

The Lesser Light: Political Ideas in Ramban's Halakhic Writings

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Introduction

Max Weber lists¹ three possible justifications for the domination of kings or politicians over the people whom they govern:

First, the authority of the 'eternal yesterday,' i.e. of the mores sanctified through the unimaginably ancient recognition and habitual orientation to conform. This is 'traditional' domination exercised by the patriarch and the patrimonial prince of yore.

There is the authority of the extraordinary and personal gift of grace (charisma), the absolutely personal devotion and personal confidence in revelation, heroism, or other qualities of individual leadership. This is 'charismatic' domination, as exercised by the prophet or--in the field of politics--by the elected war lord, the plebiscitarian ruler, the great demagogue, or the political party leader.

Finally, there is domination by virtue of 'legality,' by virtue of the belief in the validity of legal statute and functional 'competence' based on rationally created rules. In this case, obedience is expected in discharging statutory obligations. This is domination as exercised by the modern 'servant of the state' and by all those bearers of power who in this respect resemble him.

When considering the perspectives of various political philosophers, asking which of these possible views of the state's legitimacy has been adopted or rejected by each thinker can be a useful exercise.

James A. Diamond traces the political philosophy of Ramban as it is manifested in Ramban's commentaries on various narrative verses in the Pentateuch, with a focus on commentaries in the earlier half of the book of Breishit. Diamond makes a convincing case that the unifying theme of the political ideas expressed in these commentaries appears to be distrust of strong governments and human kings, who are perceived by Ramban as competing with the divine King. In his conclusion², Diamond points out that the ideal of Ramban's political

¹ Max Weber, *From Max Weber: Essays in Sociology*, ed. By C. Wright Mills and H. H. Gerth (New York: Oxford University Press), 78-79.

philosophy is “captured by the verse in Deuteronomy, ‘And there was a king in Jeshurun when the leaders of the nations gathered together the tribes of Israel.’”³ He continues:

This verse’s clearly delineated juxtaposition of human governance and divine governance offers the antidote to the political malady described by the previous section, where the king is that absolute limit of his subjects’ focus. Nahmanides overly exerted himself in his explication of this verse in order to dispel any doubts as to the divine identity of the king...Nahmanides...rendered it an articulation of the relationship that crystallized at the Sinaitic theophany, which perpetually declares, “The Torah Moses commanded us will be forever a legacy to the congregation of Jacob...and they will say that ‘God became king over Israel *when our leaders, our elders, and our judges, and all the tribes of Israel united, for we all together accepted his kingship over us forever, and we are obligated to preserve his law and kingship forever* (emphasis added). All the major organs of power meld indistinguishably into one body that coheres legislatively and politically through its common fealty to a higher power.⁴

Ramban’s *Commentary on the Torah* contains not only narrative clarifications, homiletical interpretations, and grammatical and etymological notes, but also many detailed discussions of halakhic questions which Ramban considers to be crucial for a proper understanding of the Biblical text. In his commentaries on various psukim in the Torah, Ramban lays out his understanding of the halakha as it relates to political topics, including the role of the king, the qualifications for kingship, and the essential natures of civil and criminal law. In many cases, his view is opposed to that of Rambam. A closer examination of Ramban’s halakhic perspectives on political questions in his commentaries and in other halakhic writings lends further support to Diamond’s thesis that Ramban tends to place a heavy emphasis on the idea of

² James A. Diamond, “Nahmanides on the Polis,” *Hebraic Political Studies* 4, No. 1 (2009): 56-79.

³ Deuteronomy 33:5.

⁴ James A. Diamond “Nahmanides on the Polis,” *Hebraic Political Studies* 4, No. 1 (2009): 77-78.

Divine government and to be less sanguine than his peers, such as Rambam, about the desirability of strong human governments. This contrast between Rambam, the halakhist and philosopher, and Ramban, the halakhist and kabbalist, lends support to another suggestion of Diamond's,⁵ which is that there is a connection between Ramban's preference for a relatively weak human government and Ramban's kabbalistic leanings⁶. In this paper, I will argue that Ramban's halakhic and mystical writings consistently reflect a rejection of Weber's second justification for governmental authority—a charismatic human leader--and an emphasis of the third justification—implementation of the law.

