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PARASHAT HASHAVUA

PARASHAT SHOFTIM

**The Will of the People and the Authority of the King:
A Study of the Biblical Text**

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If we compare the unit in *Sefer Devarim* (17:14-20) dealing with the appointment of kings with the description of the respective coronations of Shaul, David and Shelomo, we find what appears to be a contradiction. The Torah tells us to “appoint a king over you whom the Lord your God shall choose” (*Devarim* 17:15). The verse seems to indicate clearly that the king is chosen by God and not by the people. Indeed, Ibn Ezra comments ad loc. that the selection may be done by a prophet or through the *Urim Ve-tummim*: “the meaning is that you shall not be the one to choose him.” In a similar vein, Rabbenu Nissim of Girona writes:

“When you come to the land” – When you are overcome with the desire to be like the nations around you, who are led mainly by their kings, then guard yourself so you will not want to be altogether like them, for they anoint over them the man whom they want the most. But you – your desire should not control you to that extent, such that even if you say, “I shall set a king over me like all the nations,” guard yourself so you do not anoint whomever you want; rather, the king should be him who the Lord your God chooses. And in the Sifrei it is written, “at the word of a prophet.”²

However, when we read how the process actually unfolds, as described in *Sefer Shemuel*, we find that the decisive factor in the choice of the king is in fact the will of the people.³ Various aspects of the textual account indicate this, as we shall see.

Shaul

Firstly, the idea of appointing a king in the time of Shemuel arises explicitly from the nation, when their representatives – the elders – gather before Shemuel and present this demand.⁴ Indeed, when God instructs Shemuel to appoint a king, despite the negative aspects of this institution, He emphasizes that the reason for this step is the will of the people.

Even after Shaul is anointed by Shemuel, the prophet, he is not yet the ruler. While his anointment transforms him into a different person, with a new heart imbued with the spirit of God,⁵ this is not yet sovereignty.

Moreover, even when the nation gathers at Mitzpa before God, and Shaul is appointed by Shemuel, this is still not enough to complete the process. Shemuel sets down the “rule of the king” and the people cheer, “Long live the king!”⁶ – but afterwards Shaul returns to his home in Givon and continues to work his field with his oxen. There are also worthless people who mock and taunt him, “How shall this man save us?”, and refrain from bringing tribute.⁷ Clearly, Shaul’s kingship is not concretized through his anointment by the prophet.

Shaul’s actual reign starts only after he forces the people to mobilize in order to save Yavesh Gilad and then emerges victorious in battle, delivering Israel like one of the great judges.⁸ Thus we see that Shaul has to prove his ability to mobilize the people for war and lead them to victory, in keeping with the element of charisma, which is decisive in the emergence of deliverers during the period of the Judges.

Despite all of this, Shaul does not extend his reign “retroactively” and punish those who have scorned him; he refuses to put them to death (11:12-13). His sovereignty is whole only when Shemuel tells the people (v. 14): “Come and let us go to Gilgal and renew the kingdom there.”

At this point, Shaul’s coronation is accepted and joyfully affirmed by the public (v.15):

And all the people went to Gilgal, and there they made Shaul king before God in Gilgal, and there they made sacrifices of peace offerings before God, and there Shaul and all the men of Israel rejoiced greatly.⁹

Thus, the story of Shaul’s coronation suggests that it is only the general acceptance of the people which establishes the monarchy over Israel.

David

David’s ascent to the throne is likewise a lengthy and gradual process. In the wake of Shaul’s sin in the war against Amalek, God tears the kingdom from his hands and David is anointed at God’s command by Shemuel (17:37). However, David does not start to reign, nor make any attempt to assert his authority, but rather continues to serve Shaul as a musician (*Shemuel I* 17:21-23), as a soldier (17:37) and as a commander of one thousand (17:18). Shaul remains, to the very end of his life, the lawful king in the eyes of the prophet, the people, and even David himself.

Nevertheless, David’s men – and especially Avishai ben Tzruya – want to treat David as though he were their lawful king, and they seek to kill Shaul in the wilderness of Ein Gedi (ch. 24) and later in the wilderness of Zif (ch. 26). They regard the opportunity afforded them to kill Shaul as a clear sign of God’s will that they do so:

¹ Based on *Ha-makor Ha-kaful* (Chapters 12-13). This *shiur* has been published in different versions in various publications as well as on my website.

