Varieties of Political Leadership in Jewish Tradition

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Introduction:

 Malkhut (kingship) is not a Jewish concept in origin. The *Torah* mentions kings, queens and pharaohs throughout its canon; however, until the Prophets, the third book of *Nevi'im*, none of the royal officials mentioned were Jewish.

Pre-Monarchic Jewish Leadership:

 Although there was no official *melekh* (king) during the time period in which the Jewish people conquered and settled in the land of Israel, there were authority figures referred to as *Shofetim* (judges), who would arise during a time of need, such as when there was a war to fight, or during an episode when the Jewish nation was engaged in sin and in need of collective repentance. The second chapter of the Book of *Shofetim* describes the typical cycle of Jewish existence at the time—obediently worshipping God; forsaking God for idolatry; God's retribution via attacking enemy nations; the Jews crying out to God for mercy and deliverance; and God answering their prayers by sending a worthy *Shofet* to lead the Jews to victory against their enemies and ultimate return to God. Invariably, after several decades of peaceful national existence as a God-fearing nation, the Jews would return to their idolatrous ways and the cycle would begin again (Judges 2:7-21).

 During times of peace and tranquility there were no notable Jewish leaders holding political positions of authority on a national level, with the exception of the *Zekeinim* (the Elders); as noted in Judges, the *Zekeinim served* only at the very end of *Yehoshua*'s life. (Judges 2:7). The role of the *Zekeinim* was established by *Moshe*, who deputized them in the desert (*Shemot* 18) to assist him in teaching *Torah* to the Jewish people and issuing legal rulings based on *Torah* law.

Though the *Zekeinim* were essentially communal leaders, they had very limited ability, and perhaps capacity, to guide the people from going astray. A thorough analysis of both Books of *Yehoshua* and *Shofetim* would reveal that only a *Shofet* had the ability to actively change the trajectory of the Jewish people to guide them back to living in accordance to God's will.

The times when the *Zekeinim* were charged with the role of localized *halakhic* arbitrators, could be otherwise categorized as an anarchy, with each man responsible solely for himself. (Jewish Virtual Library) During such times, a national leader could only rise to power at the rank of leader when God would determine that it was time to retrieve His people from the brink of moral and spiritual degradation.

Leadership Titles:

Throughout history, the Jewish people have assigned different titles for their leaders. *Moshe* was referred to as "*Rabeinu*" (our teacher) and as an "*Eved Hashem*" (The Servant of God)[1]. Aharon was called the "*Kohen Gadol*" (The High Priest). There were the *Zekenim* (the Elders); *Shofetim*, who acted as judges and arbitrators; and the twelve individual *Nesi'im* (princes), each serving as leader of their individual tribe. When the Jews asked *Shmuel to* appoint a king to rule over the Jewish nation, the *Navi* responded with great indignation, evoking emotions that ranged from deep personal insult to abject horror. He demanded to know how a nation who adhered to the Supreme King desired to have a mere mortal to rule over them? What role could a human king possibly play that was necessary and different from God's? And wasn't

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[1]Based on the pasuk in Devarim (33:5) "*Vayehi Beshurun melekh*", *Vayikra Rabbah* (31:4) explains *Moshe* was actually selected by God to be the first Jewish *melekh* in the land of Israel. However, once Hashem barred him entry to the land of Israel, Moshe lost his right to the throne. It would then take centuries before a human *melekh* would rule over the Jewish people in the Land of Israel. Additionally, in *Hilkhot Melahkim* 1:3, *Rambam* seems to imply that both *Moshe* and *Yehoshua* were considered kings. *Rambam* was also of the opinion that *Moshe* was the paradigm of Plato's philosopher-king.

there already a *navi* who served to bridge the gap between the Jewish people and their God? (1 Shmuel 7:9)

Various commentators discuss *Shmuel's* response. Notably, the 14th century Torah scholar, *Rabbenu Nissim* of Gerona (known as the *Ran*) interprets this request not as a referendum on *Shmuel's* abilities, or lack of abilities, as a leader, but rather as a manifestation of the people's desire to mimic the governmental and political systems of their non-Jewish neighbors. Evidence of this can be seen in how God comforts *Shmuel:* "This is not a rejection of you, it is a rejection of Me' (*Derashot HaRan* 11)." These ideas will be discussed below during an analysis of why *Shmuel* took personal offense towards the request for a king.

Is There a Command to Appoint a King?:

When discussing the installation of a *malkhut* for the Jewish people, one must distinguish if a kingship is a biblical commandment or an accommodation manufactured to fulfill a request made by the Jewish people. The basis of this confusion is a seeming contradiction in the two places in *Tanach* that discuss the appointment of a *melekh*.

The first time it appears is in *Parashat Shofetim*, *(Devarim* 17:18) in which the command to appoint a king is given. The second place is in *Nevi'im*, in *Sefer Shmuel I*, in which the *Zekeinim* and the nation ask *Shmuel* for a *melekh*. *Shmuel's* horrified response described in the latter source suggests he does not believe it is a positive biblical commandment to appoint a *melekh*.

The *Tosefta* in *Sanhedrin Bavli* 4 discusses a three way *makhloket* (debate) that seeks to reconcile *Shmuel's* seemingly personal affront to a request to help the Jews fulfill the positive

commandment of appointing a *melekh*; a request one might expect *Shmuel* to view as an admirable desire to follow God's law.

One idea was that the people were not ready to have a *melekh* as *Shmuel* was still leading them effectively. Another opinion was that the passages in *Shofetim* were not intended to indicate another *mitzvah*, but rather it is mentioned because God knew that the people would want a king and, therefore, pre-empted their request by establishing parameters to protect them from the tendency for leaders to abuse their at the expense of those they lead. The third response was that whereas the *Zekeinim* presented this request for a *melekh* based on a lofty desire to fulfill a biblical commandment, the lay people were motivated by their debased desire to be like the other nations.

