



## JEWISH POLITICAL THEORY: HILKHOT MELAKHIM

SHIUR – Lecture #6:

### ***Impeachment, Kohanim and Judges***

By:

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Having dealt with essential elements of monarchy within Halakha, we should now proceed to examine the status of alternate systems of government. However, before doing that, we shall devote this session to a few loose ends left over from previous shiurim. I. Impeachment

The first issue which must be briefly addressed is the authority of impeachment. Can a ruler be impeached, and, if so, by whom? The Abarbanel, in his commentary on the Torah Devarim 17, pp. 170-171), already pointed out the paucity of Halakhic sources relating to this question: "However, should the monarch be evil and corrupt it is worthy of inquiry whether his people should revolt and remove him from office, since he is a foe of God and a corrupt person, for we have not seen anything relating to this issue in the works of our sages." In a most interesting passage, the Abarbanel tells us that he debated the issue with contemporary non-Jewish thinkers: "The sages of the nations dealt with this issue and decided that deposing of such a king is the proper course of action, as the tribes did to Rechav'am. I discussed this very matter with kings and wise men and proved to them that it is not legitimate and that there is no authority for the people to throw off the yoke of the sovereign, no matter how much evil he does."

Thus, although opposed to the establishment of the monarchy, Abarbanel is of the opinion that once established it is not a contract between the people and the monarch, which would allow the appointing agency to remove him if necessary, but rather a Divine appointment accountable to God alone. Moreover, he also claims that even if there is a contractual relationship between the ruler and his subjects, the contract stipulates that they cannot relieve him of office.



However, as he himself points out, there are no solid halakhic sources dealing with this issue, and the Abarbanel does not provide any sources, aside from deducing from his general concepts of political theory. Therefore, arguing from sevara, one can disagree with the Abarbanel and follow the Keren Orah's line of reasoning (quoted in the previous installment). Namely, if the king is appointed by the people he can also be deposed by the people, while if a prophet is required to select a monarch, then he cannot be replaced by any other authority. If we are to accept this logic on the one hand, and also maintain, as we did in previous shiurim, that Davidic monarchy is divinely appointed and contains within it a sacral element (as opposed to other rulers, who receive their mandate from the people), then the conclusion should be that Davidic kings cannot be replaced, while others can be impeached. This, though, need not be our conclusion; for what is divinely mandated is the HOUSE of David, and not the particular individual. Therefore, although the monarchy could not be transferred to a non-Davidic dynasty, an individual could be replaced with another Davidic alternative. Actually, God Himself did even more than that; by removing Rechav'am yet retaining a portion of the monarchy for him ("ner le-David avdi"), political power was effectively handed over to Yerav'am, while the continuity of the Davidic dynasty was assured.

We have limited ourselves to a theoretical discussion regarding the authority of impeachment, since this is an extension of our previous treatment of these topics. In practice, however, the crucial issue will be not only whether there is a right of impeachment or not, but also how to exercise it: what is the mechanism whereby it is determined that an individual is unworthy, and what are the criteria for such a verdict? Presumably, the Sanhedrin (or the central Bet Din) will be those who will rule upon such issues, yet the criteria remain unclear. A comprehensive discussion of the available (or actually non-available) sources is to be found in Prof. Blidstein's treatment of the subject (which confirms the absence of explicit guidelines beyond the general conclusion that an evil king should be removed).II. Kohanim

An additional point regarding the nomination of kings relates to the question of electing Kohanim as rulers. The Yerushalmi in Horayot (3:2) states that Kohanim cannot be anointed as kings - "ein moshchim melakhim Kohanim" - and provides two explanations. The first claims that this is not due to an intrinsic problem with the Kohen per se, but with the fact that he is non-Davidic. Therefore, although he cannot be anointed as a dynastic ruler, he can rule in the capacity of a political leader if the need arises (see Ramban Bereishit 49:10),



without compromising his priesthood. The second opinion in the Yerushalmi, though, is that a Kohen is barred from political office since he has been dedicated to a life of service in the mikdash, far removed from the intrigue, pressures and machinations inherent in the political sphere, and is barred from the perks and status of royalty. The Ramban (Bereishit 49:10) endorses the Yerushalmi's latter position and thereby condemns the Hasmonean dynasty, who, of course, were kohanim. The Rambam, however, appears to disagree, since he hails the renewal of a Jewish monarchy for over two hundred years as one of the major achievements of the Hasmoneans (Hilkhos Chanuka 3:1).III. Judges

A final point which we would like to make before moving on to non-monarchical systems is a historical one, viz. the role of the shofet ("judge") in Sefer Shoftim. Abarbanel, in his introduction to the sefer raises the issue of the king-shofet relationship and concludes that there are five similarities and five dissimilarities between the two functions. The similarities all relate to the executive function, including method of appointment, responsibility for security and justice, executive power and respect of office, and continuity. Some of the discrepancies between them can be understood as reflecting the personal status of the king: e.g., anointment, personal privileges and obligations, and dynastic succession. [We have ignored one other difference between the two positions, since it is based upon a different concept of the shofet as a judge. Aside from the fact that I do not see the shofet as having a unique judicial function, it is not connected to the rest of our discussion.] In past sessions, we analyzed the status of a ruler who has the power of office but not the personal status of a king and concluded, following the Ramban, that such an officeholder is, in essence, a shofet, though he be called a king. The functional powers residing in the office are his, but not the royal glory ("hod malkhut"). [Recall that the Ramban differs in his assessment somewhat from the Rambam, who called such a ruler a non-Davidic king. This difference stems from the fact that the Rambam recognizes monarchy, with its dynastic element, as serving a functional utilitarian need as well as a sacral goal, while the Ramban perceives the royal element as a manifestation of Divine activity, but not as providing additional benefit on the human level. [See the first shiur in this series for a development of this point.]