² *Derashot Ha-Ran* (Feldman Edition, Jerusalem 5737), 11.

³ Cf. Rabbi Yitzchak’s statement in the Talmud: “A leader is appointed over the community only in consultation with the community” (*Berakhot* 55a).

⁴ See *Shemuel I* 8.

⁵ *Shemuel I* 10:9-10

⁶ *Ibid.* vv. 24-25

⁷ See *Shemuel I* 10:26 –27.

⁸ See *Shemuel I* 11.

⁹ Rashi ad loc. comments, “Because in the beginning [his coronation] had been questioned, and now everyone was agreeable.” His interpretation accords with that of Ramban; see below.

And the men of David said to him, "Behold the day of which God said to you, 'Behold, I will deliver your enemy into your hand, and you may do to him as it shall seem good to you.'"¹⁰

Apparently, then, David's men view the prophet's anointment of David as full and true coronation.

However, it is precisely with regard to this point that David disagrees with his men. In both instances he is vehemently opposed to the initiative of harming God's anointed – i.e., Shaul – and he leaves the manner and time of his ascent to the throne in God's hands.¹⁰ Moreover, even when David is persecuted by Shaul and forced beyond Israel's borders (ch. 26-27), he tries to save Shaul, whom he continues to refer to admiringly as "God's anointed" (*Shemuel II* 1:24-25).¹¹

Even the support of the tribe of Yehuda, and their coronation of David in Chevron, is not sufficient to make him king over all of Israel. In *Shemuel II*, David still treats Ish Boshet, Shaul's son, as the lawful king, and Avner ben Ner as the commander of the lawful army (ch. 3).¹² David is furious with Yoav and his men after the assassination of Avner (3:38-39), and he has Ish Boshet's murderers hanged – all in spite of the general atmosphere of support for David (3:17-18, 5:1-3), which is prevented from being actualized only because of powerful and influential figures such as Avner ben Ner (2:8-9, 3:9-10).

Only when there is overt, pervasive and official public support for David does he rule over all of Israel, in Jerusalem.¹³

This idea that the authority of the king is dependent on popular acceptance is also conveyed through *Chazal's* interpretation of the stories about David. In between the two chapters documenting the dispute between David and his men and the way in which David uses his power and charisma to prevent harm to Shaul, we find the episode of Naval the Carmelite.

Here, the picture is inverted, with David behaving in a manner reminiscent of his men in the cave, while Avigayil embodies David's fundamental position, this time vis-à-vis David himself. It is specifically for this reason that David praises Avigayil afterwards. David seeks to deal harshly with Naval because of the affront to his honor, but as she speaks his praises Avigayil hints to him that he is not yet king and therefore cannot behave like a king, although she wishes him to achieve that status.¹⁴ *Chazal* explain the dialogue between them in a way that emphasizes the contingency of the king's authority upon the acceptance of the people:

She said to him: "Are you then a king?" He said, "Did Shemuel not anoint me?" She answered, "Even though

Shemuel anointed you, Shaul's currency is still valid; your currency has not yet emerged into the world."¹⁵ Upon hearing her words, he began praising her. (*Midrash Shemuel* 23:12).¹⁶

Even clearer – and no less surprising – support for this idea is to be found in the description of David's flight from his son Avshalom. David refuses to assert his authority as king even against his own son who rebels against him. In declining to take with him the Ark of God's Covenant, in which the source of his authority as king by the word of God is anchored, David in fact behaves like a king who has been deposed (*Shemuel II* 15:25-30).¹⁷

David has plans for escape and rescue, even sending his men to fight against Avshalom's army, by virtue of the support he still enjoys. However, since the authority of his sovereignty has not been renewed by the entire people, David does not behave like the king of Israel, until he returns and crosses the Jordan with all the people's consent (19:10-20).¹⁸

Thus, we find a broad parallel between David's behavior towards Shaul and his behavior towards Avshalom. His attitude towards Amasa ben Yeter, the commander of Avshalom's army, likewise resembles his attitude towards Avner.¹⁹

From *Sefer Shemuel* we learn, then, that not only is the king's ascent to power dependent on the will of the people, but so is his continued reign. If the king loses the support of the people, he loses his status and his throne.

