



JEWISH POLITICAL THEORY: HILKHOT MELAKHIM

SHIUR - Lecture #7:

Alternatives to Monarchy

By:

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A brief summary of our conclusions regarding the status of monarchy should be provided before we move on to discuss other alternatives to it. The following points are some of the basic claims which we have made in these shiurim until now:

- a. There is a difference of opinion whether the Torah endorsed monarchy or only permitted it as a possible system of government.
- b. There are two schools of thought as to whether a monarchical system should be preferred over other systems. One approach judges the issue from the utilitarian perspective and arrives at the conclusion that a single ruler is preferable from the functional point of view, enabling a smoother and more efficient mode of government. A second opinion does not see any practical advantage to royalty, but determines that the Torah is interested in a royal figure since he serves as God's representative in the political sphere, having received a sacral character not unlike that of the Kohanim.
- c. The former approach does not consider the establishment of a monarchy as a spiritual goal per se, but it does assume that the requirement to create such a system applies equally under all circumstances. The latter approach, however, does ascribe positive spiritual value to the appointment of a king who rules over Am Yisrael and represents it vis-a-vis the other nations. This, though, is limited to the Davidic dynasty alone.
- d. Therefore, in our current situation - ba-zeman ha-zeh - without a Davidic throne, there is a mitzva to appoint a king only according to supporters of the former line of reasoning, yet they too do not see it as being of major spiritual significance.

The above conclusions lead us to consider the question - what is the preferable alternative to monarchy, when appointing a king is not an option? Today, appointing a king is not an option either since there is no such mitzva in our current circumstances (or not at

all) or due to the fact that political reality (such as that existing in the State of Israel at the moment) will not accept such an option. Regarding this question, we do not find much in the classical sources, since after the abolishment of the monarchy, there was no independent Jewish political entity which had to grapple with this issue, thrusting it upon the halakhic agenda and forcing a discussion and debate of the various alternatives. Therefore, there are a few scattered theoretical references in non-Talmudic sources, but nothing nearing the wealth of sources generated by urgent practical issues.

Not surprisingly, different systems of government are suggested by various authorities. The Abarbanel (Devarim 17 and Shmuel 8) claims that Am Yisrael should be under the direct political, military and judicial rule of God, as stated by Yeshayahu (33:22: "For the Lord shall be our ruler, the Lord shall be our prince, the Lord shall be our king: He shall deliver us."). Thus denying that monarchy is a mitzva, the Abarbanel seems to posit a system (or lack of system) by which a leader of high moral and religious status leads the people. He cites Moshe Rabeinu, the prophets and shoftim as examples of such leadership. "God did not choose that there be a king in Israel, but rather a prophet, leader and judge as Moshe and his followers, all this indicating that a king is unnecessary and does not serve any positive function in Am Yisrael" (commentary on Sefer Shmuel, preface to ch. 8). As is evident from the above quote and the passages preceding it in his commentary, the Abarbanel is essentially positing a model of charismatic religious leadership which is based upon individual figures rising to prominence and guiding the people. However, since he is more concerned in these passages to expose the shortcomings of monarchy than to develop an alternative system, he does not address the obvious questions of what to do if no such figure exists or how is he to be identified or chosen. Nevertheless, it is clear that the Abarbanel is interested in a theocratic model.

A different approach to our question as to the desired system of government if there is no monarchy is the Netziv's thesis (R. Naftali Tzvi Yehuda Berlin, 19th century Russia). In his opinion, if monarchy is not a viable alternative, then the Torah advocates popular government. "...For as long as there was no king in Israel ... the leadership of state affairs was in the hands of an assembly of all the tribes" (Ha'amek She'ela 142:9).

However, both of the above opinions are general statements, made in the context of biblical interpretation, and neither of them is buttressed by major halakhic sources. What we



do occasionally find in Halakha is the use of the beit din (especially the supreme court, the Sanhedrin) as an agent of decision and policymaking. Thus, they are involved in declaring war, appointing a king and several other functions. However, as we pointed out in the shiur on appointing a king, this can be construed in two opposite ways; either we understand that the beit din is functioning in the theocratic mode, deriving their authority from their status as interpreters of the Torah or, conversely, they can be perceived as functioning in a representative capacity, as delegates who represent the people, even if not directly elected by them. The Rambam in his commentary on the Mishna (Horayot 1:6) explicitly states that beit din are representatives of Am Yisrael, and it is this approach which is developed by a few contemporary Acharonim. (For two extensive treatments of this, see Rav Soloveitchik's article on Kiddush Ha-Chodesh in his Kovetz Chidushei Torah and Rav Goren's discussion in his Meishiv Milchama, pp. 126-134.)

Taking into account the paucity of direct halakhic sources relating to our query, the method which suggests itself is to examine the forms of halakhically recognized self-government, which evolved on the communal, if not the national, level. Though we must be aware that there are basic differences between the sovereignty of a state and the autonomy of a community, the basic model, if carefully applied, can help us establish a form of government in lieu of a non-existent monarchy.

