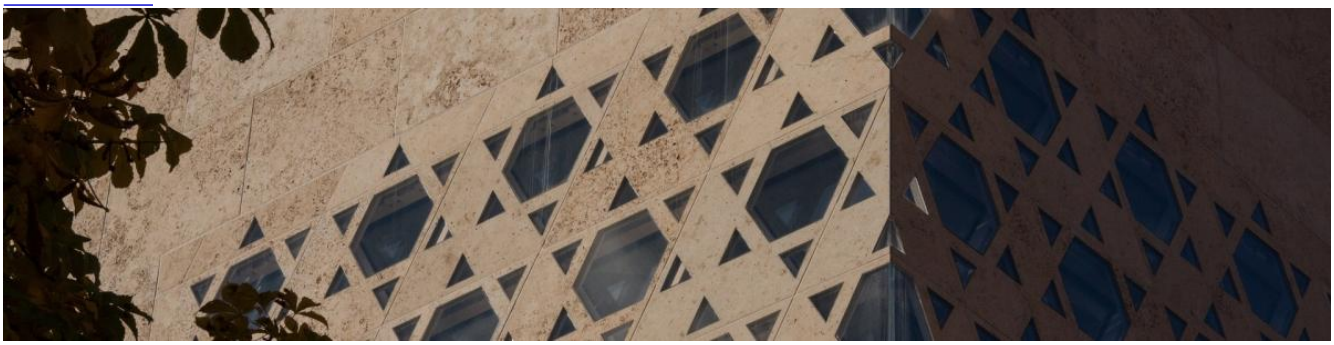
The Rabbinic Republic and Democratic Tradition

View PDF



Leonard Grunstein, a retired attorney and banker, founded and served as Chairman of Metropolitan National Bank and then Israel Discount Bank of New York. He is also a founder of Project Ezrah and Beit Midrash of Teaneck, serving as its chairman, as well as on the Board of Revel at Yeshiva University and the AIPAC National Council. He has published articles in the Banking Law Journal, Real Estate Finance Journal, and other fine publications. This article appears in issue 40 of Conversations, the Journal of the Institute for Jewish Ideas and Ideals.

The United States of America is a constitutional republic, with a system of governance designed to prevent tyranny of government or the majority. This includes a division of power and checks and balances, as well as the rule of law, which is imbued with a spirit of liberalism that recognizes that each individual has rights too.

These principles of good governance are rooted in the oral and written laws and traditions of the Torah, embodied in the Bible, Mishna, and Talmud, as elucidated and interpreted by rabbinic commentaries thereon. The Founding Fathers had access to this treasure trove of wisdom, in the body of Hebraic literature and thought, extant at the time, when they originally formulated our constitutional republic.[1]

However, it is important to appreciate that the Bible itself is not a political treatise. It does not literally prescribe the intricate details of how to organize a society into a polity and the mechanisms for providing for the best form of government, in absolute terms. There are some principles outlined; but, as more fully discussed below, this is not the fundamental purpose of the Bible and, therefore, not a primary focus of the biblical text. Even the discussions in the Book of Samuel[2] about the deficiencies of monarchy do not expressly address the matter of alternatives or what is the most desirable form of government, beyond just implicitly preserving the status quo. That subject is taken up by some of the medieval rabbinic commentators, but more on this below.[3]

The Torah does provide the most enduring comprehensive statement of individual rights and duties in recorded history. It also reflects one of the most majestic aspects of humanity; that we all share a common genetic ancestry, as the progeny of Adam and Eve, and yet, each of us is unique. As the Talmud[4] notes, no two faces, minds, or personalities are exactly alike. Nevertheless, we all bear the same spiritual essence, known as the image of God or soul. It commends each of us to afford

everyone the utmost of respect and dignity; no human being is more equal than others. Thus, the Mishna[5] records, sustaining the life of one soul is tantamount to sustaining the entire world. Fulfilling the ultimate purpose of creation requires all people, with their manifold varieties of features, forms, tones, character traits, intellects, languages, skills, and aspirations to have the opportunity to fulfill their own individual life missions.

