



JEWISH POLITICAL THEORY: HILKHOT MELAKHIM

SHIUR - Lecture #3:

Practical and Sacral Elements of Kingship

By:

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In previous shiurim, we examined the mitzva of appointing a king and attempted to put forward the thesis that there is a dual element involved in the mitzva: a) appointment of a sovereign who has the authority of government as the state's executive arm; and b) the personal election of a monarch as representative of Divine action and presence upon earth. In this capacity, he is a sacral figure, sharing certain common characteristics with a kohen (gadol). This latter role is unique to the Davidic lineage and does not apply to other monarchs.

Having established this general principle, we must now elaborate the ramifications of these dual elements.

The first of these is the status of a non-Davidic king. Based upon the above, all powers of government required for the state to function are invested in a legitimate acting ruler, even if he is not of Davidic lineage or even a monarch. The gemara in Yoma (73b) states that only a king can submit requests to the Urim Ve-tumim, and that the source for this are the verses relating to Yehoshua bin Nun:

"Only the king or the Head of the Court or one whom the community requires may inquire of the Urim Ve-tumim' (Mishna Yoma 71b) - From where do we learn this? R. Abbahu answered: From the verse, 'And he [Yehoshua] shall stand before the kohen, who shall ask counsel for him after the judgment of the Urim ... [at his word they shall go out, and at his word they shall come in, both he, and benei Yisrael with him, even all the congregation' (Bemidbar 27:21): 'he' refers to the kohen anointed for war; 'even all the congregation' refers to the Sanhedrin."



This, though, raises an obvious question. The gemara proves that only a king can use the Urim Ve-tumim by citing a verse relating to Yehoshua, who wasn't a king himself but rather a shofet (leader). At first glance, it would seem that rather than proving its point, the gemara is actually contradicting itself. However, the answer is simple. Had the privilege of using the Urim Ve-tumim been due to the sacral element of the kingship, which would have enabled him to communicate with God in a more direct manner (similar to the halakha permitting him to sit in the mikdash), then it would indeed apply only to bona fide Davidic kings. However, if use of the Urim Ve-tumim is not a personal prerogative but rather a tool available to the public to assist ii in determining public policy, then it is available to any person leading the public on issues of public security. Since Yehoshua was the head of government, it is he who can use the Urim Ve-tumim, and for these purposes he is called "melekh," which here means "head of government." Therefore, we can conclude that Yehoshua and other non-Davidic rulers are considered melekh (sovereign) on all issues of government, but not on issues of personal status. Thus, the Rambam (Hilkhot Melakhim 1:3) cites the example of Yehoshua as a source for the halakhot regulating the election of a king, since he deals with the selection process as a mechanism to choose a head of government, and not as a means of designating God's chosen.

This principle is explicit in the Rambam's treatment of the status of a non-Davidic king.

"If a prophet appointed a [non-Davidic] king, and that king followed the path of the Torah and the mitzva and fought God's battles, then he is [indeed] a king and all the laws of monarchy apply to him, despite the fact that kingship principally applies to David and there will be a king of his seed. For Achiya Ha-shiloni appointed Yeravam king and told him, 'If you hearken to all that I command you ... then I will build you a sure house, as I built for David ...' (I Melakhim 11:38). And Achiya also told him, 'And to [Shlomo's] son I will give one tribe, that my servant David may have a lamp always before Me in Jerusalem ...' (11:36)."

As can be seen, such a king has legitimacy, yet is inferior to a Davidic king regarding the dynastic element and the form of anointment. The legitimacy is due to his capacity as an active ruler, while the lack of a dynastic element reflects the fact that the perpetuation of the



monarchy in a single family is not an issue of government but of personal status. This same point, though cloaked in somewhat different terminology is made by the Ra'avad (Hilkhot Melakhim 1:9) and especially by the Ramban (Bereishit 49:10) who states that "Even though Israel may appoint themselves a king from another tribe, according to the needs of the hour, this king is not to be anointed, so that he will lack the splendor of majesty and will instead be like a judge or officer."

This is exactly the point that he is making: for the practical needs of government ("tzorekh ha-sha'a"), such a person is the recognized ruler, but he lacks the glory ("hod malkhut") since that is a function of the kedusha inherent the melekh as a sacral figure which is unique to Davidic kings.

