

The Sabra's Lawless Legacy

I srael's sixtieth anniversary offered little cause for celebration. With the gag order imposed on the ongoing criminal investigation into Prime Minister Ehud Olmert partially lifted at day's end, Israelis learned that their head of state is suspected, among other things, of bribery, fraud, breach of trust, and money laundering. That night, Olmert appeared before the media to proclaim his innocence, insisting that he would fight the charges leveled against him. He even expressed his willingness to resign if and when he is indicted. This episode marked a new low in Israel's plague of public corruption: Over the past few years, a long list of officials—including a former president, finance minister, justice minister, and the head of the Income Tax Authority—have been involved in scandals both large and small. Indeed, reports of embezzlement, kickbacks, patronage appointments, and sexual harassment have become depressingly common in the Israeli media. It is no surprise, then, that according to a report issued by the Israel Democracy Institute this year, a full 90 percent of the public believes that the state is rife with corruption.

Most commentators assert that the cancer of corruption originates in the intimate association between politics and big money. No doubt, close relationships between elected officials and businessmen—as natural, and even necessary, as they may be—can have problematic ramifications. Yet this

explanation paints only a partial picture of the problem. After all, the shameful conduct displayed by much of Israel's political and financial elite largely reflects the questionable norms embraced by significant segments of the Israeli population. In an article published in *Haaretz* on June 12, 2008, the psychologist Yair Caspi argued as much when he said that "Ehud Olmert represents the beliefs and values that have taken root among us over the past decades... the perfect embodiment of the spirit of the times and the collective Israeli unconscious." In describing "Olmert's Nation," Caspi did not mince words:

[It is] a nation that "gets by," that worships those who are best at "getting by": Those who successfully cut as many corners as possible; those who know how to extract the most from the system; and mainly, those who don't get caught. And if they are caught—get away with it.... A nation of people who want to do as they please. Who have found themselves a new philosophy that permits no one to judge them.

Sadly, this collective portrait rings all too true and will be familiar to anyone who has lived in Israel for an extended period of time. But Caspi is mistaken when he speaks of a "new philosophy" taking root among Israelis. In truth, there is nothing new about this philosophy. It is as old as Israeli society itself.

While many might wish to believe otherwise, the fact is that the unruly, irresponsible, and lawless behavior that runs rampant in the Jewish state today is not a sudden detour from the path laid out by the Zionist pioneers. On the contrary, in certain respects it constitutes a natural, almost inevitable outcome of the ethos they created. What is becoming increasingly clear is that some of the rotten apples grown by Israel's founding fathers have managed to spoil the whole barrel. Alas, even the most enthusiastic Zionists, who believe in the moral necessity of Israel's existence and prosperity, must recognize this disturbing fact and deal with its consequences if they wish to find a cure for the disease that threatens to bring disaster upon the state so dear to their hearts.

In a somewhat paradoxical fashion, the Zionist movement's effort to establish a sovereign commonwealth in the Jewish homeland was accompanied by a certain ambivalence toward the institution of Law. Indeed, from its very beginnings, Zionism was distinguished by a penchant for illegalism. While the pre-state *Yishuv* hardly lacked men versed in the legal profession—prominent Zionist leaders such as Theodor Herzl, David Ben-Gurion, and Ze'ev Jabotinsky had themselves studied law, and relatively large numbers of Jewish jurists had fled Central Europe to Palestine in the 1930s—it nonetheless may be said to have lacked respect for the Law as such.

To be sure, this attitude is somewhat understandable, given the circumstances into which Zionism was born and the challenges it encountered. The modern national worldview adopted by many Zionist activists, which entailed the renunciation of the diasporic way of life, also led them to turn their backs on *halacha*, which for religious Jews constitutes *the* Law. As the historian Anita Shapira points out in her book *New Jews, Old Jews* (1997), the gradual abandonment of religious law was, for many Zionist pioneers, almost inevitable:

The atmosphere of the land of Israel did not encourage the keeping of the commandments. On the contrary: There was something in the public climate that looked upon breaking with tradition and being freed from ancient customs in a positive light. The family home was far away, and the social inhibitions, which were understandable within a familiar framework, disappeared entirely in the new land. Dissociation from the commandments happened almost unintentionally.