It seems that it wasn't the request that angered *Shmuel*, but rather, his intuitive understanding of the people's motivation. This three way *makhloket* serves as the foundation upon which many commentators base their arguments and views in respect to the complicated idea of a Jewish *malkhut*.

The *Rambam*, *Moshe ben Maimon*, a medieval Jewish philosopher and *Torah* scholar of the 12th century, begins *Hilkhot Melachim,* the last chapter of the *Mishneh Torah*, with a discussion regarding the three commandments the Jewish people were given upon entering the land of Israel: appointing a king; destroying the nation of *Amalek;* and constructing the *Beit HaMikdash* (Holy Temple). It is evident that *Rambam* understands "*Som tasim alekha melekh*" ("you will surely place upon yourselves a king") (*Devarim* 17:15) as a command. He makes this abundantly clear through dedicating an entire chapter of his *Mishneh Torah* solely focused on the laws of *malkhut*.

The *Ran* similarly devotes a lot of thought towards this issue. He seems to believe that a king is necessary as he elaborates on the major roles that a *melekh* would be responsible for. Specifically, *Ran* elaborates on the *melekh's* role as a supreme governmental official responsible to establish laws and judge the people. (*Derashot HaRan* 11) Alternatively, *Abarbanel,* a 15th century Portugese medieval philosopher and biblical commentator, forcefully disagrees with *Ran*, as he believes that there was no command to have a *melekh*. His personal experience working as a key advisor to the Spanish monarchy only to be exiled during the Spanish Inquisition led to his adamant disapproval for a Jewish *malkhut*. *Abarbanel's* proof is that all of the functions and responsibilities that *Ran* listed as the *melekh's* job are tasks that are already performed by God (*Abarbanel's* commentary on *Devarim* 17).

In *Abarbanel's* perspective, the idea of electing a human king is both redundant and offensive to God as He already *is* the King of Israel. To further support this view, *Abarbanel* interprets the portion of *Shofetim* dedicated to the laws of a Jewish king, not as a positive commandment, rather as a list of prudent restrictions crucially necessary to circumvent a king's (should there ever be one) tendency to exert absolute power over his subjects. This means that if the Jews ever exercised the poor judgement to appoint a king over the nation, the guidelines detailed in *Parshat Shofetim* would serve to shield the Jews from the ramifications of that bad decision.By comparing the installation of a *Malkhut* to the laws of *Eshet Yefat To'ar*[2], in *Parashat Ki Tetze* (*Devarim* 21:10), it becomes explicitly clear that the *Abarbanel* views a Jewish *melekh* to be far from ideal. The only reason why the Torah mentions the laws of appointing a king is to minimize potential damage and prevent the future misfortune that would

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[2] *Eshet Yafat To'ar* details what a Jewish man should do in the event that while he is at war he finds a captive that he desires to sleep with. The law surrounding *Eshet Yafat To'ar* is widely held to be a law for a person who finds himself in an otherwise prohibited situation. According to some commentators, this law requires him to follow many subsequent actions as a mechanism to aid him in overcoming his desires and to minimize potential sinning. The command is not what he should always do; rather it provides guidelines for a person who finds himself in a specific situation.

inevitably result. *Abarbanel* is unequivocal in his objection to a Jewish monarchy through his commentaries in *Devarim* and in the Book of *Shmuel* that akingship was not beneficial for the Jewish people.

Both *Ibn Ezra*, *Avraham Ibn Ezra*, a Spanish biblical commentator from the 12th century and *Saadia Gaon*, a 10th century Babylonian talmudist, halakhist and philosopher, (Jewish Virtual Library) believed that establishing a kingship was permissible, but not a commandment (Dueteronomy 17:15). In his sefer, *Darka Shel Torah*, Rabbi Nachum Rabinovitch zt"l, an esteemed Torah Scholar who led a *Yeshivat Hesder* in *Ma'aleh Adumim*, clarified a distinction in how a person can understand this command. He writes:

> ...there are other commandments that are primarily a mechanism for bettering society and moving it toward the formation of circumstances that permit carrying out the purposes for which man was created – the Kingdom of Heaven on earth. These commandments apply only in certain situations, and our aim is to move beyond them, to a state in which we will no longer be bound to fulfill them... (Rabinovitch 13)

Rabinovitch understands this command as only obligatory during a certain time. This answers the critical follow-up question of if a commandment exists to appoint a *melekh*, why was *Shmuel* so bothered by the people's request. Rabinovitch explains that although there is a command, the time was not correct. This answer fits well with the *makhloket* in *Mesekhet Sanhedrin* mentioned above:

> Rather, it depends on the presence of its objects – whenever they may be found, the directive is to be carried out. To state the matter generally, one must understand and consider the distinction between the commandment and its object, for there may be situations in which [the commandment] applies to all generations but its object has disappeared at a particular time, but the absence of the object does not mean that the commandment is not applicable to all generations. (Rabinovitch)

Rabinovitch elucidates that while there is a mitzvah to appoint a *melekh,* it no longer applies to us today because we do not have the specific institutions, such as the *Sanhedrin,* necessary for

the process of appointing a *melekh*. Rabinovitch then looks to the Ran in order to further explain why *Shmuel* was bothered by the people's request for a king. Rabinovitch quoting Ran wrote, "...they desired that the administration of justice between man and his neighbor be preponderantly in the hands of the king". He includes that the real sin in asking for a king was that the people wanted a king to judge them even when they had a *shofet* who was a *navi* and who could judge them exactly according to God's will." (Rabinovitch).