However, both the Rambam and the Ramban, based upon the Gemara, view leaders such as Yehoshua bin Nun as having full executive powers, similar to the Abarbanel's above-quoted analysis. Nevertheless, the application of this analysis to the leaders described in



Sefer Shoftim requires qualification. Not all of them are actually shoftim. For example, anyone reading Sefer Shoftim will find hard, if not impossible, to perceive a figure such as Shamgar ben Anat as providing ongoing political leadership. He appears on the scene, defeats the Philistines and makes his exit from the politico-military stage. His is a one-time historic role to deliver B'nei Yisrael from oppression under the Philistines. Having done that, he recedes four historical sight without ever having assumed a position of leadership. Therefore, the Bible never describes him as a shofet, nor does it, for that matter, apply any other title to him. Rather, all that is said is that he delivered Am Yisrael. Shamgar is not a shofet, but a deliverer.

The same is true of all of the other figures who are active in the first half of Sefer Shoftim. All deliver the Jewish people from the oppressive yoke of kings and tyrants in a one-time campaign, but none remain in a position of leadership afterwards. A careful reading of the text will demonstrate that neither the title of shofet nor the act of judging is mentioned in regard to any of these earlier figures. Neither Ehud, Otniel ben Kenaz, or Barak become full-fledged political leaders. Their role, like that of Shamgar, is limited to a single campaign which does not transform or catapult them into positions of ongoing political responsibility. Invariably, an inspired individual leads a collection of fighters drawn upon from only some of the tribes, solves the acute problem at hand and "returns to the farm". The fleeting nature of their missions is demonstrated by the fact that their successful removal of the external yoke often creates or exacerbates internal tensions. These, however, have not been taken into account by the leader, since he is not attempting to provide stable long-term political leadership for the nation, but rather to relieve a specific external pressure. Therefore, they are aptly described as deliverers who deliver the people (e.g., 3:9, 3:15, 3:31) but not as leaders (shoftim), and the period of calm which ensues after their activity is not described as their period of rule; rather, the pasuk simply states that the situation calmed down and that there was peace and quiet in the land. The ensuing calm is a function of the respect and fear which they are able to establish, but they themselves are no longer active.

[The only figure described as engaging in "shefita" (judging) in this early period is Devora the prophetess, who appears when the Jews are subjugated to the Canaanite king Yavin. Even there, however, it is unclear whether the verb "shofetet" describes leadership and not the act of judging, since the following verse relates that the people come to her for mishpat, a word which has clear judicial connotations. At any rate, up to that point she is



certainly not providing political leadership, since Yavin has Am Yisrael under his heel. The story of Devora recounted in Sefer Shoftim is precisely the tale of her assuming a position of leadership and leading the people into confrontation with Yavin. However, she, too, is never described as remaining in any position of authority after this one episode. On the contrary, she even hints at a common goal with Shamgar (see 5:6).]

The issue comes to a head in the time of Gideon. Gideon, like his predecessors, returns to his village Ofra, uninterested in political leadership. The people, however, sense that there is a need for change and insist that Gideon take upon himself a role which will ensure long term political stability. Gideon's refusal, rooted in a denial of the need for a centralized authority, sets the stage for the anarchy which ensues after his death.

It is at this point that a major change is brought about by two seemingly obscure figures. Immediately after the episode of Avimelech, the pesukim state the following: "After Avimelech, Tola son of Puah son of Dodo, a man of Issachar, arose to deliver Israel. He lived at Shamir in the hill country of Ephraim. He led Israel for twenty-three years; then he died and was buried at Shamir. After him arose Yair the Gileadite, and he led Israel for twenty-two years. He had thirty sons, who rode on thirty burros and owned thirty boroughs in the region of Gilead; these are called Chavot Yair to this day.)" (Judges 10:1-4)

Tolah and Yair are the figures who introduce stability and ongoing political leadership into the historical reality, and it is they who reestablish the position of shofet as described by the Ramban and Abarbanel. Tolah is the first person who does not retire after delivering the people, but rather continues to lead them afterwards. Yair takes this a step further. He establishes an administration, complete with a bureaucracy, "proteksia" and perks. The pasuk dwells upon this detail at great length, since it is this new development which vividly illustrates the fact that the previous anarchy has been replaced by an organized government. The deliverer ("moshia") has been transformed into the leader ("shofet"). Henceforth, the narrative will mention the periods of leadership and the length of term of each such leader, since they are now serving in such a capacity. This is the change which has been wrought by these two figures whose major achievements complement each other. The first, after leading the people in battle, creates the office of shofet, while his successor (who may not have even served in a military capacity at all) establishes the administration necessary for long-term stability.



Thus, the position of shofet which the Ramban presents as having full authority regarding issues of government, does exist in Sefer Shoftim (though the sefer does not describe the shofet's powers) and the Abarbanel's comparison between the monarch and the shofet is indeed relevant to an understanding of Sefer Shoftim; however, all this is true only with regard to the latter half of the sefer, from the time of Tolah and onwards. Prior to that we are dealing with a totally different period, in which the office of shofet did not really exist.

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