יִשְׁרוּ לְאַלְמָנִי.

25. Nathan, the Babylonian writing when the Exilarch had lost his authority, states that the Exilarchs would read from the Torah but that the Geonim did not read after them since this was beneath their dignity.

26. Abraham Ibn Daud, Sefer haKabbala

27. Ibid. -

28. S. Zeitlin, "Rashi and the Rabbinate," JQR Vol. 31 - Dr. Zeitlin speculates that they were accused by their enemies of aspiring to become the rulers of the Jews and the Messiah.
29. Sherira Letter 3:4,5

Ibn Daud, Sefer haKabbala

He also states that the schools closed because

30. Teshubat haGeonim, Harkavy #297-8

31. L. Ginzberg, Geonica II, 87:

32. Teshubat haGeonim, Harkavy #346; L. Ginzberg, Ibid. II, 5; see chapter on taxes for more detailed discussion. Teshubat haGeonim, Coronel #26.

33. A method often employed by the secular authorities to force individual Jews to relinquish their money or property was to coerce a community into taking an oath that they have no knowledge of the whereabouts of a fellow Jew or of his money. The Geonim ruled that the members of a community so threatened may oblige the authorities by taking the oath, but do not have to deliver the victim. Teshubat haGeonim, Coronel #26.

Rab Shashna made the distinction between Herem and an oath. He felt that an oath may not be broken by a community. See Halakot Pesukot #121; Toratan Shel Rishonim P.I. #13; Shaarei Teshuba #195; R. Samuel Ibn Adret VII, 453; Ibn Zimra, Lilshonot haRambam 63; S. Duran #38; R. Meir of Rothenburg P. 813; Teshubat haGeonim haKezorot #26-
According to the Talmudic law a woman who refuses to remain with her husband must wait twelve months before her husband is forced to divorce her. This period was to serve as a "cooling off" period during which conciliation might be effected. The Geonim, however, feared that a woman in such a position would "attach herself to a powerful gentile" or to a non-Jewish court and by such means force her husband to grant her a divorce sooner. A divorce issued
under duress (by gentiles) is considered a נזירות and is not valid. The Geonim, therefore, ordered the elimination of the talmudically prescribed twelve month waiting period and forced the husband to issue the divorce immediately.

Mann concludes that the fear of secular interference in religious matters induced the Geonim to issue their edict. Jewish religious autonomy was threatened.

The key phrase in this responsum is ר"מ וּכְה נִמְלָא מַלֵּךְ וּלְא קָנָתָה לֵאמֶר.

To say that רידא נמלא refers to the non-Jewish courts appears to be inaccurate. The term נמלא or נמליא would have been used. We are then left with the other interpretation given by Mann, namely, that רידא נמלא refers to powerful individuals who could force the granting of a divorce. It seems unlikely that the Geonim would institute a Takkana which actually negated Talmudic law for what could at best be a rare occurrence. One cannot conceive that individuals became so powerful and that their interference became so frequent and widespread as to prompt Geonic action to circumvent these intrusions.

The interpretations given by Sherira Gaon, R. Asher, Ket. V, 35; Mordecai and Shiltei Giborim, ibid. are far more accurate. Recognizing the deterioration of the morals of women, especially under circumstances where they are merely marking a years time until their divorce is issued, the Geonim feared the promiscuity to which the Talmudic edict might lead. The Geonic Takkana tried to remedy such a situation and had nothing at all to do with
governmental interference. מיניות refers to promiscuity on the part of women with non-Jews.

36. Lewin, B.K. p. 99; A Jew, who of his own accord, testifies on behalf of a gentile suing another Jew in a gentile court is to be excommunicated. This penalty is only applied to a single witness. Jewish law does not recognize the testimony of one witness in such matters.

37. Ibid. Also Shaarei Zedek 4; Ibn Adret #137; L. Ginzberg, Ginzei Shechter p. 127 - A Jew who refuses to pay his debt and no Bet Din is available, may be taken to a Gentile court (if the court is honest). Witnesses not only may, but are urged to testify before that court. Ginzberg and Mann misunderstood this resposum and stated that Hai and Sherira urged the creditor to go to a Gentile court. Actually, the responsum states that the witnesses are urged.

38. The Geonim did not recognize the gentile courts because generally they were corrupt and were not to be trusted. See Marmorstein p. 59; Harkavy, Teshubat haGeonim #278;

39. Lewin, Ozar haGeonim B.K. p. 99 - The Geonim ruled that courts should be established in Jewish settlements, and the community should take an active role in their administration.
In the European countries, France and Italy, the Jewish courts continued to impose fines. They interpreted the Talmudic statement to refer to Babylonia exclusively. The Babylonians considered that they do not possess Semikha and therefore could not impose fines. The Franco-German centers fol-
lowed the traditions of the Palestinians and continued the chain of authority that began with Moses. They imposed fines. See S. Zeitlin, "Rashi and the Rabbinate", JQR Vol. 31.

The Geonim following in the traditions of Babylonia, felt that if Babylonia was excluded from levying fines, then certainly all other parts of the world did not possess this right.

We must note that R. Tam also ruled that fines could be imposed anywhere. He felt that the courts of the diaspora are merely carrying out the wishes of the Palestinian courts. R. Tam extends the ruling of the Talmud (B.K. 84b) which permits the courts of the diaspora to impose and collect fines whenever a particular violation occurs frequently and incurs a monetary loss to the victim.

Tosafot, B.K. 84b; Sanh. 3a - See also Tosafot, Gitt. 88b where the same ruling is listed in the name of R. Isaac of Dampierre (Ri).

46. Teshubat ha Geonim, Asaf’la p. 75 or perhaps to R. Samuel b. Hofni.

47. Gittin 10b -

48. Ibid.

49. According to Jewish law, a man whose property was lost at sea forfeits his right of ownership (E/κιν') and the rescuer assumes said right. Comp. Joshua Starr, The Jews in the Byzantine Empire, who cites R. Hananel b. Paltiel who asked permission of
the king of Africa to cross to Italy. The fugitives at the time Oria was captured took along their household goods and whatever funds they could rescue. R. Hanannel went to Constantinople and petitioned King Basil II to grant a decree allowing him to travel throughout the cities of the realm and recover his family possession.

The sages at Bari contested his right to these articles and cited the following: "If a man saved some articles from an invading army or from a flood, or from a fire, they are his..."See B.K. 10:2. R. Hananel replied: "...our rabbis ruled that the "law of the kingdom is the law" and here is the document with the seal the king gave me."

51. "ר"ל פ"א #97.

52. Similarly, if a ruler forbids a Jew to collect his debt, the Bet Din will not intervene and collect his debt for him. The recognition on the part of the creditor that he cannot override the ruler's decree, force him to give up hope of ever collecting his debt. See I' 46h #34; R. Meir of Rothenburg, L. 381; Miller, Einleitung, who claims that this responsum was formulated by Rashi or R. Tam.

53. The "divine right of kings" is the belief that monarchs get the right to rule directly from God, rather than from the consent of their subjects. So far as the people are concerned, the king can do no wrong.

54. Teshubat haGeonim, Asaf #24 P.75 א"ע חיכוה וק י"ק...
55. **Teshubat haGeonim Ha Kezorot #26**

כד הוהי ואמל י(usuario)

כד הוהי ואמל י(usuario)

כד הוהי ואמל י(usuario)

כד הוהי ואמל י(usuario)
NOTES TO CHAPTER III

1. RaSHBaM, B.B. 54b - .Points out that the king's laws and decrees are administered by the king's officials, and that all inhabitants of the kingdom should voluntarily submit to the king's laws and decrees.

Hayyim b. Isaac Or Zarua #34; Abkat Rohel #72, and many others.

Berthold Altmann, in his article "Medieval German Jewish History", Proceedings of the American Academy for Jewish Research, Vol. X, renders an incorrect translation of the above commentary. Altmann writes: "There is a legal rule that all inhabitants of the kingdom should voluntarily submit to the king's laws and decrees."

Altmann misread the text, placing the words together with the subsequent words. Thus, he read ... without realizing that this rendered the tense of completely wrong. By misplacing a comma, he arrived at a faulty meaning of the text. See I. Agus, R. Meir of Rothenburg, Intr. p. XXI footnote 3.

2. Compare I. Agus op. cit.; also, his p. 18.

3. The "social contract" theory goes back to Plato (Republic Book II, Gorgias) but was fully expounded much later by Rousseau. In his book "The Social Contract", Rousseau states: "The clauses of this contract are so determined by the nature of the act that the slightest modification would make them ineffective, so that, although they have perhaps never been formally set forth, they are everywhere the same and everywhere tacitly admitted and recognized, until, on
the violation of the social compact, each regains his original rights and resumes his natural liberty while losing the conventional liberty in favor of which he renounced it." (Book I chap. IV).

See also Convention Parliament of 1688 which accused James II of having "endeavored to subvert the constitution of the kingdom by breaking the original contract between king and people".

According to this theory, the state should not be controlled by power. The only rightful rulers are those freely chosen by the people of the land. A monarch's right to rule is given him by the people and not by God nor may it be taken by force. The citizens of a nation enter into an agreement with a king whereby they surrender some of their rights and submit themselves to a supreme government.

One major criticism of this theory of government has been the fact that we have no historical evidence of any such social contract. Indeed the evidence of history seems to be contrary to this theory.

It may now be shown that R. Samuel and the numerous rabbis who accepted his views, translated this theory into practice. Many Jewish communities accepted or rejected the "law of the kingdom" based upon the social contract. The king's laws were considered binding only as long as these laws lived up to the social contract. Whenever the king acted contrary to the contract, whenever he arbitrarily or wantonly overstepped the boundaries prescribed by the social contract, he was considered to be committing "royal robbery" and such edicts were ignored. (ןא"ז נודנָךְ תוייברָה - וינא"ז נודנָךְ יכָּה). See Nissim Gerondi Ned. 28a; Tosafot, ibid; the terms (ר"ז נודנָךְ תוייברָה and וינא"ז נודנָךְ יכָּה) were used throughout the entire rabbinic literature and may be found countless times referring to a king who

4. Ibn Adret, VI, 149

5. haMeyuhosot, #22

See also I. Agus U'shulik #130, responsum of R. Isaac b. Aaron

Also, Hayyim b. Isaac Or Zarua #34, 110

See Note 3.

5. Maimonides, Mishneh Torah, Geselah V:18

6. See Hoshen Mishpat 369; 2; Tur, Ibid. Mordecai Jaffe, Lebushim, 369, Zemah Zedek Hoshen Mishpat #2

7. Shiltel Gibborim to B.B.

8. Actually R. Eliezer of Metz - see Ibn Adret in his commentary to Nedarim 28a; also, Nissim Gerondi, ibid.
9. וְזֶה סֹפֶר אוֹתוֹ יָדַע, אִם היא בָּאָרָא, שזֶה לֹא מִשָּׁה יָדַע, אִם הוא בָּאָרָא. קַמְּנוּ שֶׁלֹּא מִשָּׁה יָדַע, אִם הוא בָּאָרָא.

10. E.G. extortionate taxes, freedom of motion, etc.

11. R. Asher b. Yehiel, Ned. 28a - מִשָּׁה יָדַע, אִם הוא אָבָא, שזֶה לֹא מִשָּׁה יָדַע, אִם הוא אָבָא.

12. See Hesronot haShas to Ned. 28a - מִשָּׁה יָדַע, אִם הוא אָבָא.


14. I. Agus, op. cit. - מִשָּׁה יָדַע, אִם היא בָּאָרָא, שזֶה לֹא מִשָּׁה יָדַע, אִם הוא בָּאָרָא.

Comp. Shittah Mekubezet, Quoting R. Jonah, B.B. 546 - מִשָּׁה יָדַע, אִם היא בָּאָרָא, שזֶה לֹא מִשָּׁה יָדַע, אִם הוא בָּאָרָא.


17. See Asaf, Teshubat haGeonim p. 75; Maimonides, Mishneh Torah Malveh VeLoveh 27:1; Abraham Ibn Daud, Ibid; Tur 68:1; Hoshen Mishpat Ibid; R. Asher b. Yehiel, Responsa 18:2; Abkat Rohel #72; Samuel b. Modena, Hoshen Mishpat #304, 350; Shiltei haGibborim to Gittin 10b; Joseph b. Solomon Colon #18; R. Solomon Luria, Yam Shel Shlomo, Gittin #22.

18. R. Jonah Gerondi, B.B. 54b - ...the outstanding exception to this viewpoint is R. Tam.

19. Nahmanides, see Shiltei haGibborim, Gittin 10b; also M. Katzenellenbogen, Responsa #54 - ...Trani, III, 100 - ...
20. Because of factors which would disqualify its usage – see subsequent chapter.

21. E.g. writs of gifts.

22. Ibn Adret VI, 254 – "Indessen brachten ihn die von den Juden Luccena's zusammengebrachten Summen".

23. Hassam Sofer, Yoreh Deah #127

24. See Graetz Vol. VI, 5 - Yussuf Ibn Teshufin was bribed by the Jews to revoke his demands for the conversion of an entire Jewish community. "Indessen brachten ihn die von den Juden Luccena's zusammengebrachten Summen".