The Bible is in the nature of a handbook, which primarily provides for how an individual can perfect his or her self, so as to achieve and maintain a connection to the Divine. As Rabbeinu Nissim [6] explains,[7] the workings of government are not the main object of the Bible. He analyzes the *hukkim*[8] and notes they are not relevant, per se, to the functioning of society. Rather, they are exclusively the province of perfecting the individual's ability to acquire and sustain a connection to the divine. Similarly, the *mishpatim*[9] are designed to unify the material and spiritual, in pursuit of a higher purpose and, thereby, also establish a connection to the divine. While the *mishpatim* also have the effect of ordering of society, the Ran offers that they are still markedly more oriented toward the sublime.

Interestingly, the Bible[10] does provide some level of detail regarding the judicial function. The Mishna and Talmud[11] set forth more extensive provisions on the appointment of judges and how courts are to be organized and function.[12] This includes the Sanhedrin, which also acts as a legislative body. Nevertheless, as the Ran notes, the purpose of judges and courts is primarily orientated toward the individual. Their job is to render judgments, which are true and righteous, objectively determining what is flawed behavior for the betterment of the affected individual, irrespective of any societal advantage or detriment. In essence, by following the dictates of the court and correcting his or her misbehavior, a person is ennobled and, in effect, cleaves to the divine.[13] Thus, like the vast majority of the Commandments, these too are similarly devoted to regulating the behavior of an individual for his or her gain and any benefit conferred on society is peripheral.

Astonishingly, the Ran declares that some of the laws of the nations will be found to be more effective in furthering societal order than some of the laws of the Torah. This may seem paradoxical, because we have come to accept that the Torah prescribes a total solution to how human beings should best function in this world. However, the Ran offers, the Bible is not intended as a guide for how to organize society and govern its affairs. Instead, it is primarily devoted to instructing the individual in the process and means of achieving perfection and, thus, an enduring connection to the divine. The structure and practical affairs of government, according to the Ran, are left to a monarch to fill in the gaps. Others, though, do not accept monarchy as the Bible's implicit solution and are even more flexible in how government can and should be organized.

The Bible[14] devotes just two verses to the concept of appointing a king. It records that if,[15] after entering the Land of Israel, which God gave to the people of Israel and inheriting and settling in it, the people determine to establish a king as their governing authority, as do all the surrounding nations, then they may do so by selecting the one chosen by God to be the king from among their people and not a foreigner.

The Talmud[16] takes up the question of whether this is an obligatory commandment or just a permitted one. It reports that Rabbi Nehorai says the biblical passage noted above is optional and it is not required that there be a king. It is only in response to a request by the people to appoint a king that it takes effect. Rabbi Yehuda disagrees and asserts that it is a part of a series of three mitzvoth[17] that were commanded to the Jewish people upon entering the Land of Israel, as follows:

1. to appoint a king, based on the verses noted above;
2. to wipe out Amalek;[18] and
3. to build the Temple.[19]

This disagreement is further taken up among the Rishonim, who have a range of opinions on the subject. Thus, for example, Ibn Ezra[20] viewed the entire matter of appointing a king as optional, not obligatory. Nahmanides[21] views it as an obligatory commandment and cites the Sifrei[22] in support thereof. Maimonides[23] also holds that the commandment to appoint a king is obligatory. However, Abarbanel[24] analyzes the entire matter in two lengthy essays[25] on the subject and concludes otherwise. His deep and thorough analysis of the views noted above, cogent reasoning, and compelling conclusions are bracing and every bit as fresh and thoughtful, as if expressed today. It's no wonder that his thoughts and views, expressed in the fifteenth century, were embraced by our Founding Fathers in the eighteenth century.

