**INTRODUCTION TO PARASHAT HASHAVUA**

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**In memory of Yakov Yehuda ben Pinchas Wallach
and Miriam Wallach bat Tzvi Donner**

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**PARASHAT SHOFTIM**

**KINGLY APPOINTMENTS**

**By Rabbi Yaakov Beasley**

In this week’s parasha, the Torah outlines the various forms and structures of leadership the Jewish people will require upon settling the Land of Israel. There are judges and policemen, priests and other religious functionaries. Together, they provide both religious and judicial functions for the people. Each tribe and city choose their leaders. When the people require Divine communication, Hashem will send them prophets. However, when discussing what we instinctively would sense as the most crucial part of government necessary for the people to function, the one level of government that unites the entire people, the Torah almost hesitates. No one would imagine any discussion of the Israeli political system that includes how mayors and regional heads and district courts function, without any mention of the Knesset, the Prime Minister, or the Cabinet. Most societies center around documents that clearly delineate the relationship between the leader and his subjects, either real or ideal (i.e. - Plato’s The Republic, the Magna Carta, the Federalist Papers). Yet, the Torah almost bypasses the discussion of ancient Israel’s central authority, the king, concentrating almost solely instead on the personal qualities and spiritual level of the individual who wears the crown and not the framework of the king’s responsibilities.

*"If, after you have entered the land that the Lord your God has assigned to you, and taken possession of it and settled in it, you decide, 'I will set a king over me as do all the nations about me:' You shall be free to set a king over yourself, one chosen by the Lord your God. Be sure to set as king over yourself one of your own people; you must not set a foreigner over you, one who is not your kinsman: Moreover, he shall not keep many horses or send people back to Egypt to add to his horses, since the Lord has warned you, 'You must not go back that way again:' And he shall not have many wives, lest his heart go astray; nor shall he amass silver and gold to excess: When he is seated on his royal throne, he shall have a copy of this Teaching written for him on a scroll by the Levitical priests. Let it remain with him and let him read in it all of his life, so that he may learn to revere the Lord his God, to observe faithfully every word of this Teaching as well as these laws: Thus he will not act haughtily toward his fellows or deviate from the Instruction to the right or to the left, to the end that he and his descendants may reign long in the midst of Israel." (Devarim 17:14-20)*

Only later in the Bible, when the prophet Shmuel attempts to discourage the people from appointing a king (*Shemuel* II 8:11-18), do we even come across a discussion of the king’s rights and prerogatives. Here, all we have are the king’s religious responsibilities: limits on wealth, property and wives, and a requirement to write a Sefer Torah and study it constantly. Clearly, the Torah intentionally approaches this subject with at best ambivalence, an ambivalence reflected in the opening verses:

(17:14) "*KI* you come to the land which Hashem your God has given you and you possess it and dwell in it, and you say, 'Let us appoint a king for ourselves like all the nations around us,'

(17:15) You shall surely appoint a king over yourselves, whom Hashem your God will choose, one of your brethren shall you appoint as king over you. You may not appoint a stranger over you who is not your brother."

The first word of verse 14, "*KI*" can be interpreted in two ways – if or when. Assuming that "If" is the intended meaning, then the whole verse becomes a conditional clause: "If, after you have settled the land, you ask for a king...." This, it follows, colors the meaning of the following verse "*Som tasim alekha melekh*..." as permission to appoint a king ("you shall be free to..."), with the qualifications as elaborated below (not too many wives, not too many horses, etc.). Therefore, the appointment of a king is not required or even desired. Instead, the Torah is allowing the Jewish people to be as the other nations. However, should we interpret the word "*KI*" as 'when,' as opposed to 'if,' the meaning of these verses changes significantly. Instead of responding to the people’s demand, the Torah is outlining the mandate under which a monarchy is required. undergoes a significant change. The Torah is not responding to a hypothetical demand on the part of the people for a king but laying out the preconditions under which setting up a monarchy is mandated. Though the Torah will limit the king’s powers, the need for a monarch remains. The Ohr haHayyim phrases the textual difficulty as follows:

"When the text says, 'When you come to the land... AND YOU SAY...,' it means that it is not God's command to you that a king should reign; rather, if the nation speaks so, then they are permitted [to appoint him]. But later it says, 'You shall surely appoint' – the language here shows that God is commanding that they appoint a king!"

These two interpretations of the *pesukim* are reflected in the different positions quoted in the Tosefta (*Sanhedrin* 4c):

R. Yehuda says: The Jewish people were commanded to fulfill three commandments upon entering the land: To appoint a king, to build the Temple and to destroy the descendants of Amalek... R. Nehorai says: This passage (*parashat ha-melekh*) was only in response to their (the people's) complaint, as it says "I will set a king over me..."

