



JEWISH POLITICAL THEORY: HILKHOT MELAKHIM

SHIUR – Lecture #5:
Appointing A King

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Having analyzed in previous shiurim some of the different aspects inherent in monarchy, the time has come to direct our attention to individual components of the halakhic system of government.

Which of the various possibilities for selecting a king does the Torah endorse? Actually, the formulation of the Torah itself is ambiguous. On the one hand, the narrative states that the people will set a king upon themselves (Devarim 17:14 - "Ve-amarta asima alai melekh"). On the other hand, the king is described by the Torah, in the very next verse, as being chosen by God.

The Ramban, who points out the discrepancy between the two verses, quotes the opinion of "the commentators" (da'at ha-mefarshim) who explain that the choice of the king is in God's hands, made known to us by means of the urim ve-tumim or the prophet. The first verse, which describes the people as choosing their king should be understood to mean that they shall coronate the person chosen by God. The Ramban himself, however, believes that it is the people who appoint the monarch, offering various other suggestions to understand the phrase that the king will be God's choice.

A third approach is adopted by the Rambam who combines the two elements, ruling that both the Sanhedrin (High Court) and a navi (prophet) are required. Actually, the Rambam is fusing together two Tannaitic sources. The Tosefta (Sanhedrin 3:4) states that the Sanhedrin is required to appoint a king, while the Sifri explains that the prophet determines God's choice. Rather than assuming that the two sources disagree, along the lines of the Ramban and "the commentators," the Rambam posits a system which accepts both elements as necessary to appoint a monarch. What is the relationship between the functions?



Obviously, if the navi selects a person as being worthy of the position, the Sanhedrin would not be able to contradict his choice, for they cannot dare claim that their knowledge or information is better than his. "For man can see the eyes, but God sees into the heart." Therefore, we must understand the Rambam as requiring human participation in order to establish an additional source of authority. Though the prophet is the ultimate search committee, whose ruling is final, the Sanhedrin must be involved as representing the people. Their acceptance and appointment of the king establishes the monarch as deriving his authority from the people's election. The Sanhedrin do not function here in their judicial but rather in their representative capacity. By involving the Sanhedrin in addition to the prophet, the Rambam roots the monarchical powers in the will and acceptance of the nation.

The same point is explicit in a gemara in Berakhot (55a), though in somewhat of an aggadic context.

"R. Isaac said: We must not appoint a leader over a community without first consulting it, as it says: 'See, the Lord has called by name Bezalel, the son of Uri.' The Holy One, blessed be He, said to Moses: Do you consider Bezalel suitable? He replied: Sovereign of the Universe, if you think him suitable, surely I must also! Said [God] to him: All the same, go and consult them. He went and asked Israel: Do you consider Bezalel suitable? They replied: If the Holy One, blessed be He, and you consider him suitable, surely we must!"

Even though the Almighty has chosen Betzalel, He requests that the people also participate in the selection. Moshe's reaction is that since God Himself has made the decision, what need is there for any additional input? After all, the proper choice has certainly been made. The Almighty, though, responds that the participation of the people is necessary, not in order to select the best candidate, but in order to provide him with the necessary mandate for his authority.

[The idea of the Sanhedrin functioning as the representative body of Am Yisrael, at least in the Rambam's doctrine, is well established and has been advanced by various Acharonim, basing themselves upon the Rambam's formulations in Hilkhhot Terumot 1:2 and Hilkhhot Melakhim 5:2. See Rav Soloveitchik's article on kiddush ha-chodesh in Kovetz Chidushei Torah and Rav Goren's discussion in the opening essay of his sefer Meishiv



Milchama, amongst others. See also Prof. Blidstein's book, "Ekronot Medini'im," p. 58. Actually, as pointed out by Prof. Blidstein, the Rambam himself already formulated this very idea in his Peirush Ha-mishnayot on Horayot (1:6). There, the Rambam states explicitly that the Sanhedrin is "Kahal Yisrael bi-khlaliyuto" (The Congregation of Israel in its entirety).]

Having concluded that the Rambam requires a mandate from the people and therefore rules that the Sanhedrin must be involved in the selection, we must now look into the role of the prophet. Is he serving only as a search committee, better equipped than mere mortals to identify the proper candidate, but not invested with any special authority, or does he also serve as the representative of Divine authority? In other words, is the source of monarchical power rooted only in a human source of authority or is a Heavenly source required as well? The implications of this for our current situation are obvious. If the only necessary source of authority is the decision of the people, then it is available nowadays, no less than in yesteryear, and open to democratic as well as monarchical heads of government. If, however, Divine authority is also required, then we can only grant legitimacy by means of a prophet or the urim ve-tumim. (Other possible sources of authority for democratic functions will be discussed in future installments, b"n.