The reason why *Shmuel* was so upset was because the people were asking for a *melekh* to serve a role that was meant to be served by a *Navi*. *Shmuel* didn't see a nation with a pure desire to fulfill a commandment, he saw a nation who had a leader who could communicate to the people what God wanted and now the people wanted someone without that ability to rule over them. They didn't want to replace *Shmuel* because he was getting older, they wanted to terminate his role and rehire a less qualified individual for the job. Therefore, "...and when Samuel reproved them, they did not abandon their original intent, but only slightly ameliorated their request, saying that they desired a king not for judgment alone but for leadership in war" (*Derashot HaRan* 11) thereby making their request more in line with the role that a Jewish *melekh* was supposed to carry out.

The Powers of a *Melekh*:

There are specific powers a *melekh* has that other Jewish leaders were not permitted to carry out or request from the people. The *Melekh* is able to punish as he deems fit for the good of the kingdom. This illustrates that a king serves a common purpose for Israel and creates the societal structure. The appointment of judges also serves a distinct purpose for Israel, as stated: "and let them judge the people with righteous judgment". *Ran* adds that "the main purpose of a

king is to take care of the welfare and wellbeing of the nation as a servant and representative of God (*Derashot HaRan* 11). This adds credence to Ran's understanding as to why the installation of a Malkhut is both permitted and necessary since the *melekh* serves a critical function for the wellbeing of the Jewish people.

The Laws and Limitations of a Melekh:

The *melekh* has a tremendous amount of power. Yet, built into the system is a checks and balances system, namely those provided by the *Navi* and the *Kohen Gadol*. The *Navi*, *Kohen Gadol* and *melekh* all function as manifestations of God's presence in the world. There are many laws a *melekh* is required to follow which limits the amounts of wives, horses and wealth. He is also responsible to write a *Sefer Torah* and read from it every day of his life (*Devarim*). He also must perform *hakhel,* an event that takes place every seven years following the *Shemitah* cycle in which the entirety of the Jewish people travel to Jerusalem to hear the *Torah* be read aloud by the *melekh* (Jewish Virtual Library).

Why does the *Melekh* Have So Many Restrictions?:

Ran discusses in the 11th chapter of *Derashot Haran* that, "A king's laws and judgments are based on his own human decision, with tremendous room for error when compared to God's infinite knowledge, judgment and truth" (*Derashot HaRan* 11) Additionally *Ramban* notes that with so much power and authority, it is incredibly easy for a *melekh* to become pompous and arrogant. The laws and regulations that are placed upon the *melekh* are critical in order for him to remember that his job is to lead the Jewish people as a conduit of God, who is the Ultimate *Melekh* (Ramban on *Devarim 18:1*).

<u>Separation of Powers/ Checks and Balances[3]:</u>

The *melekh* has many powers, but he is not nor can he be the only figure of authority at a given time.Others serve in order to divide the responsibilities and powers to effectively lead the Jewish people. *Ran* states that, "There are three different figures of authority within halakhic Judaism, all of whom have different leadership responsibilities..." According to Rabbi Lord Jonathan Sacks zt"l:

> ...this idea is implicit in the threefold structure of king, priest and prophet. The king led the people in battle. He recruited an army, levied taxes, and was responsible for civic order. The priest mediated the relationship between the people and G-d. He served in the Temple, offered sacrifices, and ensured that the holy was at the heart of national life. The prophet brought the word of G-d to the people and the cause of the people to G-d (*Parshat Shofetim* 5768)

This understanding enabled Rabbi Sacks to determine the different functions and services a *Melekh*, a *Kohen Gadol* and a *Navi* would fulfill. He then quotes Rav Moshe Lichtenstein who viewed all three of these roles as ways of representing God's spiritual, physical and political presence on Earth, respectively. This excerpt is prudent as it is further proof that the *melekh* did not have unlimited power. The utilitarian purpose of a *melekh* is to maintain political order in both domestic and foreign affairs and not solely as a conduit between the people and God. Rabinovitch adds a further distinction:

> A king is appointed in the first instance only to do justice and make war, as Scripture says, 'And our king will judge us and will go before us and fight our wars.'"(*Rambam* 4:10, *Hilkhot Melakhim*, 1 *Shmuel* 8:20) Doing justice is thus the first obligation of the king, and the people therefore requested that one be appointed and even undertook the onerous obligations to the king spelled out in the Torah's consideration of the monarchy. (*Darka Shel Torah* 23)

Rabinovitch is highlighting here that the appointment of a *melekh* was done out of necessity; there was a need for a leader who could judge the Jewish people and more specifically, lead them

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[3] The *Zekenim* who later was referred to as the *Beit Din HaGadol* and/or the *Sahedrin* was a major authoritative institution that played a crucial role in conjunction with the other institutions of authority as the Jewish leadership. In the presence of time, the role of the Sanhedrin will not be further discussed, however that does not minimize its importance in any way.

in war. The Jewish people understood that their request for a king would have significant ramifications on their daily lives, yet they saw the appointment of a king as something in which the benefits overpowered the consequences that would come along.

After *Malkhut* in Israel:

Once the Davidic dynasty ended its reign, the power that was vested in the dynasty was then returned to *kahal*. However, there must be some sort of leadership, even lay leadership, for all people or else anarchy will rise. Therefore the *kahal* transferred their power to the Rabbis of the time, the *Beit Din* (Jewish courts) and to other quasi-governmental type figures throughout the Diaspora.

