

Mitzvoth 497, 498, 71 and 78 – Appointing a King

MITZVAH 497

למנות מלך מישראל - שנצטוונו למנות עלינו מלך מישראל, כדי שיקבצנו כלנו וינהיגנו כחפצו, ועל זה נאמר (דברים יז טו) שום תשים עליך מלך וגו'. ובספרי שום תשים עליך מלך מצות עשה

To appoint a king from Israel: That we were commanded to appoint upon ourselves a king from Israel, so that he can gather us all together and administer us according to his desire. And about this is it stated (Deuteronomy 17:15), "Surely place upon yourself a king, etc." And in Sifrei Devarim 157, "'Surely place upon yourself a king' is a positive commandment."

I have written from the roots of the commandment in the Order of Mishpatim on the negative commandment of the chieftain (Sefer HaChinukh 71). And there I wrote at length about the benefit that is found for a people in there being one person upon them as the head and as the officer; as the order of the people will not be preserved without this. And behold, you see in the books of the Prophets that it comes as a curse when many people are the head in one place - and as it is written (see the book of Judges 9).

MITZVAH 71

שלא לקלל הנשיא - שלא לקלל את הנשיא, שנאמר (שמות כב כז) ונשיא בעמך לא תאור, ובא הפרוש (רמב"ם סנהדרין כו א) שהנשיא זה המלך. ואמנם זה הלאו כולל גם כן הנשיא שבישראל, והוא ראש סנהדרי גדולה, שנקרא נשיא גם כן, לפי שכונת הכתוב להזהירנו על כל מי שהוא ראש שררה על ישראל בין ממשלת מלכות בין ממשלת התורה

To not curse a chieftain (nassi): To not curse a chieftain, as it is stated (Exodus 22:27), "and a chieftain among your people shall you not malign." And the explanation upon it came that the nassi is the king (Mishneh Torah, Laws of The Sanhedrin and the Penalties within their Jurisdiction 26:1). But nonetheless, this negative commandment also includes the nassi of Israel and that is the head of the Great Sanhedrin, who is also called the nassi; since the intention of the verse is about anyone who is the head authority over Israel, whether it is the government of the kingdom or whether it is the government of the Torah.

It is from the roots of the commandment that it is because it is impossible for the settlement of people without their making one of them head over the others, to do his command and fulfill his decrees. As the opinions of people are different and they will never all agree to one opinion - to do one thing from among the many things. And from this, the result will be idleness and a cessation of actions. And therefore they need to accept the opinion of one of them - whether it is good or whether it is bad - so that they will be successful and be involved in the business of the world, sometimes finding great benefit from his will and counsel and sometimes [finding] the opposite. And all of this is better than disagreement which causes complete idleness. And since the one appointed as head is the cause for the benefit that we said - whether he is big in leading us in the ways of religion or whether he is big in the kingdom to guard a man from his neighbor that is more powerful than he - the matter is fitting and proper that we not [treat] his honor lightly, and also that we not curse him. [We should not do this] even not in front of him, and all the more so [not] in front of witnesses; as a bad habit that a person accustoms himself [to do] by himself will in the end become his action [in public]. And we have already [talked about] the great loss that comes because of disagreement (see Bemidbar Rabbah 18).

RETURN TO 497

From the laws of the commandment is that which they, may their memory be blessed, said (Mishneh Torah, Laws of Kings and Wars 1:3) that we do not a priori set up a king in Israel except by the word of a court of seventy elders and by

the word of a prophet - like Yehoshua, as Moshe, our teacher, and his court appointed him; and like Shaul and David, as Shmuel HaRamati and his court appointed them. And [also] that which they said (in Sifrei Devarim 157), that we do not set up a woman to the monarchy, as it is stated, "a king" - and not a queen. And when they would set up a king, they would anoint him with anointing oil (Mishneh Torah, Laws of Kings and Wars 1:7). And once he has been appointed, he acquires the monarchy for himself and for his sons, as it is written (Deuteronomy 17:20), "in order that he will have length of days upon his monarchy; he and his sons, among Israel." If he [only] left over a minor son, we preserve the monarchy for him until he grows up, as Yehoyada did for Yoash. And anyone who is precedent for the inheritance is precedent for the inheritance of the monarchy. And the big son precedes the small son. And it is not just the monarchy, but all positions of authority - in actuality or as an honorary title from the honorary titles - and all appointments in Israel are an inheritance for a man, such that his son acquires it after him, and his son's son, and his son's son's son forever. And this is when he fills the place of his fathers with the fear of Heaven. But if there is no fear of Heaven in him - even though he has great wisdom - there is no need to say that we do not appoint him to an appointment of the appointments in Israel, but it is [even] fitting to hate him and distance him. And about them, David stated (Psalms 5:6), "[You] have hated all doers of iniquity."

