

Ethical Challenges of Jewish statehood the Challenge of Sovereignty

1: 13 Then the king said to the wise men, who knew the times--for so was the king's manner toward all that knew law and judgment; 14 and the next to him was Carshena, Shethar, Admatha, Tarshish, Meres, Marsena, and Memucan, the seven princes of Persia and Media, who saw the king's face, and sat the first in the kingdom: 15 'What shall we do to the queen Vashti according to law, as she has not done the bidding of the king Ahasuerus by the chamberlains?'

"And the king said to the wise men" – these are the Rabbis. "That know the times" that fix the new months. He said to them 'tell me what I should do' They said [to themselves], What shall we do? If we tell him to have her executed, tomorrow he will demand her from us when the effects of the wine wear off. If we tell him to ignore her, there is a disregard for the kingship.

So they said to him, "From the day that the Temple was destroyed, and we were exiled from our land, counsel has been taken from us, and we can no longer judge capital crimes. Go to Ammon and Moav, who are dwelling in their place like wine upon sediment." And what they say is reasonable as it is written, "Moav has been at peace since his youth, and in tranquillity upon his sediment; he has not been poured from vessel to vessel, and has not gone into exile; therefore, his taste stands in him, and his scent has not changed."

And immediately "and the next to him was Carshena, Shethar, Admatha, Tarshish"

Holiness in space, in nature, was known in other religions. New in the teaching of Judaism was that the idea of holiness was gradually shifted from space to time, from the realm of nature to the realm of history, from things to events. (Abraham Joshua Heschel, The Sabbath)

"Time – that is the locus of our vitality, just as space is the locus of the gentiles vitality...and this is the very essence of Judaism and what sets Jews apart from gentiles...now we have traded time for space, the spiritual realm for [that of] grim physicality, ordinariness and this-wordliness, with all its base lusts and desires...here lies the danger to the Jewish people, a danger of decline and decadence. Haim Hazaz, Avanim Rotchot)

א: יג ויאמר המלך, לחכמים ידעי העתים: כי-כן, דבר המלך, לפני, כל-ידעי דת ודין. יד והקרב אליו, פרשנא שתר אדמתא תרשיש, מרס מרסנא, ממוכן--שבעת שרי פרס ומדי, ראי פני המלך, הישבים ראשנה, במלכות. טו כדת, מה-לעשות, במלכה, ושתי--על אשר לא-עשתה, את-מאמר המלך אחשוורוש, ביד, הסריסים.

"ויואמר המלך לחכמים" מאן חכמים רבנן "יודעי העתים" שיודעין לעבר שנים ולקבוע חדשים

אמר להו דיינוה לי. אמרו היכי נעביד? נימא ליה קטלה - למחר פסיק ליה חמריה ובעי לה מינן. נימא ליה שבקה - מזלזלה במלכותא!

אמרו לו מיום שחרב בית המקדש וגלינו מארצנו ניטלה עצה ממנו ואין אנו יודעין לדון דיני נפשות. זיל לגבי עמון ומואב דיתבי בדוכתייהו כחמרא דיתבי על דורדייה וטעמא אמרו ליה דכתיב (ירמיהו מח, יא) שאנן מואב מנעוריו ושוקט הוא אל שמריו ולא הורק מכלי אל כלי ובגולה לא הלך על כן עמד טעמו בו וריחו לא נמר מיד "והקרב אליו כרשנא שת" אדמתא תרשיש"

The Four Cubits - good or bad news?

"Rabbi Hiya Bar Ami said in the name of Ulla, that from the day the Holy Temple was destroyed the only place the Holy One, blessed be He has in His world is the arba (four) amot (cubits) of Halakha alone." (Talmud Bavli, Berakhot 8A)

A Sanhedrin has jurisdiction inside and outside the land of Israel. A Sanhedrin that puts someone to death once in seven years is called bloodthirsty / a destructive tribunal. R. Eleazar ben Azariah said; once in seventy years. R. Tarfon and R. Akiva said "Had we sat on the Sanhedrin, no one would ever have been executed." Rabbi Shimon Ben Gamliel responded; in that case murders in Israel would have increased. (Mishna Makot: 1:11)

דאמר ר' חייא בר אמי משמיה דעולא: מיום שחרב בית המקדש אין לו להקב"ה בעולמו אלא ארבע אמות של הלכה" (ברכות ח).