Abarbanel's thesis reflects his own breadth of knowledge of the classics, including political philosophy, familiarity with a variety of other systems of government, besides monarchy, and life experience with the fickleness of kings and capriciousness of affairs of state in monarchies. Thus, he served as the Treasurer to King Afonso V of Portugal. When the King died, his son John II took over and wanted to clean house of what he perceived to be his political opponents. In furtherance of this objective, Abarbanel was falsely accused of conspiring against the king; but he managed to make a hasty escape to Spain. Nevertheless, his extremely large fortune was confiscated by royal decree. In Spain, he became a financier to Queen Isabella. However, with the expulsion of the Jews in 1492, which he was unable to stop, despite heroic efforts and offers of vast sums to the Spanish King to revoke the decree, he too left with his fellow Jews. He then settled in Naples; but was forced to flee yet again, when it was conquered by the French. He ultimately resided in Venice, where he passed away and was reportedly buried in Padua.

Abarbanel presents and questions the views of his predecessors, noted above, who favored the position that the appointment of a king is an obligatory commandment. Among other things, he asks, if this was indeed a biblical requirement, then why did the Prophet Samuel[26] react so negatively? Although God did instruct Samuel to heed the demand of the people, God also consoled Samuel and noted that the people's demand for a king was not a rejection of Samuel, but was a rejection of God as king. Indeed, Abarbanel explains this means the people's misconduct was despicable and comparable to the sin of idolatry.[27] However, Abarbanel notes this was not a matter of how the demand was phrased. Indeed, even had the people invoked the precise formula set forth in Deuteronomy,[28] it still would have been inappropriate. Therefore, he goes on to argue that appointing a king could not possibly be a Torah mandate, because if the people were only following the Torah's dictates, then how could this possibly be so egregious an error in judgment?

This position appears to be supported by the Midrash on Deuteronomy,[29] which also takes a dim view of the seeming need by the people for a monarch. It records that God said to the people of Israel that God wanted them to be free of monarchy and the dread of kings. What was the point of asking for a king; only to be enslaved again and subject to the vagaries of monarchy, as well as, enveloped by the misfortunes likely to ensue, because of the inevitable misdeeds of the king? Moreover, as Psalms[30] cautions, we should not trust in the great, who are after all mere mortal human beings, who cannot be counted on to save us. In that sense, reliance on a mortal king is not only misplaced, it is also akin to idol worship and fated to fail. We can only truly trust in God as the genuine king.

Abarbanel[31] describes the endemic malady of kings in detail. Although the Bible[32] requires a king not to have a soaring ego or to think he is better than his people, this is usually not the case. A king is also enjoined to follow the halakha and not veer left or right.[33] However, this is not what occurs in practice. Instead kings typically enslave the people and take their children, fields, vineyards, servants, work animals, and flocks. Kings steal and oppress and are often no more than tyrants.

Abarbanel finds the efforts made to reconcile the seemingly contradictory texts of Deuteronomy and Samuel, noted above, so as to support a conclusion that there is still nevertheless a biblical requirement to appoint a king, personally unsatisfying. Indeed, he goes on to ask, if having a king was a biblical imperative, then why didn't Joshua immediately appoint one upon entering the Land of Israel?

Before tackling the seeming biblical inconsistencies summarized above, Abarbanel first introduces the topic of monarchy, generally, as a philosophical matter, in the world at large. He poses the threshold and fundamental question of whether monarchy is an intrinsically necessary form of government, or is it possible to have an organized nation without a king?

Abarbanel begins his analysis by citing reasons typically asserted by political philosophers in support of the absolute necessity for a monarchial form of government of a nation. He notes, they reason that a king is required: (i) to assure unity of the polity and to stamp out any divisions; (ii) as the source of continuity, mitigating against instability; and (iii) to wield the absolute power needed to hold people in check and society together. However, Abarbanel concludes that these assumptions are actually false.

