

**Dvar Torah – Shabbat Shoftim, August 26, 2006**

**Examining Justifications for the State of Israel**

**by Syd Nestel**

Shabbat Shalom,

This weeks parsha is Shoftim. It deals primarily with the civil law that the Israelites are to apply to organize their civic and political life in the land of Israel. These are laws that only apply in the Land of Israel, and only in conditions of Jewish self rule. Together these laws come as close as we get in the Torah to a constitution for the Jewish State. (I should say, that at this point in Jewish and world history the word "State" as we know it today is an anachronism. But I will allow myself to use it in this Dvar as a short-hand for organized Jewish self rule, of whatever form, in the Land of Israel)

So, what do these principals and rules for running a Jewish State say?

They can be divided into rules for five main "**branches of government**": Rules for the Judiciary and Police; for Kings; for Priests; for Prophets; and for the Military.

Regarding the Judiciary and the Police, the first and most important rule is that the Jewish State must have them – courts and police. This rule, in fact, is incumbent on all humanity. It is one of the seven Noahide Laws given to all peoples after the great flood. The significance of this being re-stated here is that now the Jewish people are about to enter their own land, and it is only in the context of political autonomy- with jurisdiction over a defined territory - that institutions like courts and police can have any binding effect.

So the Jewish people are reminded at this juncture of their history – just before entering the Land – that they will now become THE responsible party for ensuring that there is a functioning justice system. No more complaining about the justice, or lack of it in Egypt. Now WE, not the goyim, are on the hook for creating a just society

But is there anything in particular that is to characterize the judicial system of a Jewish State? Yes – Deuteronomy chapter 16, verses 16-20 read:

You shall not judge unfairly. You shall not show favouritism or discrimination regarding people you know. You shall not take bribes ... Justice, Justice you shall pursue, (*Tzedek Tzedek tridof*) that you may thrive and occupy the land that the Lord your God is giving you.

This last sentence in particular, is significant. Four points are worth noting here.

First, the word "pursue". This implies an urgency, and a proactive stance. In the Jewish State, courts and police are not to wait passively for litigants or victims to come forward, but are to actively pursue justice and hunt down injustice.

Second, is the use of the word Justice (*Tzedek*), as opposed the word for Law (*Khok*) or Court Rulings (*Mishpat*). To be sure Justice and Laws and Court rulings are **all** required – and indeed the phrase *Mishpat Tzedek* (Just Court Rulings) is used just a few verses prior to these ones. But in this context – in the context of the primary requirement, doubled for emphasis in case we missed the point, it is Justice, ... Justice that is required above

all. Justice, that if need be, will fly in the face of unjust Laws and corrupted courts.

Third, the repetition of the word Justice is in itself significant. Some interpreters take this to mean that we must address obvious and open injustices as well as more subtle and hidden ones, to address individual injustices such as theft and murder, as well as systemic injustices such as unequal allocation of resources, or inequitable taxation: that is, the Jewish State must pursue Justice in its broadest scope, criminal, civil, and social. Yet other Jewish scholars, say the phrase "Justice, Justice" obliges us to pursue justice **only** by just means. The Talmudic rabbis (in Sanhedrin 74A) go so far as to state that one who kills an innocent person while trying to protect his own life from a 3<sup>rd</sup> party is - **guilty**; one who kills a potential murderer, when wounding would suffice to stop him, is - **guilty**; and one who destroys the property of a bystander, **even while defending his own life**, is liable for damages.

This is the high standard of Justice that the Torah demand of a Jewish state.

Forth, and this is something I would like to explore more later, is the phrase "that you may live and occupy the land that the Lord your God is giving you." In other words, according to Torah, pursuing justice is a necessary condition for maintaining Jewish settlement and self rule in the Land of Israel.

(The section on justice within the Jewish State concludes by outlining the rules of evidence and the punishment for bearing false witness. It outlines a hierarchy of courts and the severe punishment for what we would call "contempt of court." It deals with accidental killings and lays out the rules of

the Cities of Refuge, which were meant to both protect and to punish those who committed negligent homicide. And it singles out the particularly heinous crime of stealing a family's traditional lands by invalidating older surveys and deeds.)

The second broad area of concern in Shoftim's "constitution for a Jewish State" is the King. The first thing we learn about a King, is that we don't need one - it is strictly optional.