See also Benjamin of Tudella.
Rimon was Raymond V who lived during the 12th century and died in 1194. See Ibn Verga, Shebet Yehuda.

27. Graetz, Vol. VI, 8 ff.
28. Tosafot, Ned. 28a, BK 113a. Also, Sefer Hasidim #421. Moses of Coucy, Semag #73.
29. Tosafot B.K. 58a -
30. R. Meir of Rothenburg, L. 313, Fr. 661 -
31. R. Hayyim b. Isaac Or Zarua #179; Meir of Rothenburg L. 114 -
32. R. Asher b. Yehiel, B.K. 58 -
33. Joseph Ibn Habbib and Nordecai ad. loc; Ibn Adret, V, 198 -

34. Tosafot, Ned, 28a, B.K. 113a; Semag II, 43d. Solomon Luria, Yam Shel Shlomo to B.K. #18.

35. Barfat #2 - וּכְלַעֲמַי מְסַלְּמֵנִי... כִּי הָאֶזְרָה, שֶׁאֶזְרָה לְめるָו, לְמַסְלַמְתִּי לְמַזְרָן, אָזְרָה לְמַסְלַמְתִּי לְמַזְרְרֶה, אָזְרָה לְמַסְלַמְתִּי לְמַזְרָרָה. וְלָעָלָה לְמַמְלַמָּה, הָאֶזְרָה שֶׁאֶזְרָה לְמַמְלַמָּה, אָזְרָה לְמַמְלַמָּה, אָזְרָה לְמַמְלַמָּה, אָזְרָה לְמַמְלַמָּה.

36. Maimonides, Tur, see note above.
NOTES TO CHAPTER IV

1. B.K. 113b
2. Ibid. 113a, Ned. 28a.
3. Ibid.
4. See previous chapter; Although, the Geonim ruled in this matter according to what has been stated, there were many rabbis who, later on, reversed the Geonic decision and allowed gentile writs for gifts to be properly processed and honored in a Bet Din. See below.
5. Eliezer of Metz quoted in Mordecai b. Hillel Ashkenazi, B.K.; Or Zarua III, B.K. 447; Sefer Eben ha-Ezer (אבני עזר), ed. Albeck, 112; נד. 28א B.K.; Hayyim B. Isaac, Or Zarua #110, 253 - Also, Sefer ha-Terumah quoted in Abkat Rohel #6.
6. Hayyim b. Isaac, Or Zarua #110 - پنسل جیل گوهر بن لیلی
7. Ibid. #253.
8. Joseph Colon #191 in the name of Mordecai b. Hillel Ashkenazi. Samuel de Modena states that this is also Colon's decision as found in responsum #188. This responsum deals with an entirely different matter. In #191, Colon cites Mordecai and states

However, Colon disagrees with this view.
9. Ibn Zimra V, 2076 - מ confident in the certainty of knowledge...
If I am right...

10. Maimonides, Mishneh Torah, Malveh ve-Loveh I - If you agree...

11. Abkat Rohel #47

12. Ibn Adret, I, 1132 - If you agree; III, 165 - If you agree...

13. Ibid #111 - If you agree...

14. Ibn Adret, Torat ha-Bayit #134, 292 - If you agree...

15. Levi Ibn Habib #44 - If you agree...

16. Joseph Ibn Migash, B.B. - If you agree...
17. Maimonides, Mishneh Torah, Gezelah V: 14 -

Also, Isaac b. Aaron, quoted by I. Agus, #130-

18. Ibn Adret V, 198 -

19. Hayyim b. Isaac, Or Zarua #110 -

Mordecai, B.K. in name of Eliezer of Metz -

See also, Joseph Caro, Shulhan Aruk 369; Siftei Kohan 73:39;

20. Or Zarua, bases his views on Mishneh, Gittin 5:7 -

The law of Dina D'Malkhuta was valid because of the power and force of the king, but Dina did not apply since it involved individuals and was not equal to all.
21. R. Nehemiah, at end of responsa of R. Meir of Rothenburg - 
See also, Abkat Rohel #6

22. Ibn Zimra V, 2248 -

23. Joseph Habbib, Nemukei Joseph, B.B. - 
See also, Joseph Caro, Hoshen Mishpat, 369:8


25. Asher b. Yehiel, B.B. - 
See also, Joseph Caro, Hoshen Mishpat, 369:8

26. Solomon b. Simon Duran #47 -

27. R. Yom Tob b. Abraham Ibn Ashvillla #53 - 

28. Abkat Rohel #80 -
29. Hatam Sofer, Eben ha-Ezer #126 - חותם סופר, אבן חזק #126

30. Moses Isserles, Nefesh ha-Shulkhan 369 - Isserles quotes the responsum #195 of Joseph Colon. The writer could find no such reference.

31. The requirement for equality in law preceded the requirement for all laws to be within the established, traditional law. The law of equality was first proposed by Ibn Migash in the 12th century, whereas the first to mention the need for established law were the scholars of the 13th century.

Solomon Luria, Yam Shel Shlomo B.K. 18 quotes Maimonides, Mishneh Torah, Gesela V:13

Luria points to the phrase מְנַה לָא בִּיא וְיֵשׁ בָּא and claims that Maimonides already stipulated the need for established, traditional law. The phrase can only be understood in context with the entire ruling of Maimonides. He is speaking of the law of equality. The phrase "known to all" refers not to established traditional law, but is known to all because it applies to everyone and involves all citizens. The law requiring precedence was instituted later on.

32. Ibn Adret VI, 254.
Also, Ibid. Torat ha-Bayit #356; R. Nehemiah, at end of responsa of R. Meir of Rothenburg; Joseph Habbib, Nemukei Joseph B.B. - plan mikol 19/101 'in.nn vayav 22 do 9 cdep 9 kemiyonu ylchov
Meiri, quoted by Shittah Mekubezet, ad. loc. מ"ה ירוי א ידב שד
Yom Tob. b. Abraham Ibn Ashvilla, ad. loc., Ned. 28a; Asher b. Yehiel, Responsa 86:9 - מ"ה ירוי א ידב שד
Nissim Gerondi, Gittin 10b - מ"ה ירוי א ידב שד
Solomon b. Simon Duran #212 - מ"ה ירוי א ידב שד
Abkat Rohel #6 - מ"ה ירוי א ידב שד
Solomon Luria, Yam Shel Shlomo, B.K. #18.

34. Ibn Adret, Ibid.- מ"ה ירוי א ידב שד
See also L. Finkelstein, *Jewish Self-Government in the Middle Ages*, II, p. 332 - "The commissioners shall endeavor to obtain a decree from our lord, the King, that the Community should not be compelled to pay any salary to the tax-collectors or Asigna-
tions since their pay used to come from the treasury of the king and not from the communities."


Also, Ibn Adret, *Ibid.* - יִתְנַשֵּׁב דּוֹלֶת קֹדֶשׁ לָן


Yom Tob b. Abraham Ibn Ashvila, *Ned. 28a.*

38. Tosafot B.K. 58a.


40. Ibid.


42. R. Moses ha-Kohen, quoted by both sources mentioned in the previous note; Nahmanides, quoted by Solomon Luria, ibid.

43. Abraham Ibn Daud of Posquieres -

Also, Joseph Ibn Habbib, Nemukei Joseph, B.B. -

Nissim Gerondi, Gittin -
In a situation where the government confiscated the property of B to pay for a debt which A owed, two opinions arose. The Spanish authorities ruled that A must reimburse B for his expenditure when the confiscation was deemed a legal one. See Maimonides, Hobel U'Mazik, 8:6

On the other hand, the French and German authorities reversed the process. Only when B saves A from incurring a loss must he be reimbursed. However, a legal debt must be paid and it is not considered a loss. Therefore, only when the king illegally confiscated property must A repay B.

See, Tosafot, B.K. 58a, B.M. 31b

Also Meir of Rothenburg,

B.K. (59)
See also, Isaac b. Samuel of Lemberg #16.

45. Ibn Adret, ha-Meyuhasot #22 - מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז L


47. Joseph Habbib, Nemukei Joseph, B.B. 54b -"ולא השבעת הותרת משמע הזהרה... כדי שלא שום כניעת ליקה.../an yarei v'zarim/" Ibn Adret quoted by Joseph Colon in responsum 637; Joseph Caro, Bet Joseph; #26; Moses Isserles, Hoshen Mishpat 369.

48. Maimonides, Mishneh Torah, Malveh ve-Loveh 27:1- see Magid Mishneh ad. loc.; Nissim Gerondi, Gittin 10b, Ned. 28a; Ibn Adret VI, 254 - אֶלָּא יָרֵא יִשְׂרָאֵל יִשְׂרָאֵל יִשְׂרָאֵל יִשְׂרָאֵל יִשְׂרָאֵל יִשְׂרָאֵל Y Asher b. Yehiel 103:1; Meir of Rothenburg, Ms. 889; Samuel de Modena, Hoshen Mishpat #224; ibid. Samuel Halevy and Joseph Taitozok; M. Isserles, Hoshen Mishpat 369; Darkei Moshe 11.

49. Ibid.

50. Ibn Adret V, 194 in name of Abraham b. David of Posquieres - Also, Joseph Caro, Abkat Rohel #81 in name of Maggid Mishneh - וַתִּשְׁאֲלֵהוּ רַבּוֹתָהוּ בֵּיהְמָה שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁהֲפָכַת הָעַמּוֹת שֶׁhאֲפַלָּוְתָהוּ בֵּיהְמָהוּ אָמָר לַעֲלַי" Also, Joseph Caro, Abkat Rohel #81 in name of Maggid Mishneh - מַעַן הַנָּאִי לַעֲפֹר יֵלֵךְ סְדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי לַעֲפֹר יֵלֵ�ךְ סְדָר ה�ָדָר הָאָחַז לֵאמֶר בַּאַר מַעַן הַנָּאִי L
51. Abkat Rohel #72, 6-
52. Joseph Caro, Bet Joseph Hoshen Mishpat #26
53. Ibid; Hatam Sofer, Yoreh Deah #315.
54. Ibid., Hoshen Mishpat #142
55. Ibn Adret III, 34, 40; V, 198; Barfat 197-

Nahmanides, quoted in Hatam Sofer, Eben ha-Ezer #126; Siftei Kohen, Yoreh Deah 165;8; Hoshen Mishpat 74; Hatam Sofer, Hoshen Mishpat 58, 187 -

Apparently he did not see the authorities who disagree; Samuel de Modena, Hoshen Mishpat 75.
56. Meir of Rothenburg, Ms. יַבִּל #889; Asher b. Yehiel 103:1-

57. Solomon Luria and Joel Sirkis considered the problem a מִשְׁפַּט and only he who was able to substantiate his claim could prevail. ( מִשְׁפַּט)

58. Nahmanides, Ned. 28a and quoted in Hatam Sofer, Hoshen Mishpat #58, 65; Nissim Gerondi, Gittin 10b, Ned. 28a; Joseph Habbib,
Bezalel Ashkenazi, Shittah Mekubezet, ad. loc.; Ibn Adret I, 895.

59. Gittin 10b

60. Ibid.

61. Yom Tob b. Abraham Ibn Ashvilli #38; Ibn Adret I, 895; III, 63, 66, 69, 79; VI, 218; Torat ha-Bayit 213; Novelle, Gittin 10b; Barfat 51, 203; Nissim Gerondi, Gittin 10b; Ibn Zimra I, 67, 541; Solomon b. Simon Duran 219; Joseph Caro, Bet Joseph 66; Solomon Luria, Yam Shel Shlomo, Gittin #22.

62. Gittin 10b

63. Alfasi, Gittin, mentions both solutions. Two opinions arose as to which of the two answers Alfasi accepted. Ibn Ashvilli felt that Alfasi did not make any decision. Ibn Adret stated that Alfasi ruled according to the last answer or else why mention it. Comp. Ibn Zimra I, 67.

Teshubat ha-Geonim, Asaf (נ''ג) p. 75; Maimonides, Mishneh Torah, Malveh ve-Loveh 27:1; Maggid Mishneh ad. loc; Joseph Caro, Hoshen Mishpat 68:1; Joseph Colon 18, 161.

64. Nissim Gerondi, Gittin 10b, Mordecai, ad loc; Maggid Mishneh, Malveh ve-Loveh 27:1; Joseph Caro, Abkat Rohen 72; Samuel de Modena, Hoshen Mishpat 304; Solomon Luria, Yam Shel Shlomo, Gittin #22; Hatam Sofer, Hoshen Mishpat 58 claims that whenever there is a matter which directly concerns the king, then the law of the kingdom is to be applied even if it contradicted Jewish law. Samuel's principle is not required when the law of
the government coincides with Jewish law.

6. Ibn Adret VI, 254 - יבנה אדרט, כרך VI, עמוד 254: "הправ הממשלתי מתאקס לחקיקה היהודית. אם הנשיא פירג את חקיקה, יכלה להטיל עבירה על הנשיא, אם היא הוגנתvenience, הקיה על הנשיא." 

