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## GOVERNMENT OF THE PEOPLE BY THE CHOSEN PEOPLE

### Halachic Perspectives On Democracy

By Rabbi Yitzhak Grossman

With the recent demonstrations in Hong Kong protesting the Chinese government, this week's article will focus on the right (or duty) of revolution, and explore some of the halachic perspectives on democracy.

#### THE RIGHT (OR DUTY) OF REVOLUTION

A strikingly undemocratic stance appears in *Abravanel's* commentary to the Biblical discussion of monarchy. He raises the question of the propriety of a nation rebelling against and overthrowing a king who is "evil and scoundrelly". He records that "the sages of the nations" have analyzed this question, and determined that it is indeed appropriate, "but I spoke on this topic before kings and their sages, and I demonstrated that it is not appropriate, and that the nation has no right to rebel against the king and remove his dominion and kingship even should he commit all manner of villainy". He bases this upon three arguments, the first two applicable to any king, and the third specifically to Jewish ones:

The irrevocability of the social contract: the nation's covenant of obedience to the monarch is absolute and unconditional, and the former does not have the right to judge the latter's righteousness or villainy.

The monarch's place in the land is analogous to Hashem's in the world, and lifting a hand against the former to remove him from his position is therefore equivalent to lifting a hand against Hashem Himself.

One without the autonomy to choose a king

cannot have the authority to depose him. The choice of a Jewish king is not in the hands of the people, but in that of Hashem (as per the

Biblical verse opening this article), and since the people do not grant the kingship, they may not withdraw it. Hashem does not grant the nation the right to rebel and overthrow the king, no matter how evil he is, and its only recourse is appeal to Him.

The *Abravanel* notes that "we have not seen anything on this in the words of our nation's sages", and I do not know to what extent this reactionary perspective is accepted and shared by other Jewish thinkers. Although he asserts that he has "demonstrated" that revolution is illegitimate, his arguments, particularly the first two, hardly seem compelling.

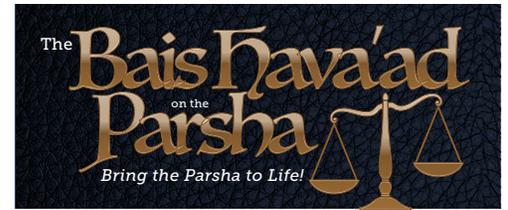
#### CONSENT OF THE GOVERNED AS THE BASIS OF GOVERNMENTAL LEGITIMACY

The Lockian-Jeffersonian idea that governmental legitimacy derives from the consent of the governed finds expression in the Rashbam's famous explanation of the Talmudic principle of *dina de'malchusa dina* ("the law of the government is [halachically recognized as] the law"):

For all the subjects of the government willingly accept upon themselves the decrees of the king and his laws and it is therefore the absolute *din*.

According to the Rashbam, it seems obvious that if *Chazal* asserted the principle of *dina de'malchusa dina* in the context of the autocratic governments of the ancient world, *a fortiori* does it apply to modern democracies. Indeed, the consensus of the modern *poskim* does so extend the principle, arguing that even according to the alternative rationales

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Bais HaVaad on the Parsha Shiur delivered by: Rav Yehoshua Grunwald

### "ביום השמיני עצרת תהיה לכם כל מלאכת עבודה לא תעשו" (במדבר כט:לה)

The Midrash states that when Hashem asked *Klal Yisrael* to remain with Him for the extra day of Shemini Atzeres, they responded, "*nagila vnismecha bo*." The Midrash explains that *bo* means rejoicing with Hashem, rather than the day itself, based on the *pasuk* "*nagila vnismecha bach* [you-Hashem]": *Bach betorascha, bach beyeshuascha*.

Rabbeinu Yona explains that our primary *simcha* on Yom Tov is for the miracles performed for us specifically. We can add that commemorating the open miracles performed for our ancestors linked to each Yom Tov enables us to recognize the hidden miracles in our own lives, the primary subject of our thanks on Yom Tov. Rabbeinu Yona also states that when we recognize His miracles, we can actually see Him in a certain sense (*bach beyeshuascha*), and the same is true with studying Torah (*bach betorascha*).