If established, however, a King of the Jewish State must obey the following rules:

- He is appointed by and behold to God;
- He can not be a foreigner;
- He shall not spend too much money on the military;
- He shall not live too rich a lifestyle nor accumulate too much wealth
- He shall own a Torah scroll and study it. He shall observe all the Laws in it. He is not above the Law.
- And finally –to quote: "Thus he shall not act haughtily to his fellows, nor deviate from the Instruction - to the right or to the left -, so that he and his descendants may reign long in Israel."

Thus we have the world's first constitutional monarchy. The monarch is subject to restrictions and to Law. Failure to live up to these standards may result in the end of his reign and/or his dynasty.

In the interest of time I will skip over the Laws regarding Priests and Prophets.

This then brings us to the last area of Constitutional Law addressed in our parsha – laws of the Military.

First the Torah assumes a universal draft and outlines the grounds for draft exemptions. Next the Jewish State's army is commanded, before attacking, to always try to negotiate terms of peace with the enemy. The parsha then briefly touches on the rules of booty where in it **expressly forbids** the killing of non-combatant women and children.

The parsha also forbids the Jewish army from destroying fruit trees during war: a rule that was expanded on by the sages to have included the general prohibition against *bal tashchit* - wanton destruction. To quote the Etz Hayim:

We are not to be so carried away in times of war that we forget that the war will be over one day, and people will have to live and feed their families in the place where the battles are raging. Beyond that Maimonides writes: "Not only one who cuts down a fruit tree, but anyone who destroys household goods, ... demolishes a building, stops up a spring, or ruins food deliberately, violates the prohibition of *bal tashchit* .

These, according to our parsha, are the standards that the Army of a Jewish State must live up to.

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So much for the parsha itself.

I wanted to pick up on an implicit theme in these texts. Namely, that the Jewish State is both contingent and utilitarian. That is, that the existence of a Jewish State is contingent on Jewish behaviour; as well as being a means to other goals. The existence of the State is not **guaranteed in Torah**, nor is the State an **end in itself**. This is expressed in the verses I quoted earlier about the consequences of pursuing justice, and of the King following all the laws. And these ideas - of contingency and purpose - are more famously expressed, in the verses we read in the Shma:

Beware then lest your hearts be lead astray, and that you go of and worship other Gods, and submit to them, so that the anger of The Mighty One should burn against you, and seal up the heavens so no rain would fall, so that the ground would not give forth her produce, and you be forced to leave the good land I am giving you.

And in the words of Isaiah which we sing every time we open the ark:

*ki miitziyon tezeh torah, udvar adonai mi-yerushalyim.*

Out of Zion shall go forth Torah, and the word of the Lord from Jersuslam

What a burden! Most national States do not have such pre-requisite for their existence, nor such a demanding purpose for being. The Italians are not warned they will face exile and foreign rule if they do not live up to certain moral standards, and no one as far as I know, bemoans the fact that Paraguay is not living up its purpose for being.

Nevertheless the ideas of contingency and purpose have stuck to the modern State of Israel. Most often placed there by Jews themselves. Partly this is our Biblical heritage, and partly as a result of the ideological (as well as physical and financial) effort it has taken to create and sustain the modern State of Israel.

It is the pre-requisites and purpose for the Jewish State, that I want to briefly explore in the time left.

The first organized group that can be call Zionist, in that it called for mass aliya and the establishment of an autonomous Jewish society in the Land of Israel was Hibbat Zion – one of whose "*garinim*" the Biluim, established in 1884, what is now called *aym ha moshavot* - the mother of the settlements, Gedera (and which coincidentally, I lived in from 1978 to 1988. I still remember the great celebrations that were held for it 100<sup>th</sup> anniversary in 1984.) One of Hibbat Zion's intellectual leaders was Ahad Haam and the broader political philosophy he espoused came to be called Cultural Zionism.