Abarbanel notes that it is undeniable that Florence and Venice organized very successful societies, which function extremely well and are most prosperous, all without the need of a king. Their form of government is composed of councils of many leaders of the people, elected for set terms. They gather and unite and agree upon one policy. They also adopt laws and provide mechanisms for their administration and enforcement under their leadership. Thus, the proposition that there is a need for one leader with absolute power has proven in practice to be untrue.

Abarbanel goes on to analyze how it is better to have term limits of one to three years and a system of checks and balances. This might help deter many of the corrupt and dissolute practices of leaders, because they will soon have to account to the new leaders elected to serve after the offending leaders' term of office ends. The new leaders and judges can then investigate and enforce claims against the prior leadership for malfeasance. No one should be above the law. He also notes that one person with sole power is more likely to err than a group of leaders, since if one purports to do wrong, others will usually protest. Moreover, since their term in office is limited, there will ultimately be an accounting for misdeeds. As the popular saying goes, power corrupts and absolute power corrupts absolutely.

Abarbanel then artfully disposes of the halakhic[34] arguments mustered, based on biblical exegesis, which are cited in support of the position that appointing a king is an obligatory commandment. He first asserts that the biblical verse[35] does not unqualifiedly state appoint a king; rather, it provides for a situation if and when the people ask for one. This suggests that it is optional and not a requirement; otherwise, why the need for this threshold condition? Secondly, if this were an absolute requirement, then why the superfluous phrase, like all the other nations, in the text of the invocation? This qualification makes no sense if it was indeed intended as an obligatory requirement. After all, what difference does it make if anyone else does or doesn't have a king, if we are commanded to have one? Moreover, we are separately commanded not to emulate the ways of the idol worshippers, which makes this apparent qualification even more paradoxical. Indeed, as Abarbanel goes on to note, in his third point on the subject, the text can more readily be interpreted as a prophetic statement as to what would occur in the future, rather than a definitive commandment. This then puts the report in the Book of Samuel in the context of a realization of that prophecy, as opposed to a contradictory text.

Abarbanel's fourth point is a marvel of statutory construction and technical legal artistry. He posits that if the verses in Deuteronomy were actually intended to be a commandment, then perforce there would be two positive mitzvoth. The first would be to appoint a king and the second, in the next

verse,[36] would be the requirement to appoint one chosen by God, from among his people. Furthermore, there would also be a third negative commandment not to appoint a stranger as a king, who is not kin.

Abarbanel then states, in his fifth point on the subject, the irony of the people asking the Prophet Samuel to appoint a king, albeit for the wrong reason of judging them, and the harsh reaction of Samuel and God.[37] However, he goes on to quip, if this was an obligatory commandment, then why didn't Joshua perform it, immediately upon entering the Land of Israel?

For all the foregoing reasons, Abarbanel concludes, appointment of a king is not an obligatory commandment; rather, it is a permitted one. This he notes is consistent with another commandment relating to a war bride.[38] He observes that there is no obligation to seek one out; but if do so, then there are a number of applicable requirements that apply.

He posits, similarly, if the people elect to have a king, then there are a series of requirements that follow, including as to the process of selection and certain rules that are intended to restrain the behavior of the king. As noted above, the king must be one selected by God, from among the Jewish people, as communicated by a Prophet of God and with the approval of the Sanhedrin.[39] The king may not have too many horses or wives nor accumulate an excessive amount of gold and silver.[40] He is also required to write a Sefer Torah and keep it with him, read it all his days, be guided by it, and observe all its precepts.[41] However, notwithstanding these requirements, in general, the history of kings is a sordid one, with limited exceptions.

The Netziv[42] also considers the appointment of a king a permitted, not obligatory matter. He offers that it is for the people to decide what form of government best serves their needs.