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# GENERAL HALACHA

## RENT CONTROL: THE LAW AND THE LAW?

### Dina Demalchusa Dina and Tenant's Rights

By Rabbi Yitzchak Grossman

#### HOW DOES HALACHA RELATE TO RENT CONTROL LAWS?

##### Question

*My tenant's lease expires in a couple of weeks, and I have given him notice to vacate upon its termination. He responded that Chazal have instituted various rules protecting tenants from eviction in situations where it is difficult for them to find new premises, and that the secular law in our jurisdiction also forbids eviction in our circumstance. Am I really barred from utilizing my property as I see fit?*

##### Answer

While it is true that *Halacha* forbids eviction under certain circumstances, this does not apply to our scenario, since the lease contains an expiration date. Thus the only remaining issue is whether *Halacha* considers secular rent control legislation binding between Jewish landlords and tenants. This is a question that has been heavily debated over the last century and a half, with no clear consensus emerging. There are two *halachic* principles that potentially call for the acceptance of the secular law: *dina de'malchusa dina* - "the law of the [temporal] government is the law"

*minhag* - in monetary matters, particularly contractual ones, we usually follow the prevailing custom.

#### DINA DE'MALCHUSA DINA

The application of *dina d'malchusa dina* to rent control legislation hinges on several major disputes among the *poskim* over the scope of the principle:

Some *rishonim* limit the principle of *dina d'malchusa dina* to legislation that directly concerns governmental interests, such as taxation and currency regulation, while others dis-



agree and extend it to any legislation for the benefit of society. It seems that *dina d'malchusa dina* can only apply to rent control legislation under the latter view, as there is no direct governmental interest served by such legislation. Moreover, there is an opinion that even the broader standard of "societal benefit" is not met, since although the legislation benefits tenants, it does so at the expense of landlords, and so cannot be said to be for the general good of society.

Some *poskim* insist that in general, we ignore any law that contradicts *Halacha*, others disagree. In the particular context of rent control, some argue that such legislation constitutes an un-*Halachic* taking of property, particularly insofar as the law's primary supporters are "free[-thinking] representatives, who hold the doctrines and opinions of the communists and socialists, to squeeze the rich and take their money, and all these doctrines are against *da'as Torah*".

There is an opinion that the criterion for the application of *dina d'malchusa dina* is that the law be "according to the *Torah*", which is determined by the existence of relevant *Halachic* precedent. Some therefore argue that since *Chazal* have already instituted certain protections against eviction, a secular law forbidding eviction (but not a law prohibiting the raising of the rent to market rates) is valid.

Some *poskim* suggest that even if the traditional criteria for *dina d'malchusa dina* do not apply, we still accept contemporary rent control legislation, either because modern democratic governments have more *Halachic* authority than the ancient autocracies, or because in the absence of our traditional

independent communal structure, we have no choice but to recognize secular legislation.

#### MINHAG

Many *poskim* maintain that regardless of the applicability of *dina d'malchusa dina* to rent control legislation, insofar as the law already existed at the time of the initial contract between landlord and tenant, this creates a *minhag*, and we apply the standard rule that any agreement is presumed to incorporate the prevailing custom.

Of the *poskim* who are skeptical toward rent control legislation, most do not raise the question of *minhag* at all, and their attitude toward the above argument is therefore unclear. There are those, however, who explicitly reject the idea of following such a *minhag*, asserting that it is not a "*minhag vasikim*", and only exists because of the impotence of *Bais Din*.

#### CONCLUSION

There is considerable debate over whether the principle of *dina d'malchusa dina* applies to rent control legislation. Many *poskim* maintain that even if it does not, the law still creates a binding *minhag*. However, this too, is not unanimously accepted, although the level of opposition to this approach is somewhat unclear.

The normal rule in the case of unresolved *Halachic* disputes is that the possessor of the property in question (*muchzak*) is entitled to retain it (*ha'motzi me'chavero alav ha'rayah*), but in our scenario, the very question of who is considered the *muchzak* is itself the subject of considerable dispute.

# MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

## OVERPAYMENT - KEEP THE CHANGE

**Sender asks Chaim to pick up a bottle of detergent at the local supermarket. The bottle costs \$9.50 and Chaim lays out the money.**

**Sender repays Chaim with a \$10 bill and tells him to keep the change. Has Sender payed ribbis?**

**Does it make any difference if Sender says he is giving the extra money as compensation for the effort of shlepping the detergent from the store?**



According to many *poskim* this is a form of ribbis, and therefore it would have been better for Sender to give Chaim his own money beforehand to buy it on his behalf.

Since this was not the case, when Chaim lays out his own money it is as if he is lending that money to Sender, who has now repaid more than he borrowed.