Ahad Haam viewed the primary purpose for renewed Jewish settlement and autonomy in the Land of Israel to be the cultural and spiritual revival of the Jewish People, and the revival of it's Biblical and Prophetic ethos. He never for a moment imagined or desired that all Jews would live in Israel, and used the analogy of a hub and spokes to describe the desired relationship between the Israel and the Diaspora. For Ahad Haam the triumphs of Zionism where to be the revival of the Hebrew language, the modernization of Jewish learning, the re-vitalization of Jewish culture in all its aspects, the creation a viable and autonomous Jewish community in Eretz Yisreal where Jewish ethics, based on the Jewish Bible and Prophets, could be enacted, as well as

the ennobling of Jews throughout the world. (If this sounds somewhat familiar it should – as Mordechai Kaplan adopted many of Ahad Haam's ideas into his emerging program for Jewish life in America – Reconstructionism.) For Ahad Haam, a Jewish State (and now I use this term in the modern sense) was neither here nor there. A large Jewish yishuv, with cultural autonomy, within the either Turkish or the British empire would serve his purposes just as well. In fact he opposed Herzl's vision of a Jewish State - as soon as possible – as putting the cart before the horse; and more importantly, likely to needlessly antagonize the indigenous Arab population. In an 1891 essay titled, "The Truth from Eretz Yisreal", Ahad Haam tells his followers in Europe that the land is not in fact empty, and that only by co-development of the land with the indigenous Palestinian people can Zionism succeed in creating a new and improved Jewish culture. And he berated his followers already in the land, for exploiting their Arab workers, and for promoting separate development.

(In 1912 – regarding the campaign instigated by the early Labour Zionists to hire only Jewish labourers:

Apart from the political danger, I can't put up with the idea of our brethren are morally capable of behaving in such a way ... the thought comes to mind: if it is so now, what will be our relationship to the others if in truth we will achieve someday power in Eretz Yisreal. If this be the Messiah, I do not wish to see his coming.)

Ahad Haam died in Tel-Aviv in 1927, having lost his pre-eminence in the Zionist movement first to Herzl and then to the Labour Zionism, bitterly disappointed with the turn Zionism had taken, towards normalization – as

the Labour Zionists called it - being a people like all others and striving for a State like all others. But his followers – including Judah Magnes, the first Chancellor of the Hebrew University, Martin Buber the modern Jewish religious thinker and philosopher, and Hannah Arendt, the post war Jewish social critic, kept alive his tradition; and all of these three opposed the creation of a Jewish State arguing instead throughout the 1940s, 50s, and 60s for a bi-national state.

Theodore Herzl is, of course, the most famous early Zionist. For Herzl the primary purpose of the Jewish State is to allow Jews to escape anti-Semitism – which he saw as negatively affecting Jew's economic status, their self image as well as their status in the eyes of the non-Jews. For Herzl, the pre-requisite for gaining the Jewish State was first and foremost Great Power endorsement. He envisioned the new Jewish State as sort of a Mid East Switzerland - a liberal bourgeois heaven, secular and tolerant of all – except for hidebound old fashioned Jewish religiosity. One of the plot lines of his book "Alt-Neu-Land" was how the nefarious orthodox Jews are trying to take away the civil rights of the Jewish State's Arab citizens, and how the hero of the book, together with the enlightened citizenry, put a stop to that, thus guaranteeing total equality for non Jews in the Jewish State. For Herzl, Hebrew and any older trapping of Jewish culture were irrelevant and backward. He envisioned the language of the Jewish State to be German.

Like Ahad Haam, Herzl too lost control for the Zionist movement, which came to be dominated for 70 years by Labour Zionism. For Labour Zionists the primary purpose of Jewish settlement in Eretz Yisrael was to allow the Jews to participate in the Socialist Revolution and/or build a Socialist/Egalitarian society. Related to this ideal was the re-creation of

Jewish farming and labouring classes, thus establishing the Jewish connection to the real source of human meaning – Land and Creative Labour. In this sense they were similar to the cultural Zionists in that they were attempting to fix the Jewish spirit. But their “Religion of Labour” was a much more radical break from the past than Ahad Haam’s attempts to reconstruct Prophetic Judaism into a new ethical nationalism. In short the purpose of Zionism for the early Labour Zionists was Jewish Socialism, as well as the normalization of the Jewish people - the creation of a Jewish working class, and establishing a Jewish connection with the Land.

The key was building the Jewish economy and doing it in a Socialist manner. Most Labour Zionists were so focused on this goal that they did not officially endorse an independent Jewish State until 1942 when the pressing need to open Palestine to massive Jewish immigration - and as soon as possible - became obvious.

In reaction to Labour Zionism's dominance of the Zionist Movement, Zeev Jabotinsky founded the Revisionist Zionist movement and in the 1930's completely broke away from the official World Zionist Organization. He called it “Revisionist” because he wished to **go back**: back to Herzl's original focus on a sovereign Jewish State. But Jabotinsky's reasons, as well as his vision, for a Jewish State were different than Herzl's. For the Revisionists the primary purpose of the Jewish State was to develop and exercise Jewish power; this for several reasons.