Chazal note the decline of David's status as king during the period of his son's rebellion: "Throughout the six months that David was in flight from Avshalom, a she-goat would atone for him, like any regular person." (Yerushalmi, *Horayot* 3:2).²⁰ In other words, the sin offering that he would need to sacrifice, in the event that he committed any transgression, would be the same as that of any regular person, rather than the special sin-offering of the king.

Ramban's interpretation of the unit on the king

Getting back to *Sefer Devarim*, we find that the interpretation adopted by Ibn Ezra and Ran is not the only possibility; in fact, it entails a textual difficulty, as Ramban explains. Ramban offers a different understanding of the unit about the king. After citing Ibn Ezra, Ramban points out the problem raised by the continuation of the verse: "From among your brethren shall you set as king over you; you may not set a stranger over you, who is not your brother" (*Devarim* 17:15).

¹⁰ "And David said, 'As God lives, God shall smite him, or his day shall come to die, or he shall descend into battle and be swept away. God forbid that I should stretch out my hand against God's anointed...'" (*Shemuel I* 26:10-11).

¹¹ Indirectly, through the arguments of the officers of the Pelishtim, the text reveals David's plan to save Shaul in the war at Gilboa; see *Shemuel I* 29:4-5.

¹² This is the background to the war in Givon between Yoav and David's servants, on one side, and Avner and the servants of Shaul, on the other – a war that started only because of Avner (*Shemuel II* 2:26-28).

¹³ See *Shemuel II* 5:1-3 and *Divrei Ha-yamim I* 11-12.

¹⁴ "And it shall come to pass when God shall have done to my lord according to all the good that He has spoken concerning you, and shall have appointed you ruler over Israel, that this shall not be a cause of stumbling to you... that you have shed blood without cause." (*Shemuel I* 25:30-31)

¹⁵ In other words, commercial life is still conducted on the basis of coins minted by Shaul; coins honoring David are not yet legal tender in the realm. For more on the acceptance of the king's coins as legitimizing his sovereignty, see below Ramban's discussion, *Laws of Theft* 5:11-18.

¹⁶ See also *Megilla* 14b; Yerushalmi *Sanhedrin* 2:3; Ramban, *Laws of Theft* 5:18.

¹⁷ See also the curse of Shimi ben Gera (*Shemuel II* 16:5-8) and David's second response to Avishai ben Tzruya, who seeks to defend David's honor (ibid. vv. 10-12).

¹⁸ The public support for David is not universal. The men of Yehuda do not wait for the majority of Israel, and a rebellion erupts – but Sheva ben Bikhri does not manage to consolidate any support.

¹⁹ See also *Melakhim I* 2:5, where David explicitly refers to them together.

²⁰ In accordance with *Vayikra* 4.

If the appointment of the king is dependent on prophecy alone, then there is seemingly no reason for this warning, since obviously God would not appoint a non-Jew. Therefore, Ramban ad loc. writes:

My understanding of the plain meaning of “whom the Lord your God shall choose” is that anyone who rules over a nation is divinely sanctioned... As *Chazal* teach, “Even the official responsible for sewage is appointed by Heaven.” In other words, you shall surely set a king over you – whoever has been decreed by Heaven to reign, even if he is from the smallest of the tribes of Israel and from its youngest family – but a foreigner may never be king over you.

According to Ramban’s understanding, even in the command as set down in *Sefer Devarim*, the choice of the king is left to the people. Moreover, their choice is in fact the revelation of God’s will. Of course, this contrasts sharply with the interpretations of Ibn Ezra and Ran.

The advantage of Ramban’s explanation is that it fits better with the plain meaning of the textual unit in *Sefer Devarim*, which stipulates one single, absolute criterion: a foreigner may not be appointed king over Israel.

According to Ramban, then, as well as according to the plain meaning of the text – especially as arising from *Sefer Shemuel* – the appointment of the king and the validity of his reign are dependent on popular will and acceptance.