... And this commandment is practiced when Israel is on their land - and like they, may their memory be blessed, said (Sanhedrin 20b), "Israel was commanded three commandments in their entering into the land: to appoint a king over themselves, to build the Choice House and to cut off the seed of Amalek." And do not ruminate about my words, my son, to say, "And how can my father count this as one of the commandments practiced by [all] the generations? And is it not that since King David was anointed, that this commandment was withdrawn from Israel; since it is not upon them to appoint another king, as David and his seed are the elevated ones over them 'until Shilo comes,' that the king be from his seed forever - may it be speedily and in our days?" As the content of this commandment is not only to appoint a new king; but rather from its content is all that we have have mentioned - to anoint a new king if there is a cause that necessitates it - but also to set up the monarchy in the hand of the inheritor, to put his fear upon us, to behave [towards] him in everything according to the Torah and according to the well-known commandment. And this is truthfully practiced forever.

MITZVAH 498

שלא להקים עלינו מלך נכרי - שנמנענו מלהקים מלך עלינו איש שלא יהיה מזרע ישראל, ואפילו יהיה גר צדק, ועל זה נאמר (דברים יז טו) לא תוכל לתת עליך איש נכרי אשר לא אחיך הוא. ואמרו זכרונם לברכה בספרי לא תוכל לתת עליך איש נכרי, זו מצות לא תעשה, וכמו כן שאר המנויין אין ראוי שנמנה עלינו בדבר מהדברים, לא מנוי תורה ולא מנוי מלכות, איש שיהיה מקהל גרים, עד שתהא אמו מישראל, מדכתיב שום תשים וגו', ודקדקו זכרונם לברכה (קדושין עו, ב) כל שימות שאתה משים עליך לא יהיו אלא מקרב אחיך.

To not establish a foreign king over us: That we were prevented from establishing a man that is not from the seed of Israel - and even if he is a righteous convert - [as] king upon us. And about this is it stated (Deuteronomy 17:15), "You may not place upon yourself a foreign man that is not your brother." And they, may their memory be blessed, said in Sifrei Devarim 157, "'You may not place upon yourself a foreign man' - this is a negative commandment." And likewise, it is not fitting to appoint upon us for anything - not a Torah appointment and not a state appointment - a man that is from the 'congregation of converts,' until his mother be from Israel, from that which is written, "You shall surely place, etc."; and they, may their memory be blessed, made a precise inference (Kiddushin 76b), "Any placing that you do shall only be from among your brothers." From the laws of the commandment is that which they, may their memory be blessed, said (Kiddushin 76b) that we only set up a head of authority from the seed of Israel - and even if he is appointed over a watercourse to distribute from it to the fields.

And they also said (Kiddushin 82a) that we do not set up one who is a barber, a bathhouse attendant or a tanner [as] king, nor [as] high priest. It is not because they are [intrinsicly] disqualified from the monarchy; but rather since their trade is lowly, the people will always disparage them. And one who has done these crafts even one day is disqualified from these positions of authority.

And David and his seed have already acquired the monarchy of Israel. And it is not still in our hands to change it - [just] like it is no longer in our hands to change the priesthood from the seed of Aharon - as it is stated about it (II Samuel 7:16), "your throne shall be established forever."

BAVA BATRA 7B, 8B

מתני' כופין אותו לבנות בית שער ודלת לחצר רבן שמעון בן גמליאל אומר לא כל החצרות ראויות לבית שער כופין אותו לבנות לעיר חומה ודלתים ובריה רשב"ג אומר לא כל העיירות ראויות לחומה

MISHNA: The residents of a courtyard can compel each inhabitant of that courtyard to financially participate in the building of a gatehouse and a door to the jointly owned courtyard. Rabban Shimon ben Gamliel disagrees and says: Not all courtyards require a gatehouse, and each courtyard must be considered on its own in accordance with its specific needs. Similarly, the residents of a city can compel each inhabitant of that city to contribute to the building of a wall, double doors, and a crossbar for the city. Rabban Shimon ben Gamliel disagrees and says: Not all towns require a wall.

כמה יהא בעיר ויהא כאנשי העיר י"ב חדש קנה בה בית דירה הרי הוא כאנשי העיר מיד

With regard to this latter obligation, the mishna asks: How long must one live in the city to be considered like one of the people of the city and therefore obligated to contribute to these expenses? Twelve months. But if he bought himself a residence in the city, he is immediately considered like one of the people of the city.