65. Ibn Ashvilli #38; Nissim Gerondi, Gittin 10b; Barfat 203; Samuel de Modena, Hoshen Mishpat #304; Solomon Luria, Yam Shel Shlomo Gittin #22; Solomon Luria states that in 16th century Poland there was no such demand on the part of the king, and as such, a writ for a gift was not accepted when it was issued by a gentile court.

67. Asher b. Yehiel 18:3; Nissim Gerondi, Gittin 10b; Abkat Rohel #72


69. Barfat #484 - בקרף, כרך IV, עמוד 484: "אין כלום אלא שאר נשים יזדווגו עם נשים, אלא נשים שנולשות צרות נשים, והן נשים שנולשות צרות נשים."
70. See chapter III.
71. Meir of Rothenburg L. 313-
72. Ibid.-
73. Ibid.-
74. Mordecai, B.K.; Ibn Adret V, 244-
See also M. Isserles #52.
75. Maimonides, Mishneh Torah, Gezelah V:13-
Note that no distinction is made between a head-tax and a land-tax. The Talmud, B.B. 55a made such a distinction. Furthermore, confiscation as a result of the failure to pay land-tax which was considered legal by the Talmud and by the medieval authorities, was denied later on when kings no longer owned the land. See Joshua Falk, Sefer Me'irat Enayim 369:10; See also David Halevy, Turei Zahab, ad loc.

78. Meir of Rothenburg L. 381; Ibn Adret, Torat ha-Bayit 396; Mordecai B.K. (215); Maimonides, Mishneh Torah, Gezelah 5:13, Contr. Samuel de Medina Hoshen Mishpat II, 55

79. Ibn Adret, ibid, 225; M. Trani III, 128.

80. As in many instances where under ordinary circumstances the law of the kingdom was not invoked because the matter was of no di-
rect concern to the king, if in any nation the king insisted that the law be obeyed, and thus made it his concern, then Samuel's law prevailed. Consequently, Ibn Ashbili ruled that where the king demanded that property should be confiscated upon the failure to repay a debt, such confiscation was legal and whosoever purchased such property from the creditor cannot be accused of theft. See Ibn Ashvilli #127.

If the king makes restitution to A for properties stolen from him, but unknowingly includes property belonging to B, such property must be returned to B. The law of the kingdom was to restore the stolen articles to their rightful owners. Such must be done even if such owner had already resigned himself to his loss (ליכונין). Ibn Zimra I, 460.

Religious books confiscated by order of the king belonged to him who redeemed them. See Maimonides, Responsa, ed. Sasportas #131.
82. Meir of Rothenburg Pr. 677
83. M. Trani I. 194
84. Joseph Caro, Abkat Rohel #47 - סלומ חסונך כה וילך
נֵכַּלּוּ פַּרְשַׁיִּים קָנָאָה קַנָאָה חַיִּים אֶלֶּה
כִּי יְבִּיאָה יַעַרְשָׂךְ לִבְאֵשׁ אֶלֶּה כִּיַּֽכְּלָּהֶּם וְלָבֹאָם
נֵכַּלּוּ הַפַּרְשַׁיִּים קָנָאָה קַנָאָה חַיִּים אֶלֶּה.
NOTES TO CHAPTER V

1. B.K. 113b - וּמָסְרָה יָדָה וְלֹא מָשָׁל

2. Ibid.

3. Joseph Caro, Orah Hayyim 391; Bet Joseph ad. loc; Abkat Rohel #47.

Some of the rabbis preceding Caro ruled otherwise. Caro quotes Ibn Adret I, 626; V, 168; ha-Meyohosot 218 and others who ruled that the kings have no rights with regards to the homes in a city. Consequently, the "law of the kingdom is the law" cannot be cited as justification for the act of purchasing Reshut. The king who oversteps his rights and claims authority over property in a city is guilty of royal theft. It is incumbent upon the Jews residing in such a city to purchase Reshut from each gentile resident separately. It cannot be achieved by means of a "package deal" via the king. Comp. Meir of Rothenburg quoted by Mordecai, Erubin (509) and Adret V, 4; Kol Bo 33; Maimonides, Erubin-

Tur 391; Baal Halakot Gedolot in Semag, Mitzvot de Rabonon 1.

Jacob b. Aaron, Mishkenot Jacob

Orah Hayyim, 112.

Joseph Caro differentiates between instances where the king has certain rights in these cities and those wherein he enjoys no rights at all. Most kings have rights, such as quartering sol-
diers, seizing or razing homes in times of war, or the authority to make use of any home whenever he so desires. In such cases, it is sufficient to purchase Reshut from him or any agent.

Where even such rights are denied the king, then it is necessary to purchase Reshut from each home owner individually. See Bet Joseph 391. It is obvious that everyone agrees that when the king actually owns the homes of a city it is sufficient to purchase Reshut from him alone. See Simon b. Zemah Duran II, 281; Bet Joseph, Ibid.

First, it should be noted that only Adret speaks of a city containing a substantial Jewish community. The others speak of a few (ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"ר ד"r

In the latter case the problem was not as pressing. Adret lived at a time when Jews desired to limit the power of the king as much as possible. We have shown in the previous chapter why this was so. The overall situation warranted their ruling against recognizing and granting broader rights to the king. Even though in this particular instance the rights granted to the king would facilitate matters for the Jews of a
community, in the long run the powers granted the king would have harmed them.

On the other hand, 16th century Palestine under Moslem rule had no such fears. The Jews lived interspersed with Gentiles, although Jewish sections existed (םֶלַח). They enjoyed autonomy and were not anxious to curtail the powers of the king since these kings did not overstep their bounds. The problem of Jews living next door to Moslems became acute with regards to the Sabbath and Caro re-interpreted the earlier Halakah to ease the burdens created by the new situations.

Caro considered the potential right of the king to requisition the homes of his citizens, as if it were an actual right of ownership.

4. Adret I, 1105- מַעְבְּדָה מִיְּבָנָה כְּלִי לְהַבְּצָר כְּלִי

Shiltei Gibborim B.B. 54b - מַעְבְּדָה מִיְּבָנָה כְּלִי לְהַבְּצָר כְּלִי

Hoshen Mishpat 369 - Furthermore, the Jews' fear of churchmen following the rules and regulations set forth by the Church, rather than the more liberal statutes of the secular government, prompted N. Gerondi (Gittin 10b) to exclude the legal acts of bishops
Comp. also Ibn Adret, Torat ha-Bayit 213. However, should the recipient, A, attempt to sell these privileges to, B, there was a difference of opinion. Ibn Ashbilli allowed the resale even if it does not comply with all conditions required by Jewish law. All facets concerning this transaction are to be governed by secular law and are validated by Dina D'Malkhuta.

Whereas, Ibn Adret denies this leniency. A, may only acquire...
these privileges by means of *Dina D'Malkhuta* but cannot sell them in turn, unless all conditions of Jewish Law are fulfilled.


7. The Herem Hayyishub was introduced in the middle ages in order to give the dwellers of a city the prerogative to restrict the settling of newcomers. The Herem had nothing at all to do with any laws governing trade competition. In fact, the Herem could be applied to all newcomers to a city, irregardless of their intention to trade, or not to trade, there. It dealt strictly with the prevention of new settlers into a community. Dr. Zeitlin, already stated (*J.Q.R.* 1944 p.p. 381-2): "Whenever the rabbis had to promulgate a new law for which they had a clue in the Talmud they never resorted to a Herem. They declared a new law on the basis of the Talmud. Only where there was no clue in the Talmud or in the Geonic literature did they invoke a Herem."

The above thesis may be substantiated by a statement made by Mordecai b. Hillel Ashkenazi. (*B.B.* 22)

In other words, it was only on the basis of the *herem* that the communities could refuse newcomers to settle but not on the basis of the law. Comp. S. Zeitlin "The Herem Hayyishub", *JQR.* XXXVII, p.p. 427-431, 1946-47.
8. Solomon Luria, Responsa 36

The arrangements between Arandar & landlord varied in different times and places. Thus, R. Menahem Mendel of Lubavitz, Zemah Zedek, Hoshen Mishpat 78 writes that the Arandar was not considered an agent of the Emperor but rather merely paid a tax for the right to sell in a particular territory.

9. Ibid.

10. Hatam Sofer, Hoshen Mishpat 175-


Also, S. Zeitlin, *op. cit.*


14. See footnote 11 above.


16. Adret I, 729-


18. Ibn Adret, V 279; Barfat 249; A. Neuman *op. cit.* *Ibid*

19. Ibn Adret, VII, 453

20. *Ibid.*, 454, see also A. Neuman *op. cit.* *Ibid* p 57-8

21. Ibn Adret III, 388-

Also *Ibid.*


23. Ibn Adret I, 612 -
23. (Continued) Simon b. Zemah Duran 158-162; Samuel b. Simon Duran 533-

24. Barfat 271 -

25. Barfat, Ibid -

26. Ibn Adret I, 475 -

27. Samuel b. Simon Duran 533 -
27. (Continued)

28. The fact that all rabbis asked for official sanction from the government was not the same as seeking official appointments to the rabbinate. This approval was sought so that no one be accused at the hands of informers (פִּֽלְפִּֽלִים) of rebelling against the authority of the crown by administering justice without the king's consent. Samuel b. Simon Duran 533 -

Comp. A. Yaari, Igrot Eretz Yisroel p. 105

29. Barfat, Ibid -

30. Takkanot such as at the Synod of Castille in 1432. "We further ordain that no officer may appoint any judge or any other officer without the consent of the community, or the majority thereof, and that the proposed officer must be mentioned by name (before the electorate). Any election held in any other way than that prescribed is hereby declared void."


31 Samuel de Modena, Orah Hayyim 156 -
The excommunicated person could apply to the secular authorities for an injunction restraining the rabbi from putting the Herem into effect. This could mean that the restraint was not a right granted to the government, but was effected by means of force. However, were this to be true, some form of protest would have been registered. See Barfat 395-

Interesting are the decisions of M. Isserles, a Hatam Sofer. Isserles living in 16th century Poland and Sofer in 19th century Hungary, both influenced by the Franco-German School and yet recognized the appointment of a rabbi by the owner. Isserles stated:
Hâtam Sofer concurred.

38. The communities of Spain were subjected to a Chief-Rabbi appointed by the kings. Local authorities were responsible to this official, known as rab de la corte. He was usually a man without any rabbinical qualifications. See Baer I, p. 212; II, 287, 360, 365; A. Neuman, Jews in Spain p. 114.


40. Duran I, 161 - איה הב נס ה ה רג מ וה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ H.

41. Duran 158-162. ד""ד ה ה רג מ וה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ ה יפ H.

42. Ibid.

43. Ibid 162 - A יפ ה יפ H.

44. Comp. A.M. Hershman, A. Isaac b. Sheshet Perfet and his Times, pp. 52, 55 - who writes that the phrase "conditions had changed for the better" refers to Duran's recognition that Barfat will not abuse his powers as the sole religious authority of Algiers. It is difficult to say that this would be considered an improve-
44. (Continued) Element of "conditions". יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכזמ יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 يבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכ光泽 יבכgle Y...
Dr. Agus states: "No scholar of Germany or France would ever give such a reason. R. Asher who was still steeped in the customs and manners of legal thinking of his native land found great difficulty in accepting a king's patent as a legal basis for the competence of a Jewish court; other reasons were therefore given to him. In cases, however, where the German and French communities also resorted to capital punishment. R. Asher was not hesitant any longer; his logic was clear, his proofs were based on sound Jewish law and his decision was straightforward and final."

Mordecai, B.M. 257-:

"..."  

Solomon Luria claims to have used a parchment written by Meir of Rothenburg; also see S. Zeitlin, "Rashi and the Rabbinate", JQR, Vol. 31, p. 42.

L. Finkelstein, Jewish self Government in the Middle Ages, p. 154:

"..."

Simon b. Zemah Duran I, 142

Meir of Rothenburg, Fr. 137; Gr. 190; Mordecai, B.K. (107)
51. The Responsum deals with any office, rabbi or cantor. The interchange of words and the ability to fine would indicate this. See also statement: Hatam Sofer, Hoshen Mishpat 19; Meir of Rothenburg, Pr. 137. See also S. Zeitlin, "Rashi and the Rabbinate", JQR, Vol. 31. p. 44-

Also Finkelstein, op. cit. p. 154; Ibid p. 227 -

Orah Hayyim, 53 -

52. Barfat 271 -

53. See note 51.

54. Barfat 271

55. Ibid.-

56. Ibid. -
57. Ibid. ... וְהַשֵּׁם שָׂרֵת בָּנֵי יִשְׂרָאֵל... חַיָּה בֶּן אֶלֶף בּוֹדֶא נֵלְכוּת מִקְרָא קְרָא אֵין

58. Ibid. ...ַּלְאַחְדָּיִם אַף אֲשֶׁר אֶזֶכָּה קְרָא קְרָא אֵין

59. Ibid. ...ַלְאַחְדָּיִם אַף אֲשֶׁר אֶזֶכָּה קְרָא קְרָא אֵין

60. B. H. Auerbach, Brit Abraham, p. 6.


62. Ibid. p. 21

63. Weiss, Dor V, pp. 170-1 ...ַּלְאַחְדָּיִם אַף אֲשֶׁר אֶזֶכָּה קְרָא קְרָא אֵין


64. C. Lauer, op. cit. p. 21 - Wie ist es denkbar, dass der grosse R. Meir Halevy...einem habsüchtigen Rabbiner mit Ordination und Titel ausstatten und ihn dazu ermächtigen konnte, einen fremden Lande seit Jahren amtierenden Rabbiner zu entthronen?