The halakhic expression of this query is the issue whether a navi is required only le-khatchila or also be-di'eved. If we support the former position that the navi is no more than a search committee, then his involvement is not crucial. If he can assist in the selection process - thank God; if not, then Beth Din (the court) will apply their own judgment. However, the latter position maintains that God must grant His authority, and therefore the navi is indispensable. The Keren Ora, in his commentary on Horayot (11b) seems to suggest that this issue is a machloket (dispute) between the Talmud Bavli and the Yerushalmi. The Bavli is of the opinion that any leader accepted by the people is considered a king, while the Yerushalmi, which states that all Israelite kings after Yehu were thieves (since they were not appointed by a prophet), insists upon the authority of the navi alone to grant the mantle of monarchy. He also quotes a Tosafot (Sanhedrin 20b) that requires election by God in order to exercise royal authority, since Divine authority alone can grant one man power over his fellow man. In contrast to this Tosafot, the Rambam in his commentary on the Mishna (Keritut 1:1) raises various scenarios regarding the accession of a prospective king, including popular acclaim, use of force, appointment by a navi, the Sanhedrin or Kohen Gadol, all of which are recognized as granting him royal authority.



Two other well-known sources who address this issue are the Radvaz (Melakhim 3:8), who opines that a king may be chosen either by a prophet or by the people, and Rav Kook, who ponders this issue in a teshuva (Mishpat Kohen 144:15) and tends to accept the first option, that a navi is dispensable, thus paving his way for legitimizing the Hasmonean kingdom.

Thus, the question of the necessity of Divine involvement in the appointment of a king is the subject of a (possible) machloket between the Bavli and the Yerushalmi and between Rambam and Tosafot, and is also the subject of further discussion in Acharonim.

Having presented the above mentioned opinions, we cannot yet conclude this segment without connecting them to the issues and concepts dealt with in previous shiurim. Throughout all of the above discussion, we did not discriminate between different functions of royalty. However, as we explained in previous shiurim, it is obvious that not all halakhot relating to a melekh can be lumped together without analyzing their essential nature. Therefore, we must now proceed to review our conclusions in light of this. As a starting point, we may take a remark of Rav Kook's in the closing lines of the responsum cited above. Having been questioned as to the right of the Hasmoneans to wage war (a royal prerogative) and concluding that they were legitimate rulers since appointment by a navi is dispensable, he adds the following:

"Aside from this, it seems reasonable that at a time when there is no king, these privileges revert to the hands of the nation as a whole, since the prerogatives of monarchy also pertain to the general condition of the nation. In particular, it seems that every Judge who arises in Israel has the status of a king, as regards several royal prerogatives, particularly those pertaining to governance of the nation." (Mishpat Kohen, 144)

The truth of his remarks rings loud and clear. As long as we are concerned with the public weal - what we defined as issues of malkhut (government) rather than personal status - it is eminently logical that the people have the ability to grant the authority and prerequisites of power to a ruler (or, in the absence of a monarchy, to any governing administration set up by the people). To the extent that a navi is needed, it is only for matters pertaining to the



king's personal status. Conversely, if we accept the claim that the Davidic kingdom confers a personal sacral status, that clearly can be authorized by Divine authorization alone.

Thus, the sources cited above must be analyzed as to which element of monarchy they are dealing with. Since both the Bavli and Yerushalmi are discussing the issue of korban nasi (leader's sacrifice), they are obviously disagreeing; however, it is not necessarily a machloket regarding the legitimacy of the governing authority, but rather a narrower question of whether the korban is a function of personal status or abuse of power. The Radvaz makes his comment regarding the halakha of mored be-malkhut; Tosafot discuss mishpat ha-melekh (royal privileges); the Rambam deals with the halakha of anointing a king after a disputed succession; and Rav Kook is confronted by the issue of declaring war. Regarding each, a separate analysis must be made. At the moment, we will not undertake this task; however, we must point out that the issue at stake may be the understanding of each particular function and its relationship to the varying royal elements, rather than a sweeping machloket as to the need for a navi to legitimize royal power and person.

In conclusion, it is worthwhile to point out that the Ramban also claims, basing himself on the phrase, "Ve-amarta asima alai melekh," that the people's request of a king is itself part of the mitzva, a requirement which would indicate that the source of authority is rooted in the people, who must express their willingness to establish a human king over themselves.

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