Background

In *Politics and the Limits of the Law*--a study which focuses on the political philosophy of Rambam as it is presented in Mishneh Torah and Moreh Nevuchim, and of the Ran as it is presented in Drashot Haran-- Menachem Lorberbaum summarizes⁷ the history of the academic studies of Rambam's political philosophy:

⁵ Diamond, 58

⁶ It seems worthwhile to note at this point that the Chassidic movement, which provides the framework for many of the significant modern treatments of Kabbalistic thought, adopts a Rambam-esque view of the origins of authority in its emphasis on the charismatic authority of the "Rebbe." This is only one of many instances of Chassidic integration of Rambam's philosophy with Kabbalistic ideas. Ramban's (and Abravanel's) opposition to strong human government is therefore specifically characteristic of medieval Jewish mysticism. For an overview of the scholarly treatment of Chassidic adoption of Rambam's philosophy, see Naftali Loewenthal, "How Did Maimonides Influence Chassidism?: The roots of Chassidic mysticism (devekut) in the writings of Maimonides." *Chabad.org*. https://www.chabad.org/multimedia/media_cdo/aid/2864408/jewish/How-Did-Maimonides-Influence-Chassidism.htm

⁷ Menachem Lorberbaum, *Politics and the Limits of the Law*. (Stanford: Stanford University Press, 2001), 4

All work on Maimonides' conception of politics and law is indebted to the great achievements of Maimonidean scholarship in the twentieth century. Leo Strauss initially demonstrated the political quality of Maimonides' work, both in terms of its contents and in terms of its exposition. Strauss's Maimonides is a political philosopher. Strauss inquired into the relation between philosophy, law, and the multilayered quality of Maimonides' writings with this characterization in mind yet did not examine Maimonides' legal writings...

The important critics of the bifurcation of Maimonides into philosopher and jurist are David Hartman and the late Isadore Twersky. Their work, however, focuses on the overall relation between philosophy and the law in Maimonides oeuvre and not on Maimonides' politics. Gerald Blidstein's *Political Concepts in Maimonidean Halakha* is an attempt to fill this gap. It provides a detailed and highly useful commentary on the *Code's* Laws concerning Kings and their Wars. It does not aspire, however, to provide an integrated account of the two salient components of Maimonides' political theory—the philosophical, and the legalistic. One of the goals of my study is to fill this lacuna.

Lorberbaum also devotes some space⁸ in his book to a discussion of Ramban's teaching that community leaders and rabbinical courts should create civil customs which constitute a sort of secondary legal system that is independent of Torah law, for which Lorberbaum draws upon Ramban's legal monographs as well as Ramban's Biblical commentaries. This idea may appear to be inconsistent with Ramban's generally cautious attitude towards human government and law, and I will be discussing that problem in its place in this paper. Another scholar who has written about Ramban's political ideas is Bernard Septimus, whose paper⁹ on a responsum of Ramban, "Kings, Coinage, and Constitutionalism: Notes on a Responsum of Nahmanides," highlights Ramban's discussion of medieval constitutional theory and how it relates to the Talmudic dictum of *dina dimalchuta dina*. Septimus notes that Ramban thinks that the ability of the king to legislate is severely limited by the constitution of his country and the consent of his

⁸ Ibid., 106-112.

⁹ Bernard Septimus, "Kings, Coinage, and Constitutionalism: Notes on a Responsum of Nahmanides," *The Jewish Law Annual* 14 (2003): 295-314.

people.¹⁰ This conservative attitude towards the power of the non-Jewish king is, of course, consistent with the general picture of Ramban's political thought which has been sketched out by Diamond.

Appointing a King

Before considering the political ideas of Ramban which pertain to non-Jews, it makes sense to start a discussion of his political ideas by considering the most obvious political question which can be asked about any halakhist, which is whether he thought that there is a mitzvah to appoint a Jewish king, and if so, what the nature of that mitzvah is. A section in the book of Devarim¹¹ is devoted to the laws of a Jewish king, but the language used there is ambiguous, and the psukim may be interpreted as giving permission to appoint a king, rather than requiring the appointment of a king. There is another ambiguous passage in Shmuel aleph¹² which sounds rather disapproving of the institution of kingship, but which nevertheless contains laws concerning the appointment of a king and a command to do so at that time. Consequently, there is a dispute between rabbis quoted in the Talmud¹³ about whether or not there is an obligation to appoint a king: according to Rabbi Yehuda and Rabbi Yosse, there is a positive obligatory mitzvah (*mitzvah chiyuvit*) to appoint a king which becomes mandatory upon the entrance of the people of Israel into the land of Israel; according to Rabbi Nehorai, the section of

¹⁰ Ibid., 300-301

¹¹ Deuteronomy 17:14-20

¹² 1 Shmuel 8

¹³ BT Sanhedrin 20b

laws pertaining to the Jewish king were only given as a response to the [future] demands of the people of Israel which are foretold at the beginning of that section. There is some ambiguity in the teaching of Rabbi Nehorai, and room for different constructions: it is possible that he views the laws of a king laid out in Devarim in a wholly negative light, and does not think that there is a holy fulfillment (*kiyum*) of the divine word at all if they are followed; alternatively, although he clearly disagrees with his colleagues about the obligatory nature of the laws pertaining to a king, he may indeed believe that there is some kind of positive good involved in their fulfillment, and that they involve an optional mitzvah or mitzvot (*mitzvah kiyumit*).