65. Ibid.

66. Ibid - Unbegreiflich is es, dass R. Jochanan...in einer schwulstigen Sprache zwei Briefe, einen an katholischen Rabbiner und den andern an Ribasch abfasst, in welchen er gewaltige Phrasen drischt, meisterhaft schimpft, aber keine einzige Stelle ausdem Talmud ... anzuführen weiss, die für seine ... gerechte Sache
zeugen".

67. Ibid. p. 22 - Wie konnte der Grossrabbinner von Frankreich in einem Kampfe unterliegen, in welchen er die Hilfe der Regierung, die ihm in dieses Amt eingesetzt hatte, anzurufen vermochte? ... Es scheint aber, dass R. Jochanan die ihm "schützende Hand" eben nicht hat anrufen können.

68. Meir of Rothenburg, M. Mintz 102; Graetz, Geschichte Vol. VI, 181; Vol. VII, 21; also quoted above note 57.


70. Dr. S. Zeitlin, "Opposition to the Spiritual Leaders appointed by the Government", JQR Vol. XXXI, pp. 294-5.

71. A.M. Hershman, op. cit.

NOTES TO CHAPTER VI

1. B. K. 113a - Joseph Caro, Hoshen Mishpat 369:2

2. B.K. 113a, Ned. 28a

3. Meir of Rothenberg, A. II, 128; Mordecai B.B. (480);

Terumat ha-Deshen 341; Nehemiah b. Isaac found at end of Meir of Rothenburg (Am.Ed)

J. Caro, Hoshen Mishpat, 4; Joseph Saul Nathanson, Shoel u' Meshib I, 21 - קֵּלֵּא יָשַׁבְתָּו כְּכֶלֶּבֶת מִּרְכָּבָה זוּ פְּלַטְמָא אֱלוֹהִים

However, money set aside for charity was taxable. See Nissim Gerondi, Responsa #2

4. Ibn Adret, Novellae B.K. 113a

5. Maimonides, Gezelah 5:11-

Also Joseph Caro, Hoshen Mishpat; 369:6; perhaps Maimonides living in Moslem countries, was more prone to blankly disqualify
non-Jewish tax farmers because the Moslems in general were more avaricious and cared little if the money were legally or otherwise acquired. In 16th century Salonika Samuel de Modena testifies that the profit accrued by tax farmers was considered stealing from the king. Hoshen Mishpat, 156-

Compare interpretation of this Maimonidian statement made by R. Hayyim Volozin, Hut Hameshulosh #14, 16

6. Nissim Gerondi, Ned. 28a-

7. Ibn Adret V, 178


10. Ibn Zimra II, Lilshonot ha-Rambam, 164; IV, 54-

11. He is not barred from giving testimony because he may be guilty of theft for taking more in taxes than he is legally permitted. Were theft the reason for disqualifying him, the Mishneh (B.K. 113a) would not have to list separately the tax collector (مركז). He could be included in the category of מוכד who are
barred because they put their hands into the public till. See Samuel de Modena, Orah Hayyim 152.

12. B.K. 113a, Ned.28a

13. Solomon Luria, Yam Shel Shlomo B.K. 18-

14. Ibn Zimra II, Lilshonot ha-Rambam 164-

15. Ibn Adret I, 644; Abkat Rohel, 205 -

16. Asher 6:15

17. It was the right of the German Emperor to relieve Jews of the payment of a "seal" (Stempel) on the bills of sale for leavened products prior to Passover. The exemption was justified on the grounds that these sales were not for business purposes but were rather of a religious nature. See subsequent chapters that deal
with the problems this ruling engendered. Hatam Sofer, Orah Hayyim 113.

18. Of course, the communities accepted privileges which would benefit them all, even if they were awarded to a specific court favorite. For example, among the taxes to be paid by the individual was a tax on bread. It was only by special royal privilege bestowed upon one court favorite that permission was granted to bake bread at home or for the community to bake Matzah for the Passover instead of being required to utilize the royal bakeries. Adret IV, 139.

19. Sometimes the communities themselves conferred a tax exemption to an individual. See Ibn Adret I, 967-

However, this subject continually served as a source of irritation and litigation as will become evident from the responsa to be cited. See also A. Neuman op. cit. Vol. II, p. 102 - "At the Cortes of Valladolid, in 1312, it was charged that five thousand of the richest Jews of the country were tax free. Considering the source of the complaint, it may be assumed that this figure was a gross exaggeration. But there was undoubtedly, enough truth in the claim to prove grievous the plight of the Aljamas as a result of the king's reckless grants of exemptions". See Meshal ha-Kadmoni, ed. Venice lob, ed. Zamora p. 46; Baer I, pp. 92-93; Isaac Ibn Sahula of Gualalajara lists those who receive shares from kings as not meriting a share in the world to come.

20. B.B. 55a; Tur 163 -...
21. Joseph Habbib, Nemukei Joseph, ad. loc. in the name of Hai Gaon-

22. Joseph Colon 2-

23. B.M. 8:9

24. Ḥ anukah Ishan Ishan Ḥ anukah Ḥ anukah Ḥ anukah Ḥ anukah

25. R. Simha quoted in Mordecai B.K. (177)


26. Ibid. R. Simha Ḥ anukah Ḥ anukah Ḥ anukah Ḥ anukah Ḥ anukah

27. Ibid. Ḥ anukah Ḥ anukah Ḥ anukah Ḥ anukah Ḥ anukah

28. R. Simha quoted by Mordecai ad loc. and Samuel de Modena,
Hoshen Mishpat 364-

Comp. quoted in Haggath ha-Oshri B.B.

29. Ibid.

30. Meir of Rothenburg, Ibid.

31. Ibid.

32. Ibid.

33. Meir of Rothenburg L. 358 -

Also Mordecai ad. loc.
34. Ibid.

Also, Ibid. A. I, 122-

35. Ibid.

36. Terumat ha-Deshen 341 -

37. Hayyim b. Isaac, Or Zarua 80, 253, 206 -

38. Finkelstein, op. cit. p. 332 -

A Takkanah of Aragon 1354.
39. Meir of Rothenburg, A. I, 122; Cr. 222; L. 358; Ibn Adret I, 841-

Agudah, B.K. 144; Maharil 71; M. Mintz 61; Terumat ha-Deshen 341

40. Adret V, 279; A. Neuman, op. cit. p. 104

41. Finkelstein, op. cit. p. 368

42. Ibid.

43. Ibn Adret I, 841-

44. Meir of Rothenburg A. I, 122-

45. Joseph Colon 186 –
46. Samuel de Modena, Hoshen Mishpat 364.

47. R. Asher and Tur, Hoshen Mishpat 389 - 

48. Samuel de Modena, Hoshen Mishpat 364 -

49. Solomon b. Abraham ha-Kohen II, 147-

50. Maimonides, Pirush le-Mishnayot Ned.
Evasion of a proper tax law is a violation of the commandment "Thou shalt not steal". Hoshen Mishpat 369:6.

Also, R. Bahye b. Asher, Kad ha-Kemah, Gesel p. 20

"He who does not take meticulous care to contribute his share of the taxes along with his fellow members in the community robs the public and betrays his want of faith and his lack of trust in Reward and Punishment, denies the existence of a personal Providence and seeks to deceive the Lord as did Cain, the villain, who said there was no law and no judge...There is robbery of the public which alone is a criminal offense, and the public also contains the poor, the orphaned and the widowed...It includes yet another sore -- blasphemy of the Lord. It involves perjury, for whoever swears to pay the tax faithfully and fails to do so is guilty of sin and LESE-MAJESTÉ'... How many impecunious persons are there of insecure livelihood and heavy obligations, who shed their life-blood and pay taxes with their marrow and blood ...
and here comes the wicked and villainous rich man who says in his heart, "There is no God", and wants to fill his chambers "out of the oppression of the poor and the sighing of the needy" in order to make his own burden lighter and the yoke of the indigent, the orphaned, and the widowed heavier.

51. Asher 68:10-

52. Barfat 2-

Solomon b. Abraham ha-Kohen, II, 81

Also, Solomon b. Simon Duran #64

53. Samuel de Modena, Yoreh Deah 71-
54. Zevi Hirsh b. Jacob Ashkenazi, Hakam Zevi 72-

55. Meir of Rothenburg L. 246-

56. Barfat 2-

Also, ha-Hadoshot #9;

See also Asher; Joseph Habbib Nemukei Joseph, B.K. 55a;
Nissim Gerondi, 8:10, Ned. 28a; Moses Isserles, Hoshen Mishpat
369:7; Comp. Maimonides, Responsa, 146, ed. Freiman -
57. Moses b. Joseph Trani, I, 261

Ibid 299

58. Ibid.

See also his commentary to Maimonides, Shebuot III:2.

60. Meir of Rothenburg L. 246; I. Agus, Meir of Rothenburg 174

61. A different interpretation to this Talmudic text is rendered by Rashi, ad. loc. He writes that the dispute between Rab and Samuel concerns merchandize which is given to another who is to repay the donor with money. Since the agreement expressly calls for money, Rab rules that the currency in use at the time of payment must be utilized. That which had been invalidated by the king no longer might be considered money. Samuel, on the other hand, considers any currency money as long as it has value anywhere.
However, according to this interpretation, in the case where money was lent both Rab and Samuel agreed that the old, albeit voided, currency may be used.

62. B.K. 97a-

63. Ibid.

64. Ibid.

65. Hatam Sofer, Hoshen Mishpat 58 -

Perhaps this is why a whole array of rabbis of the Middle Ages disregarded Samuel's decision and ruled with Rab. R. Tam, RaSHBaM, Ri, Mordecai, B.K. (111-113) state the debtor is to pay with currency in use at the time his debt is due because such was the demand of the king and "the law of the kingdom is the law".

See also Meir of Rothenburg Fr. 1000.

66. Comp. Tosafot, B.K. 97a - ; also Meir of Rothenburg Fr. 353 -
Under Peter IV, the Jews of Aragon petitioned against the excessive cruelty of the tax collectors. "...whereas the tax collectors have of late gone beyond all bounds making sorrowful the souls of our brethren...and they have bound them in affliction and in irons...the commissioners should endeavor to obtain a decree from the king, forbidding his tax collectors...to cause anyone bodily pain, except in the manner which the king and his ancestors have been in the habit of employing heretofore." Finkelstein, op. cit. p 332
74. Tosafot, Ibid.-


76. Ex. 22:24; Ezek. 17:13; Ps. 15:5.

77. Comp. A. Neuman, op. cit. ad. loc.

78. Asher, 79:7- לַא יִקְרָא לְחַגְּדוּתָם יֶחְדָּה וְיִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים לְחַגְּדוּתָם שֶׁלָּהָ לָהֶם יִזְכִּיר יִצְכִּיר וּלְחַגְּדוּתָם יִכְּרָא מִפְּרוּשִׁים L

79. Ibid.-

80. In Castille, in the early part of the 14th century, a royal decree outlawed loans on interest extended by Jews. The Jews refused to accept the legality of this statute. It was discriminatory in nature. They called it "the scourge of the land." Ibid.-
NOTES TO CHAPTER VII

1. Exodus XXI - בָּאָרָי אֱלֹהָי לְעֹלַם אַיָּרָי

2. Baraita, Gittin 88b-

פְּרִיָּהִים עָלָיו מִנָּהֲלָה הַיָּמִין מִלֵּא אֵלֶּה בָּאָרָי וּמִלְּא אֵלֶּה בָּאָרָי מִלְּא אֵלֶּה בָּאָרָי מִלְּא אֵלֶּה בָּאָרָי מִלְּא אֵלֶּה בָּאָרָי מִלְּא אֵלֶּה בָּאָרָי מִלְּא אֵלֶּה בָּאָרָי

In Sheiltoto to Genesis, the same statement was made in the name of R. Meir and in Sifre to Exodus 21 in the name of R. Eliezer b. Azariah, Contr. Holdheim, Autonomie Der Rabbinen, p.66 ff

3. As we have seen in Chapter 2.

4. Teshubat ha-Geonim, Harkevy 278; and above chapter 2.

5. Lewin, Ozar ha-Geonim B.K., p. 99. The Hebrew text may be found above chapter 2, footnote 39.

6. Shaarei Zedek, 4; Harkavy, Teshubot ha-Geonim 233; Joseph b. Samuel Bonfils quoted by Haga'oth Maimuni, Maimonides, Sanhedrin 26:7; Sefer Ha-Terumot 62; Semag II, 74d; L. Rabinowitz, Jews of Northern France in the XII-XIV Cent. p. 77; Joseph Colon, 132, 172; Meir Katzenellenbogen gave permission to one of the children of Don Samuel Abravanel to hail his two brothers to a non-Jewish court because they refused to come before a Bet Din. See A. Marx, "R. Joseph Arli and R. Johanan Treves", Studies in Memory of Moses Schorr, p. 218
7. Finkelstein, op. cit. p. 153-

Also, Meir of Rothenburg, L. 248, 334; Pr. 717, 979, 994.