Shift of Power of Authority: From the *Melekh* to the *Kahal*:

This begs the question; if the power invested into the *malkhut* was returned to the people once the Davidic Dynasty dissolved temporarily, albeit for thousands of years, where is that power now? Rambam, deriving this concept from Aristotelian philosophy, explains that people are political animals and are in need of a leader to rule over them. *Sefer HaChinukh* draws upon this point as well. He discusses in Mitzvah 71, the command against cursing a *Nasi,* that people have different opinions and therefore it is quite inevitable that two individuals will disagree with each other. When individuals disagree, they will not follow the laws of the other. This will lead to a breakdown in society as everyone will begin to do what they agree with. Therefore, *Sefer*

HaChinukh thinks it is required for the Jewish people to appoint one person in charge.[4]

Rabinovitch makes the following points:

> All concur that the community's representatives and judges enjoy authority and power only if the community has empowered them...if the community has chosen its appointees, recognized them as authoritative, and even specified precisely the authority granted to them, it will treat them with proper respect and understand that they are acting for the common good and meeting the needs of the time. (Rabinovitch 21-22)

Rav Kook, as quoted in Blidstein's *Halakha and Democracy*, "...argues that monarchic authority derives from the people, so that when the monarchy lapses, such authority returns to the people. (*Mishpat Kohen* no. 154)" It is then up to the *kahal* to establish who will lead them, as there must be some sort of a leader. If this quote is intended to hold *Halakhic* status, it is a remarkable *Chiddush.* Rav Kook seems to be implying that any individual or group of people that the *kahal* has appointed to serve them has the same *Halakhic* status that a *melekh* has. It also implies that Rav Kook understood that the Israeli government could and would have the same *Halakhic* status as a *melekh*.

<u>Elections and Recognition of Authority:</u>

An important question to answer is how does a person achieve recognition of their authority. Rav Rabinovitch writes that, "Those whom 'the masses have recognized as authoritative' enjoy authority, and that authority does not detract from the principles to which we aspire" (Rabinovitch). It appears that Rabinovitch believes that only those who accept the authority of the lawmakers are bound by their laws. This was one of the perspectives of the *Dati* (religious) community in which they promoted a theocratic Jewish State. They determined that

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[4] It is quite important to note that *Sefer HaChinukh* does not classify this command as under the umbrella of appointing a king. By using the word, *Nasi* and not *Melekh,* it is clear from the text of the command regarding the prohibition on a person who curses a political leader, that the command is not only referring to a *Melekh*. A Nasi is used here as a general word to refer to any political leader or person of authority.

laws that were *halakhic* in nature would only apply to those who accepted upon themselves to abide by these laws. This is entirely unrealistic as no state in which not all laws apply to all citizens can function effectively. (Rabinovitch). Rabinovitch's assertion changes the way we view elections in the democratic state of Israel, which by definition, means that the country's leaders are determined by which candidate receives a plurality of votes. If Israel had established a government based on Rabinovitch's view, one might assume that secular or non-Jewish Israelis would not be bound by laws enacted by a representative who holds Orthodox Jewish views that secular or non-Jewish citizens do not not adhere to, or believe. Such a scenario would be absurd, creating irreconcilable fault lines within the population between the *Dati*, *Hiloni* and non-Jewish populations living in Israel.

However, Jewish law requires more than an election to appoint a representative. Rabinovitch brings proof from the Book of *Shmuel* by looking at the events immediately after *Shaul*, the first *melekh,* was selected to lead. It says, "And after the king was selected in the presence of the entire nation," the entire nation would shout, "'Long live the king!" (1 *Shmuel* 7)). **"**Then, *Shmuel* again lectured them on the consequences of appointing a king: "Samuel addressed the nation on the rules of the monarchy, and he wrote them in a scroll and placed it before the Lord " (Rabinovitch 23). The nation needs to be involved in the confirmation of the placement of the position of authority. That is because the power of authority really belongs to the people. The reason as to why this is the case will be discussed in the next section. But just like the authority of power is upon the people to approve those to whom they are transferring power, the people also have the ability to take it away. *Ran* notes, "Whatever honor the masses are willing to give him, that is the sovereignty he will have, to the point that if they wish to take away all honor from him, all sovereignty will be taken away from him *(Derashot HaRan* 11)".

The authority that the leaders possess are subject to the people's desire to let the leaders rule. If the people no longer wanted an official in a leadership position, then that person no longer has the power of authority. Authority is only powerful when those on a lower hierarchical level see their leaders as those who are above them[5].

Elections are how citizens in As mentioned above, the winner in democratic election, i.e., who becomes an elected official, is determined by which candidate receives a plurality of votes. Once this plurality is achieved, all citizens, even those who did not vote for the winning candidate, are required to follow the rulings and laws made by the government. Taking this idea into account makes Rav Rabinovitch's explanation confusing; it cannot be the case that his understanding applies to the laws of a secular democratic government in Israel because the laws are legally binding and apply equally to every person living in that democratic society. It does not matter whether or not a person individually voted for the person in office as long as this official person was rightfully elected by a democractic system of elections that the state created for the sake of the people.

Melekh **Versus** *Malkhut:*

Rav Moshe Taragin provides a helpful insight in his article, *Jewish Monarchy,* which further explains the power of a *Malkhut* by establishing a careful distinction between a *melekh* and *malkhut* based on his interpretation of the *sugya* in *Mesekhet Horayot* (13a). He writes, "The *gemara* in *Horayot* 13a which declares, 'The entire nation of Israel is suitable to be king.' vs. The *Mekhilta* (*Parashat Bo*) informs us, 'Until David was chosen, all Jews were worthy for royalty; once he was chosen, all the rest of the nation was excluded' (Taragin)". If this is the case, then the status of kingship and the power of authority that a *melekh* receives can belong to

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[5] When the *Navi* describes *Shaul*, it repeats that from his shoulders and up, he was taller than all the nation. The nation accepted *Shaul* as their king because of both his physical and spiritual greatness.

anyone who is rightfully elected. But that is where the concepts of *melekh* and *malkhut* divide. While technically anyone can be a *melekh,* "The concept of *malkhut* was promised to David, and once he was chosen all other families were excluded from dynastic ownership of the throne (see especially *Rambam*, *Hilkhot Melakhim* 1:7,9). There is no background malkhut outside of the House of David even though the personal status of *melekh* applies (Taragin)." *Malkhut* is specifically designated only for the Davidic line. While the status of a *halakhic melekh* applies to any individual*,* that authority will not necessarily pass on to his children. Only a dynastic *Malkhut* can do so[6]. The distinction between *melekh* and *malkhut* has played a significant role in determining the levels of authority that Jewish political leaders hold.