סנהדרין נוהגת בארץ, ובחוצה לארץ.

סנהדרין ההורגת אחד בשבוע, נקראת חבלנית;

- רבי אלעזר בן עזריה אומר, אחד לשבעים שנה.

- רבי טרפון ורבי עקיבה אומרים, אילו היינו בסנהדרין,

לא נהרג בה אדם לעולם;

- רבן שמעון בן גמליאל אומר, אף הן מרבים שופכי דמים בישראל

Whose positions regarding capital punishment do you identify with more?



Staying within the Four Cubits is Comfortable

We can play the soapbox preacher: One reason it's so good for many Israelis in Berlin is that Germany isn't their country and they don't see it as their homeland. ...here in 'permissive' Berlin, it's like Paradise compared to Israel. After all, the dirty laundry isn't 'ours' but 'theirs'. The Israeli in Berlin is free from all the distressing public decisions requiring ethical choices that German citizens wrestle with. Why? Because he lives in exile, and the meaning of exile is the ability to worry about oneself and one's family, without any need to be involved in what's going on in public sphere, to show solidarity in the broader sense of the word, or to be a committed partner in society. That's why life in exile is – and I know this sounds paradoxical – so easy. At times life was hard, but the Jewish genius knew how to deal with difficulties and overcome them, and the difficult decisions he left for the *goyim* – the need to serve in the army, the need to determine policies of social justice or issues of life and death. Similarly, it was easy to be ethical and to play the role of soapbox preacher because you yourself didn't need to make difficult moral decisions. (Shlomo Avineri – Why is it so good for Israelis in Berlin? YNET)

We can be pure: Let us be grateful for the exile. It has freed us from the guilt of national existence in a world in which national existence meant guilt. We have been oppressed, but we were not the oppressors. We have been killed and slaughtered but we were not among the killers and slaughterers. We have been hunted from country to country, but there were no fugitives fleeing from their homes because of fear of us (Eliezer Berkovits, On the Return to Jewish National Life)

We can cling to absolute values: Sovereignty pulls people in a pragmatic world of compromise and responsibility, where one cannot act on pure ideals alone (Gadi Taub)

Statehood Expands the Cubits

One can religiously embrace the secular Zionist invitation to return to the land because **Israel expands the possible range of Halachic involvement in human affairs beyond the circumscribed borders of home and synagogue to the public domain**. Jews are given the opportunity to bring economic, social and political issues into the centre of religious consciousness. The moral quality of the army, social and economic disparities and deprivations, the exercise of power moderation by moral sensibilities, attitudes towards minorities and the stranger, tolerance and freedom of conscience – all these are realms that may engage our sense of covenantal responsibility. Everyday life can mediate biblical foundations for our covenantal identity (David Hartman)

Judaism was forced out of the public domain into the limitations of the private one. Broad layers of the Torah were thus pried away from the comprehensive life of a normal people, for which they were originally intended. The vital link between Torah and reality was severed in the exile of the people. That is the Torah of Hutz LeAretz. It is Torah in exile. It is Torah imprisoned in the private domain [*daled amot* - CBD]. **The living Torah needs the dialectical tension of the confrontation with a total reality that asks questions and presents problems**. Torah is alive when it meets the challenge, struggles with the problems, seeks for solutions by a continuous deepen of its self understanding, thus forever discovering new levels of meaningfulness in the depth of its inexhaustible eternity. Torah in exile lacks the life-sustaining challenge of the confrontation; it is stunted in its vitality and, for a lack of possibilities of Torah-realization, it is greatly impaired in its wisdom of Torah application (Torah in Exile, Torah in Israel, Eliezer Berkovits)

The creation of an autonomous Jewish body corporate, is the sine qua non for the regeneration of Jewish religion and culture. Without it, further development of Judaism is impossible; without it Judaism can hardly be saved in the present circumstances (Eliezer Berkovits, On the Return to Jewish National Life, 1943)

But this expansion is a double-sided coin – it brings problems and challenges as well



Halacha isn't prepared...

