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CIVIL DISOBEDIENCE: THE JEWISH VIEW

Though it is commonly accepted that civil disobedience as a political tool is a modern day innovation, references may be found in Talmudic and medieval sources. This does not mean that the Jews of France were led in massive demonstration by the Tosafists nor that the Jews of Germany were urged to practice civil disobedience by Meir of Rothenburg, but rather that some form of resistance and disobedience to what were considered unjust laws was prevalent.

Jewish history is filled with resistance movements against illegitimate rulers which took on two distinct forms, neither of which could be called civil disobedience. First, when they were powerful enough, they resorted to military rebellion as during the Hasmonean revolt or the rebellion of Bar Kochba. Their aim was to oust and drive out the illegitimate government and to re-establish Jewish independence.

A second form of Jewish resistance took place when they were denied the right to practice their religion and they were not strong enough to revolt. Jews went underground and defied their persecutors by secretly living as Jews. The Hadrianic persecutions and the Spanish Inquisition are but two instances of many that could be cited.

As long as Jews lived in their own land, they had but one allegiance: namely, to the law handed to Moses and developed by their sages. As soon as the Jews found themselves in exile, they were confronted with a dilemma. As law-abiding residents of their adopted lands, Jews wished to obey the laws and enactments of the state. On the other hand, Jews wished to adhere to the Torah and Talmudic laws. Inevitably, these two systems of

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law, predicated upon different systems of thought and philosophy, would clash. The question often arose: how could Jews be law-abiding residents of the state and at the same time loyal Jews, devout adherents of their faith?

This was achieved by Samuel, Amora of the third century, who proposed the principle of *Dina De'Malkhuta Dina* — the law of the kingdom (the state) is the law.¹ Samuel here provided the *modus vivendi* by which Jews could exist in the Diaspora.² By means of three words, readily accepted by the talmudic sages without challenge and without the usual demands for substantiation,³ Samuel legislated that the civil law of the state was the law for Jews. In any clash between the civil law and Jewish law, the latter, where possible, would make an accommodation. For example, according to Jewish law, anyone in possession of a tract of land for the duration of a three year period without anyone's protest was considered its legal owner. Persian law, however, demanded a period of 40 years of uninterrupted possession necessary for legal title. The Talmud ruled in favor of Persian law, even though it overruled Jewish law.⁴

Similarly, Chanannel b. Paltiel asked permission of King Basil II to allow him to travel throughout the cities of the realm and recover his family possessions. The sages at Bari contested his right to these articles citing the following: "If a man saved some articles from an invading army or from a flood, or from a fire, they are his."⁵ Jewish law held that a man whose property was lost at sea relinquishes his right of ownership and the rescuer assumes that right. Nevertheless, Chanannel won his point when he argued: "Our rabbis rule that 'the law of the kingdom is the law' and here is the document with the seal which the king gave me."⁶

Any number of similar cases might be cited to substantiate the view that Samuel's precept overruled Jewish law.⁷ Suffice it to say, that Jewish civil law was not the determining factor.

Dina De'Malkhuta Dina was only operative in civil matters and was never invoked when religious laws were at stake. No king, no officer, and no government was given the power to legislate when such ordinances nullified Jewish religious law.⁸

It must be noted that the very nature of Samuel's law served,

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as well as threatened, Jewish jurisprudence. On the one hand, it provided for the establishment of a vehicle to govern relationships between Jews and non-Jews and it offered the method whereby Jews living among non-Jews might observe their own law without defying secular law. On the other hand, the authority which was thereby granted to the kings and the secular governments of the Diaspora might endanger Jewish existence. Investing the king with powers which allowed him to enact laws that also automatically became law for Jews compromised the sovereignty of Jewish law.