In contradistinction to the subject of monarchy, the Talmud[43] also deals with the appointment of leaders, generally. It records Rabbi Yehuda says that leaders are not to be appointed without consulting with the members of the community. He bases this principle on the appointment of Bezalel as the leader of the project of building the Tabernacle.[44] He explains that God told Moses to go ask the Children of Israel whether the choice of Bezalel was a suitable appointment in their eyes. Their answer was if suitable to God and Moses, then of course it's suitable to them. While the Talmud does not set forth the details of the elective process, it does posit that the consent of the governed is required.[45]

The tradition of democracy is an essential and fundamental part of the halakhic court (including legislative function of the Sanhedrin) and decision-making process. The guiding principle is majority rule governs.[46] The concept is also applied in determining whether legislation so enacted remains effective. Thus, if a majority of the people don't accept a new enactment, then it is vitiated.[47]

It is noteworthy that there is also a healthy respect among the sages for dissenting points of view. As the Mishna[48] reports, dissenting opinions are recorded so that if a court prefers the opinion of a single sage, it may rely thereon.

The Talmud[49] records that both the views of Bet Shammai and Bet Hillel, who argued matters of halakha with each other, asserting conflicting positions, were authoritative expressions of divine will. The views of Bet Hillel were generally accorded preference in determining the final ruling adopted as the halakha, because in making their presentation, they first stated the position of Bet Shammai, before arguing their own. Interestingly, The Talmud[50] also provides that, while the halakha is generally in accordance with Bet Hillel, one who wishes to act in accordance with the opinion of Bet Shammai may do so, so long as follows all of Bet Shamai's rulings consistently and not just the leniencies of each of them. Most importantly, the Talmud[51] records that despite their pronounced differences when it came to matters of halakha, neither refrained from marrying within one

another's families. They epitomized the healthy respect, friendship, and camaraderie, as well as love of truth and peace[52] that are the paradigm for interpersonal relations.

The consent of the governed and civil rights accorded each and every individual are a fundamental and essential part of our tradition. Government would appear to be a matter of expediency, and we have come a very long way from demanding and needing an actual king to be appointed. Yet, leadership at some level and the executive function are recognized as a necessary complement to the organization and proper functioning of society. As the Mishna[53] pithily declares, pray for the welfare of government, for otherwise one person might swallow another alive.

It is most gratifying to know that democratic principles of majority rule, as well as respect for the views and rights of individuals who may differ are an intrinsic part of our tradition.

May divine providence guide our choices of leadership so that they are good ones, suitable to God and humankind alike.

Notes

[1] See, for example, *The Hebrew Republic*, by Eric Nelson (Harvard University Press 2010), which notes (at page 15), this included works of the Abarbanel, discussed below. See also, *Discourses on Government*, by Algernon Sydney (1698).

[2] I Samuel 8.

[3] The discussion of *Derashot HaRan* 11 and Abarbanel on Deuteronomy 17 are based on studying these materials in a lecture given by Rav Asher Weiss, in which the author regularly participates. Rav Weiss, author of the *Minhat Asher*, is one of the foremost Halakhic authorities of our times. The topics under consideration were titled: *Mishpat HaMelekh U'Mishpat HaSanhedrin* (Laws of the King and Laws of the Sanhedrin) and *HaIm Democratia Hineh Derech HaTorah* (Is Democracy the Way of the Torah). Any errors in discussing these materials are the author's.

[4] BT *Berakhot* 58a.

[5] Mishna *Sanhedrin* 4:5.

[6] Known as the Ran, a fourteenth-century talmudic authority and author of the famous commentary on the eleventh-century halakhic compendium on the Talmud of the Rif (Rav Yitzhak Alfasi), which appears in most editions of the Talmud.

[7] *Derashot HaRan* 11.

