

The Consent of the Governed

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The contribution of Tanach, the Hebrew Bible, to political thought is fundamental, but not well known. In this study I want to look at the institution of monarchy. What does it tell us about the nature of government as the Torah understands it?

The command relating to a king opens with these words:

“When you enter the land the Lord your God is giving you and have taken possession of it and settled in it, and you say, “Let us set a king over us like all the nations around us,” be sure to appoint over you the king the Lord your God chooses...”

Deut 17:14-15

It continues by warning against a king acquiring “great numbers of horses for himself”. He “must not take many wives”, nor may he “accumulate large amounts of silver and gold.” He must write a Sefer Torah, and “he is to read it all the days of his life so that he may learn to revere the Lord his God and . . . not consider himself better than his brothers, or turn from the law to the right or to the left.”

The entire passage is fraught with ambivalence. The dangers are clearly spelled out. There is a risk that a king will exploit his power, using it to acquire wealth, or wives, or horses (one of the status symbols of the ancient world). This is exactly what Solomon is described as doing in the Book of Kings. His “heart may be led astray”. He may be tempted to lord it over the people, considering himself “better” than everyone else.

The most resonant warning note is struck at the outset. Rather than commanding the appointment of a king, the Torah envisages the people asking for one so that they can be “like all the nations around us”. This is contrary to the whole spirit of the Torah. The Israelites were commanded to be different, set apart, counter-cultural. To want to be like everyone else is not, for the Torah, a noble wish but a failure of imagination and nerve. Small wonder then that a number of medieval commentators held that the creation of a monarchy is not a biblical imperative. Ibn Ezra held that the Torah did not command it but merely permitted it. Abarbanel – who favoured republican government over monarchy – regarded it as a concession to popular sentiment.

However, the key passage is not here but in [I Samuel 8](#).^[1] As predicted in Deuteronomy, the people do eventually request a king. They come to Samuel, the prophet-judge, and say: “You are old, and your sons do not walk in your ways; now appoint a king to lead us, such as all the other nations have.”

Samuel is displeased. God then tells him: “Listen to all that the people are saying to you; it is not you they have rejected, *but they have rejected Me as their king.*” This seems to be the heart of the matter. Ideally, Israel should be under no other sovereign but God.

Yet God does not reject the request. To the contrary, God had already signalled, through Moses, that such a request would be granted. So He says to Samuel: “Listen to them; but warn them solemnly and let them know what the king who will reign over them will do.” The people may appoint a king, but not without having been forewarned as to what are the likely consequences. Samuel gives the warning in these words:

“This is what the king who will reign over you will do: He will take your sons and make them serve with his chariots and horses, and they will run in front of his chariots . . . He will take your daughters to be perfumers and cooks and bakers. He will take the best of your fields and vineyards and olive groves and give them to his attendants. He will take a tenth of your grain and of your vintage and give it to his officials and attendants . . . and you yourselves will become his slaves. When that day comes, you will cry out for relief from the king you have chosen, and the Lord will not answer you in that day.”

Despite the warning, the people are undeterred.

“‘No!’ they said. ‘We want a king over us. Then we will be like all the other nations, with a king to lead us and to go out before us and fight our battles.’ When Samuel heard all that the people said, he repeated it before the Lord. The Lord answered, ‘Listen to them and give them a king.’”

What is going on here? The Sages were divided as to whether Samuel was setting out the powers of the king, or whether he was merely trying to dissuade them from the whole project ([Sanhedrin 20b](#)). The entire passage, like the one in Deuteronomy, is profoundly ambivalent. Is God in favour of monarchy or against? If He is in favour, why did He say that the people’s request was tantamount to rejecting Him? If He is against, why did He not simply command Samuel to say no?

The best analysis of the subject was given by one of the great rabbis of the 19th century, R. Zvi Hirsch Chajes, in his *Torat Nevi'im*. His thesis is that the institution of monarchy in the days of Samuel took the form of a social contract – as set out in the writings of Locke and Rousseau, and especially Hobbes. The people recognise that they cannot function as individuals without someone having the power to ensure the rule of law and the defence of the nation. Without this, they are in what Hobbes calls a “state of nature”. There is anarchy, chaos. No one is safe. Instead, in Hobbes’ famous phrase, there is “continual fear, and danger of violent death; and the life of man solitary, poor, nasty, brutish and short” (Hobbes was writing in the wake of England’s civil war). This is the Hobbesian equivalent of the last line of the Book of Judges:

“In those days Israel had no king; everyone did as he saw fit.”

The only way to escape from anarchy is by everyone agreeing to transfer some of their rights – especially the use of coercive force – to a human sovereign. Government comes at a high price. It means transferring to a ruler rights over one’s own property and person. The king is entitled to seize property, impose taxes, and conscript people into an army if these are necessary to ensure

the rule of law and national security. People agree to this because they calculate that the price of not doing so will be higher still – total anarchy or conquest by a foreign power.

That, according to Chajes, is what Samuel was doing, at God's command: *proposing a social contract* and spelling out what the results would be. If this is so, many things follow. The first is that Ibn Ezra and Abarbanel were right. God gave the people the choice as to whether or not to appoint a king. It was not compulsory but optional. The second – and this is the fundamental feature of social contract theories – is that *power is ultimately vested in the people*. To be sure, there are moral limits to power. Even a human king is under the sovereignty of God. God gives us the rules that are eternal.

Politics is about the laws that are temporary, for this time, this place, these circumstances. What makes the politics of social contract distinctive is its insistence that government is the free choice of a free nation. This was given its most famous expression in the American Declaration of Independence: “to secure these rights (life, liberty and the pursuit of happiness) Governments are instituted among Men, *deriving their just powers from the consent of the governed.*” That is what God was telling Samuel. If the people want a king, give them a king.

Israel is empowered to choose the form of government it desires, within the parameters set by Torah law.

Something else follows – spelled out by R. Avraham Yitzhak haCohen Kook (Responsa Mishpat Cohen, no. 143-4, pp. 336-337): “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 melech 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.”

In other words, in the absence of a king of Davidic descent, the people may choose to be ruled by a non-Davidic king, as they did in the age of the Hasmoneans, or to be ruled instead by a *democratically elected Parliament*, as in the current State of Israel.

The real issue, as the Torah sees it, is not between monarchy and democracy, but between government that is, or is not, freely chosen by the governed. To be sure, the Torah is systematically skeptical about politics. In an ideal world, Israel would be governed by God alone. Given, however, that this is not an ideal world, there must be some human power with the authority to ensure that laws are kept and enemies repelled. But that power is never unlimited. It comes with two constraints: first, it is subject to the overarching authority of God and His law; second, it is confined to the genuine pursuit of the people's interests. Any attempt by a ruler to use

power for personal advantage (as in the case of King Ahab and Naboth's vineyard: [1 Kings 21](#)) is illegitimate.

The free society has its birth in the Hebrew Bible. Far from mandating a retreat from society, the Torah is the blueprint of a society – a society built on freedom and human dignity, whose high ideals remain compelling today.

[1] For a brilliant recent study, though one that does not touch on the issues raised here, see Moshe Halbertal and Stephen Holmes, *The Beginning of Politics: Power in the Biblical Book of Samuel*, Princeton University Press, 2017.