The Halakhic Status of Democracy:

Rabbi Sacks provides an expansive conversation regarding the *halakhic* status of democracy. He wrote, "According to the sages, major national decisions such as an offensive or voluntary war (*Milkhemet Reshut*) or an extension of the boundaries of Jerusalem required the assent of all three powers. Indeed it is in the Mishnah that we find the first explicit description of the three powers as "crowns" (Sacks 5768)." Yet, in present times there is no *navi, melekh* or *kohen gadol*. Rav Abraham Isaac Ha-Kohen Kook, the first Ashkenaz chief Rabbi in Palestine[7], dealt with this conundrum by arguing that the Jewish people of today possess the same power and authority as they did in ancient times. This interpretation enabled Rav Kook to believe that the Jewish political leaders of his time could carry out some of the functions that past leaders were able to perform.

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[6] *"There can be a* melekh *from other tribes, but no family dynasty which sees the throne pass eternally through the family. Indeed, throughout* Tanakh *we notice that children of* malkhei Yisrael *inherited their father's throne. This does not reflect the presence of* malkhut *- a dynastic political entity which automatically passes through the generations. Instead, it reflects another* halakha *- any public position is inherited by a son (known as the law of* serara*)" (Taragin)*.

[7] It is important to note that Rav Kook passed away before the establishment of the State of Israel.

It was left to Rav Abraham ha-Cohen Kook in the twentieth century, to argue that kingship (like the leadership of the judges in pre-monarchic Israel) was essentially a decision on the part of the people to be ruled in a certain kind of way, and therefore, in the absence of a king, those powers reverted to the people. His claim asserts that a democratically elected assembly such as the Knesset was the functional equivalent of a (non-Davidic) king. Democracy is thus not alien to Judaism (Sacks).

Rav Kook states in *Mishpat Cohen:*

> 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)

Rav Kook claims that in the absence of a king of Davidic descent, the people may choose to be ruled by a non-Davidic king as they were in the age of the Hasmoneans[8]. This means that they can instead be ruled by a democratically elected parliament, such as the one present in the modern-day State of Israel.

In *Mishpat Cohen*, Rav Kook also discusses the difference between a king of the Davidic dynasty and what is required to regulate and rule a Jewish state. According to Rav Kook, the king from the Davidic dynasty is obligated to follow all of the *halachot* that are discussed in *Parshat Shoftim*. When there is no *melekh* and no *shofeet*, the power of authority reverts to the nation. The responsibility then falls back onto the nation to select a system of government for regulation and maintenance of the Jewish people and state. (144, 336-337)[9] He then continues:

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[8] It is disputed if the Hasmoneans were legitimate kings or not. *Ramban* saw the Hasmoneans rise to kingship to be a breach of the separation of powers as they were *Kohanim*. *Rambam* considered them legitimate kings, despite not being from the house of David. *Rambam* considered the second temple era still under *Jewish* Kingship, even if it wasn't Davidic Kingship. Rav *Moshe* Taragin distinguishes between *Malkhut* and *Melekh*. A king and monarchy can be mutually exclusive from each other.

[9]   It is important to note that Rav Kook passed away before the creation of the state of Israel.

...monarchic authority derives from the people, so that when the monarchy lapses, such authority returns to the people. Taken literally, this analysis says nothing about the non-desirability of monarchy per se; but it may be read as a way of providing the theoretical basis of a non- monarchic polity, as it were, as well as a way of providing the modern Jewish community with political legitimacy. R. Hayyim David HaLevi has claimed that Maimonides' monarchism is not really representative. And R. Aharon Lichtenstein has outlined the halakhic notion of the "civil sovereign-initially a chief judge or monarch but conceivably an oligarchic or democratic entity as well. (Blidstein)

If we apply this understanding of Rav Kook to the current state of Israel, then the Israeli government has the same authority as a *Melekh Yisrael*. This is due to the fact that the *kahal* exercises its authority to establish their leaders and does so by voting their leaders into office. This would mean that the Israeli government possesses the *halakhic* authority to draft citizens for its military, levy taxes and declare both "*milkhemet mitzvah* and *milkhemet reshut.*" (*Hilkot Melakhim*)[10]

There's an anecdote about Rabbi Yosef Dov Soleveitchik, who when going to meet Prime Minister Begin, stated that because the Israeli government has the status of a *melekh* and Begin being the leader of that government, the Rav was therefore obligated to travel to Israel to meet with Begin rather than Begin to traveling to Boston to meet the Rav, as *K'vod HaMelekh* applies. (R' Saul Berman, YU Torah)

Rabbi Hayyim Hirschensohn, a contemporary of Rav Abraham Isaac Kook, firmly believed that creating a democratic governmental system in Israel was not in violation of *Halakha*. In his responsa, *Malki Bakodesh*, he discussed contemporary *Halakhic* problems, including women's rights in modern Israel as well as what the composition of the current government of Israel should be. He said, "[i]n these days of democracy when kings are toppling from their thrones and monarchy rightly seems to be doomed, when war is being waged against autocratic powers to make the world safe for democracy, how is it possible for us to consider the