The king has a dual source of authority: he is chosen by God and accepted by the people. In fact, these two sources are interwoven. It may be that prophecy comes to indicate the proper candidate, and then the consent of the people is sought; or it may be that the people wants a certain candidate, and he then requires prophetic approval. In the absence of explicit prophecy or the *Urim Ve-tummim*, the vote of the people remains the king’s only source of authority.²¹

We cannot ignore the significance of this point in relation to the status of the democratic regime in the State of Israel, which is elected by the people. There is a widespread “religious” argument that democracy is a form of government that is fundamentally contrary to Torah, and therefore the laws and directives of the state lack binding religious validity. Based on the above discussion, it would seem that this form of government actually has a solid basis in the Torah.

Popular will and royal authority: halakhic discussion

It is important to note that Ramban, in his *Mishneh Torah*, presents two parallel forms of government. One is the ideal system of rule that is described in the *Laws of Kings*. The other is a this-worldly, realistic administration that is described in the *Laws of Theft*. The ideal reign is dependent on prophecy and the Sanhedrin, and its purpose is *tikkun olam*, the victory of the “true faith” and dealing a blow to wicked people, so that the world will be full of

²¹ This is Ramban’s explanation of *Chazal*’s position in Midrash Halakha. However, according to his own opinion, in accordance with the simple meaning, even in this case the dual source of the king’s authority remains in place, since God’s will is expressed through the vote of the majority.

²² This law is based on the episode of Navot’s vineyard and the sin of King Achav, who tries to seize it. After killing Navot and inheriting his vineyard through aggression, Achav pays with his life (see *Melakhim I* 21). Cf. Tosafot, *Sanhedrin* 20b.

²³ The use of the term “bandits” appears to refer to the statement in the Yerushalmi (*Horayot* 3:2) that after the dynasty of Yehu, the

righteousness. The realistic model of government is depicted in far more limited terms. In this model, a foreign king is equivalent to a Jewish king, so long as two fundamental conditions are fulfilled:

- a. All citizens are equal before the law.
- b. The king’s currency must actually be in circulation and in use, expressing popular acceptance of his reign.

Ramban writes:

For the law established by the king is binding law... whether the king is Jewish or not... The general principle is that any law that the king legislates for universal application, not applying it merely to one individual, is not considered robbery. But wherever [the king] takes from one particular person, in a manner that is not legal, but rather represents arbitrary seizure, this is considered robbery...²² When does this apply? When the coins issued by the king are the tender of the land, indicating that the inhabitants of that land have accepted him and consider him to be their ruler and themselves to be his subjects. But if the coins he issues are not the tender of the land then he is considered as a robber who seizes through aggression. Like a gang of armed bandits whose laws are not binding, so the king and all his servants are considered as robbers in every respect. (*Laws of Theft* 5:11-18)²³

While Ramban, too, rules that the validity of the king’s authority is dependent on popular acceptance, he describes a passive form of acceptance consisting merely of day-to-day use of the king’s currency. This rather diminished manifestation of popular acceptance is sufficient to bestow upon the king the right to rule, to the extent that “they consider him to be their ruler and themselves to be his subjects”. Without this minimal acceptance, however, the king and his officials are robbers and bandits in the eyes of Halakha.

The power of the king’s authority therefore lies in the hands of the people, and they are free – at least in terms of a decision in principle – to choose who will receive that power. In this sense, Ramban anticipates the classic political philosophers who seek a basis for the earliest democratic principles, such as the rule of the people and the idea of a social contract.²⁴

Conversely, we also learn from Ramban about the boundary of what is permissible in an uprising against a cruel and halakhically undesirable regime. The only action that the individual is (halakhically) entitled to undertake against the ruler is to cease using coins minted by the king – or, in modern terms, to cease commercial activity conducted in accordance with the rules set down by the regime.²⁵ The use of violence to transfer power is forbidden by halakha just like violence in any other context. According to Ramban, the halakhic test for the lawfulness of the king is regular commercial activity in accordance with the directives of the regime and under its supervision, in cooperation with the citizens.

kings of Israel seize power “by banditry” and their reign has no validity.