The same principle holds true in the opposite case, i.e., a Davidic king who has lost his practical authority. If the issue at hand is an issue of government, then he is not considered a king, while if we are dealing with a halakha relating to his personal status, then he retains his status as a royal. (To make the same point in "yeshivish"/Brisker terminology, he has a *chalut shem melekh be-gavra* but he cannot perform the *ma'aseh* of governing.)

This distinction is brought home by the sugyot relating to the nasi (ruler). The nasi, if he sins, does not bring the usual *korban chatat* (sin offering) but rather a special *chatat*, specifically designated for him (see Vayikra 4:22-26), just as the kohen gadol brings a *korban* which is unique to him. As explained in the mishna in Horayot (10a), the nasi referred to in the pasuk is the king: "Who is the 'nasi?' It is the king, as it is written ... [If he transgresses any of the commandments of the Lord HIS God." Thus, both the king and the kohen gadol have special *korbanot*. However, the opening mishna of the third perek in Horayot determines that a retired kohen gadol (*mashuach she-avar*) brings the special kohen gadol *korban*, while a retired (or deposed) king does not. Based upon the above, the meaning of this is that the kohen gadol's sacrifice is a function of his personal sanctity and is not due to his job as the chief kohen. This is attested to by the fact that the mishna there states that only a kohen gadol who has actually been appointed brings the special *korban* and not a functioning kohen gadol who hasn't been anointed (*merubeh begadim*), the difference between them being in their respective levels of kedusha and not in their functions in mikdash.



The status of nasi, however, is not a function of one's personal kedusha but of his office. This is attested to by the very fact that he is described as a nasi rather than a melekh (i.e., he is defined in terms of the authority of his position rather than his royal title) and by the fact that the gemara (11a) considers various people in positions of authority (such as the tribal nasi) and determines that the level of authority is the deciding factor. (See Rambam, *Hilkhot Shegagot* 9:10.)

Therefore, if the king is an active king, accompanied by all the dangers and temptations of abuse of power, there is a special chatat to emphasize the dangers involved in his power, while a retired king, who has forfeited his power, brings a regular individual chatat. Actually, any king stripped of his authority reverts to the regular chatat. Thus, the Yerushalmi in *Horayot* states in a famous passage that even David Ha-melekh himself did not bring a royal chatat during the period that he was in exile escaping from Avshalom's revolt.

In conclusion, a few observations should be made regarding the application of this principle in relation to various biblical episodes.

A. Yehoshua, as mentioned above, was a functional king without the personal status of the melekh as a meshiach Hashem (anointed of God). Therefore, whatever halakhot of kingship apply to him can be understood to relate to all rulers. The practical ramifications of this will be dealt with in future installments (*bli neder*).

Though this interpretation is the one which we have adopted and which seems to explain the status of Yehoshua as presented in the biblical and rabbinic sources, mention must be made of the fact that the *Mekhilta* (*Shemot* 17:14) claims that Yehoshua was actually anointed. (However, it doesn't specify if *shemen ha-mishcha* was used or not.)

B. The status of Shaul is unclear. Was he intended to be only a functional ruler or also a royal king with the kedusha of *malkhei beit David*? This, too, will be dealt with at a later stage of the course (*bli neder*).

C. The verses describing the loss of Rechavam's kingdom are careful to use the phrase "*mamlakha*" which denotes only the power of government Yerovam is handed over the reins of power, but a symbolic enclave of Yerushalayim and its surroundings is left to Rechavam,



as the offspring of David, who represents the element of the election of beit David (see I Melakhim 11).

D. The Rambam recognizes the legitimacy of later sovereigns, though non-Davidic. Thus, aside from the halakha quoted above regarding non-Davidic kings, the Rambam also mentions the fact of Hasmonean monarchy as a positive value (Hilkhos Chanuka 3:1) and describes the Exilarch (Reish Galuta) as having kingly authority (Hilkhos Sanhedrin 4:13).

Thus, the dual element of kingship expresses itself on all levels. In following shiurim we shall examine many of the details of monarchy and government, exploring both the ideal system the Halakha wishes to set up as well as the practical significance of these laws.

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