Firstly they viewed European anti-Semitism as both a humiliation and a physical threat. (To his credit, already in 1940, Jabotinsky was one of the few Jewish leaders anywhere predicting widespread slaughter of European

Jews) Revisionists viewed the Diasporic problem of the Jewish spirit as being primarily that of shame and timidity, the unwillingness of Jews to stand proud and fight. They were influenced by the militant and militaristic nationalisms sweeping Europe at the time, and Jabotinsky himself was much enamoured of Mussolini, prior Mussolini's alliance with Nazi Germany in the mid 30's. Only in a Jewish State, Jabotinsky claimed, could Jews develop and exercise power, and only through power can a people achieve safety and ultimately glory. The word ***Hadar*** – glory – became a Revisionist slogan, defining how an ideal Jew should comport himself. It is not without significance that while Herzl's literary work includes *Alt-Neu-Land* - a fantasy about a future Bourgeois Liberal Jewish Utopia - Jabotinsky's includes his 1926 novel **Samson the Nazirite** (later turned into the Cecile B. deMille movie *Samson & Delilah*), a tale of past Jewish suffering, as well as Jewish strength and revenge.

Religious Zionists had yet a different understanding of the purpose of the Jewish State and the requirements for its success. The majority of Religious Zionists view as their ideological mentor Rabbi Avraham Yitzhak Kook.

He posited that, instead of the return to Eretz Yisreal being a result of the Messiah's coming, it was in fact a pre-requisite for his arrival. That the return of the people to its land would liberate holy sparks, and bring forward the Messiah's arrival. The fact that most Zionists settling the land at that time were non, or even anti, religious was just God working things out in his own mysterious way. Religious Jews should cooperate with their secular brothers in the building-up of the land and the restoration of Jewish sovereignty. The return of the people to its land was *It'chalta De'Geula* - the Beginning of

Redemption in the most literal sense. Thus the purpose of the Jewish State for Rav Kook is to bring forward the Messiah.

Of course most Orthodox Jews remained non, or even anti, Zionist (and most Zionists remained non or anti religious) until after the Six Day War. At that point, the balance changed. This was largely due to the religious Zionist theories of Rav Kook as expounded and refined by his son Rav Tzvi Yehuda Kook. Tzvi Yehuda understood the Six Day War as a miracle, and proof that what his father understood as only happening in the still distant future – the coming of the Messiah – was now imminent. If Jewish settlement in the land was enough to begin the process (as his father claimed), then Jewish sovereignty over all of the ancient Holy Land was the penultimate stage. He and his followers viewed it as incumbent upon Jews to settle and Judaize all of the Land, and to prepare for the return of the Temple mount to exclusive Jewish control as well. Any retreat from Jewish settlement of the Land decreases holiness in the world and delays the Messiah's otherwise immanent arrival. Any costs for this effort, including increased conflict with the Palestinians are understood as "*Hevlsi Hamashiah*" - the birth pangs of the Messiah. Loyalty to this vision not only fulfills the purpose of the Jewish State, but is the primary pre-requisite for its continued thriving and surviving.

But there are also religious Zionists who do not follow this line of thinking.

One is Rabbi Irving Greenberg, who developed his Zionist ideology out of his Holocaust Theology. Surprisingly he did not really develop this theology until the mid 1970s, and it only gained mainstream Jewish acceptance in the 1980s. According to Greenberg, the primary sin that caused the Holocaust is

that Jews in particular (and good people in general), were weak and timid. The primary lesson that Greenberg learns from the Holocaust is that Jews (as well as the forces of good in general) must be powerful and must aggressively use this power to protect themselves and to confront evil. In his theory, the State of Israel is both God's **and** Judaism's appropriate answer to the Holocaust. Thus the primary purpose of the Jewish State is to exert Jewish power, which is by definition righteous, in that protects Jews and fights anti-Semitism. Concomitantly Israel's primary pre-requisite for thriving and surviving is the righteous use of Jewish power.