8. Ibid.

9. Contr. Finkelstein, op. cit. p. 156, who states: "It is evidence of the greater tolerance that was arising among the French rabbis that they do not include Christians in the category of idol-worshippers. The only reason for keeping Jewish litigations in Jewish tribunals was the fear of injustice on the part of the Gentile Courts. Therefore, where both parties agreed, the rabbis of France could see no reason for hesitation in bringing matters before them."

Comp. D. M. Shohet, The Jewish Court in the Middle Ages, p. 85 who agrees with the above: "We cannot but marvel at the tolerant spirit manifested by the Jewish authorities towards the followers of other religions, despite the persecutions of an intolerant medieval Church. If here and there, as we shall see later on, an attitude other than generous seems to pervade the responsa, this is due not to an inherent contempt for the Christian world."


We submit that the Takkana of R. Tam had nothing whatever to do with "greater tolerance that was arising among the French rabbis."
The Geonim evaluated non-Jewish courts on the basis of their honesty and reputation for fairness. As a result, the courts of Bagdad, because of their honesty were recognized. In civil matters, an individual may do with his money as he chooses. The parties involved may accept the decisions of a non-Jewish court as binding. The Talmud has a similar situation when the "courts of Syria" were permitted to be utilized if both parties agreed. See Sanhedrin 23a.

Comp. D. M. Shohet, *op. cit.* p. 101, who tries to prove that Jewish and non-Jewish judges sat together at trials. He writes: "That Jewish judges sat at trials together with non-Jewish judges, appears from the fact that the Roman Court in Palestine had Jews among its personnel and even the defendant or the debtor was granted the right of preference in the selection of a tribunal for litigation." Shohet cites Talmudic passage, Sanh. 23a, dealing with and Rashi ad loc. A number of difficulties arise with Shohet's interpretation of the cited Talmudic text. The Talmud defines that these courts consisted of men who were "ignorant of Jewish law"; judges who were not . Rashi ad loc. states:

Or Zarua, quoted in Haga'oth ha-Asherī ad. loc. has the following:

Comp. also Ibn Adret II, 290 who also maintains that such courts consisted of Jews, albeit ignorant of Jewish law. Whether these courts consisted of ignorant Jewish or non-Jewish judges is really outside of this discussion. The main point is that nowhere is it stated that these courts did have a mixed group of judges sitting together.
Furthermore the statement made by Shohet that "even the defendant or the debtor was granted the right of preference in the selection of a tribunal for litigation" is not substantiated by the source cited. On the contrary, in the case of the debtor was merely granted the right to refuse to submit his case before that court. In all other circumstances, it was the creditor who determined which court was to hear their dispute. See Sanh. ad. loc.

Shohet also states that "the judges in these courts were, it seems, regularly appointed by the Roman authorities". For his source, Shohet cites Or Zarua quoted in the glosses to Asheri, Sanh. See Shohet, op. cit. ad. loc. footnote 3. The source quoted has no mention of such appointments. There is found a passage from but one which does not state that such appointments were made regularly or that the Romans were the ones who made them. Finally, Shohet also writes: "If a Jew accepted (and the acceptance was strengthened by a kinyah - symbolical delivery) a gentile to act as one of the judges trying his case, the decision of the court could not be invalidated on the plea of the presence of a gentile trial judge, even if he were suspected of having taken bribes". Here again, Shohet wishes to demonstrate that a mixture of Jewish and non-Jewish judges, sitting at a trial was valid. He cites as his source Mordecai Nezikin 686.
If Shohet had not quoted the passage of Mordecai out of context, he would have noticed that the responsum of R. Meir of Rothenburg, quoted in Mordecai refers to accepting a gentile as a witness and not as a judge.

It becomes obvious that the phrase refers to accepting upon oneself a gentile, who otherwise would be disqualified to serve as a witness. Comp. I. Agus, R. Meir of Rothenburg II, pp. 409-410 (421) who properly translated this responsum. The same responsum appears in Cr. 245; Pr. 284; Or Zarua I, 752.

10. Meir of Rothenburg, Cr. 185; L. 334; and quoted in Agudah, Sheb. 22; Mordecai B.K. (195)

11. Ibid.

12. Meir of Rothenburg, Pr. 103, 247, 717, 994 - ...
12. (Continued)  

The Jewish community held that a takkanah was issued...  לית לנתנת הצע
which is usually attributed to R. Faltoo Gaon. Contr. Joseph Colon 126, who states that for a mere threat one should disqualify anyone from giving testimony.

13. **Ibid.** L. 247-8: Mordecai B.K. (195)

M. Mintz 44; D. Kaufmann, "Jewish Informers in the Middle Ages", *JQR* (OS) Vol. VIII, pp. 217-228.

14. A *Takkanah* of the early 13th century, probably of Mayence, Finkelstein, *op. cit.*, 221 -

15. Meir of Rothenburg, quoted by Mordecai, B.K. (195); some have said that the takkanah of R. Tam did not include one who denounces an individual who has previously denounced him to gentiles. See Rabiah, *Agudah to B.K.* -
R. Meir of Rothenburg denies that the communities would promulgate such a takkanah. He understood that someone acting in a "moment of passion" might be freed of any punishment which the community would otherwise inflict. However, the offender who has acted to revenge himself, gains nothing for himself but the satisfaction of revenge by equally damaging his opponent.

Ibid. (196)
16. Meir of Rothenburg, Pr. 717, See also a similar case *Ibid.* 994; Contr. with R. Hayyim b. Isaac, *Or Zarua* 25, 142 who understood the takkanah to free the offender when such offense came as a result of the "heat of the moment".

17. Meir of Rothenburg quoted by Judah Mintz, *Mabik* 7 - Also, Jacob Weil 147 -

18. One questions the decision of Zevi Hirsh b. Jacob Ashkenzi, *Hakam Zevi* 14, in Amsterdam in the early part of the 18th century, who ruled that Kahal may avail itself of the power of the secular court to enforce its decision, but only after it received the consent of the Bet Din. In a dispute between the Kahal and an individual, the Kahal may confiscate the individual's property in order to assure his appearance before a Bet Din.
18. (Continued)

Whether this ruling, which granted Kahal no greater powers than an individual and which made Kahal subservient to the Bet Din by requiring the latter's permission, was prompted by the gradual decline of the power of Kahal and the natural shift of power to the Bet Din or whether it was due to the personal quarrels which Hakam Zevi had with his Parnasim remains doubtful.

19. Meir of Rothenburg, Pr. 357; Cr. 175, 246; Am. II, 30; L. 126-7; Mordecai B.M. 276.


In another instance a Jew informed against his own son-in-law that he intended to escape from his creditors. Perhaps the Jews involved only informed to the gentile authorities but not to the Gentile Courts since the court is nowhere mentioned.
See also Jacob Weil, 147 - who cites case of a known informer.

21. Baal ha-Terumot-


23. Ibid.


26. Ibid.
27. Ibid.
28. R. Isaac Alfasi, *Response* quoted by Isserles 52 -

29. Ibid. #221 -

30. Maimonides, *Sanhedrin* 26:7-


Also, Joseph Caro, *Hoshen Mishpat* 26:1

31. Ibid.

Also, Joseph Caro, *Ibid*.

32. Ibid.
34. **Ibid.**

35. **Ibid.** : V, 171; VI, 140; Asher 18:4, 5, 6

36. **Ibn Adret VI, 254.**

37. **Ibid III, 109, VI, 149** -

Yom Tob b. Abraham Ashbilli 53 -
37. (Continued)

See also Levi Ibn Habbib 44 -

38. Asher 68:13

39. Adret VI, 149

Barfat 228 -

Contr. I. Epstein, *The Responsa of R. Solomon b. Adreth of Barcelona*, p. 47 who writes: "Side by side with the Jewish law courts there were civil ones, and the Jews could bring their
affairs to either - the ordinance of R. Tam (twelfth century), prohibiting Jews from dragging their litigants before non-Jewish tribunals, not having been accepted in Spain". The evidence presented from the Responsa of Adret does not bear out this statement.

40. Ibn Adret V, 171 -

Nahmanides, Pr, 160, 63 (186); Asher 18:4

41. Ibid, Toldot ha-Adam 84.

42. Ibn Adret Ibid -

Contr. Nahmanides, Commentary, Ex:21:1 who forbids such an agreement.
42. (Continued)

Also Joseph Caro, *Hoshen Mishpat* 26:1

43. Asher 18:4

Comp. I. Epstein, op. cit. p 48 who in connection with this subject writes: "The Spanish civil law courts would often pay deference to the jurisdiction privileges of the aljamas...even when the civil law court had adjudicated in a litigation between Jews, and had even given its verdict, it would allow the dispute to be transferred to the Jewish law courts". For his source, Epstein cites Adret, I, 1148. The reading there is י"ע אי להו! יכ"ל יג יג יג יג יג

and refers to a decision to be rendered on the basis of Jewish law. It does not mean that the case be transferred to a Jewish court. We often found that Gentile Courts were commanded to decide according to Jewish law. See Barfat 305, 239, 413-

44. Adret, III, 384 -5 -

388 -
44. (Continued)

Asher, XVII, 4-

45. Asher Ibid -

46. Ibn Adret II, 290-

47. Ibid -

48. Asher 68:13 -

49. Adret VII, 142, Asher 18:5,6; A. Neuman, op. cit. p. 151

50. Barfat 102, 216-


52. Ibid p. 364.
53. Ibn Adret II, 3, 19, 84-
Ibid. 225-
Also Barfat 395

54. Ibid. 239-

55. Adret II, 225-
Ibid. 244-
Ibid III, 3:V, 171:VI, 4, 92; Asher CVII, 6-
56. Ibid CVII, 6-

57. Barfat 305-

58. Ibid.

59. Ibn Adret III, 141; Terumat ha-Deshen 354-

60. A. Neuman, op. cit. pp. 147-8.

61. G. Kisch, op. cit. pp. 91ff. He cites the privilege extended by Bishop Rudiger of 1084 for the Jews of Speyer which "bestowed upon the Jewish Court the right of exclusive jurisdiction in legal disputes between Jews...Only if the Jewish Court regarded itself unable to pass judgement was the suit to come up for decision, before the Bishop or his chamberlain." Also, he quotes the privileges extended by Emperor Henry IV in 1090 to the Jews
61. (Continued)
of Speyer and Worms. Here, again, "the exclusive character of
the Jewish courts' jurisdiction was pointed out with even great-
er distinctness. Jewish litigants shall be convicted and judged
by their equals and not by others...according to their own law".
The Meissener Rechtsbuch III, 17, 41 states that Jews of the last
part of the 14th century were to be tried by their own courts.
In Breslau, the courts considered excommunication by a Jewish
Court equal to excommunication of any other ecclesiastical court
and would not recognize any petition of an individual under the
ban.

62. Meir Katzenellenbogen 154-


64. Ibid. 161

65. Ibid. 172, 132; Meir Katzenellenbogen 154.

66. Finkelstein, op. cit. pp. 314-5...
66. (Continued)  

67. Ibid. p. 304

68. Simon b. Zemah Duran I, 61-

Also III, 44, 227-

69. Ibn Adret III, 154-

70. Simon b. Zemah Duran II, 290, 292 - The 8th Takkanah -
70. (Continued)

also, I. Epstein *The Responsa of R. Simon b. Zemah Duran*, p. 65;

71. R. Samuel b. Simon 439 –


73. Samuel Halevy and Joseph Taitozok, quoted by Samuel de Medina,

*Hoshen Mishpat* 224–

74. *Ibid.*, *Orah Hayyim* 5–

75. *Ibid. Hoshen Mishpat* 224–

77. Ibid., Eben ha-Ezer 131; S.A. Rosanes, Dibrei Yemei Yisroel be-Tugrama, Vol. II, p. 63-4, p. 100 quotes a manuscript of Abraham Damon of Constantinople.

78. Ibid. p. 100-

79. Joseph Caro, Abkat Rohel 192; Samuel de Medina, Yoreh Deah 75.
80. Ibid. 108, 192.

81. Ibid. Medina quotes the Talmud, Ned. 28a and equates the situation at hand to an unlimited tax. "^^ ^^ or a self-appointed tax collector ^n^ . ^ ^ 81

82. Ibid. agrees with ruling of Barfat -

83. Ibid.


85. Ibid.-

86. Ibid.-

87. Ibid.-
88. Ibid. - p. 264-

89. Shibhei Jerusalem p. 24b; Graetz, Geschichte, Vol. 9, p. 25;
A. S. Rosanes, op. cit. p. 131-

91. Ibid., Hoshen Mishpat 388:5.

93. Ibid. 100-

94. B.K. 113a, 113b.

95. Ibid.

96. Ibid.

97. R. Tam quoted by Mordecai, B.K. (177).

Also Isserles 52.