There is not a consensus among the rishonim about what the conclusion of the Talmud is. Rambam begins his discussion of the laws of a Jewish king¹⁴ by siding with Rabbi Yosse, and stating that there is an obligation for the Israelites to appoint a king as soon as they enter the land. Abravanel famously devotes a significant amount of space in his commentary to an anti-monarchist argument, which means that he construes Rabbi Nehorai's opinion in the first way mentioned above. It is generally thought that Abravanel is the only rishon who adopts an anti-monarchist stance.¹⁵

To the best of my knowledge, Ramban discusses the laws concerning appointment of a Jewish king between two and three times in his commentary (one discussion is absent from many manuscripts), and, like the text of the Torah itself, his words are somewhat ambiguous. It appears to me, however, that their weight leans strongly toward a non-monarchist angle. That is, Ramban does not think that there is an obligation to appoint a king, and he is not enthusiastic about

¹⁴ Rambam, Shoftim, Melachim 1:1

¹⁵ See R. Mosheh Lichtenstein, "The Commandment to Appoint a King," Virtual Beit Midrash, accessed on April 22, 2018, <http://etzion.org.il/en/commandment-appoint-king>.

kingship, but he is not necessarily a strident anti-monarchist as Abravanel is—his commentary leaves room for the more monarchy-friendly reading of Rabbi Nehorai. The first time Ramban discusses the appointment of a king is in his commentary on Breishit.¹⁶ The context is his interpretation of Yaakov’s blessing to Yehuda—“the scepter shall not leave Yehuda,” as a promise that kingship will belong to the descendants of Yehuda (it seems likely that his understanding of this and several other prophecies and blessings in the Torah prevented him from taking a fully anti-monarchist stance). Then, of course, he needs to address the question of why Hashem first made Shaul, who was from the tribe of Binyamin, the king:

And what occurred with Shaul was that, since asking for a king at that time [which is what Israel did] was disgusting to the Holy One blessed be He, He did not want to install a king over them from the tribe to which the eternal kingship belonged, and instead he gave them a temporary kingship...and all of this was because Shmuel was the judge and the prophet and fighter of their wars before Hashem, and their savior, and they ought not to have asked for a king in his days. As he said to them, “the L-rd your G-d is your King.”¹⁷ And the pasuk says, “It is not you [Shmuel] whom they have spurned, but it is I [Hashem] whom they have rejected as their King.”¹⁸

Here the themes which Diamond traces in Ramban’s earlier commentaries are again prominent: Ramban sets up a dichotomy between divine kingship and human kingship, and finds fault with Israel for preferring human kingship. Although Ramban does not come out and say here that there is no obligation to appoint a king, it may be inferred from his words that he does not think that there is one--it would have been very strange for Hashem to have found fault with the people for trying to fulfill an obligatory mitzvah¹⁹. At any rate, he certainly does not believe,

¹⁶ 49:10, s.v. “lo yasur shevet miyihuda.” My translation starts with the words “vi’inyan Shaul.”

¹⁷ 1 Shmuel 12:12

¹⁸ 1 Shmuel 8:7

as Rabbi Yosse and Rambam do, that there is an obligation to appoint a king which becomes relevant at the time of entrance to the Land of Israel.

The next discussion of this topic in Ramban's commentary that can be found in all of the manuscripts relates to the Torah's laws pertaining to a king, which are found in Devarim 17:14.

Ramban comments²⁰ as follows:

According to our rabbis, it is as if it says "you ought to say 'I will appoint a king over myself,'" and it is a positive commandment which obligates us to say so after inheriting the land and settling in it, and [the fact that it is written as "you will say" --and not in the commanding tense—"you ought to say"--is not significant, because] it is like "and you will make a fence for your roof,"²¹ ...

And in my opinion, this too is one of the hints about the future, because so it was when they requested Shaul--they said to Shmuel, "put a king over us to judge us like all of the nations"²²...How could the Torah say in a mitzvah, "like all the of the nations that surround me"? It is not appropriate for Israel to learn from them, nor to be jealous of doers of bad deeds. Rather, it is a prophecy of what is to come, and that is why the text is written in the simple future tense.

This commentary is not straightforward. On the one hand, at the beginning, Ramban seems to say that the consensus of the rabbis is according to the opinions in the Talmud which say that there is an obligatory mitzvah to appoint a king. To put it mildly, Ramban does not have a reputation for disputing what he considers to be the Talmudic consensus; yet, in the next paragraph, he appears to argue—quite compellingly—against the opinion which he has just quoted, based on logic and the words of the pesukim. The second part of his commentary, which begins with the phrase "in my opinion," clearly lines up with the opinion of Rabbi Nehorai.

¹⁹ Even if one holds a position which may hypothetically be ascribed to Rabbi Yehuda, that the obligation does not immediately become relevant upon entrance into the land.