[8] The term "*hok*" is derived from the word "*hakika*," something indelibly engraved in rock like a picture (See Rabbeinu Bahya's commentary on Numbers 19:2). It is suggested that in modern parlance, it might be termed imprinting, in the sense of creating neural pathways in the brain. It results from the habitual behavior associated with the performance of a *hok*. It is submitted that the process of acting out rituals or other observances like *hukkim* is a way for a person to imprint patterns of good behavior. Since a *hok* is by definition not a rational requirement, this means of imprinting the brain has the added benefit of bypassing the filter of the rational mind. Patterns of behavior are the essence of the imprinting process. It is by habitually doing things that the imprinting process is implemented. In this sense, it is like muscle memory. This can be accomplished by, for example, praying in a *minyan*, at specified times, observing the details of the Sabbath and holidays or following other observances. It can also be the result of performing what are otherwise irrational actions, such as wearing *tzizit*. As the *Midrash Tanhuma* (*Hukkat* 7) notes, like other such *hukkim*, there is an illogical character to this mitzvah. On the one hand, it is prohibited to wear a mixture of wool and linen (Deuteronomy 27:11). On the other hand, this combination is permitted for *tzizit*. It is illogical, and yet God commanded us to observe this mitzvah as a *hok* (Leviticus 19:19). Rabbeinu Bahya posits that the details of the Red Heifer requirements (Numbers 19:2; another example of a *hok*) are not only devoid of logic, they appear to defy logic. Thus the very same ashes of the Red Heifer purify the ritually impure and defile the ritually pure. Rabbeinu Bahya further explains (in his commentary on Numbers 19:2) that the term *hok* also means boundary or limit (citing the usage of the term in Jeremiah 15:22). Establishing boundaries and limiting our behavior is an essential element in the kind of habitual behavior that can imprint our brains with a positive message. It is one of the fundamental benefits of performing the mitzvoth. Prescribed rituals and other patterns of good behavior can bypass the rational portion of the mind to reach and overcome the instinctual and, thereby allow for the spiritual influence of the soul to take hold. See, A red cow protocol, by the author, in the *Times of Israel* blogs, dated June 17, 2021.

[9] The commandments that can be rationally explained and indeed, might otherwise have been conceived and adopted, so as to regulate human affairs.

[10] See, for example, Leviticus 19:15 and 24:22, Deuteronomy 1:16–18 and 16:18–20 and Exodus 18:24–26.

[11] See, for example, Tractate *Sanhedrin* and BT *Avoda Zara* 52a.

[12] This includes the principle of majority rule governs, based on Exodus 23:2 as discussed in BT *Bava Metzia* 59b, *Hullin* 11a, and *Sanhedrin* 2a and 17a, as well as, JT *Moed Katan* 3:1 and *Sanhedrin* 1:1, 1:4 and 4:2. See also Maimonides, Positive Commandment 175 and *Mishneh Torah*, Laws of Sanhedrin 8:1. There is also a principle applicable to the appointment of judges that, besides their other qualifications, consideration must be given to their public acceptability (see, for example, BT *Sanhedrin* 88b, as well as, Maimonides, *Mishneh Torah*, Laws of *Sanhedrin* 2:7-8). Interestingly, a unanimous verdict in a capital case is dismissed (BT *Sanhedrin* 17a), because didn't adequately and fully consider the case if no one could find at least some merit, defense or mitigating factor or circumstance (See *Yad Ramah* thereon).

[13] The term "cleave to God" is idiomatic. It is impossible actually to cleave to God. Maimonides explains, it means to emulate God's ways of loving kindness, justice, and equity. Just as God is compassionate, gracious, slow to anger, and abundantly kind, so must we be as well. See, Maimonides, *Guide for the Perplexed*, Part III, Chapter 54.

[14] Deuteronomy 17:14–15.

[15] The verse is introduced with the Hebrew word "*Ki*," which can be interpreted as "if," as noted above, or "when."

[16] BT *Sanhedrin* 20b.

[17] Meaning commandments. The singular is mitzva. The mitzvoth are further divided into positive ones, which require an affirmative action be taken and negative ones, which prohibit an action being taken.

[18] Deuteronomy 25:17–19.