GEMARA: The Gemara asks: Is this to say that making a gatehouse is beneficial? But wasn't there that pious man, with whom the prophet Elijah was accustomed to speak, who built a gatehouse, and after-ward Elijah did not speak with him again? The objection to the building of a gatehouse is that the guard who mans it prevents the poor from entering and asking for charity. The Gemara answers: This is not difficult: This, the case presented in the mishna, is referring to a gatehouse built on the inside of the courtyard, in which case the poor can at least reach the courtyard's entrance and be heard inside the courtyard; that, the story of the pious man and Elijah, involves a gatehouse that was built on the outside of the courtyard, completely blocking the poor's access to the courtyard's entrance.

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הנהו בי תרי טבחי דעבדי עניינא בהדי הדדי דכל מאן דעביד ביומא דחבריה נקרעוה למשכיה אזל חד מנייהו עבד ביומא דחבריה קרעו למשכיה אתו לקמיה דרבא חייבינהו רבא לשלומי

The Gemara relates: There were these two butchers who made an agreement with each other that whichever one of them worked on the day assigned to the other according to their mutually agreed-upon schedule would tear up the hide of the animal that he slaughtered that day. One of them went and worked on the other's day, and the other butcher tore up the hide of the animal that he slaughtered. They came before Rava for judgment, and Rava obligated him to pay the butcher who slaughtered that animal.

Rav Yeimar bar Shelamya raised an objection to Rava: Isn't it stated among actions that the residents of a city may take: And to fine people for violating their specifications, i.e., those ordinances that the residents passed? Rava did not respond to him. Rav Pappa said: He did well that he did not respond to him, as this matter applies only where there is no important person in the city, in which case it is permitted for the residents of the city to draw up ordinances on their own. But where there is an important person, it is not in the residents' power to make stipulations, i.e., regulations; rather, they are required to obtain the approval of the city's leading authority to give force to their regulations.

TOSEFOT BAVA BATRA 8B

ולשנות' לכל מה שירצו. נראה לר"ת דיכולים לשנותו אף לדבר הרשות אע"ג דאמרינן בערכין בפ"ק (דף ו: ושם) האי מאן דנדב שרגא לבי כנשתא אסור לשנותה לדבר הרשות ואמר נמי התם האומר פרוטה זו לצדקה עד שלא באה ליד הגבאי מותר לשנותה משבאה

ליד הגבאי אסור לשנותה לדבר הרשות הכא שבני העיר משנים אותה שאני לפיכך מותר לשנותה אפילו לדבר הרשות ואפילו באה ליד הגבאי וכן היה ר"ת נוהג לתת מעות הקופה לשומרי העיר לפי שעל דעת בני העיר נותנים אותם

TOSEFTA BAVA METZIA 11:14

כופין בני העיר זה את זה לבנות להן בית הכנסת לקנות להן ספר תורה ונביאים ורשאים בני העיר להתנות על השערים ועל המדות ועל שכר הפועלים רשאים לעשות קיצתן

BAVA KAMA 113A

מתני' אין פורטין לא מתיבת המוכסין ולא מכיס של גבאין ואין נוטלין מהם צדקה אבל נוטל הוא מתוך ביתו או מן השוק

MISHNA: One may not exchange larger coins for smaller ones from the trunk of customs collectors nor from the purse of tax collectors, and one may not take charity from them, as they are assumed to have obtained their funds illegally.

ומוכסין והאמר שמואל דינא דמלכותא דינא

It was taught in the mishna that one may not exchange money from the trunks of customs collectors, which are assumed to include stolen funds. The Gemara questions this ruling: But doesn't Shmuel say that the law of the kingdom is the law, i.e., halakha requires Jews to obey the laws of the state in which they live. Accordingly, the customs are collected legally and it should be permitted to make use of the funds.

אמר רב חנינא בר כהנא אמר שמואל במוכס שאין לו קצבה דבי ר' ינאי אמרי במוכס העומד מאליו

The Gemara answers: Rabbi Ḥanina bar Kahana said that Shmuel says: The mishna is discussing a customs collector who does not have a limitation placed by the governor on the amount he may collect, and he collects as he pleases. Alternatively, the Sages of the school of Rabbi Yannai said: The mishna is discussing a customs collector who stands on his own, i.e., he was not appointed by the government but, on his own, he forces people to give him money.