²⁰ Ad loc. S.v. viamarta asima alai melech

²¹ Deuteronomy 22:12

²² 1 Shmuel 8:5

When the commentary on Breishit is also taken into account, the least messy solution seems to be that when Ramban says “our rabbis,” he means “one opinion in the Talmud—the opinion that I do not accept.” While this is a difficult reading of those few words, it appears to be the only way to reconcile this commentary with itself and with the commentary on Breishit.

There is, however, yet another commentary on this topic, which complicates the above reading even further. On Shemot 17:16, Ramban²³ discusses the meaning of “and the hand of Hashem is on the throne of the Lord.” One of the explanations he brings is as follows:²⁴

And the gemara²⁵ explains it in a similar way, as they said that “the hand of Hashem is on the throne of the L-rd, there will be a war of Hashem with Amalek from generation to generation.” From this we learn that they must appoint a king over themselves first, since there is no “throne of the L-rd” other than a king, as it says, “and Shlomo sat.”²⁶...and this is a reading of this pasuk with a solid basis.

Here, Ramban seems to approve of the Rabbi Yosse’s reading of the pasuk which treats the appointment of a king as an obligatory mitzvah. However, unlike in one of the other two cases which we have seen, he does not preface his approval with the phrase “and in my opinion.” In the remaining case, in Breishit, no contradictory opinions are brought; here, in Shmot, this is only one of several readings of this pasuk which he cites approvingly in his commentary. It is not uncommon for Ramban to disinterestedly applaud mutually exclusive readings which he considers to be good. Furthermore, this entire section of his commentary is missing from many manuscripts. Because of all of these factors, the reasonable conclusion seems to be that, in his

²³ Ad loc.

²⁴ my translation starts from “vigam zeh derech midrasho.”

²⁵ This is Rabbi Yosse’s reasoning for his opinion about the time when mitzvah becomes obligatory.

²⁶ 1 Divrei Hayamim 29:23.

Commentary, Ramban, unlike Rambam and most other rishonim, does not think that there is an obligatory mitzvah to appoint a king, which fits in with Ramban's generally pessimistic attitude towards human governance.

This conclusion can be further supported—or, at least, is not contradicted--by Ramban's treatment of this issue in the work entitled "Taryag Mitzvot Hatorah," which is his (primary) contribution to the medieval mitzvah-counting genre. Like Rav Saadya Gaon, Ramban relates each of the mitzvot which he counts to one of the Ten Commandments. He classes most of the restrictions on the king as prohibitions. However, he does count²⁷ the admonition to appoint an Israelite, and not a gentile, as a king as a positive commandment, which falls under the Ten Commandments heading of the prohibition of idolatry (because a gentile would likely lead the Jewish people spiritually astray). The first and most obvious thing to note here is the weakness of the "positivity" of this mitzvah in Ramban's view. His emphasis on its restrictive character is evidenced by his connection of it to the prohibition of idolatry, and not, say, to the command to honor one's father and mother. This is consistent with his general dim view of human kingship of which we will see more examples. The fact that Ramban classifies the appointment of a king as a positive commandment (*mitzvat aseh*), does not exclude the possibility that he considers it to be a mere optional commandment (*mitzvah kiyumit*), since he includes²⁸ obeying the laws pertaining to an optional war--which is, of course, an optional commandment--in his counting of the mitzvot as well. Taken together, the writings of Ramban concerning the appointment of a king point to his adoption of the "softer" reading of Rabbi Nehorai as the practical halakha.

²⁷ Chavel, *Kitvei Ramban* 2, 538

²⁸ *Ibid.*, 547

A King's Lineage: Not a Descendant of Aharon

A related disagreement between Ramban and Rambam also comes up in Ramban's commentary to "and the scepter shall not leave Yehuda." In Mishneh Torah²⁹, Rambam states that despite the fact that kingship is primarily associated with the house of David, a king from another tribe who is appointed by a prophet and does what he should do is just as much of a king as a king who is a descendent of David. In his discussion of the laws of Chanukah³⁰, Rambam describes the Hasmonean dynasty in unambiguously glowing terms, and triumphantly states that they "returned kingship to Israel for more than two hundred years." Ramban³¹ takes Yaakov's blessing that the scepter should not depart from Yehuda more seriously than Rambam does, and advances several theories about the inferiority of kings from other tribes when compared to kings from the tribe of Yehuda. Then he discusses the Chashmonaim, who ruled as kings despite the fact that they were priests from the tribe of Levi:

And they were punished according to what they deserved, for the Holy One, blessed be He, installed their servants as rulers over them, and they ended their family line. And it is possible that there was an additional sin in their kingship, since they were priests, and were commanded, "guard your priesthood for everything relating to the altar, and relating to that which is behind the curtain, and I have given your service to you as a gift..."³² and they should not have ruled, but just have done the divine service.