Restrictions and safeguards to Samuel's law had to be placed in order to check and to circumscribe the royal powers. We encounter a variety of stipulations curbing the authority of the monarchs. In the Talmudic period we find a series of limitations to the king's powers. The law of the state is the law only when the law improved the welfare of the state.⁹ Extortionate taxes or improperly authorized tax-forms were labelled acts of "royal robbery."¹⁰ Each age and each country developed additional restrictions in accordance with their need. Whenever a king overstepped his legal bounds by enacting laws which were not applicable to all his subjects equally,¹¹ or by a decree based on a momentary whim which had no precedence,¹² such a king no longer acted as a legitimate ruler and hence, his ordinances were to be disregarded.

In essence these curbs proclaimed, at least theoretically, that the legitimacy of any civil legislation as far as Jews were concerned was to be determined by a rabbinic court. Jewish judges were to validate or invalidate royal enactments. This power was theoretical because practically speaking, the Jews were in no position to put their decisions to the test. The king was the true sovereign and reigned with absolute power.

An obvious question arises. What purpose was there in reviewing the laws of the state if such a review had no effect upon the governmental decree? Surely the rabbis were not engaged in idle speculation nor deluding themselves that they truly had the ultimate power to approve or reject civil law.

Nonetheless their decisions were important. First of all, internally speaking, within the framework of the *kahal*, all rab-

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binic decisions regarding the state law were final. Therefore, if one Jew, A, received property by means of a royal decree or the law of the state, it would depend squarely upon rabbinic decision whether or not another Jew, B, had any recourse to the *Bet Din*. Of course, it all revolved on one point; whether the civil law was upheld by the rabbis as *Dina De'Malkhuta* or rejected as "royal robbery." Only in the latter case, could B hail A before the Jewish court and demand legal compensation.¹³

Or when a governmental official illegally confiscated property of one Jew, A, and another Jew, B, bought this property from the official, B does not become its legal owner. Since the confiscation was illegal and was adjudged "royal robbery," B had no right to purchase it from the official. The property had to be returned to A, its rightful owner. Of course, B was properly recompensed.¹⁴ Failure to return the property labelled B the recipient of stolen goods.¹⁵

Thus Samuel's precept governed the internal affairs of Jews insofar as their relationship with non-Jews was concerned. If the Jewish community considered a particular governmental edict lawful or if a king or his deputy was recognized as having the legal authority to act, their decisions were binding upon the Jewish community. Any evasion or violation of such edicts would be punished by Jewish law. And failure of a civil law to gain rabbinic sanction would leave a Jew who benefited from it without the backing of the Jewish court.

Secondly, and perhaps far more important, is that here we find the first seeds of civil disobedience—the refusal to obey a governmental law on the grounds that the law is unjust.

In the 12th century we find that Jews demanded that edicts issued by a king must be laws applied equally to all subjects of the land.¹⁶ Jews fully understood the necessity for a government to maintain its authority. Jews throughout the Middle Ages worked for centralized power. Nevertheless, Jews were also wary of such power. They were cognizant of the consequences of discriminatory laws. The demand for "equality in law" was based upon fear of discrimination. Despite the recognized right of every king to tax his subjects, he could not impose a head-tax upon rabbis. It was accepted law that the clergy be exempt from such

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taxes. Any change constituted a discriminatory law and was voided.¹⁷ Laws placed against minority groups or people belonging to a particular trade such as moneylenders, were not valid.¹⁸ When the government in Spain demanded that certain conditions with regard to dowries be met by husbands, conditions which were not part of Jewish law, the rabbi to whom the *responsum* was addressed ruled that the government's demands must be fulfilled, since these demands were required of all people residing within the country. However, the rabbi warned: "Nevertheless, we may deduce that in such matters 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."¹⁹ The law must be promulgated for the entire nation; it cannot be issued for Jews alone.

The pronouncements made and the decisions rendered by some of the rabbinic sages of Spain and of the Franco-German centers were very bold. Thus, all laws which were intended to curb the right of Jews to move about freely and unhampered, or to migrate to any foreign land were denounced as unlawful. And any ruler who violated this right did so not in accordance with the law and was guilty of "royal robbery."²⁰ Although their position at best was precarious, the Jews did not taint their souls with the sin of silence.