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The Gemara notes: There are those who teach the statements of Rabbi Ḥanina bar Kahana and the Sages of the school of Rabbi Yannai with regard to this following mishna (Kilayim 9:2) and its attendant discussion. The customs collectors would not levy a duty for the garments one was wearing. In light of this, the mishna teaches: A person may not wear a garment made of diverse kinds, i.e., a combination of wool and linen, even if he wears it on top of ten garments, in order to avoid paying customs. It was noted that this mishna is not in accordance with the opinion of Rabbi Akiva, as it is taught in a baraita: It is prohibited to avoid paying customs by wearing a garment of diverse kinds. Rabbi Shimon says in the name of Rabbi Akiva: It is permitted to avoid paying customs in this manner.

The Gemara comments: Granted, with regard to the prohibition of diverse kinds, they disagree about this: One Sage, i.e., Rabbi Akiva, holds that an unintentional act is permitted. In this case, the prohibition is to benefit from wearing the garment, and that is not his intent, as his intention is merely to avoid paying the customs duties. Therefore, it is permitted. And one Sage, i.e., the first tanna in the baraita, holds that an unintentional act is prohibited. But is it ever permitted to avoid customs? Doesn't Shmuel say: The law of the kingdom is the law?

In answer to this question, Rabbi Ḥanina bar Kahana said that Shmuel says: The dispute in the baraita is with regard to a customs collector who does not have a limitation placed on the amount he may collect. Alternatively, Sages of the school of Rabbi Yannai said: The dispute is with regard to a customs collector who stands on his own, i.e., who is self-appointed.

The Gemara notes: And there are those who teach the statements of Rabbi Ḥanina bar Kahana and the Sages of the school of Rabbi Yannai with regard to this mishna (Nedarim 27b): One may vow before murderers, plunderers, and customs collectors in order to reinforce the claim that a certain item that is being commandeered is teruma, or that it

belongs to the king's house, and thereby avoid its seizure, despite the fact that it is not teruma or that it does not belong to the king's house. It was asked: Can it be that it is permitted to pronounce such a vow before customs collectors? But doesn't Shmuel say: The law of the kingdom is the law? It should therefore be prohibited to state such a vow before the customs collectors.

Rabbi Hanina bar Kahana said that Shmuel says: The mishna in Nedarim issues its ruling with regard to a customs collector who does not have a limitation placed on the amount he may collect. Alternatively, the Sages of the school of Rabbi Yannai say: The mishna issues its ruling with regard to a customs collector who stands on his own.

RAMBAM, HILCHOT MALACHIM 1:8

נביא שהעמיד מלך משאר שבטי ישראל. והיה אותו המלך הזלך בדרך התורה והמצוה ונלחם מלחמות ה'. הרי זה מלך וכל מצות המלכות נוהגות בו. אף על פי שעקר המלכות לדוד. והיה מבניו מלך. שהרי אחיה השילוני העמיד רבעם ואמר לו (מלכים א יא לח) "והיה אם שמוע תשמע את כל אשר אצוה ובניתי לך בית נאמן כאשר בניתי לדוד" וגו'. ואמר לו אחיה (מלכים א יא לו) "ולבנו אתן": "שבט אחד למען היות ניר לדוד עבדי כל הימים לפני בירושלם

Should a prophet install a king from any of the other Tribes of Israel, and that king follows in the ways of the Torah and observes the Commandments, and fights the Wars of G-d, he, too, is a king and all the Commandments of the King are applicable to him. This, even though the "essential" monarchy belongs to David and from his children there will be kings. For we see that Achiya the Shilonite appointed Jeraboam and said to him, "And it will be, if you listen to all that I command you...and I shall build for you a sure house as I built for David..." (I Kings 11:38). And Achiya said to him, "And to his son, I shall give one tribe, so that it shall be a remembrance for David my servant for all days before me in Jerusalem" (I Kings 11:39).

RABBI AVRAHAM YITZCHAK HACOHEN COOK, MISHPAT COHEN

... It is apparent that Joshua was not a King but rather a Judge, but when he fought he did so under the rules of a Kingship, as he made decisions on his own ... and proof for this comes from the Rambam (Sanhedrin 4:13) which says "the heads of the exile communities in Bavel acted as Kings and had their powers." All the more so regarding those leaders (nasiim) that were agreed upon by the nation, in the time we are in our own land with our own ability to rule ourselves, and not just for the purpose of spreading Torah ... they are like the Hasmoneans (who were not Kings but were accepted as Kings) ... and are certainly not less significant than the leaders in the Bavel exile.