Part of the reason that Ramban is more concerned than Rambam about the king coming from the tribe of Yehuda has to do with specific kabbalistic teachings about Yehuda's son, Peretz, which will be discussed at the end of this paper. Ramban's theory about the double sin of the

²⁹ Rambam, Mishneh Torah, Shoftim, Milachim, 1:8.

³⁰ Mishneh Torah, Megillah vichanukah, 3:1.

³¹ Ramban, Breishit, 49:10.

³² Bamidbar 18:7

Chashmonaim, however, is fascinating in its own right. In context, the pasuk in Bamidbar certainly does not sound like it is placing limits on the kohanim; rather, it sounds like they are being told to guard their exclusive gift. What might be behind Ramban's suggestion here is the idea that having both the gift of priesthood and the gift of kingship would be too much--as we have seen, he is very concerned with the arrogance that can go together with high office. If so, this would be another instance in which Ramban tries to limit kingship. Specifically, he thinks that kingship is justified primarily by its function—governing—which should not be combined with other functions—such as divine service. If he saw kingship as being justified by the charisma of the leader, he would not have no reason to object to the combination of kingship and priesthood; on the contrary, combining the functions of king and priest would enhance the justifications of the ruler.

The Noachide Obligation to Establish Justice Systems

A Biblical narrative regarding the fallout from the illegal actions of a non-Jewish prince prompts one of Ramban's discussions of political halakha within his commentary. Both he and Rambam struggle to find the halakhic justification for Shimon's and Levi's massacre of the men of Shechem as a response to Shechem's abduction of Dina. Ramban begins³³ his treatment of this topic by quoting Rambam³⁴:

And the Master [Rambam] answered in the book of Shoftim and said that children of Noah are commanded in "laws," which means that they must appoint judges in each town to adjudicate regarding their [remaining] six laws, and a child of Noah who violates one of them is liable to be killed with a sword, and because of this all of the townsmen of

³³ Breishit 34:13 s.v. vaya'anu bnei Yaakov et Shechem viet Chamor aviv bimirma. My translation begins with the word "viharav."

³⁴ Rambam, Mishneh Torah, Shoftim, Melachim, 9:14

Shechem deserved the death penalty, since they saw [Shechem's abduction of Dinah] and knew and did not judge him.³⁵

After rejecting Rambam's explanation due to exegetical considerations, Ramban outlines part of his further disagreement with Rambam, which is rooted in halakha:

In my opinion, the [commandment of] "laws" [dinim] which [Chazal] counted as pertaining to the children of Noah as part of their seven commandments is not merely to establish judges in each town, but it commands them regarding the laws of stealing, abuse, payment of employees' wages, and the laws of stewardship, rape, and seduction, torts, personal injury, and the laws of lender and borrower, and the laws of buying and selling, etc., just like the laws which were commanded to Israel, and [a child of Noah] is killed over these commandments if he stole, or withheld his employees' wages, or raped or seduced his fellow's daughter, or set a pile of his crops on fire, or injured him, etc. And included in this commandment is the obligation to appoint judges in every city, just like the children of Israel, but if they did not do so they are not killed, for it is a positive commandment for them, and [Chazal] only said "their warning [azhara] is punished with death." And the term "warning" is only applied to a negative commandment, and this is the way [the word is used] in the gemara in Sanhedrin.

It is difficult to imagine that Rambam would disagree with Ramban's idea that non-Jews have some kind of an obligation set up comprehensive systems of civil and criminal law; their disagreement is focused upon the origin and nature of this obligation. Where Ramban interprets the divine Noachide laws broadly, in such a way that they encompass all civil and criminal laws, Rambam interprets them more narrowly, as only comprehending those civil or criminal laws which are explicitly enumerated by the Talmud as belonging to the set of Noahide laws.³⁶ One consequence of this position is that, in Rambam's view, the origin of the obligation for non-Jews to create comprehensive law codes is not divine, and the creation of non-Jewish legal codes is left up to human ingenuity; in Ramban's view, the categories of violation as well as the types of

³⁵ All translations are mine unless otherwise noted.

³⁶ One question that can be asked about the position of Ramban is why murder and stealing would have to be enumerated separately as Noahide laws if "dinim" is so comprehensive.

punishment have all already been divinely prescribed. This position of Ramban's again supports the general thesis that Ramban attempts to minimize human governance and maximize divine governance wherever possible. Presumably, Ramban believes that non-Jewish legal codes should originate with non-Jewish kings.