The Halacha accepts the absence of Jewish statehood as axiomatic, or one might say, as a prior condition for the fulfillment of its prescriptions...The regime of the Torah as it has come down to us constituted a way of life for a community free of responsibility for internal and external security, for foreign relations, for national economy, for administration of the body politics, and even for a judicial system operating with state sanctions...Jewish community life as guided by the Halacha depended historically on Gentiles, who provided the matrix law and order within which the Halacha functioned. Caro and his contemporary Jews were freed from political and administrative duties.

Only two forms of the State of Israel are known in the Halacha - the prehistoric and the post-historic. **By creating a state, we altered one of the fundamental assumptions of the traditional Halacha...**Religious Jews view the state through prism of a system which never reckoned with the possibility that such a phenomenon would exist. Either Jewish independence and sovereignty in an ideal past, exile and subservience in the real present or independence and sovereignty in an ideal future. Eternal Torah is frozen into a Halachic mould which has practical application only under foreign rule, or in an unrealised utopia

Take for example the 16th Century code of Joseph Caro, the Shulchan Aruch – still cited as authoritative. It begins on a truly inspiring religious note, with these words 'I have placed God before me always; let a man gird up his strength like a lion and rise in the morning to serve his creator'. Now Caro was perfectly aware that no one can rise in the morning much less sleep safely through the night, unless the prior conditions of public safety and social order have been provided. Properly speaking, our codifier ought to have prefaced Chapter 1 of his Orach Chayim with a complete code of public law providing the framework within which it becomes possible to live in accordance with the 'regulations for rising in the morning' as well as all the other regulations of the four parts of the Shulchan Aruch. Caro did not do so for a very simple reason. He had a silent partner to whom he could leave the entire sector of life called government, the Turkish governor in Acre who had jurisdiction over Safed where Caro lived. It makes no difference whether the Turkish system was one of justice or of bribery, of integrity or of intrigue. The point is, it was there, and it freed Caro and his contemporary Jews from political and administrative duties, so that they could undertake quite different responsibilities in that sector of life which was within their control. Had Caro not been able to take for granted an existing system of law and order, he would have had to write a very different Shulchan Aruch . (Yeshayahu Leibowitz)

Forming a Halacha of the *State* not the *Shtetl*

Halacha should concern itself with questions of social justice, of economic honesty and fairness, with problems of labour relations and of the work ethos, with the social gap, with ethics and morality in public life, even with such matters as traffic laws in cities and on the highways. How is Shabbat to be kept in a highly industrialised society that depends on continuous-process industries that can't be turned off every Friday night at sunset? Are they to be serviced only by non religious Jews, just as the police force is to be recruited only from among non Sabbath observant citizens? Is this what the Torah intended by a Jewish people living in its own land, a land dependent on the Jewish Shabbes goy? (Eliezer Berkovits, Not in Heaven)

The new reality of the state of Israel demands an understanding of what Halacha is about in its original classic essence. Yet what we have today is an understanding of Halacha and its application to an exilic reality that no longer exists. It is the Halacha of the Shtetl, not the Halacha of the state; it is not the Torah of the land of Israel. (Eliezer Berkovits – Return to Jewish National Life)

I have no ground to believe that Israel is going to create a new renaissance of Judaism. And if you read all my works... Israel was for me the carrier of a new covenantal Judaism, of a new renaissance of the Jewish people, of a new Torah - I really believed we were going to write a new Torah. And that reality was going to invade Judaism and we're not going to live with the *shtetl* memories of the past...

I love this country because its making me mature as a Jew. I love this country because it's telling me, 'Hartman you better shape up the Halacha and make it a living law, that's free from all the immoralities that are there.' That's what sovereignty means for me – it gave me the opportunity to make Judaism a part of a way of live that embraces everything – hospitals, the aged, morality of war, all those things – suddenly they became Jewish issues. Sovereignty gave us a total way of life to bring the spirit of Torah and we are failing totally. And we have to admit that. But does that mean because we are failing we'll never succeed?

God is supposed to be sanctified by the Jewish people in history. It hasn't worked. But He's still trying. And if He's prepared to continue trying, I'm prepared to continue believing.
(Hartman, The State of Israel: What it means to be Sovereign)