In a time when there is no King, since the Laws of Kingship apply also to the general situation of the people, the rights and powers of the King also reside with the people. That is why Judges had the power of Kings in their day.

Some rishonim attempt to settle this oddity with the words of Yiphtach, that had the din of King, which is why he had such an obligation to fulfill the words that left his mouth, especially those that were made in public, so much so this obligation would trump killing. This was the reason why Pinchas, the Cohen Gadol, was needed to annul Yiphtach's vow. But Yiphtach did not go because (according to VaYikra Raba, 37) he said "I am the King" to himself, and though he was also a Judge, his din was as King.

RABBI SHAUL YISRAELI

Quoting the Ran (11): "When there is no King in Israel, the Judge has two roles, both the King and the Judge." Further, following the Abarbanel, I see that all the time the name Judge is used in Sefer Shoftim it clearly describes a role of not just jurisprudence decision making, but also general leadership including the power to go to war. As Abarbanel writes, "if we find them going out to war, clearly they have the ability to legislate the needs at the time, including those not

according to the Torah ... and on the verse 'And in Yeshurun there was a King' this is Moshe (Shemot Rabah 42), which is to say, when there is no King, the Gadol HaDor has that role.

Further, even though there is a lechatchila way to appoint a King, if it is not done that way but is done with the agreement of the nation, his appointment is legitimate. The appointment of Agripas the King. The Talmud tells two stories about Agripas 'forgiving' his honor ... standing while reading Hakel and changing his route to honor a Kalah ... and the Sages attacked him for both. The Talmud justified both, but the more important point is that the Sages assumed he was King, despite the fact that an essential element of the requirements to be appointed King was missing. If he could be King despite a fundamental flaw, then certainly Jewish leaders can play similar roles even if their appointment was not by halacha.

RABBI SHIMON FEDERBUSH (1892-1969), SEFER HAYOVEL

There is a benefit in a theocracy, which means a belief in the Kingdom of God for all inhabitants of the world, that God is the 'Father' of all humanity, but this spiritual theocracy leads us in practical matters to democracy in practice, to an equality for all humans towards their Creator and also towards the Law of their State. Therefore, the spirit of Israel is against the tyranny of an individual ruler. In an Israeli Theocracy there is no room for personal rulers with great power, for Hashem dwells specifically with the humble and lowly of spirit.

SEFER HACHINUCH 78

The commandment of inclining towards the many: To incline towards the many, and that is when there arise a disagreement among the sages in a law of all the Torah laws - and so too in a private case, meaning to say a case that would be between Reuven and Shimon, for example - when there would be a disagreement between the judges of their city, that some of them rule guilty and some rule innocent, to always go after the majority; as it is stated (Exodus 32:2), "to incline towards the many." And in the elucidation, they, may their memory be blessed, said (Chullin 11a), "The majority is by writ of the Torah." And this choice of the majority appears to be when the two opposing groups are equally known for their Torah wisdom - as it cannot be said that a small group of sages would not be decisive against a great group of ignoramuses, and even like [the number] that went out from Egypt. But with approximately equal wisdom, the Torah informed us that the many opinions will always conform to the truth more than the minority. But whether - according to the opinion of the listener - they agree to the truth or they do not agree to the truth, logic dictates that we do not swerve from the path of the majority. And that which I say that the choice of the majority is always with two groups that disagree that are equal in the wisdom of truth is said so about every place except for the Sanhedrin. As with them, we are not exacting when they disagree as to which group knows more; but rather we always do like the words of their majority.

It is from the roots of the commandment that we were commanded through this to strengthen the fulfillment of our religion. As if we were commanded, "Keep the Torah, according to how you are able to understand its intended truth," each and every one in Israel would say, "It follows from my opinion that the truth of matter x is such." And [so,] even if the whole world would say its opposite, he would not be allowed to do the matter contrary to the truth, according to his opinion. And destruction would come from this, as the Torah would turn into many Torahs - since every one would judge according to the poverty of his [own] opinion. But now that we have been explicitly commanded to accept the opinion of the sages about it, there is one Torah for all of us, and its performance is great through this. And we may not budge from their opinion, whatever the case. And so, in our doing their commandments, we are executing the commandments of God. And even if the sages sometimes do not reach [come to] the truth - God forbid - the sin will be upon them and not upon us. And this is the matter that they, may their memory be blessed, said in Horayot 2a that [if] a court erred in a ruling and an individual acted upon their [word], they have liability for a sacrifice, [while] the individual does not at all, except in the [cases] that are explained there.