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[10] In *Hilkhot Melakhim, Rambam* makes a distinction between voluntary or offensive wars and wars that are fought in order to expand the borders of Israel. For the sake of brevity

setting up of a hereditary king to reign over us in Palestine as Jewish tradition demands?" (Hirschensohn)

According to Rabbi Hirschensohn, the commandments of establishing a king, building the temple and eradicating *Amalek* are intertwined. Since we do not have a temple, prophets, nor *Amelek*, "there is no longer the *mitzvah* of appointing a King." (David Zohar, Conversations) According to David Zohar's article, "Rabbi Hirschensohn argues that the *mitzvah* which would be appropriate in modern times would be to appoint a democratic government which would be elected by the people in their entirety, men and women equality. According to him, the desired form of government according to the *Torah* is a democracy." (ibid)

In his article, *Is a Halakhic State Possible? The Paradox of Jewish Theocracy*, Aviezer Ravitzky discusses extensively whether or not it is possible for Israel to differentiate itself from being a state for the Jewish people versus a state that follows Jewish *Halakha.* (Ravitzky)

His article brings up a critical and paradoxical question: If *Torah* observant Jews were elected as the majority of the Israeli *Knesset,* would they be obligated to or should they make significant changes to the laws of the State of Israel in order for the state to follow *Halakha*. In fact, there are religious conservative political parties in the Israeli *Knesset*, namely *Shas* and United Torah Judaism, however at this point they are just two political parties of over a dozen coalitions that make up the majority and the opposition within the Knesset. It seems that the conclusion of Ravitzky's article implies that it would not be well advised of such a government to impose religious laws and requirements onto the citizens of Israel and even more so on individuals who do not keep *halakha*.

<u>Contemporary Times and Applications of Halakhic Democracy in The State of Israel:</u>

There are many ways that the leadership models of the past have influenced modern day Israel. The following aspect of this discussion will focus on the ramifications and the practical applications of the state of Israel if the state does have *malkhut* status. In the case that the government of Israel has the status of a *malkhut*, it would be safe to assume that they would be required to rule the State of Israel as a *halakhic* state. As discussed in Aviezer Ravitzy's article, although at face value it would seem that the creation of a Jewish state was fitting and the correct thing to do immediately following the declaration of independence on May 5th 1948, in reality, it wasn't sensible or prudent of the Israeli government to declare independence to a theocratic state governed by religious law. In fact, the decision of whether or not Israel should be ruled according to Jewish law was an extremely contested debate between the *Dati* and *Hiloni* leaders. Those with the authority to impose *halakha* as the basis for Israeli law have had major dilemmas in the process and could not do so without forfeiting any participation in the future government of the state of Israel as they would not be included in the decision making process if they could not compromise.

Culturally, But Not Halakhically Jewish:

Conflicts arose concerning what the basis for the foundation of Israeli law would be immediately upon the declaration of the State. The first of many centered on those who insisted God's name must be included into the text of the Israeli Declaration of Independence, and those who were adamantly opposed. The two groups reached a compromise that consisted of substituting Gods' name for the phrase "*Tzor Yisrael*" (The rock of Israel) as a means of alluding to God while simultaneously referencing the Israeli Defense Forces.

Another example, which had an enduring impact on fundamental Israeli society concerned the Law of Return, which enabled Jewish people moving to Israel, making *aliyah*, to become full Israeli citizens upon arrival. According to *halakha*, one's Jewishness is determined exclusively through matrilineal descent. Yet, the Law of Return was formulated to consider as Jewish anyone who had at least one Jewish grandparent, whether maternal or paternal. The basis for this dual consideration originated from the Nuremberg laws enacted in Germany by the Nazis in the 1930s, which categorized anyone with at least one Jewish grandparent, maternal or paternal, as Jewish, and thereby subjected to Nazi persecution. Isreal's founders actualized the poetic justice of viewing anyone Jewish enough to warrant Nazi persecution as Jewish enough to be welcomed withm open arms as citizens of the Jewish homeland. (Haaretz)

However, it is important to also recognize that although patrilineal Jews can make *aliyah,* they are not *halakhically* Jewish; according to Israeli law, should they want to marry a Jewish person, a legal designation based solely on a *halakhic* definition, they would be required to first complete an Orthodox conversion. This inconsistency between those who identify as Jewish, and and considered as such where naturalization is concerned, and those who are *halakhically* Jewish, has led to significant disputes and court battles. At the heart of these battles is the debate of whether or not the State of Israel recognizes Orthodox conversions as legitimate, thereby denying the legitimacy Reform and Conservative conversions. This is still an ongoing debate and there are many Supreme Court cases that deal with these types of questions simply because the State is not primarily a *Halakhic* state. (Haaretz)

Israeli Elections:

Since the nation elects their representatives in *Knesset*, this is considered as if the Jewish nation is democratically elected and grants the power of authority to their leader. Whether or not one would consider the state of Israel to be *halakhic* state, i.e. a society governed by laws created on a basis of *halakha*, it is objectively a Jewish state and represents the Jewish people.

We can conclude based on the discussion above that the *Knesset* is a secular institution, and shares much more of the authority granted to ancient Jewish king's than previously thought. However, there is a crucial distinction in that *Knesset* is a king only in terms of having the status of a *melekh*, but not the status of the *malhkut,* which refers solely to a king from the Davidic Dynasty.