²⁴ See, for example Thomas Hobbes, *Leviathan*; John Locke, *A Second Treatise of Government*.

²⁵ It seems that the idea of the king’s coins as tender in the land should be understood in the broader sense – in other words, as an example of all commercial activity being regulated by the king, since Ramban himself views this as an indication of the people’s consent.

We find a similar principle, with far-reaching ramifications, among some of the later halakhic authorities. Based on the fact that the text (*Sefer Devarim*, in the unit on the king) makes the appointment of the king dependent on the will of the people, Rav Naftali Tzvi Yehuda Berlin of Volozhin concludes that the will of the people is the decisive voice. In his view, the will of the people affects not only the identity of the king, but also the nature of the regime. In other words, any form of government that is chosen by the people is valid in terms of Halakha:

The government of a state is different if it is run at the discretion of the monarchy, or in accordance with the opinion of the people and its representatives. There are states that cannot tolerate a monarchy, while others, in the absence of a king, are like a ship with no captain. And so this matter cannot be mandated by a positive commandment... For this reason it is impossible that there be an absolute commandment to appoint a king, so long as the people do not yet consent to suffer the yoke of a king after seeing the states around them functioning better [with a king]. (*Hamek Davar, Devarim 17:15*)²⁶

A similar (although not identical) idea is formulated by Rav Kook, who was a disciple of Rav Berlin. His words in this regard are often cited as a great innovation, but they are actually the obvious conclusion to be drawn from the chain of main points discussed above. According to Rav Kook, the source of the king's authority is to be found in the people itself. Therefore, if there is no king who stands at the head of the people, the authority reverts to the people and they may decide autonomously who should lead them and how. The leadership figure(s) and model chosen by the people have essentially the same authority as that of the king:

It seems that when there is no king, being that the king's laws also relate to the general welfare of the nation, the rights of those laws revert to the nation as a whole.

In particular, it would seem that every judge that arises in Israel is regarded as a king with respect to some of the laws of the monarchy, and especially with respect to public leadership... For with regard to the laws of the monarchy as they pertain to public leadership, the judges and princes are also generally accepted; they stand in place of the king. (*Mishpat Kohen, Responsum 144*)²⁷

At the same time, it should be noted that all the halakhic authorities emphasize that while the public has the power to imbue the regime with validity, the public does not have the power to appoint a ruler to uproot the laws of the Torah.

This conclusion sits well with the dual source of the king's authority – God's will and popular acceptance. The will of the people must accord with the will of God – or, at least, not go against it.

The fundamental structure of government according to Torah

The fundamental assumption that the ruler of Israel draws the binding religious validity of his reign from a dual source of authority is reflected in the structure of the administration and division of authority as set forth in the Torah.

In *Sefer Devarim*, the Torah defines four separate authorities: the judges, the king, the *kohanim*, and the prophet. There are clear internal connections between these authorities, and especially between the judges and the *kohanim*, on one hand, and the king and the prophet, on the other.

At the center of this structure is the contrast or tension between the monarchy and the priesthood.

The *kohanim* and the judges are mentioned together in the unit stating the obligation of going up to God's chosen place when a supreme legal or religio-halakhic ruling is sought:

If there arise a matter too hard for you in judgment, between blood and blood, between plea and plea, between plague and plague, matters of controversy within your gates, then you shall arise and go up to the place which the Lord your God shall choose, and you shall come to the Levitical priests and to the judge that shall be in those days, and inquire; and they shall tell you the sentence of judgment. (*Devarim 17:8-9*)

In other words, the Levitical priests and the judge function jointly as the body that bequeaths, inculcates and teaches Torah, as well as adjudicating its laws. Indeed, the supreme judges (the judges of the Great Court in Jerusalem) sit at the Temple. The local and regional courts that are likewise mentioned in this unit, located "in all your gates" and "by your tribes" (*Devarim 16:18*) are subservient to the Great Court in Jerusalem. This court sits in close proximity to the *Kohanim* and the Levites who serve in the Temple.²⁸ Notably, the definition of the Temple as the exclusive domain of Levitical priests is bound up with their separation from the rest of the nation, insofar as they have no portion in the land (*Devarim 18:1-5*).

