



JEWISH POLITICAL THEORY: HILKHOT MELAKHIM

SHIUR - Lecture #4:

Past and Present Governments

By:

Rabbi Mosheh Lichtenstein

Our previous shiurim focused upon the dual elements of personal status and power of government involved in the concept of kingly rule. Though not wanting to belabor the point any further and eager to move on to its significance for our present-day situation, there is nevertheless an additional Talmudic source which is so prominent in this regard, that we must first present it, prior to moving on to the political status of Medinat Yisrael according to Halakha.

The gemara which I am relating to is an Aggadic passage (Megilla 14b) which tells the story of Abigail's persuading David not to kill her husband, Naval. The gemara relates that Abigail met David, who was planning a night-time raid upon Naval, and demanded to know how he could conduct a nocturnal tribunal - "Do we judge capital cases at night?" This brought about the following exchange:

"He said to her: [Naval] is a rebel against the monarchy (mored be-malkhut) and therefore does not need to stand trial" [since mored be-malkhut doesn't require due procedure - see Tosafot ad loc. and Chiddushei Ha-Ran Sanhedrin 36a]

"She said to him: Sha'ul is still alive and your nature [i.e., your kingship] has not yet become public."

This gemara is presenting the issue which we have been dealing with as a debate between David and Abigail. David's status at the time is a halfway status. He has been anointed by Shemuel, yet Sha'ul is the acting monarch. Naval's insults towards David were perceived by David as insults towards a representative of God, similar in their nature to defaming the priesthood. Abigail's response, though, is that mored be-malkhut is not a



function of personal status but of authority; the rebel is perceived as a threat to state security and as a danger to public stability. Therefore, even though David has achieved the sanctity of the anointing oil, he has not yet arrived at a position of sole authority. Thus, the gemara considers the dual elements of the royal person vs. position and presents it as the subject of a debate between two biblical heroes. The author of the Mishneh La-melekh, in his work Parashat Derakhim (Derush) elaborates upon this principle and interprets many additional episodes in Tanakh as based upon this issue. Thus, he focuses upon the episode of Shim'i ben Gera's curse of King David (while the latter was fleeing his rebellious son Avshalom) and explains the various positions expressed by the participants as reflecting their position vis a vis the question.

"Avishai ben Tzuria responded: Shall not Shim'i be put to death, for he has cursed the anointed of God?" (II Shemuel 19:22). As the Parashat Derakhim points out, the pasuk here deliberately uses the phrase "meshiach Hashem." Since David has fled Yerushalayim and is no longer in a position of power, Shim'i can be blamed only if the prohibition of mored be-malkhut relates to David's personal status of meshiach Hashem. This is the position taken by Avishai; David, however, who has accepted Abigail's claim that mored be-malkhut is a function of political authority, rejects Avishai's position and focuses the issue upon the concept of melekh in the following verse.

A careful reading of the opening chapters of Sefer Melakhim will reveal that David's instructions to Shlomo and Shlomo's actions in fortifying his position as king revolve around this issue as well. There, too, Shlomo's acts seem to be predicated upon the assumption that a king may punish for treason only when his authority is threatened.

Actually, the conclusion that mored be-malkhut is contingent upon a threat to the sovereign's authority should not come as a surprise. The pasuk which establishes the halakha of mored be-malkhut is the pasuk in which Yehoshua's authority is accepted by the tribes of Gad and Reuven (see Sanhedrin 49a and Rambam Hilkhot Melakhim 3:8). Since Yehoshua represents the functional, non-sacral element of monarchy, a source concerning his authority will obviously relate to the power of government rather than the personal status, and, therefore, Abigail's position is accepted.



Having spent much time dwelling upon the issue of governing authority versus personal status, we should now ask ourselves what are the practical ramifications of these elements for our present-day situation.

The answer, based upon the above, is quite simple. Obviously, all halakhot which are a function of personal status do not apply to a present-day head of state in the State of Israel, who is not a king and especially not a Davidic monarch, nor do the halakhot of personal status apply to the government as a whole.

However, those elements of *Hilkhot Melakhim* which establish the authority of the *malkhut*, whose function is to provide for a working government, should apply to present-day governments. The state has replaced the court as the arm of government; however, the function and authority of both serve similar purposes. Therefore, regarding taxation, foreign policy, use of the *Urim ve-Tumim*, treason, etc., the authority of contemporary governments should be recognized by *Halakha*.

If, as we saw in previous *shiurim*, various non-Davidic governments, such as the kings of Israel during the First Temple, the Hasmonean kings and even the *Reish Galuta* (*Exilarch*), were recognized as having the power, if not the "*hod malkhut*" (*majesty*), of monarchy, so too should republican governments have this authority. Even lacking a single leader with unlimited power, this should not change the picture, since it is the authority of the governing body as such, and not the individual, which is the source of authority.

Based upon the above logic (presumably), *Rav Kook* claims in a famous responsum (*Mishpat Kohen siman 144*) that when there is no monarchy, the authority of government reverts to the people who can exercise it through their chosen representatives. If the issue is one of government, and the authority is granted to certain individuals to provide for the public needs (such as *Yehoshua* or *Yerov'am*), there is no reason to necessarily limit it to an individual ruler and to exclude either a group or the representatives of the public.

This may be contingent, though, upon such rulers having reached their positions of power by means which the Torah recognizes as legitimate and upon their ruling in accordance with policies which are acceptable to Torah values; therefore, we cannot reach at this stage a final conclusion regarding our current political reality. All that can be established



at this point is that all the halakhot which apply to the malkhut, as opposed to the melekh, can be transferred to a legitimate non-monarchical regime.

Having claimed in previous shiurim that Sefer Ha-chinukh believes that the Torah demands a lone ruler as a political necessity, it would seem that he would deny the legitimacy of a multi-person system of government as such. However, though it is undoubtedly clear - as was explained in previous shiurim - that he indeed insists upon choosing such a leader and would claim that our current system is not what the Torah desired, this does not necessarily mean that he would deny the prerogatives of power to rulers governing under a different system. Be-di'eved, ex post facto, it too is granted authority, despite the fact that it should not have been originally established.

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