Support for this reading of Rambam may possibly be inferred from his writings about and attitudes towards Jewish kings. In his discussion³⁷ of Rambam's view of Jewish kings, Lorberbaum claims that Rambam teaches that Jewish kings are legislators:

The focus of power in a polity is located in the agent empowered to put people to death and to make law. The Maimonidean king is such an agent:

The king is empowered to put to death anyone who rebels against him...even if any of his subjects is ordered by him to go to a certain place and he does not go, or is ordered to stay home and he does not do so, he is culpable, and the king may, if he so decides, put him to death, as it is written: "Whosoever he be that shall rebel against thy commandment...shall be put to death" (Josh. 1:18). (Law of Kings 3:8)

This law establishes the king as an authority independent of Torah law...Although Maimonides speaks as if he is citing a hypothetical case, his example is based upon the Biblical story of Solomon's command to Shimei...The example may point to the rebellious nature of the act, implying that such...an act of rebellion...[is] punishable by death at the king's behest. However, it may be intended to show that the king's authority to command applies not only to injunctions addressing the polity as a whole but also to particular, and perhaps arbitrary, directives issued to specific individuals...The context of this law points to the latter, broad reading of the king's power to command.

A possible problem with Lorberbaum's reading here is that he may be employing a backwards *a fortiori* argument: it is not at all clear to me that just because the king is allowed to give and enforce temporary orders to individuals, it is necessary that he may also enact broad or permanent change to the law of the land. As we saw in Septimus's description of Ramban's responsum above, Ramban (and other rishonim whom he quotes there) thought that the power of

³⁷ Lorberbaum, 51-53.

the king to enact broader laws was severely circumscribed by precedent and by the willingness of the people to accept new laws. Because of the Biblical story to which Lorberbaum alludes (and possibly other Biblical stories), Ramban and the other rishonim would certainly acknowledge that the king may have temporary authority to direct his subjects in highly specific ways and to punish them for disobedience or rebellion. This acknowledgement, however, did not lead Ramban to conclude that a king had an obvious right to change the mode of production of a certain country's monetary currency. Be that as it may, even Ramban, as he is quoted by Lorberbaum,³⁸ discusses the establishment of certain civil customs (regarding neighbors and fences and suchlike) by kings—at the time of the founding of a polity. Ramban, at the very least, could leave the establishment of a non-Jewish nation's civil and criminal codes up to its kingly founders, if not to the rulers of succeeding generations. By suggesting that the origin of the common civil law of non-Jews is (or ought to be) divine, Ramban once again implies that the role of the king is that of a servant, and that the king's power comes not from his charismatic personality, but from the law itself.

Non-Torah Jewish Legislation

Lorberbaum asserts that “Nahmanides developed a notion of political legislation that is contrasted to Torah law.”³⁹ He brings two proofs for this claim: one is Ramban's discussion of the establishment of civil customs by Moshe and Yehoshua; another is constituted of several of Ramban's discussions of the authorities of kings, courts, and communities to issue decrees and bans. Although it might seem, on the surface, to be the case that Ramban's acknowledgment of

³⁸ Ibid., 106-112.

³⁹ Ibid., 112.

political institutions that are outside of Torah law is inconsistent with his general mistrust of human authority, an examination of his actual treatment of these subjects will show that, within the limits of the halakha of the Talmud, he takes a position which is as non-monarchical as possible.

Lorberbaum quotes and analyzes⁴⁰ Ramban's comments about the civil customs set up by Moshe and Yehoshua as follows:

In his Commentary on the Torah, Nahmanides discusses the legislative activities of the nation's political leadership. The Book of Exodus states that Moses "made for them [Israel] a statute and an ordinance" (15:25) before the giving of the Torah at Sinai. Nahmanides⁴¹ explains the nature of this laying down of the laws:

In line with the plain meaning of Scripture, when the Israelites began coming into "the great and dreadful wilderness...thirsty ground where there was no water" (Deut. 8:15), Moses established customs for them concerning how to regulate their lives and affairs "until they came to a land inhabited" (Exod. 16:35). A custom is called *hok*...Custom is also sometimes called *mispat* (judgment or ordinance) because it is something measured out accurately. (pp. 209-10).

The word "custom" does not connote a spontaneous local or conventional practice in contrast to institutionally legislated law....Similarly,

In the case of Joshua it is also said, "So Joshua made a covenant with the people that day and set for them a statute and an ordinance in Shechem" (Josh. 24:25). Here too the expression does not refer to the statutes of the Torah, but rather to the customs and ways of civilized society such as "the conditions Joshua made," which the Rabbis have mentioned, and other similar regulations. (p. 210)

Joshua too, joins the people in a covenant, a charter specifying the conditions under which the Israelites as a people agree to settle the Land of Israel. This legislative action yields laws other than those of the existing legal code, the Torah.

Although Lorberbaum is certainly right to point out that Ramban acknowledges a parallel legal system of civil customs that is human in origin and somewhat external to the Torah (although it is, of course, incorporated back into Rabbinic, and thus Torah, law), this is not at all

⁴⁰ Ibid., 109.