98. Ibid 52, 86.
NOTES TO CHAPTER VIII

1. Mishneh Gittin 10b; Tosefta Ibid., I, 9.
2. Gittin, ad loc.
3. Ibid.
4. Ibid. The two answers shall here be referred to as Al and A2.
5. Above chapter II.
6. Alfasi, Gittin ad. loc. is always cited. Yet, the wording of Alfasi really tells little concerning his opinion in this matter. Alfasi's general principle in organizing his code was to include only such parts or statements of the Talmud which he considered to be the binding opinions. In this case, Alfasi records both Al and A2. The early Spanish sages, who, like the Geonim, ruled according to A2, interpreted Alfasi's choice to mean that he, too, ruled in the traditional manner; namely, according to A2 or else why mention A2 at all. However, in the 13th century, when a change occurred and the authorities no longer thought Al and A2 to be conflicting opinions, they cited Alfasi's choice of including both answers as agreeing with their premise or else why include Al. Comp. also Maimonides Malveh ve'Loveh 27:1-
7. Ibid. -
7. (Continued)

8. Abraham Ibn Daud of Posquires, ibid, glosses-

9. Ibn Adret I, 895; II, 2, 211;— א"ר ר"י"ך יר"א לש ה"ה

Also, VI, 140-

Torat ha-Bayit 211; III, 63, 68, 69, 79; VI, 218; Novellae, Gittin 10b; R. Yom Tob b. Abraham Ibn Ashbilli 38-

quotes Nahmanides and Ittur as agreeing; Asher, Gittin ad. loc.; Mordecai, ad. loc.; Nissim Gerondi ad. loc.; Barfat 51, 142, 203, 478, 493; Samuel b. Simon Duran 219, 233, 461 and also quotes
9. (Continued)

Simon b. Zemah Duran as ruling similarly I, 158, III, 325

Joseph Colon 18, 121, 161-

David b. Abi Zimra I, 67

Contrast with I, 541-

Samuel de Medina, Hoshen Mishpat 304, 350; Joseph Caro, Abkat Rohel, 72-
Shiltei ha-Gibborim, Gittin ad loc.

It is interesting to note that this dispute concerning the two answers in the Talmud took place in the Spanish centers. There is no mention of it by the Franco-German rabbis. Only when we reach the Polish center in the 16th century is there mention of it again. Thus, Isserles, Hoshen Mishpat 68:1 and Solomon Luria, Yam Shel Shlomo, Gittin 22 rule that A1 and A2 do not conflict and when there is a specific royal decree demanding the recognition of documents issued by the Gentile Courts then such documents are legal. Luria records that in his day there was no such royal demand, consequently, Dina D'Malkhuta Dina applies to bills of sale or indebtedness only.

We do see that in his day, Jews made use of such documents issued by the secular tribunals. Luria found it necessary to warn that we are not bound by documents issued by them as a result of intentional wrong doing of an individual who prefers gentile law to Jewish without being forced to do so. Such documents are valid only when Jewish scribes are not available, when it concerns
deeds to real-estate where it is the custom to register them in the Gentile Courts or else fear of coercion. It is only then that these are recognized.

Obviously, a difference existed between the lands under Moslem and under Christian rule.
12. Barfat 51

13. Ibid. 142, 478, 493.


15. Nahmanides 52 (175)-

Comp. Nahmanides, Novellae, Gittin 10b.

16. Ibid.-

17. Ibid. 70 (192); Teshubat ha-Geonim, Harkavy 239, 278; Teshubat ha-Geonim, Coronel 51; Nahmanides, Novellae, Gittin 10b; Tur, Hoshen Mishpat 68 end; Barfat 51, 203.

18. Ibid.-
18. (Continued)

19. Ibid.

20. Ibid.; the translation is taken from A. Neuman, op. cit., pp 213-14


22. Ibid. 143, 145

23. Samuel de Medina, Eben ha-Ezer 200

24. David Ibn Zimra I, 542; II, 634-


Samuel b. Simon Duran, 215, 394, 461; Shiltei ha-Gibborim, Gittin 10b; Joseph Caro, Hoshen Mishpat 68.

27. Ibid., 47, 60.

28. We must again point out that the rabbis of France and Germany during the Middle Ages did not discuss the relative status of documents issued by the Gentile Courts.

29. Solomon Luria, Yam Shel Shlomo, Gittin 22.
Also, R. Menahem Mendel of Lubavitz, Zemah Zedek, Hoshen Mishpat #11.

30. Isserles, 51, 86 - לְפָלַס קִרְיַת אֶבֶן עַזּוֹ הוא גוּזֵי בַּקֶּשׁ לְפָלַס קִרְיַת אֶבֶן עַזּוֹ הוא גוּזֵי בַּקֶּשׁ.

Isserles and Z. Z. favor the earlier蓼 İlk "בכף קא"מ גוּזֵי בַּקֶּשׁ קִרְיַת אֶבֶן עַזּוֹ.

Solomon Luria, Ibid.

A century later, Joel Sirkes ruled (Responsa, Yeshonot 26) that two creditors, holding separate notes upon the same non-Jewish debtor, may foreclose their liens only in accordance with the sequence of the notes they hold. The creditor whose note was issued earlier has preference. However, in Poland the law of the kingdom was not concerned with the time the notes were issued but rather regarded the dates notes were due. "The Law of the Kingdom is the Law" and even if a note was issued at a later date but is a short-term loan, it takes precedence over an earlier issued but long during note.
31. (Continued)

32. B.B. 147b; Ket. 85b; B.K. 89a, B.M. 20a; Kid. 48a.

33. Hakam Zevi 147-8

Meir b. Gedaliah of Lublin, Meir Einei Hakamim #22.


35. Ezekiel b. Judah Landau, Nodal be-Yehuda, Hoshen Mishpat 10
35. (Continued)
Contr. with Ibn Adret, VI, 149 - A note written in a Gentile Court went past its due date but could not be re-written should the debtor claim that it was paid. This ruling held true even if the king ordered that it be re-written. This does not fall under the category of a royal decree but was considered royal theft.

36. Ibid. 11

37. Ibid. The questioner felt that Jewish law recognized the validity of such a note but honored the claim of the debtor when he stated that he had paid the note. Landau considers the note a scrap of paper without any validity. It is worthless because Dina D'Malkhuta had rendered it valueless. A difference between these two views would be in a similar case where a promissory note was post-dated and the debtor refuses to pay. The questioner, who accepts the note on face value according to Jewish law, would demand payment. The respondent would disqualify the note on the grounds that a post-dated promissory
37. (Continued)

note is rendered void by the "the law of the kingdom".

38. R. Yeruham, Sefer Mesharim; Samuel de Medina, Hoshen Mishpat 350.


41. Barfat 51; Abkat Rohel 75; Hoshen Mishpat 68.

Of interest is the case cited by Joseph Caro (Bet Joseph 26; Hatam Sofer, Hoshen Mishpat 142) of a husband who presented his wife with a house which he registered in her name with the secular courts. His wife, in turn, wrote a will leaving the house to her heirs and cutting the husband off without allowing him any share at all in this house. Adret ruled that Dina D'Malkhuta Dina is not operative or else you void all the laws of the Torah. Caro disagrees in this instance and cites three reasons to prove his point.

(1.) The husband himself, turned the house over to his wife;
(2.) According to the "law of the kingdom" the wife's heirs have possession (Dina D'Malkhuta Dina); (3) Dina D'Malkhuta Dina is applicable in this instance since there is a direct benefit to the king. The king shares in the inheritance of the king's property left to the heirs. It is to the king's benefit that the husband should not inherit.
41. (Continued)

Joseph Caro rules that the will is valid. Comp. Hatam Sofer, Hoshen Mishpat 142 who takes each of the above mentioned reasons and arrives at another conclusion. (1) A husband who registers a house in his wife's name does not thereby relinquish his right to inherit the house. After all, he inherits a home which was hers all the time. (2) Why should the law of the Gentile Courts render the wife's heirs "in possession"? The law of the Torah should make her husband the "possessor". (3) The king shares in the inheritance no matter who inherits, the heirs or the husband. Therefore, there is no benefit to the king if the will is or is not valid. See, R.M.M. of Lubavitz, Zemah Zedek Hoshen Mishpat #38.

42. Samuel de Medina, Eben ha-Ezer 131; see also above chapter VII. However, when a will upholds Jewish law it was recognized as valid even if it was drawn up by a Gentile Court. Thus, when a daughter destroyed a document which allowed her brother to inherit their father's estate while cutting her off without anything, Trani ruled, that the document was valid whether a Bet Din or a Gentile Court had issued it and the daughter must make good any loss her brother sustained. In this instance the document, if valid, upheld Jewish law for without it, the daughter could inherit as well by merely applying to a non-Jewish Court.

Trani I, 130 -

44. Hatam Sofer, Hashmatot le-Hoshen Mishpat 198

45. Trani I, 309

46. Barfat, quoted by Joseph Caro, Abkat Rohel 80-

47. Ibid.


49. Barfat 5, 6 invalidated a marriage performed by gentile authorities. Abkat Rohel, ibid. cites these responsa and states that Barfat recognized the Ketuba issued as a result of such a marriage. The quote could not be traced.

50. Trani, I, 309 and quoted by Joseph Caro in Abkat Rohel 81 who disagrees. Caro felt that if a marriage is contracted in a Gentile Court and is not considered valid, then the Ketuba issued by the same court at the same time can neither be considered legal. The Ketuba is a document given by a husband to his wife. If a marriage is not legal, neither can the Ketuba be legal.
Caro differentiated between the Christian and Moslem countries. In Christian countries there was no demand on the part of the king for Jews to make use of the Gentile Courts for such documents. As a consequence, these instruments are but as bits of paper. In Moslem countries, since there was a definite royal decree demanding the acknowledgement of all instruments drawn up in a Gentile Court these documents are *eo ipso* valid.

Caro's arguments would be valid if everyone would agree that a concubine is not to receive a Ketuba. It would be an indication that the Ketuba is inexorably tied in with marriage. However comp. P. T. Ket. V

Contr., Sanh. 21a-

The above is the reading as found in the Talmudic text before us. However, see the reading of Rashi, Genesis 25:6 which obviously stated that a concubine was

In North Africa, deeds and documents drawn up in a Jewish Court were not recognized by the authorities. Jews were ordered to make use of the Moslem Courts. See Barfat 102.
50. (Continued)

Also, 148

Comp. also Samuel b. Simon Duran who advised to stay clear of so doubtfull an act. One should not write a Ketuba in a Gentile Court since there is ample doubt as to the validity of such a document. Anyone who does so saddles himself with a Ketuba of dubious value which in turn raises the question of whether or not it is permissible for him to have relations with his wife. See Duran 293.

51. Barfat 102, 148, 174; Simon b. Zemah III, 94, 219, 278; Samuel b. Simon Duran 417-

52. Barfat 148

53. Ibn Adret II, 244
54. Maimonides, Malveh ve-Loveh 27:1

55. Asher, Gittin 10b

56. Asher, Ibid.

57. Ibid. Ha-Meysharot 78

58. Barfat 143
59. Asher, Gittin, ad. loc.

Contr. de Medina, Hoshen Mishpat 350 who considered, Asher to be far too lenient in this matter.

It is difficult to determine the view of Alfasi who merely states:

Whether or not he demands specific proof as did Maimonides is not evident.

60. Ps. 144:8.
61. Ibid. 26:10.
62. Samuel b. Simon Duran 477

63. Abkat Rohel 73
63. (Continued)

see Maimonides, Malveh ve-Loveh 27:1; de Medina, Hoshen Mishpat 304.

64. Gittin 11a

65. Adret V, 168 in the name of Zerahiah Halevi

66. Ibid. Torat ha-Bayit 111

67. Nahmanides quoted by M. Katzenellenbogen 54; Shiltei Gibborim, Gittin; Isserles, Hoshen Mishpat 68:1

See also Nissim Gerondi, Gittin 10b
David Ibn Zimra I, 541 agrees with Tur that scribes do not have the status of a court.

see Katzenellenbogen who states

69. Adret, ha-Meyohotot 65

Ibid., Tur 68:1; Joseph Colon 18, de Medina, Hoshen Mishpat 304;
NOTES TO CHAPTER IX

1. B.B. 119a-


4. B.K. 113a

5. Ibid.

6. Comp. J. Caro, Kessef Mishneh, Gezelah 5:11 who states that Maimonides' view that Dina D'Malkhuta Dina is operative with a Jewish or gentile king is based upon the same reasoning.