Whether a conscious ideological rebellion or an unintentional consequence, the rejection of halacha as the legal framework of national existence created a normative vacuum in the lives of the first Jewish settlers. Different factions attempted to fill this vacuum by different means: national myths, class ideologies, universal values, and other lofty ideals.

None, however, was of a juridical character. After all, the Zionist founders were in no hurry to replace one form of legalism with another, and especially not one of foreign origin. Indeed, the Yishuv regarded the laws imposed by the British Mandate not as an authority to be obeyed and respected, but rather, and quite justifiably, as an obstacle to its national aspirations. As a result, and with increasing haste after the publication of Britain's 1939 restrictions on Jewish immigration, the Zionist leadership worked outside of and against the law, which had become wholly identified with a hostile foreign regime.

Regrettably, the establishment of the State of Israel did not change the Zionist leadership's uneasiness with the Law. Certainly, the founders of the state desired to give it the appearance of a well-administered, constitutional democracy. Yet they were reluctant to forsake their suspicion of legalism. As far as they were concerned, the law was and remained a stifling and archaic constraint that frequently did not correspond to the conditions of real life. Israel's first prime minister, David Ben-Gurion, did not hesitate to voice his clear and harsh opinion on the matter in a speech to the Provisional State Council in September 1948:

The question is this: Have we been made for the legal principle or has the legal principle been made for us? Every jurist knows how easy it is to weave juridical cobwebs to prove anything and refute anything.... As a [former] law student I know that no one can distort any text and invent farfetched assumptions and confusing interpretations like the jurist.... We need recognition of the reality and knowledge of the facts, and this should be the decisive factor, not juristic legalisms.

Ben-Gurion's opinions on judicial culture were also reflected in his opposition to the establishment of a constitution. He assumed that an overly rigid legal order would hinder Israel's latitude in such crucial areas as security, settlement, and immigration. "Our state is the most dynamic state in the world," he proclaimed. "It is recreated each day anew. Every day

more Jews are being released and allowed to immigrate to Israel. Every day new lands are being redeemed from wilderness and neglect. This dynamism does not tolerate rigid limitations or superficial restrictions.” Ben-Gurion’s position—which served as the official line of his ruling Mapai party—had a durable effect on Israel’s legal history. The state’s “constitutional moment”—the critical period during which a newly formed commonwealth has the opportunity to create a founding legal document and thus determine its future character—passed, and a singular opportunity was lost. Ever since, the task of altering Israel’s governmental and judicial infrastructure has proven exceedingly difficult—in fact, nearly impossible.

In the absence of any genuine appreciation for the rule of law, the political and security establishment of the young state took an essentially utilitarian attitude toward legality. Israel’s decision makers viewed the law as little more than a tool for the advancement of their national and social objectives, and when those came into conflict, the “larger” concerns almost always took precedence over juridical remonstrations. At the heart of this approach, writes Pnina Lahav in *Judgment in Jerusalem* (1997), “lay the belief, widely shared by both members of Left and Right, that what really mattered was ‘what the Jews do.’ Not values, norms, or words, but action made the difference, and everything else was diminished before the main, colossal task of surviving as a sovereign state.”

This view suited the circumstances of the young state and, unfortunately, is still relevant in today’s Israel as well. There is no denying that in certain situations, national security must take precedence over all other considerations. Nonetheless, such thinking has bred a rather permissive attitude toward displays of public and private lawlessness. Siegfried Moses, Israel’s first state comptroller, clearly understood the risks posed by the utilitarian approach to Law when he warned that:

There is an attitude amongst us which gravely endangers ethical standards in no small amount of cases. It is the accepted view in certain circles that a

forbidden action is usually permissible if it is done in the name of a cause that is deemed by the perpetrator to be of national or ideological importance... but experience teaches us that a man who commits illegal acts for altruistic purposes will often commit illegal acts for his own personal benefit.