[19] Deuteronomy 12:10–12, which refers to the Holy Temple as the *Bet HaBehira* (Chosen House).

[20] Rabbi Abraham Ibn Ezra, a twelfth-century biblical commentator, in his commentary on Deuteronomy 17:15.

[21] Rabbi Moshe ben Nahman (Ramban), a thirteenth-century biblical commentator and talmudic and halakhic authority, as well as a medical doctor, in his commentary on Deuteronomy 17:15.

[22] Sifrei (a tannaitic halakhic Midrash), Devarim 157.1.

[23] Rabbi Moshe ben Maimon (Rambam), a twelfth-century halakhic and talmudic authority, philosopher, and author of, of among other things, the masterwork, *Mishneh Torah*, as well as, a medical doctor. Maimonides lists the obligation to appoint a king as positive commandment 173, in his *Sefer haMitzvot* (Book of the Commandments), and also sets forth the Commandment to appoint a king in his *Mishneh Torah*, Laws of Kings and War 1:1 (following the format of Rabbi Yehuda in BT *Sanhedrin* 20b, as noted above).

[24] Rabbi Don Isaac ben Yehuda Abarbanel, a fifteenth-century biblical commentator, statesman, and financier.

[25] One commentary on I Samuel 8 and another corresponding commentary on Deuteronomy 17:14.

[26] I Samuel 8:5–7.

[27] As an aside, Abarbanel, in his commentary on I Samuel 8:4, further elucidates the erroneous intent of the people in making this demand. They wanted to shrug off the burden of conducting themselves as God and, by extension, the Prophet Samuel's leadership regime required. Instead, they sought to appoint a king, who would permit them to enjoy the unrestrained permissive lifestyle of an idolater and, hence, the analogy to idol worship.

[28] Unlike Maimonides, Abarbanel does not find the difference in phrasing between Deuteronomy (like all the other nations around us) and Samuel (to judge us like all the other nations) to be a convincing and dispositive reason to draw a distinction between the two circumstances.

[29] Deuteronomy Rabba 5.

[30] Psalms 146:3.

[31] Abarbanel commentary on I Samuel 8:1.

[32] Deuteronomy 17:20.

[33] Deuteronomy 17:19–20.

[34] The term *halakha* literally means “the way.” It embodies the entire corpus of Jewish Law and practice.

[35] Deuteronomy 17:14.

[36] Deuteronomy 17:15.

[37] I Samuel 8:5–7.

[38] Deuteronomy 21:10–14.

[39] Maimonides, *Mishneh Torah,* Laws of Kings 1:3.

[40] Deuteronomy 17:16–17. See also Mishna *Sanhedrin* 2:4 and BT *Sanhedrin* 21b.

[41] Deuteronomy 17:18–19. See also Mishna *Sanhedrin* 2:4 and BT *Sanhedrin* 21b–22a.

[42] *Ha’amek Davar* on Deuteronomy 17:14.

[43] BT *Berakhot* 55a.

[44] BT *Berakhot* 55a, based on Exodus 35:30.

[45] See, for example, Responsa of Hatam Sofer, (*Hoshen Mishpat*) 5:19.

[46] Exodus 23:2; Mishna *Sanhedrin* 1:6; BT *Bava Metzia* 59b, *Sanhedrin* 2a, and *Hullin* 11a.

[47] BT *Avoda Zara* 16a.

[48] Mishna *Eduyot* 1:5. See also Tosefta *Eduyot* 1:2, which notes that while the law is in accordance with the majority view, dissenting opinions are preserved, so that they are available to be relied upon, in case they are needed at any given time.

[49] BT *Eruvin* 13b.

[50] BT *Eruvin* 6b and see also JT *Berakhot* 1:4.

[51] BT *Yevamot* 14b.

[52] Zechariah 8:19.

[53] *Avot* 3:2. See also BT *Avoda Zara* 4a.