If the *Knesset* is analogous to a non-Davidic king, *halahkically*, it is therefore permissible as a government body to wage war, collect taxes, and declare innocence or guilt. In his article, *Halakha and Democracy,*[11] published in *Tradition*, *a Journal of Orthodox Jewish Thought*, Gerald J. Blidstein writes:

> The Mishna assumes that the people of Israel are ruled (or co- ruled) by a king, recording no dissenting view, and Maimonides codifies the command to appoint a king, making it the norm. There is no honest way, I believe, to reduce a hereditary monarch who possesses great, if not absolute, power, to a symbolic figurehead, or to convert Maimonides' monarchy into a West-European constitutional democracy. It will clearly not do, either, to argue that the people may 'democratically' elect to be ruled by a monarch; that is simply a formalistic abuse of the concept. Nor, I think, can one take refuge in the pragmatics of the situation, claiming that halakhic communities have existed over the centuries on a completely different, non-monarchic footing. (We shall, indeed, come back to the precedent, but only after a painful detour.) For we are dealing with a matter of concrete and unambiguous halakhic-not philosophic principle, one which requires a principled answer. It will not do merely to concede that the monarchic ideal is not, in truth, a live option for many of us sitting in this room...But if personal, hereditary monarchy can contribute little to a democratic halakhic society, the institution is most relevant in a structural sense. Basically, its existence demonstrates the legitimacy and desirability of political

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[11] It is important to acknowledge that according to Blidstein, "This essay is written from the perspective which sees the restoration of Jewish self-government as a partial fulfillment of millenial hopes." This paper does not discuss whether or not the Jewish return to self governance in the land of Israel is considered the beginning of Messianic times." This footnote is here to explain the context in which Blidstein is writing.

governance, that is to say: governance, which is by definition not in the hands of religious leadership. (Blidstein)

This quote provides an essential framework for our understanding of the current leadership in the state of Israel. Blidstein is implying that the ideal form of government for the State of Israel would be to have a monarchy as per the fulfillment of the command to appoint a king in the land of Israel. Blidstein then continued:

> R. Nahum Rabinovitch. too, sees the monarchy as a manifestation of political governance, a governance which continued in different form in the organized community of the Middle Ages, when lay leadership was *halakhically* endowed with civil authority contingent on the consent of the populace. Major aspects of democratic theory are, thus, integrated into the *halakhic* world-view: civic authority is held by lay persons, not by sacral, or even *halakhic*, figures; and political authority is wielded by virtue of popular consent. Indeed, on a more basic level, the community per se seems to have been endowed with legislative rights. All this assumes a civil authority which legislates as well as administers- much as the medieval community did in its *takkanot ha-kahal*, a position staked out in its most thoroughgoing form by R. Nissim of Gerona. R. Rabinovitch also posits a firm and apparently easily discerned distinction between the areas governed by civil authority and those governed by *halakhic* authority. Thus, R. Rabinovitch provides a proposal which disarms the major conflict in which halakha and political democracy are apparently embroiled. Civil legislation, which is the proper bailiwick of government, is not the realm of *halakhic* authority. (Blidstein)

Blidstein, quoting Rabinovitch, has stated here that *malkhut* has translated into the current form of political governance, regardless of how that political government was organized as long as the *kahal* collectively accepts the political leaders as their leader. Specific roles that a political government would control the civil and domestic needs of the people though would not serve as a religious leader. This division of power separates the political authority from the religious authority. Within Halakha, there are many overlapping principles in which the political leader and the religious leader would need to work together. Yet, according to Rabinovitch the political leader does not have the authority to determine *halakhic* matters.

Church and State in the Jewish State:

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In his article, Gerald J. Blidstein considers the fact that the differentiation between the *Sanhedrin* and the *melekh* is quite analogous to the separation between church and state (Blidstein). Two influential religious leaders, Rav Chaim Ozer Grodzinski, one of the founders of Agudath Israel (Levatin) and Chief Rabbi of Israel, Rabbi Herzog disagreed with each other regarding what level of religious affiliation the State of Israel should have.

> ...it must be decided in favor of a dual system of law - the law of *Torah* and the law of the king (in the approach of the *Ran*) … we come to the built-in tension between the two sources of authority which are really only – the *Torah* and the people – in managing the matters of the people and the state and the balances between them, from the days of the Bible until today, until the (minimalist) Israeli formulation of a 'Jewish and democratic state'. (Ben Nun 23)

In a Jewish but *non-halakhic* state, there is a very complicated line to distinguish between church and state in the State of Israel. Yet, it is critical to define that line as there are both religious and secular leadership positions and institutions in Israel. The state cannot function by itself nor can the religious leaders speak on behalf of the entire state. It is critical for them to work together, yet as Rav Kook firmly believed, "...in order for Israel to be sustainable as a country and as a Jewish state, it need[s] a dual leadership. It requires a sacred leadership as well as a national and liberal leadership. Both the religious and the secular leadership need to work together, but there must be both components. The Jewish people must be ruled by both the *Torah* and by the *melekh*. "the sages stressed the special status of a king's rulings as merely temporary measures that do not establish permanent *halakhah* (Rosh HaShana 21b). (Blidstein)

While this paper will not discuss the official Rabbinate of Israel, local rabbnic leadership have played a role in shaping religious life within the State of Israel. According to Lipshits:

> The democratic and pluralistic character of the Jewish people was expressed in its rabbis. However, after the founding of the State of Israel, the rabbinical establishment was based on a central authority. The Minister of Religion became the main factor in choosing the rabbis of towns and settlements in Israel. However, a religious leadership drawing its strength from politicians and political party sectors cannot be a source of inspiration for general society. The

main democratic principle, according to which the leadership draws its authority from society, was neglected. (Lipshits *2)*

Lipshits further provides multiple ways in which the rabbinic leadership can improve and reform themselves in order to better function and serve their Jewish communities in the State of Israel even without becoming official political leaders.