The most obvious example of an autonomous communal government is the institution of the Roshut Ha-Gola (the Exilarchate) in Babylonia, which aside from having a legal status as representatives of the Jewish community vis-a-vis the non-Jewish government, also was recognized as the legitimate authority regarding Jewish affairs (in particular, those relating to the judicial system). However, halakhic sources tend to treat the status of the Roshut Ha-Gola as analogous to a monarchy, and the Rashei Gola themselves as being descendants of the House of David. (See Horayot 11b, Sanhedrin 5a, Rambam Sanhedrin 4:13 and Rambam's commentary on the Mishna, Bekhorot 4:4.) Therefore, even though this is a system of communal government, it will not provide us with much help regarding the issue of an alternate system to a hereditary monarchy,.

Thus, we must seek in other sources a clue to our problem. The Gemara (Bava Batra 8b) does make it clear that local authorities, which represent the citizenhood, have the authority to regulate commercial and communal affairs. However, aside from the general



claim that benei ha-ir - community members - have such power, there is no indication as to the composition or method of election of this body. In another source (Megilla 26a), mention is made the institution of "shiv'a tovei ha-ir," a seven man council whose right to act on behalf of the community is recognized. However, here too, the sugya is mute as to the method of appointment to this council, qualifications, etc. All we know from the Talmudic sources is that such a body did indeed exist, but not much more.

Rishonim, though, did develop these concepts much further. Two obvious possibilities present themselves regarding the definition of the tovei ha-ir. One option is to consider the tovei ha-ir as the best members of their community by virtue of their personal stature; to put it differently, the tovei ha-ir are the Sages whose authority is derived from their knowledge of Torah. This is analogous to the theocratic model of beit din, and is rooted in the theocratic concept of leadership. Such an approach appears in a responsum by the Rambam. Writing in response to a query as to the significance of the number seven, which is mentioned in Mishneh Torah, the Rambam responds that the number is unimportant, but that the "tovei ha-ir [are] talmidei chakhamim, people of Torah and good deeds."

However, almost all other sources prefer the opposite alternative, which is to perceive the institution of tovei ha-ir as a representative body chosen by the public from amongst its members to serve as a political lay leadership, in charge of communal affairs. This point is explicitly made by the Rashba who writes that the "seven tovei ha-ir who are constantly mentioned are not the wisest, the most dignified or the greatest in property and wealth; rather, they are seven people appointed by the community to be responsible for their affairs. Their status is as guardians of the public." The same refrain runs through countless other teshuvot. [A perusal of the sources compiled on this issue in the Encyclopedia Talmudit, vol. 19, "tovei ha-ir," will clearly illustrate that this is the dominant approach.]

Thus, with the exception of the Rambam, the principle of a representative body who can act for the entire community is well-established.

Aside from establishing the principle of representation, we must also inquire as to the method of communal decision making, whether by members of the entire community regarding specific rules and decrees, or in relation to the election of the council of chosen officials. In a famous teshuva penned at the dawn of Ashkenazi society, the principle of



democratic majority rule in the community is firmly established. [The teshuva appears in the Kol-Bo (142) and was written in mid 11th century by R. Elazar b.R. Yitzchak and R. Yehuda Ha-Kohen. A detailed analysis of the teshuva and the reasons for dating it in the eleventh century can be found in my uncle Prof. Chaim Soloveitchik's book, "She'elot U-teshuvot Kemakor Histori," ch. 9.]

The issue of majority decision making and its legitimacy was debated in a later teshuva written by the Ra'avia (Shut Mahrach Or Zarua 222), who clearly argues that the majority do have the right and the authority to impose their will upon the minority, as opposed to the opinion of Rabeinu Tam and some of his mentors ("ve-yesh me-rabotai") who required unanimity. The subsequent development of Halakha illustrates that the principle of majority rule was clearly adopted. Already the Chatam Sofer in a teshuva (Choshen Mishpat 116, s.v. "Omnam," towards the end of the passage) pointed out the obvious result of a rule of unanimity - if we require a unanimous decision, communal affairs and government would be totally paralyzed. The Chatam Sofer therefore argues that the communities have accepted the Ra'avia's opinion, and even R. Tam would agree that the minhag of the kehilot abrogates the pure halakha which he formulated.

Thus, it is quite clear that the principle of following the majority opinion in matters relating to taxation, communal security, welfare, etc., is well established. This should not surprise us at all, since the concept of rov (majority) and its application to the decision making process are well established principles in Halakha. The model of beit din and its use of majority opinion (see Chullin 11a) provides the justification for a deliberative body functioning on such a principle; it also provides the justification for majority election of an executive body, though not necessarily providing us with clues as to the functioning of the executive. Therefore, at least in matters of policy making we can accept the concept of majority opinion as halakhically valid, and in terms of practice and executive functioning we can rely upon the model of communal leadership throughout the ages.

This assumes that communal and national government are similar, and that both are "by the people for the people." In relation to communal affairs, such a statement does not seem to be problematic in the least (trusting of course that the appointed trustees are men of integrity), while in regard to national government, this returns us to our previous discussions as to the character of the monarchy. The line of thought presented here has been consistent



with our previous claims; viz., that in matters of function, there is an authority which resides in the people which does not require a Davidic monarch to exercise it, and, as Rav Kook claims in his famous teshuva which was quoted a few weeks ago, in the absence of a monarchy such authority reverts back to the people.

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