   R. Akiba could not be dealing with a Jewish king. There were no Jewish kings in Judea in his day. Furthermore, Maimonides speaks of a gentile king in the diaspora and when he equates a Jewish king with a gentile king, he means that Dina D'Malkhuta Dina is binding when a Jewish king rules outside of the land of Israel.
7. Gittin 10b. See also, R. Hayyim Volozin, *Hut Hameshulosh*, #17 who states

The Mishneh needs no explanation.

8. *J. T. B. K.* 3c-

9. *Ibid.* The correct interpretation of the text is that the matter deals with the collection of taxes from transients of a city. Until the tax collector assesses the residents of the city, a transient may bribe the collector to exempt him from tax payments, a thing he no longer may do once the assessment had been levied upon the townspeople.


12. Comp. with the discussion in chapter I.

13. Roth, *op. cit.*

13. (Continued)
in einer alten Mischna ausgesprochen fand...(Gittin 10b)"
Ibid. ft. note 4 - "Graetz, (Gesch II, s. 287) behauptet dass der
Samuel'sche Grundsatz im Widerspruche mit alter Halacha's sich
befinde und vergisst zu erwähnen, dass er in einer Mischna eine
feste Stütze hat, während der Widerspruch mit einer alter Halacha
von Samuel hinreichend ausgeglichen ist!"


15. - See also correct interpretation of this passage
as cited above ft. note 9.

16. Teshubat ha-Geonim, quoted by Rashi; Teshubat Rashi, 255, ed.
Elfenbein, and by Ibn Adret VII, 428-

17. Comp. Maimonides, Commentary to Mishnayot, Ned. 28a

Gezelah V, 11
17. (Continued)

It is evident that Maimonides was aware of the problem concerning a Jewish king but equated his powers with those of a gentile king insofar as Dina D'Malkhuta Dina. However, in both instances, it cannot be determined whether Maimonides speaks of the land of Israel or the diaspora.

18. Tosafists, quoted by Nissim Gerondi, Ned. 28a. See above Chapter III.

19. Tosafot, Ned. 28a; Ibn Adret, Torat ha-Bayit, 134-

of. A. Neuman, op. cit. pp. 8-9

20. Ibn Adret, I, 637

Hayyim Or Zarua 110-

Ibn Adret, Commentary Ned. 28a
Joseph Habbib, Nemukei Joseph ad. loc.

21. R. Samuel b. Meir, B.B. 54b; See Chapt. III.
22. Comp. Hatam Sofer, Hoshen Mishpat 44 who maintains that the opinions of Samuel b. Meir and the Tosafists are not mutually exclusive. On the contrary, the Tosafists agree that in all matters, which the populace accepts freely, Dina D'Malkhuta Dina applies to a Jewish king in Palestine as well. However, taxes that people do not accept freely upon themselves are the item wherein differences between a Jewish king and a gentile king arise. The gentile king has the power to coerce payment whereas the Jewish king has claim to the land.

This opinion narrows the scope of R. Samuel b. Meir's view. It limits the process to individual items, laws and/or ordinances. It no longer sees R. Samuel b. Meir's view as a major
change in the philosophy of kingship, that is, rule by the will of the people, but sees it as a type of retail approval necessary for each and every law. R. Samuel b. Meir stipulated that "free will acceptance" was necessary. It is the king, so accepted, who then rules. It has nothing whatever to do with whether taxes are or are not pleasing to the public.

23. Samuel 8:11

24. Tosefta, Sanhedrin 4:3; Sanhedrin 20b

25. Ibid.

26. Maimonides, Melakim 4:1

Meiri, quoted by Bezalel Ashkenazi, B.K. 113a

And also Bet ha-Behira, Ned. 28a; Yom Tob b. Abraham Ibn Ashbilli, B.B. 54a; Joseph Habbib, Nemukei Joseph ad. loc.; Joseph Caro, Bet Joseph, Hoshen Mishpat, 162; Kesef Mishneh, Melakim 4:1;
26. (Continued)

David Ibn Zimra, ad. loc.; Migdal Oz, ad. loc.; Samuel b. Meir, B.B. 69b

Semag, positive 115; Zohar, Vayeshab

Comp. this with Tosafot, Sanh. 20a; However the following disagree with this ruling; Mordecai, B.K.

Ibn Adret, Novellae, Ned. 28a attributes similar reasoning to the Tosafists.; Gersonides, Samuel 8:11

27. Ibn Adret, Ibid. attributes to the Tosafists, who exclude a Jewish king from Dina D'Malkhuta Dina, the decision that ּי

Contrary-wise, if ּי then Dina D'Malkhuta Dina is operative with Jewish kings as well; Comp. Meiri quoted in ft. note 26; Ibn Zimra, Melakim 4:1
27. (Continued)

Migdal Oz, ad. loc.

28. Ibn Zimra, ad. loc.

29. The dispute in the Tosefta between Jose and R. Judah should be
decided in favor of R. Jose. Similarly the Talmudic disputation
between Rab and Samuel should affirm the opinion of Samuel.
Thus, the king should be granted full powers as enumerated in
the Bible - לֵאמֶר צְלָה.

30. Comp. the following:

(a) Gersonides, Samuel 8:11, quoted in ft. note 26 with his
commentary to Deut.

(b) Joseph Habbib, Novellae, Ned. 28a, Ibid. B.B. 54b.

(c) Ibn Adret, Novellae, Ned. 28a; Responsa, I, 637.

(d) Don Isaac Abrabanel, Commentary, Samuel 8:11 who agrees with
Maimonides that לא לֶאָמֶר and then concludes:

(e) Hayyim b. Isaac, Or Zarua 110 who rules לא לֶאָמֶר and stipu-
lates that if לא לֶאָמֶר then only those enumerated in Samuel are
permitted but nothing else.

31. Interesting is the comment made by Simon b. Zemah Duran IV, 14
who claims that Jewish kings must obey the laws of the Torah and
31. (Continued)

these are naturally binding upon all Israel. It must then always be said that the "law of a Jewish king in the Holy Land is the law"; i.e., Dina D'Malkhuta Dina-

32. Isserles, 123

Isserles who based his view upon Barfat, failed to distinguish between the Exilarchs, to whom Barfat attributed Dina D'Malkhuta Dina, and the kings of Judea. Barfat 271, Samuel b. Simon Duran 533, 637

33. Trani, III, 78.

34. Samuel de Medina, Hoshen Mishpat 369-

36. *Ibid.* does not accept that such a law existed. He shows how Jews openly purchased slaves everywhere in the Turkish Empire including Palestine. Jews would not dare do so were it an open violation of royal decrees. At best, he concludes, that the law might have originated from a number of gentile judges but was not the "law of the kingdom".

Note the underlined ֵ which refers to his own land, Palestine.


See also *Ibid.* II, 64 wherein Trani permitted a Jew to till his fields during the Sabbatical year (*Shemittah*) because the king demanded...
39. (Continued)
a great share of the crops. Trani reasoned that no Jew may violate even rabbinic (Shemittah in their day was only rabbinic prohibition) law when it involved a common gentile. However rabbinic law was waived when a king's decree demanded it.

It seems logical to assume that the leniency with regards to the crown is based upon Samuel's law. It must be stated that Trani might just as well have recognized the great powers of the nobility and knew that practical conditions would force the Jew to till his soil during the Sabbatical year in order to fulfill the demands of the king. It may be the greater threat of force that the king wields rather than Samuel's precept which prompted Trani to waive rabbinic law.

40. Sanh. 49a
41. Joshua 1:18
42. Sanh. ad. loc.
43. Rashi, Ibid.

Maimonides, Melakim 3:9
44. The evidence is not too convincing, yet Barfat 272 does interchange the terms. This may very well be due to the fact that he did not discuss their differences and as such was not too careful in his choice of words.

45. Hatam Sofer, Hoshen Mishpat 44-

46. Ibid., Orah Hayyim 208-

However, Dina D'Malkhuta Dina is operative only to Gentile kings. They may exercise the death penalty.

(Sheb. 35b.)

This was only true as long as it was not rampant destruction.

Contr. Samuel Edels, ad. loc. who states that Samuel applies this to Jewish kings and not to Gentile kings.

47. Interesting, although homiletic in quality, is the remark made by Ben Dov, Talpioth 1961, who refers to the term Malkhuta in its Aramaic form and claims that this proves that Samuel's law is applicable to the diaspora only or else Malkhut, the hebrew
would have been employed to connote Israel as well. He points to the similar use of Haga which refers to non-Jewish holidays and Hag which refers to the Jewish ones.

May we point out that Malkhut in rabbinic literature has the connotation of either Jewish or non-Jewish kingdoms. The phrase מַלְכָּהּ מָלְכָּה will suffice as but one of many examples that might be cited.
NOTES TO CHAPTER X


Holdheim, Ueber die Autonomie der Rabbinen und das Prinzip der Jüdischen Ehe, pp. 137-165; Z. Frankel, ibid.; I. Agus.

Teshubot Ba'alei Tosafot, Respona 3 states that R. Tam is the only one to make the clear distinction that Dina D'Malkhuta Dina is only applicable to civil matters (Dinei Mamanot) but excludes all religious laws (Issur ve'Hetter). The evidence presented here shows quite clearly that R. Tam was not the first nor the only one who explicitly makes such a distinction.

2. Gittin 10b.

3. B.B. 54b

4. Ned. 28a; B.K. 113a.

5. B.K. 113b; Yeb. 46a

6. Assaf, Teshubat ha-Geonim (מסות) p. 75-
7. Rashi, Gittin 10b-

8. Samuel b. Meir, B.B. 54b-

9. I. Agus, op. cit., Responsum 3-

See also Mordecai, B.K. 113a (215); Maimonides, Pirush ha-Nishnayot Ned. III, 3.

10. Maimonides, Zekhiya u-Mattanah 1:15

Gezelah 5:13-

11. Ibn Adret, Torat ha-Bayit III-

12. Ibid. VI, 254-
12. (Continued)
See also Yom Tob Ibn Ashbilli, Yeb. 46a; Joseph Habbib, Nemukei
Joseph ad. loc.-
Solomon b. Simon Duran, 520-

Asher, Novellae, B.B. 54b-

13. Tosafot, Bechorot 4b; Simon b. Zemah 1, 158

14. The concept of קָבָל כֶּסֶף שֵׁנָה, e.g., if meat was
determined to be non-Kosher by the testimony of one witness
which is acceptable by Jewish law, then, he who eats such meat
is subjected to flagellation, a punishment which usually requires
two witnesses. However, in this instance, the single witness
merely determines the status of the meat. What happens after-
wards is not the direct result of his testimony. The nature of the meat in question was his only concern.

15. Nissim Gerondi, 40-

16. Ibid.

17. It is not a matter of direct concern for the king.

18. David Ibn Zimra I, 514-

19. J. Caro, Abkat Rohel 47, for the complete responsum see above Chapter V.

20. Ibid.
21. Ibn Adret III, 34, 40-

Comp. with Nahmanides, 46; Sefer ha-Terumot 46; Contr. Joseph Caro, Abkat Rohel 6, who disagrees. Caro feels that all the laws of the Torah could be voided because of Dina D'Malkhuta Dina —

22. Ibid. V, 198 -

23. Mordecai b. Hillel, B.K. (154) in the name of Isaac b. Peretz
23. (Continued)

Contr. with J. Caro, Abkat Rohel 6, who disagrees and feels that any amount above and beyond the amount of the loan must be returned to the debtor.

Also, Shabbatai ha-Kohen, Siftei Kohen, Hoshen Mishpat ad. loc.

24. Ibn Adret V, 244

Comp. Nissim Gerondi 65, who states three separate times

This does not refer to the technical term, signifying Samuel’s law. It means that the law forbade the issuing of the Herem. Furthermore, the term Herem in Gerondi’s statement refers to the punitive Herem and not to a type of vow. See also Samuel de Medina, Yoreh Deah 156, who also forbids a community to violate
25. (Continued)

its oath even if it be in opposition to the law of the kingdom. "The law of the kingdom is the law," but it may not dismiss an oath which is in the category of religious law.

26. Joseph Habbib, Nemukei Joseph, Yeb. 46a

The opinion of Tosafot, Rashi, ad. loc., Maimonides, Abadim, 9:4 that the Talmudic passage refers to a non-Jewish slave. However, Joseph Habbib, Nemukei Joseph, ad. loc. maintains that the slave in question was a Jew.

27. The opinion of Tosafot, Rashi, ad. loc., Maimonides, Abadim, 9:4 that the Talmudic passage refers to a non-Jewish slave. However, Joseph Habbib, Nemukei Joseph, ad. loc. maintains that the slave in question was a Jew.