Status-Quo Agreement:

On June 19, 1947, David Ben Gurion, the future first Prime Minister of the State of Israel, sent a letter called the Status-Quo Agreement on behalf of the Jewish Agency to the World Agudat Israel Federation. The purpose of this agreement was to create "...a framework for determining the rules governing the relationship between church and state in Israel from 1948 onwards" (Rabinovitch, Reinharz). In the months leading up to the establishment of the State of Israel in May of 1948, there were major disagreements taking place between the orthodox and secular Jewish leaders. As stipulated by the United Nations, the State of Israel could only enter into statehood if it were to abide by the principles of freedom of speech and freedom of religion. From its inception, these stipulations dictating freedom of religion precluded any opportunity for the State of Israel from becoming theocracy—to attain legitimacy, the state was to be and must always remain a democratic state.

Ben Gurion's letter was the basis of the fundamental separation of church and state in Israel. For the 74 years since Ben Gurion's letter, and well into its continuing foreseeable future, the integrity of the State of Israel's fundamental separation of church and state has remained steadfast. Though periodically put to the test, supreme court cases and current events have consistently proven that there is a distinct and enforceable line between church and state in Israeli society that solidifies the state of Israel's status as a state that is Jewish but not a Jewish State.

In *A More Jewish and Democratic State of Israel,* by Rabbi Dr. Hadar Lipshits, he wrote, "This marked the critical shift as beforehand, with a status quo, dating back to the British and Ottoman Mandates, there was a religious presence in Israel and there was a compromise between the *Dati* and *Hiloni* Jews. the potential for a future religious Jewish state and squandered all possibilities of making that happen." (Lipshits)

Lipshits continued:

> At least some of the religious moderates tried to establish a *halakhic* justification for the status quo through explorations of the halakhic concept of *mishpat hamelukhah* which they properly saw as establishing a sphere of jurisdiction for the state that was *halakhically* legitimate but which freed the civil authorities (*keter malkhut* in traditional terms) to act beyond the frame of halakhic rulings in critical matters When the constitutional debate which had taken place briefly during the four years after the establishment of the state, reemerged in the 1970's, it was no longer a debate about what to include in the status quo but a debate as to whether Jewish tradition deserved any sanction on the part of the state (Rabbi Dr. Hadar Lipshits 2)

Over time, it became more and more clear that the state of Israel is simply, put, not a *halakhic* state. In Daniel J. Elazar's *The Relationship Between Halakhah and Mishpat HaMelukhah*, he discusses the Status Quo Agreement and the sentiment toward a religious Jewish state:

> During the first generation of statehood, moderates from both camps dominated governmental and public decision-making on this issue, Those moderates who proclaimed their commitments to *medinat hok* nevertheless saw that civil law as protecting Jewish religious requirements for all Jews and, indeed, making certain basic ones such as *Shabbat*, the Jewish calendar, *kashrut*, and the official expression of Jewish rights of passage normative in state institutions and the public square, albeit with clear protections for freedom of private behavior except as limited by civil law for the maintenance for freedom of public order. Moderates on the side of *medinat halakhah*, on the other hand, confined their demands to state institutions and the public square, holding that the matter of *halakhic* behavior was private for each individual or family and that the state need not legislate, perhaps even should not, its enforcement outside of a few spheres of public behavior. (Elazar)

In Conclusion:

Rabbi Dr. Hadar Lipshits noted that every instance in which the State of Israel's political leaders attempted to address decisions regarding *halakhic* matters has led to negative outcomes that harmed the reputation of the State of Israel. He wrote:

> The central leadership, the government, the *Knesset* and the law courts, made decisions on religion: the best conversion methods, the most suitable *kashruth* certificates, the suitability—or unsuitability—of rabbis to serve communities. The political system's decisions were reached, as usual, by distasteful bargaining and not by persuasion, influence, and discussion. Shamefully, the discussions on the content of religion too often led to a distancing between the Jews in the Diaspora and in Israel. The damage to Israel, the Jewish people and religion as a result of the political influence on the religious system was obvious. (Lipshits 2-3)

In the Jewish state of Israel, although it is not a *halakhic* state at the given moment, we are blessed with the ability and opportunity to have a place in the world where religious freedom is granted to all. Or perhaps, we will learn how to adapt a democratic state in a way that does not infringe on anyone's freedoms. As Rav Aharon Lichtenstein so aptly put it:

> The whole world of *Halakha* is built on the concept of responsibility: a person's responsibility towards himself, his environment, his society. Living as a Jew means living with a very high level of responsibility and obligation. While the western world – from the time of the French Revolution onwards – has focused on rights, the world of *Halakha* is based on a declaration of man's obligation: both general commitment, and commitment that is expressed in any details. To the extent that democracy highlights the sense of responsibility of the citizen and towards the citizen, a democrac society is one in which the spirit and values of *Torah* can be realized on a higher and more meaningful level. (Lichtenstein part 2)

It's obvious to any observer, regardless of their religious affiliation, that not all conventions within Israeli government and society are optimal. Whether or not those observers are conscious of the terms, let alone the distinctions between, *melekh* and *malkhut*, or have any familiarity or awareness of the names and titles of Israel's ancient leaders, an equal measure of the Israeli population divides between those who grumble and fret about the state growing too religious, and those who lament that the state is not religious enough. Few, if any, hold the elusive Goldilocks view that things in the State of Israel are just right.

What does unify the great majority of Israeli society is a belief that like all successful democracies, Israel is a grand work in progress; that while there is always room for improvement, much has already been achieved. Indeed, the state of Israel through its government

and citizenry continually strives to perfect its balance between a *halakhic* state and a democratic

state where the separation of church and state within its society and governance is assured for all.

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