⁴¹ The translation and page references Lorberbaum uses here come from the Chavel's English edition of Ramban's *Commentary*.

unique, and Ramban could hardly do otherwise, since the conditions of Yehoshua are discussed by the Talmud.⁴² The aspect of Ramban's commentary here which is really remarkable is that he traces the legal origin of the conditions of Yehoshua back to a narrative within the Pentateuch, thus giving them an association with divine authority--or at least with divine endorsement--since the Pentateuch is authored by Hashem. Although no Rabbinic Jew could do other than endorse the concept of civil customs instituted by a powerful leader, Ramban does his best to continue to downplay human authority when he discusses them.

Lorberbaum contrasts⁴³ Ramban's views of leadership and the authority of the community, expressed in *Mishneh Torah*, with Ramban's perspective on the same subjects, expressed in the legal monograph, *Mishpat Hacherem*:

The *Code's* politics is monarchic and centralist, recognizing only the authority of kings and the higher courts. General participation in local public life is not conceived as a political activity worthy of cultivation. Maimonides, relegating the consent of the multitude to a passive, ex post facto role, downplays the precedents for public legislation and the exercise of political power by townspeople.

Nahmanides' attitude is very different... In *Mishpat ha-Herem*, Nahmanides discusses the main legal technique used to make communal charters and enactments binding—the ban, or herem. Originally, the herem was an oath taken when a communal charter was drawn up, but later it came to be used to ensure compliance even after the charter was in place... Nahmanides returns to the political sphere in which this authority originates—the townspeople, and not just courts, are empowered to impose a herem:

This too is the law regarding the townspeople, if they agreed, unanimously or by majority, in the presence of the good men of the city and imposed a ban. Because “they are authorized to enforce a decree” (Tosefta, Bava Metzia 11:23) and to impose a ban, their ban binds all those obligated to follow their enactments...

The only precondition for imposing such a ban is that it be carried out by a recognized religious quorum of at least ten males,

because [less] is not considered a tzibbur [a public] nor are they considered a court which stands for a public. Such a group has no power to impose a ban...

The quorum requirement... reinforces the sense of the kahal as a local charismatic unit rooted in, and reflective of, the people of Israel as a whole. Even the court's authority to

⁴² BT Bava Kama 80-81.

⁴³ Lorberbaum, 106-109.

impose a ban is described as derived from that of the public. The court “stands for a public.” Nahmanides continues:

And if the ban was imposed by a king of Israel or the Sanhedrin, in the presence of the majority of Israel, the transgressor is liable to the death penalty, and the king or Sanhedrin is permitted to execute him in whatever manner they choose. That is the rule of Joshua, who tried Akhan as a capital case [for breaching the herem of Jericho, see Joshua 7]. (p. 296)

Of course, Ramban’s preference for divine authority over human kings is not rooted in a general distrust of human nature, but in more specific caution about the possibility that kingly arrogance, such as that exhibited by Nimrod⁴⁴, could detract from the worship of G-d. By contrast, an authoritative community is not liable to develop arrogance as a king is, and thus does not present a threat to the kingship of Heaven⁴⁵. Even if Ramban has introduced a novelty in his monograph on bans, he has remained true to his own principles by emphasizing the communal nature of the authority to issue a ban, even when the issuing party happens to be a king or a court.

Interestingly, Ramban’s requirement that a new ban by a Jewish king must be imposed “in the presence of the majority of Israel” echoes the idea expressed in the responsum quoted by Septimus, that a non-Jewish king may only impose new laws with the consent of the majority of his people. Ramban’s vision of the king as a public servant can be seen even more clearly in this instance than in the other examples which were brought earlier.

A King’s Lineage: From the Family of Peretz

⁴⁴ See Diamond, 62-65.

⁴⁵ See Ramban’s commentary on Devarim 17:20, s.v. *livilti rom livavo me’echav* for more of Ramban’s thoughts on the unique dangers of kingship.

A possible origin of Ramban's general commitment to non-charismatic kingship, and his belief that the authority of the king is ultimately derived from law, is suggested by one of his mystical commentaries on the book of Breishit. In Breishit 38: 29-30, the twins of Tamar are given their names. After discussing the meaning of their names according to the peshat, Ramban, quotes Sefer Habahir.⁴⁶

And in the midrash of Rabbi Yechunya ben Hakaneh, he alludes to a secret in the names of these children.

It is said that one is called "Zerach" after the sun, which shines always, and "Peretz" is named after the moon, which is sometimes broken [nifretzet] and sometimes built up. But [how can this be--for] Peretz is the firstborn, and the sun is greater than the moon? It is not a question, for it is written that "he [Zerach] put out his hand," and it is written, "and later his brother came out."

And, according to their opinion, the name associated with the moon was given to Peretz because of the kingship of the house of David, and they were twins because the moon is matched with the sun, and Peretz is the twin of Zerach who puts out his hand, and he [Peretz] is the firstborn with high power, as it says, "I shall make him a firstborn as well (Psalm 89:28)," and this is why they say in the sanctification of the new moon, "David the king of Israel lives and exists." And one who is acquainted with the esoteric dimension of the Torah [hamaskil] will understand.