28. Yeb. 46a, see also above Chapter I.

29. Tosafot, Yeb. 46a.

30. Rashi, ad. loc.

31. David Ibn Zimra, I, 67-
32. J. Caro, Abkat Rohel, 134

33. Samuel de Medina, Yoreh Deah, 194-

34. Comp. Trani II, 199 who denied the existence of the law forbidding Jew from owning slaves.

35. Yeb. 120a

36. Ezekiel Landau, Nodei be-Yehuda, Eben ha-Ezer 46, quotes Joel Sirkes. Landau merely disputes the conclusion that the "law of the kingdom" demands the breaking of the neck. He feels that this was left to the discretion of the hangman who is subject to bribe. If there were no doubt that it was a specific demand of the authorities, Landau would concur with Sirkes.
See also Naphtali Zevi Judah Berlin, *Meshib Dabar IV*, 23 who released a woman to be remarried when her husband was reported drowned in the Thames River in London, England. The identity of the deceased was established by the testimony of a policeman who had attempted to rescue the victim. Since this testimony was the result of the policeman fulfilling his duty, it was considered "indirect" testimony (א"שון). A photograph of the drowned man taken three days after he drowned was also accepted as valid documentary evidence. It was regarded as a document of a Gentile Court; Also, Isaak Elhanan Spector, *Ayn Yitzhak*, *Eben ha-Ezer* #31; *Beer Yitzhak* *Eben ha-Ezer* 5:4; also, Joseph Saul Nathanson, *Shoel u'Meshib I*, 10 recognized a death certificate even when the name of the deceased was not quite accurate. He checked other pertinent facts, e.g. the rank, branch of service, and duration of service of the deceased and permitted the widow to remarry.

Also, Hayyim Ozer Grodzensky, *Ahiezer III*, 10


41. *Ibid.* Eben ha-Ezer 65-

42. *Ibid.* Hoshen Mishpat 187-

Contr. Isaac Elhanan Spector, *Ayn Yitzhak, Yoreh Deah* #30 - who honors banknotes even to be used for the redemption of first born.

43. Boruch Frankel, quoted by Hatam Sofer, *Orah Hayyim* 113-
43. (Continued)

Also, J. S. Nathanson, Shoel u'Meshib, I, 211 -

44. Ibid.

See also - Jacob b. Joseph Reischer, Shebut Yaakov, Orah Hayyim II, 15 -

Isaac Elhanan Spector, Ayn Yitzhak, Orah Hayyim #22; Masat Benjamin #97; Magen Abraham 448:4. Abraham Shapiro, Dbar Abraham I, 1; Jacob b. Aaron, Mishkenot Jacob, Orah Hayyim 149.

45. Ibid. 311, 314.

See also, Abraham Shapiro, Dbar Abraham I, 1. Benjamin Aaron Slonnic, Masat Benjamin #35.

46. Meir of Rothenburg Pr. 677; synopsis taken from I. Agus, op. cit. (589). Contr. this with the Sephardic view in the 16th century, Trani I, 194, who ruled that the king has absolute power to decide in trade competition. A Jew bought a contract from the king to mine; another Jew outbid the first. The king may award
46. (Continued)

47. See next chapter on modern views on this subject.
NOTES TO CHAPTER XI

1. Italics are the author's.

2. Italics are my own.


4. Ibid. p. 152 ff.

5. Comp. Talpioth 1945-46, articles on attributable activities. The articles debate whether a civil marriage between Jews can be dissolved by a civil divorce alone. See also ha-Pardes, 1941 wherein the view is quoted that a Kohen may marry such a woman because no Get is required.

6. From a manuscript found at the Dropsie College Library, as yet unpublished, written by C. Adler, second copy, translated from the original document found in the National Archives A. F. IV Brief 2156.

7. See J. Rosenthal, Talpioth 1949 pp. 571-2 where in the view is quoted that a Kohen may marry such a woman because no Get is required.
Contr. with Jacob b. Joseph Reischer, *Shebut Yaakov, Orah Hayyim* I, 20. In a mixed marriage, where the Jewish husband retained all other practices and the gentile woman observed her customs, would the leavened products the wife had become permissible for use by the husband after Passover or do all things belonging to a wife automatically become the property of her husband. R. Reischer replied that although Jews do not recognize such a marriage, nonetheless, since the secular law recognizes the husband as the legal owner of all property, then *Dina D'Malkhuta Dina* is applied and the leavened products are the husband's. He would not be permitted to make use of them.

8. (Continued)  
the Law of the State in Matters of Divorce". Today, Orthodox and Conservative Jews follow the same procedure.


10. S. Holdheim, Ueber die Autonomie der Rabbinen und das Princip der Judischen Ehe, p. 59-60; ... führte der aus Tiberias zurückgekehrte Lehrer Sameul in Naharadea...den Grundsatz durch: dass im Civilrechte das Landesgesetz anerkannt werden müsse. Again p. 66- "...und das Landesgesetz auch für alle civilrechtlichen Verhältnisse der Juden eingeführt ist, da tritt der jüdische Rechtsgrundsatz; dass im Civilrecht die Verfügungen der Staatsregierungen vom Juden anerkannt werden müssen..."

11. Ibid. p. 87- "Hat aber der Staat die Machtvollkommenheit, die Jüdische Autonomie aufzuheben und das Landesgesetz an deren Stelle zu lassen, so kann das religiöse Gewissen sich dabei vollkommen beruhigen, da in Keinem Fall die religiösen, sondern die privaten Rechtsverhältnisse dabei...

12. Ibid. p. 138 - "Die Jüdische Ehe in ihrem Bestande und während der ganzen Dauer derselben ist ein religiöses, auf sittlich religiöser Grundlage basirendes Verhältniss; geworden und zu Stände gekommen ist sie durch die Mitwirkung juristischer Elemente, nämlich: durch die Entäusserung und Erwerbung einer Sache...

13. Kid. I:1

14. (Continued)
dritten, dort ḫ ḫ Besitzergreifung, die in dem Gebrauch
...hier charakteristisch ḫ substituirt wird...

15. Kid. 2b-

16. Ibid.

17. Ibid. 5a, Ket. 57b-

18. Ibid. 6a

19. Holdheim, op. cit.-this entire process of thought is found in
the cited passages.

20. Kid. 9a. Comp. S. Zeitlin, An Historical Study of the Canoniza-
tion of the Hebrew Scriptures, 1933; The Rise and Fall of the
Judean State, pp. 303-305 who clearly showed that in olden times
it was the father who wrote the "instrument of cohabitation" as
seen in the "Book of Tobit". Comp. also J. A. Frankel,
Literaturblatt des Orients, 1840, #21. That this was against
the Halakha as proposed in 65 CE and thus excluded the Book of
Tobit from the religious canon, would also disprove the theories
of Holdheim.

21. Holdheim op. cit. p. 141

22. Ibid. quoting Nissim Gerondi Ned. 30a-

23. Bezah 37
24. Comp. N. Z. Y. B., Meshib Dabar IV:49-


27. Holdheim, op. cit.

28. K. Kohler, op. cit. p. 343; Numerous flag-waving statements such as one made by Leon Harrison, C C A R Yearbook, Vol. XXIII, 1913 p. 355 - "There is only one valid divorce in America, the divorce that is issued by an American court of law. Indeed the spirit of Orthodox Judaism itself tacitly admits this fact in the well-known Talmudic maxim, "Dino D'malchuso Dino" (the law of the land is the law), may be ignored.

30. Kid. 41-
   ...דוחה... והרי כו

31. Ibid. 10b-
   ...דוחה... והרי כו

32. Yeb. 101b-
   ...דוחה... והרי כו

33. Sanh. 70b-
   ...דוחה... והרי כו

34. Ket. 8a-
   ...דוחה... והרי כו

35. Sanh. 22b-
   ...דוחה... והרי כו

36. Gittin 85b-
   ...דוחה... והרי כו

Rashi ad. loc.-
   ...דוחה... והרי כו

37. N C Y B, Meshib Dabar IV:8 ...דוחה... והרי כו
37. (Continued)

38. Ibid. p. 361

39. E. G. in the state of Pennsylvania the Marriage Act of 1953, 
   #383 Section 5, i, lists the degrees of Consanguinity and pro­
   hibits the marriage of first cousins.

40. In Pennsylvania this law may be found in the Act mentioned in 
   footnote 44.

41. Hul. 9b, 10a and commentaries ad. loc.

42. Comp. Frankel, Grundlinien XIX; Krauss, Kohler Festschrift, 
   Studies in Jewish Literature, "Die Ehe Zwischen Onkel und Nichte" 
   p. 165 ff. See also Yeb. 62b where such a marriage is considered 
   a Mitzvah.

43. A. Simon, C C A R Yearbook XXV p. 380-1

44. See above Chapter III.

45. I. Hoffman, Der Orient, 1842 #50 - "Im Talmud wird nämlich an 
   mehr Stellen die bestimmte Lehre ausgesprochen, dass, wenn der 
   Staat, in welchem wir leben, nicht aus Religionszwang, sondern 
   ein allgemeines Gesetz Zum Besten seiner Unterthanen erlasst, der 
   Israelit sich unbedingt nach diesem Gesetz richten darf und soll... 
   Aber wir haben uns nur nach dem Landesgesetze zu richten, welches 
   mehr Verbindlichkeit und Verpflichtung für uns hat, als selbst ein 
   mosaisches Gesetz; wir dürfen daher jedes Amt annehmen und am 
   Sabbat jede Amtsverrichtung, jede Arbeit, jeden Waffendienst 
   vornehmen, welche der Staatsdienst oder die Bürgerpflicht uns 
   auflegt...
45. (Continued)
See also, S. W. Baron, A Social and Religious History of the Jews Vol. II, p. 252.

46. Z. Frankel, Ibid. - "Wir wollen nicht hervorheben wie es möglich war, einen solchen falschen Schluss aufzustellen, dass, weil der Jude den Landesgesetzen da, wo es die Unterthanen treue und das unmittelbare Wohl des Vaterlandes erheischt, Gehorsam zu leisten hat (in diesem Sinne spricht es der Talmud aus), er sich auch berechtigt fühle, die Vorschriften seines Glaubens da aufzugeben...

47. Holdheim, op. cit. p. 92-93, footnote 62 - "Er hat freilich kein Geschäft, das am Sabbath verboten, aber auch keines, das an ihm geboten, verrichtet; nichts gethan, was der Heiligkeit des Tages zuwider, aber auch nichts, was ihr angemessen ist...Das stimmt mit dem Buchstaben überein, der nur das Schreiben als Melachah verbietet. Dem Geiste nach aber ist der Schulbesuch an und für sich...an sich ein Geschäft...


49. Jews in American Wars

50. J. A. Frankel, "Unsere Religion erlaubt uns im Dienste des Königs und des Vaterlandes das Ceremonialgesetz ausser Acht zu lassen", Literatureblatt des Orients, 1842 #21

51. Erub. 45a-
52. Maimonides, Shabbat 2:23—

53. Ibid.—

54. Joseph Caro, Bet Joseph 329; Orah Hayyim 329:6-7—

55. Israel Meir ha-Kohen, Mishneh Berurah ad. loc.

The above was quoted in the name of Agudah and Rokeah.

56. Shab. 19a—

57. Hulin 17a, Maimonides, Melakim 8:1—

58. Joseph Caro, Kessef Mishneh, ad. loc.—
59. David Ibn Zimra, ad. loc.

60. J. A. Frankel, op. cit. p. 326 - "Allein sowohl im Talmud als in den spätern an den Talmud sich angstlich halten den Schriften werden Gesetze über den sein jüdisches Vaterland verteidigenden Soldaten vorgeschlagen, welche wir für uns in unserm Staate in Auspruch nehmen müssen und können. Sollte also den Juden, als sie noch selbst einem politischen Staat...erlaubt gewesen sein für ihren König, für ihr Vaterland und für ihre Bruder am Sonnabend oder an den Festtagen zu kampfen und im Kampfe die Speisegesetze und andere Gebrauche und Satzungen zu übertreten; so werden auch wir für unsern König... dieselbe Dispensation vom Gesetze nicht nur beanspruchen können, sondern selbst beanspruchen müssen.

See also Ibid. Abraham Tiktin, chief rabbi in Breslau and Meyer Weil of Berlin; Hillel Posek, Hillel Omer, Orah Hayyim 137, Yoreh Deah 225, Hoshen Mishpat 22.

61. The same appears to have been the case in Germany, where the maxim Dina D'Malkhuta Dina was not always necessary since the government made exceptions and provisions to release soldiers for holidays and made allowances for special food. See J. A. Frankel, op. cit. p. 328.
62. Elijah Mizrachi, Responsa 45; Rosanes, op. cit. p. 134:

Translation from I. Abrahams, Jewish Life in the Middle Ages, pp. 107-108.
63. Ibid.
64. Ibid.
65. Ibid.
66. Ibid.
67. J. Caro, Hoshen Mishpat 369:1, 356-359:

See Above Chapter VII.
68. Mafteah, p. 182
69. Ibid. p. 191
71. No Jew is permitted to directly hide a fellow Jew who is sought by the authorities but it is permissible to advise him. Dina D'Malkhuta Dina is not applicable even if it forbid such an act. See Jair Hayyim Bachrach, Havat Jair 176-

72. Comp. Semahot II, 9

73. J. S. Nathanson, quoted by I. Herzog, op. cit. p. 135

74. Solomon b. Simon Duran, 212-

75. J. Henkin, "Be'Iyin Dina D'Malkhuta Dina", ha-Pardes Vol. 31, April 1957, pp. 3-5-
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