Many have tried avoiding this issue (and even larger ribbis issues) by claiming that the money "was given as a present." This is not a valid

*heter* (though some *poskim* are lenient when done between *relatives* where it is *obvious* that it was done as a present; see footnote).

The *poskim* offer various solutions to avoid our problem.

One way would be for Chaim to buy the detergent for himself, and then resell it to Sender for ten dollars

Another option would be for Sender to say that he is giving the extra money as reimbursement for the *effort* Chaim expended on his behalf.

# YOU DAILY LIVING

## Weekly Questions



**May one get engaged during the three Weeks?**

Yes, one may get engaged throughout the entire Three Weeks including *Tisha B'Av*. Prior to *Rosh Chodesh Av* (excluding the fast of 17 *Tammuz*), a formal meal may be served as

well. From *Rosh Chodesh Av* until *Erev Tisha B'Av*, only refreshments such as cakes and beverages may be provided (*Shulchan Aruch* OC 551:2 and *Mishna Berura* *ibid.* 16).

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- דף י"ג *Futures in Halacha*

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for the principle, a democratic government is no worse than a monarchy, with some going even further and arguing that some of the limitations of the principle established by the *poskim* do not apply to the legislation of democratic governments. Moreover, some *poskim* argue that democratic, consensual government can derive its legitimacy from additional *halachic* frameworks such as partnership (*shutfus*) or municipal government (*sheva tu-vei ha'ir* - see below), although these ideas are controversial.

### LOCAL GOVERNMENT

Another context in which *halacha* endorses the democratic idea is that of local government. The Maharam of Rottenberg, responding to a community riven with strife that could not reach consensus on the appointment of leaders (*"roshim"*), laid down the following procedure:

All the householders who pay taxes shall be assembled, and they shall accept upon themselves under penalty of anathema (*"cherem"*) that everyone shall express his opinion for the sake of Heaven and for the good of the city, and they shall follow the majority, whether to select

leaders, to establish *chazanim*, to institute a charity fund, to appoint *gabai'm*, to build or to demolish the synagogue, to add and detract, to purchase a wedding hall and to build and demolish therein, to buy a bakery and to build and demolish therein.

The bottom line is, any communal need shall be addressed at their direction, according to whatever they say, and if the minority shall refuse and stand in opposition, ... the majority, or whomever the majority shall appoint as leaders, have the power to compel and force them via either Jewish law or the law of the nations, until they say "we desire [to comply]" ...

### ONE DOLLAR, ONE VOTE?

The Maharam apparently takes for granted that suffrage is limited to taxpayers; his student, the Rosh, propounds a similar view, at least in the context of financial matters:

A community that institutes an anathema (*"cherem"*), if it is in the context of financial affairs, we follow the majority of wealth ... and it cannot be that the majority of individuals who pay the minority of the taxes shall decree an anathema on the wealthy according to their views.

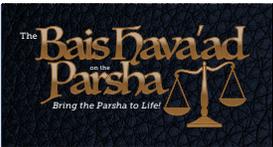
The *acharonim* debate whether the Rosh means that the wealthy minority can actually impose its will on the impecunious majority, or merely that we view the two groups as equally balanced, and they must therefore reach some consensus, or that those who do not pay the relevant tax do not vote, but all those who do pay tax are counted equally, regardless of the differences in their assessments.

### SOCIALISM AND COMMUNISM

The *Chavatzeles Ha'Sharon* insists that socialism and communism are fundamentally anti-Torah:

It is known to us that the primary support for this [post Great War rent control] legislation comes from certain free [thinking] elected [representatives], who have among them the opinions and doctrines of the communists and socialists, to squeeze the wealthy and to take their money, and all these doctrines are against *da'as Torah*.

Similarly, R. Yehudah Silman concludes that at least the extreme case of the blanket nationalization of property is illegitimate: it is considered theft, and not covered by the principle of *dina de'malchusa dina*.



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Why does the Midrash discuss the nature of *simcha* on Yom Tov concerning Shemini Atzeres specifically and not other *Yomim Tovim*? The answer is based on the *Sefer HaChinuch*, which explains that the mitzvos of Sukkos are designed to increase our *simcha*, but on Shemini Atzeres they are not necessary, as our remaining with Hashem and experiencing a special closeness with Him suffices to provide us with this *simcha*. Therefore, in contrast to other *Yomim Tovim*, on Shemini Atzeres we say Hallel without commemorating any miracles, since the *simcha* is solely about closeness to Hashem: *Bach bishuascha bach betorascha*.

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