One thing which seems very clear from the last few lines of this commentary is that the kingship of the house of David is associated with the moon partly because the house of David will be renewed, just as the moon is renewed. Unfortunately, Ramban purposefully writes his mystical commentaries in such a way as to make the details difficult for a non-maskil to understand. Fortunately, there are a number of later commentators who write on the same topic with less coyness. It should be noted before proceeding that, in the sephirotic system of kabbala, to which, of course, Ramban subscribed, malchut—"kingship," which is the tenth sephira, is associated with the moon, mirrors, yielding, and femininity. Both of Yehuda's twins are named

⁴⁶ Ramban, Breishit 38:29, s.v. ma paratzta alecha peretz. My translation starts from "uvimidrasho shel Rabbi Yechunya ben Hakaneh."

by their father⁴⁷, but Peretz, the child who is associated with the moon, is given a name which is prompted by an exclamation of his mother⁴⁸.

In the next pasuk⁴⁹, the Torah says, “and later his brother, upon whose hand there was a crimson thread, came out, and he called his name Zarach.” Rashi⁵⁰ comments that “the word ‘hand’ is written here four times, corresponding to the four bans against which Achan, who was his [Zerach’s] descendant trespassed, and some say that they correspond to the four things which he took...” Gur Aryeh⁵¹ uses Ramban’s comment on the previous pasuk to explicate this midrash brought by Rashi:

And if you say, what is the story of Achan, who trespassed against four bans, coming to hint at here, you should know that these two children were not just children, but they were children who were born through Hashem’s decree, and there are hidden things about them which teach about their essences, and it was appropriate that the kingship of the house of David should come from Peretz; and from Zerach... it was appropriate that Achan, who trespassed against bans, should come, and a change in nature which occurred with Zerach...--it was an unusual thing that a fetus should stick out its hand and then withdraw it--...teaches about the essences of each of the children.

And this idea is a great thing, because the one who broke through is the progenitor of kings, because the king who rules takes things according to the law, as it⁵² says in the discussion of the king, and the other also takes with the strength of his hand, but it is a trespass on what is forbidden to him. Because the two sons, Peretz and Zerach, resemble the moon and the sun, which both rule and are kings over the world, and every king may break through [poretz] a fence to make a road for himself according to the law, but he may not stretch out his hand with additional strength to take that which is not his.

⁴⁷ Breishit 38:30

⁴⁸ Breishit 38:29

⁴⁹ Breishit 38:30.

⁵⁰ Ad loc. S.v. “asher al yado hashani”

⁵¹ Ad loc. S.v. “kineged arba charamot.”

⁵² Rav Hartman (in the footnotes ad loc.) notes that Maharal is referring to BT Sanhedrin 20b, which he quotes later in this commentary. It says that a king “can break through [poretz] to make a road for himself, and nobody should stop him.”

And that is why Israel counts according to the moon, the lesser light, and Peretz merited to be the progenitor of the house of David, and he breaks through a fence to make a path for himself and comes out first. But Zerach corresponds to the sun, which is also a king, and he stretches out his hand with too much strength, to take more than what is appropriate for a king, and therefore it is not appropriate for him to be king...

Thus, according to Gur Aryeh's supercommentary here, the association of Peretz—the progenitor of Jewish kings—with the moon teaches not merely about the temporal resilience of the kingship of the house of David, but also about the qualities which a Jewish king is expected to possess, which include reflection—recognition that his light does not come from himself—and the quality which Gur Aryeh emphasizes here, which is relative mildness, or restraint.

Conclusion

Ramban's halakhic commentaries and other halakhic writings reveal that, in his interpretation of halakha, he consistently minimized centralized human authority, and promoted the king's role as a servant to both God and the public, adopting a religious version of the third of Max Weber's justifications for governmental authority. Ramban's positive views about centralized human authority contrast sharply with Rambam's on many points, and can at some occasions be interpreted as promoting Weber's second justification for authority—that of the charismatic leader. Ramban, unlike Rambam, was a kabbalist, and he wrote in his commentary on Breishit about the connection between kingship and the moon. It is reasonable to conclude that Ramban's halakhic attitudes towards a variety of political questions may have been influenced by his kabbalistic leanings. Although the pious origin of Ramban's attitude towards monarchy is obvious, it does not necessarily follow that Rambam's attitude was less religious; Rambam may have valued the idea of a charismatic human king because the king would then be a sort of metaphor for God, the One who, both Ramban and Rambam agree, is the true King. It

may be that the two medieval halakhists reverse their positions about the origins of the legitimacy of monarchy when it comes to God: Ramban, who often emphasizes God's power and glory would say that God's authority comes from his nature, while Rambam, who, in addition to writing about God's glory, believes in natural law, might trace God's authority to natural law as well.

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