In a series of statements, rabbinic and lay leaders in Spain and Franco-German centers spoke out. The Jews of Gerona made representation to Pedro IV to restrict the movement of rich taxpayers and were severely chastised for it. Crescas Elier, royal physician to Pedro IV addressed an open letter to the leaders of Catalonia, calling their attention to this shortsighted and dangerous action.²¹ Jews were declared "freemen," permitted to travel wherever and whenever the spirit moved them. One rabbi vehemently declared that such a right had never been challenged. It was a right which had been theirs for centuries.²² Bensenyor Gracian added that this right was "axiomatic."²³ Samuel Benvenista wrote: "I am not a scholar but I have spent my years in public office . . . Our eyes have seen, our fathers told us, and all people know that Jews have travelled openly and without subter-

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fuge to the Land of Israel and other parts of the Orient with their gold and silver, their wives and children. Indeed, before the fearful expulsion, they also travelled freely to France, Germany and other Christian countries in the north, and no one shut the doors upon them . . . Year after year they migrate from Spain and no one halts them . . . How then shall we narrow our steps in bondage?"²⁴

In France, the Jews claimed this right since the Roman period. Jews had been permitted to move about at will. Now they were forced to remain stationary just like the serfs. The Jews fought this status. Isaac b. Samuel of Dampierre stated: "For we saw throughout the country that the Jews had the legal right, similar to the rights of the knights, to live wherever they wanted; and the law of the kingdom provided that the overlord should not appropriate the Jew's property after he had moved away from his town. This was the custom throughout Burgundy."²⁵

These words alone were sufficiently bold for their day. These indeed show the first kernels of civil disobedience, if only in word and not in action. Furthermore, under such circumstances, it was declared that one could conscientiously evade such illegal edicts by any means at one's disposal.²⁶ Hence, when government officials resorted to placing Jews under oath not to forsake their lands, Jews were forced to take the oath, but were permitted to silently add the word "today" (*ha-yom*); that is, they qualified their oath to restrict their migration for that day only.²⁷ Of course, this was permitted only when the oath was taken under duress.

Similarly, when the Marranos were prohibited to leave their places of residence, or when laws were passed to confiscate their property, such ordinances were denounced as unrighteous and evasion was condoned.²⁸

Again, it must be understood that no proof can be produced that such actions were actually applied in practice. The enforcement of a royal edict did not depend upon the Jews' stamp of approval. Such declarations probably served merely as guidelines for the Jewish courts when they dealt with internal disputes. Nevertheless, the mere verbal protest is of great interest.

On occasion we find some exceedingly bold acts of defiance.

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The Jewish community of Tudela did so in dramatic fashion. When the Moors relinquished the city to Alfonso, King of Aragon in 1114, a treaty was drawn up which refused to concern itself with Jewish interests. The residents in official protest emigrated from the city to a man. Alfonso had to invite them back with proper concessions.²⁹

In Germany, the Jews consistently refused to permit the government to appoint its spiritual leaders. They maintained that the authority of the rabbis stemmed from the chain of tradition going back to the Talmudic scholars and even to Moses. Furthermore, a second aspect of their authority over the members of the community came to them by their election by the community. The titles Rab and Rabbi showed this two-fold source of power. The title Rab indicated position by election and anyone who possessed scholarship but had no position bore the title Rabbi.³⁰

On many occasions the German kings and Polish governments tried to appoint rabbis but without success. The Jews adhered to their old tradition of retaining autonomy in the management of their lives and they insisted that they alone could choose their leaders. When once a cantor was appointed by the intervention of a duke, R. Meir ruled the appointment void. "In our country matters such as this are dealt with in strict measure . . ." In a similar case, a rabbi (cantor) became enraged and shouted: "Sir, our law does not permit me to accept the office to worship our Lord from your hands."³¹

These acts of defiance were based on the premise that the government had no jurisdiction in such matters and that any interference by the government was not lawful. Hence, all defiance was justifiable.