(Several things are interesting to note in this regard. First, Greenberg was the longest serving chair of the US Holocaust Memorial Council – which runs the United States Holocaust Museum. Thus it is not co-incidence or mere sentimentality that has the final tableaux in that Museum's tour through history of the holocaust end with the establishment of the State of Israel - as redemption out of the ashes. Secondly, given Greenberg's view of the significance of his Holocaust Theology for the world at large fit so well with the general neo-conservative world view, it is perhaps not co-incidence that the Holocaust Museum he championed was eventually funded by the Regan administration.)

It is my feeling, that of all the historical Biblical and modern theories of a Jewish State, it is Greenberg's that is, de-facto, the most accepted one, at least among Diaspora Jewry.

Let me wrap up this review with a theory which is close to my heart – namely some of the ideas of the religious Zionist thinker **Yeshayahu Leibowitz**. Leibowitz, the brother of noted Bible commentator Nehama

Leibowitz moved to Palestine in 1935 and died in 1994 at age 90. He virulently opposed any point of view that granted holiness as such to the State or to the Land. And he accused Ben Gurion's Labour Zionists, Begin's Revisionists, **and** the Religious Zionist followers of Rabbi Kook of this very sin. Indeed he famously called the modern day Jewish religious right, "Sabbatteans" for their false Messianic beliefs. And he labelled ideological West Bank settlers as idolaters, in that they worshiped the rocks and stones of the West Bank more than the ethical commandments of Judaism. He pointed out, that settlement in the land does not automatically curry God's favour, or fulfill any Mitzvah at all; but only when combined with holy intent and righteous actions.

For Leibovitz the purpose of the Jewish State was three fold. First it allowed Jews the same rights to a national state as the French or the Lithuanians. It is simply the natural secular right of any people to not be ruled by foreigners if they do not want to be. Second, a Jewish State can, potentially, provide a cauldron in which Jews can modernize and realize all of God's commandments.

Third, the State of Israel is a test: a test of whether we can live up to our ethical ideals. In 1953, in reprisal for an Arab raid into Israel which killed a mother and two children in their sleep, Israeli army forces (under then **Major Ariel Sharon**) raided deep into the Jordanian West Bank and, in the village of Kibiyeh, killed 69 people, mostly women and children, and destroyed over 40 houses. Leibovitz wrote a month later:

Kibiyeh, its causes, implications and the action itself are part of the great test to which we as a nation are put as a result of our national

liberation, political independence, and our military power – for we were bearers of a culture which, for many generations derived certain spiritual benefits from our conditions of exile, foreign rule, and political impotence. Our morality and conscience were conditioned by an insulated existence in which we could cultivate values and sensibilities that did not have to be tested in the crucible of reality. In our own eyes, and, to some extent in those of others as well, we appeared to have gained control over the terrible drives to which human nature is subject, among them the impulse to communal murder. While congratulating ourselves upon this, we ignored ... [the fact] that, in our historical situation, such mass murder was not one of the means at our disposal, either for self-defence or for the attainment of our collective aspirations. From the standpoint of moral vocation and religious action, exilic existence enabled us to evade the decisive test.

Leibovitz goes on to demand that national goals must be subservient to religious / moral obligations, even when these do not seem expedient. He is not a pacifist or a believer in a bi-national state, but believes the whole point of the Jewish State is to allow us to try to live up to the high standards set out for autonomous Jewish society – those first defined in the Torah, and in parshat Shoftim in particular.

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So there you have it: at least 8 different competing and overlapping views on the purpose and necessary conditions for a Jewish State.

- To actively seek Justice of the highest order, and by example transmit God's Torah to the world.
- Or, to renew the Jewish spirit based on Hebrew culture, arts, learning, and ethical nationalism, in an open and equal interaction with non-Jews.
- Or, to allow Jews to thrive economically, to be proud, to modernize, and to gain respect in the eyes of non-Jews.
- Or, to create a Jewish socialist/egalitarian society, by normalizing the Jewish people, creating an empowered Jewish working class, and renewing Jewish attachment to the Land.
- Or, to promote Jewish strength and pride, to protect Jews, and to attain Jewish glory.
- Or, to bring forward the Messiah, by building up and settling every inch of the Land of Israel.
- Or, to prevent another Holocaust, by the use of righteous Jewish power.
- Or, to be a testing ground to see if we can indeed learn to live up to our Jewish ethical obligations and ideals.

I think it behoves everyone of us to consider which of these viewpoints speaks truest, and what the implications of that might be.

Thank you, and

Shabbat Shalom