R. Yehuda understands the verses as commanding the appointment of the king, while R. Nehorai views them as a concession to the people. Among the medieval commentators, most followed the Rambam (*Hilkhot Melakhim* 1:1) who ruled in accordance with R. Yehuda's opinion, and holds that there is a positive commandment to appoint a king. However, the Abarbanel (see commentary to *Shemuel Aleph* chap. 8) defends R. Nehorai's position as follows:

"When the Torah says, 'When you come to the land... and you say: Let us appoint a king for ourselves like all the nations around us,' this does not constitute a mitzva at all. God did not command that they say this and request a king (as the Ramban had explained). Rather, this is foretelling the future. It means, after your settlement in the chosen land, the conquest and all the wars, and after the division [of the land] ... I know that you will be ungrateful and say of your own volition, 'I will set a king over me,' not out of necessity to fight the nations and occupy the land, for it will have already come under your occupation, but rather to render yourselves equivalent to the nations that crown kings over themselves. He mentioned that when this occurs, they should not crown that king based on their own will, but rather [they must crown] the one who God chooses from among their brethren... According to this, then, the issue of the king is a positive commandment that depends upon a voluntary situation, as if to say, when you want to do so, notwithstanding its impropriety, do so only in this manner."

Despite the near unanimous opinion among the medieval commentators that Jewish law rules in accordance with R. Yehuda’s viewpoint, the textual ambivalence at the beginning of the verse remains. The Torah could have easily phrased the command in a manner that left no room for doubt as to its intentions (for example, forgoing the second half if not all of verse 14 entirely). Why the need for the ambiguity? The Netziv (19th century) attempts to explain it by suggesting that unlike other commandments, with regard to leadership, coercion is not an option:

"'And you say: Let us appoint a king for ourselves' - This is does not imply 'saying' in the typical sense, that is, verbally (as the Ramban explained), but rather [it denotes the people's desire]... Indeed, from this expression it appears that this does not signify an outright obligation to appoint a king, but it is rather voluntary… However, it is well known in the words of Chazal [R. Yehuda] that there does exist a mitzva to appoint a king. If so, then why is [the commandment written in an equivocal fashion]? It seems that [this is] because national leadership changes [with regard to] whether it is controlled by the will of the monarchy or by the desire of the population and their elected officials. Some countries cannot tolerate royal authority, and other countries are like a ship without a captain when they do not have a king. This matter (determining the form of government) cannot be done according to a mandatory positive mitzva. For with regard to matters relevant to leadership over the nation at large, this involves issues of life-and-death that override a positive commandment.

Therefore, it was impossible to command in absolute terms the appointment of a king UNTIL IT WAS AGREED UPON BY THE NATION to tolerate the royal yoke based on their observation that the surrounding nations managed better [under a monarchy]. Only then is it a positive mitzva for the Sanhedrin to appoint a king. … This is why throughout the three hundred years that the Mishkan was chosen to stand in Shilo there was no king - because there was no consensus among the people."

According to R. Avraham Yitzchak haCohen Kook, the first Ashkenazic Chief Rabbi of Palestine, this is the underlying source of authority for any governing body that has ruled over the Jewish people throughout the ages, from the time of the Judges to present day democratic institutions.

"Since the laws of monarchy pertain to the general situation of the people, these legal rights revert [in the absence of a king] to the people as a whole. Specifically it would seem that any leader [*shofet*] who arises in Israel has the status of a king [*din melekh yesh lo*] in many respects, especially when it concerns the conduct of the people . . . Whoever leads the people may rule in accordance with the laws of kingship, since these encompass the needs of the people at that time and in that situation." (*Responsa Mishpat Cohen*, no. 143-4, pp. 336-337)

However, the careful reader should still be suspicious – are not the modern commentators reading their modern philosophical *Weltanschauung* into the text? Are there indeed the stirrings of democratic thought within these verses? Let us go back to the opening verses – once the decision has been made to appoint a king – who chooses who shall rule? According to the Ibn Ezra, who like the Abrabanel agrees with R. Nehorai to the optional nature of the appointment, the actual choosing remains in Divine hands:

"*'You shall appoint'* - this is optional;

"'*Whom G-d will choose'* - through a prophet or the decision of the *Urim Ve-tumim*; meaning - not someone whom you yourself will choose."

If, however, only Hashem can choose the king, how does one explain the verse’s closing: *Be sure to set as king over yourself one of your own people; you must not set a foreigner over you, one who is not your kinsman.* Surely Hashem would not place a stranger on the throne in violation of his own Torah? Therefore, the Ibn Ezra interprets the second half of the verse as “*be-derekh ha-emet*” – surely Hashem would not choose a foreigner to lead. The Ramban, however, views the second half of the verse as normative. The responsibility of choosing falls upon the people, and the limitations placed on their choices are real. How then should we explain the verse’s first half, which implies that Hashem is to choose the leader. He brings two possibilities. The first suggestion is that if you have the capabilities to have Hashem appoint a leader for you (through prophecy etc.), that is the ideal situation for the people; otherwise, they are to search for the leader themselves under the guidelines delineated in the second half. However, the Ramban brings a second approach that he views as the “*peshat*.” The choice of leader remains with the people. They are to pick a leader that is acceptable to Hashem, one of His beloved people. Most importantly, however, is that they recognize that, whomever they choose, that leader’s appearance was ultimately ordained from Above, for Hashem chooses all leaders. In an age where the democratization of government leads some to believe that just as they build up their leaders, they should engage in tearing them down as well. According to the Ramban’s understanding, the Torah means not only to limit the leader’s tendencies for self-aggrandizement, but the people’s as well. Only with a healthy relationship between all three parties, the leader, the Jewish people, and Hashem, will the promises and blessings so meticulously outlined in *Sefer Devarim* come to pass.