In more recent days, in Germany, the provisional head of the Rabbinate in Sachsen-Meiningen in 1842 permitted, better yet, urged Jewish students to write their school lessons on the Sabbath stating that it is the law of the state.³² Opposition came forth which pointed out the error of such a conclusion. The concept of "the law of the state is the law" was never to be applied at the expense of Jewish religious law. Some compromised and allowed their children to obey the law of the state by attending school on the Sabbath but would not let them write their lessons.³³ Many

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refused to allow the children to attend since such attendance did not fulfill the spirit of the law even if it did not violate the letter of the law.³⁴

The evidence presented here does not show any massive movement for civil disobedience. The status of the Jews under secular domination just did not allow for that. Furthermore, the spirit of the times in general did not tolerate disobedience of the law. However, the widespread declarations of Jewish authorities, the urging to resist such laws even if only internally, the suggestion to evade such illegal and unjustifiable edicts all suggest attempts at disobedience. If one adds to this the occasional acts of defiance, one can readily see the Jewish view of laws which violate one's sense of justice and morality.

One very important point must be stressed. In all the sources available, suggestions were made to disregard a civil law which could not be justified. However, never once can one find even the slightest hint at disobedience with the use of force or violence. It was never considered. They were not the tools of the Jewish people. Disobedience, even in words, never expressed the desire to implement such ideas by means of violence. Their protests wanted to insure equality and fairness for Jews. They realized that violence not only would not bring such equality for them, but would defeat the very ideals of justice and morality for which they endangered their lives.

NOTES

1. *Gittin* 10b; *B.K.* 113a; *Ned.* 28a; *B.B.* 54b.
2. The subject is fully developed by the author's book entitled *Jewish Law in the Diaspora*, Dropsie College, (Philadelphia 1968).
3. The Talmud repeatedly states "Was it not Samuel who has said . . ."
4. *B.B.* 55a; *Comp. Samuel b. Meir*, *ad loc.* who offers two interpretations of this Talmudic passage.
5. *B.K.* 10:2.
6. Joshua Starr, *The Jews in the Byzantine Empire*, (Athens 1939).
7. See L. Landman, *op. cit.*

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8. *Ibid.* Chapt. X, pp. 124-134. This conclusion is evident from the Talmudic sources that cite Samuel's concept only in relation to civil matters. See also, S. Assaf, *Teshuvat ha-Geonim* (Jerusalem 1942) p. 75; Rashi, *Gittin* 10b; Samuel b. Meir, *B.B.* 54b; I. Agus, *Teshuvat Baalei Tosafot* (New York 1954), 3; Maimonides, *Zekhiyah u-Mattanah*, I:15; *Gezelah* 5:13; Ibn Adret, *Torat ha-Bayit*, III; *ibid.*, VI, 254; Jellinek, *Neuzeit*, 1862 No. 1; L. Löw, *Gesammelte Schriften*, (Szegedin 1881), pp. 348-352; D. M. Shohet, *The Jewish Court in the Middle Ages* (New York 1931), pp. 112-113.

9. *B.K.* 113b.

10. *Ibid.* 113a; *Ned.* 28a.

11. Maimonides, *Gezelah* V, 14; Isaac b. Aaron, quoted by I. Agus, *op. cit.*, 130; Ibn Adret, V, 198; Hayyim b. Isaac *Or Zarua*, 110; Mordecai b. Hillel Ashkenazi, *B.K. ad loc.* in the name of Eliezer of Metz; Asher b. Yehiel, *B.B.*; Joseph Caro, *H.M.* 369; *Avkat Rohel*, 6; Sabbattai ha-Kohen, *Siftei Kohen* 73:39; Moses Sofer, *Hatam Sofer* 126; R. Nehemiah cited at the end of the responsa of Meir of Rothenburg; Ibn Zimra V, 2248; Joseph Habbib, *Nemukei Joseph*, *B.B.*