In contrast, the king must operate "in the midst of Israel" (*Devarim 17:20*), and likewise the prophet arises "from among their brethren" (*Devarim 18:18*). The units dealing with the king and the prophet are introduced by the connection between them and the land, as a contrast to and rejection of the culture of the pagan nations. In other words, the king and the prophet are responsible for the people in its inheritance in the land.

On one hand we have the system of the priesthood, which dwells "in the place which God shall choose," including the justice system as well. On the other hand we have the system of political leadership, including the prophet.

In what way do these two systems differ?

The essence of the leadership of the king and the prophet is guidance of the people in accordance with the conditions and exigencies of place and time. In *Tanakh*, prophecy comes not to inculcate the fixed, eternal principles of Torah, but rather as part of the leadership of the nation in a given situation, with consideration for diverse and changing circumstances. It is for this reason that prophecy rarely deals with statutes, *mitzvot*, and Halakha.

The Torah is conveyed by Moshe to the Levitical priests (*Devarim 31:9, 24–26*). According to our discussion above, the priesthood and the courts are institutions that instruct and guide *Am Yisrael* in the fixed way of God. Therefore, according to Halakha, the king and even the prophet have no authority to teach its laws

²⁶ At the same time, he emphasizes that all of this applies to the nature of the regime but not to justice, since "it is forbidden for us to depart from the laws of the Torah."

²⁷ Rav Kook bases his opinion here on Rambam: "The Exilarchs of Babylonia are considered like [literally, replace] the king." (*Laws*

of Sanhedrin 4:13). To this Rav Kook adds (*ibid.*), "How much more so the princes, who are generally accepted by the nation when it is upon its land and under its own rule, on whatever level."

²⁸ See Sifrei, *Shoftim 152*; *Sanhedrin 88b*; Ramban, *Devarim 17:11*; Rambam, *Laws of Rebels 1*.

or define it (Rambam, *Laws of the Foundations of the Torah* 9). The king may punish in response to a specific situation, even not in accordance with the laws of the Torah, but he cannot adjudicate Torah law – and he is certainly not entitled to uproot biblical rules and change them permanently.²⁹

In the same way, the prophet (according to Rambam, following *Chazal's* teachings) is entitled to change or even uproot a mitzva of the Torah only in the context of a specific situation, not as a permanent state of affairs.³⁰

The fundamental distinction between the king and the *Kohen* reflects a model that mandates the separation of powers long before the modern period. As noted, the origins of this distinction go back to the leadership of Moshe and Aharon, who share the leadership, with Aharon serving as *Kohen* and Moshe as the prophet. *Chazal* note this separation of powers and teach that “*Kohanim* are not anointed as kings” (Yerushalmi, *Horayot* 3:2).³¹

Moreover, the Halakha states that every individual bows before the king, even a prophet – but not the *Kohen Gadol*, who “does not bow down before the king, nor does he appear before him unless he so chooses” (Rambam, *Laws of Kings*, 2:5). This law expresses the independence of the *Kohen Gadol* in relation to the king and the separation of powers between them.

Thus we find that the system of ruling in the Torah entails two centers of power, each comprising two authorities. One center is the religious authority, consisting of the *Kohanim* and the judges. The other center consists of the practical, political leadership, combining the king and the prophet – who are sometimes at odds.

These two nuclei parallel the model of government described by Rabbenu Nissim in his teachings, featuring the power of the judge and the power of the king: the power of the judge to issue righteous judgment, and the power of the king to lead and to rule in accordance with the circumstances and exigencies of place and time.

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²⁹ Rambam, *Laws of Kings* 3:9-10; *Laws of the Sanhedrin* 18:6.

³⁰ Rambam, *Laws of the Foundations of the Torah* 9:3-5. With regard to engaging in idolatry, the prophet has no authority to change Halakha, even as a temporary measure; and a ‘prophecy’ mandating idolatry represents the gravest form of false prophecy (see *Devarim* 13:2-6).

³¹ See also Ramban’s commentary on *Bereishit* 49:10 concerning the sin of the Hasmoneans in taking the “crown of kingship” for themselves in addition to the “crown of priesthood” which they already possessed.