12. Ibn Adret VI, 254; *Torat ha-Bayit* 356; R. Nehemiah quoted at the end of the responsa of Meir of Rothenburg; Joseph Habbib, *op. cit. B.B.*; Meiri, quoted by *Shittah Mekubezet*, *ad loc.*, *Yom Tov* b. Abraham Ibn Ashvilla, *ad loc.*; *Ned.* 28a; Asher b. Yehiel, 86:9; Nissim Gerondi, *Gittin* 10b; Solomon b. Simon Duran, 212; Joseph Caro, *Avkat Rohel*, 6; Solomon Luria, *Yam Shel Shlomoh*, *B.K.* 18.

See also, L. Finkelstein, *Jewish Self-Government in the Middle Ages*, (New York 1924) 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 *Assignaciones* since their pay used to come from the treasury of the King and not from the communities."

13. *Tosafot*, *B.K.* 58a; *s.v. i nami*; *B.M.* 31b; Meir of Rothenburg, *B.K.* (59); Isaac b. Samuel of Lemberg, 16; Contr. Maimonides, *Hobel u-Mazik*, VIII:6.

14. *Tosafot*, *ad loc.*; Meir of Rothenburg, L. 313, Pr. 661.

15. Abraham Ibn Daud of Posquieres, *ad loc.*; Joseph Ibn Habbib, *B.B.* 54a; Nissim Gerondi, *Gittin* 10b; Mordecai, *B.K.* (215).

16. See footnote 11.

17. R. Nechemiah at the end of the responsa of Meir of Rothenburg.

18. Moses Isserles, *Ch.M.* 369:8.

19. *Yom Tov* b. Abraham Ibn Ashvilla, 53.

20. Adret I, 612, 1159; V, 4, 198; VII, 454; Barfat, 2; Joseph Ibn Habbib *ad loc.*; *Tosafot* *B.K.* 58a; Meir of Rothenburg, L. 313; Pr. 661; L. Landman, *op. cit. pp.* 42-5; A. Neuman, *Jews of Spain*, (Philadelphia 1948) Vol. I, p. 10.

21. Y. Baer, (Berlin 1929-36) I, 219, 224a.

22. *Idem.*, p. 314.

23. *Ibid.*, p. 315.

24. *Ibid.*, p. 316, 5; Meir of Rothenburg, (B. 1895) 1001.

25. *Tos. B.K.* 58a.

26. See note 21.

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27. *Tosafot*, Ned. 28a; B.K. 113a; *Semag* II, 43d; Solomon Luria, *Yam Shel Shlomoh*, B.K. 18.
28. Barfat, 2.
29. M. Kayserling, *Die Juden in Navarra*, (Berlin 1861) 12, 16.
31. For a detailed discussion see L. Landman, *op. cit.* pp. 64-73; Barfat, 272; C. Lauer, *Jahrbuch der Jüdisch – Literarischen Gesellschaft*. (Berlin 1924) Vol. XVI, pp. 1-42; S. Zeitlin, "Opposition to the Spiritual Leaders appointed by the Government," *J.Q. R.* Vol. XXXI; A. M. Hershman, *R. Isaac b. Sheshet Perfet and his Times*, (New York 1943) pp. 52-55.
31. Meir of Rothenburg, Pr. 137; Cr. 190; Mordecai, B.K. (107); Moses Sofer, *op. cit.* 19; S. Zeitlin, "Rashi and the Rabbinat," *J.Q.R.* Vol. 31 p. 44; Finkelstein, *op. cit.* pp. 154, 227; Joseph Caro, *O.C.* 53.
32. I. Hoffman, *Der Orient*, 1842, 50.
33. Z. Frankel, *ibid.*
34. Samuel Holdheim, *Autonomie der Rabbinen und das Princip der Jüdischen Ehe*, (Schwerin 1843) pp. 92-3.