Unfortunately, time has proven Moses right. The trickle of corruption already apparent in the early 1950s is now a veritable torrent, and his successors at the state comptroller's office have repeatedly found themselves with their fingers in the dike, trying desperately to stave off the flood.

The anti-legalistic inclinations of the Zionist pioneers might not have had such a lasting effect were they not accompanied by an extensive educational and cultural effort to create a “new Jew,” a type defined in many ways by a rather unruly disposition. As history has shown, this effort was successful—perhaps too much so.

The new Jew—the native *sabra*—was designed to be the antithesis of his diaspora forefather, who was often portrayed as a passive, weak, and obedient *nebbekh*. The sabra, by contrast, was a noble savage, endowed with an independent and rebellious spirit. Inspired by this ideal, the elite youth of the Yishuv developed a tradition of boldness and grit but also of occasional mischief and lawbreaking: stealing livestock from farms, raiding orchards and groves, “lifting” equipment from offices and army bases, defacing signposts—all were par for the course. Moreover, such actions were not condemned or denounced; instead, they became the stuff of legend, the raw material for what would become a national folklore. In his comprehensive study *The Sabra: The Creation of the New Jew* (2000), the sociologist Oz Almog explains:

It was not just the sabras who viewed their pranks as the legitimate privilege of an elite—most of the adult representatives of the establishment and the moral norm-setters (teachers, commanders, political leaders) did so too. As far as they were concerned, these were venial sins—even positive character attributes—that expressed the lovable, playful, cunning, rough-hewn, anti-establishment character of the native, his youthful charm and grinning sociability.

The organizational frameworks in which this lawless subculture thrived—youth movements, militias, agronomic schools—were far from marginal. They were, in fact, training grounds for future generations of Israeli leaders. Moreover, the undisciplined and often borderline-criminal norms cultivated by the Yishuv's elite youth were inherited by top units in the newly formed IDF. And so a glorified Israeli tradition of misconduct was formed.

The story of Meir Har-Tzion and his blood vendetta is perhaps the most famous example of illicit behavior being tolerated and even protected by the establishment. Har-Tzion was a legendary warrior, a decorated officer in the elite commando Unit 101 and the paratroopers' brigade. In December 1954, Har-Tzion's sister and her friend were murdered by Bedouins while hiking in the Judean desert. In retaliation, Har-Tzion and three fellow soldiers went to the area where the bodies were found (which was then under Jordanian rule) and killed a group of Bedouins from the same tribe, leaving only one old man alive to tell the tale. Israeli police arrested Har-Tzion and his friends, but, following the intervention of Ben-Gurion and then-IDF chief of staff Moshe Dayan, the four were released without trial. Har-Tzion, whom Dayan called "the finest of our soldiers," was suspended from the military for six months—the equivalent of a slap on the wrist—but his private act of revenge made him into a hero in the eyes of many Israelis.

As Israeli society underwent profound political, economic, and cultural changes, the figure of the sabra evolved along with it. And as Israel became

more individualistic, liberal, and materialistic, so too did the sabra—the cultural embodiment of “Israeliness”—become more egocentric, hedonistic, and ambitious. Tales of heroism and self-sacrifice gave way to stories of personal success in business, entertainment, and politics. At the same time, the old-guard Labor party elite lost its ability to shape Israeli identity in accordance with its ideals. In a climate of ideological tension and social fragmentation, this identity has become a battleground between different groups and sectors: Ashkenazim and Sephardim, secular and religious Jews, and political Right and Left.

Nonetheless, in the realm of popular imagery the “authentic” Israeli personality retained some of its old attributes: a tough character, brazenness (or arrogance), and an inability or refusal to “follow the rules.” A weakening of the public’s trust in its state institutions has merely added to the mix an anti-establishment fervor absent in the 1940s and 1950s. Indeed, it is no coincidence that many icons of Israeli pop culture from the 1970s onward have been characters who’ve walked a fine line between the legal and the illegal and often crossed it altogether. Popular Israeli cinema and television of the past decades features a rogues’ gallery of hustlers, petty criminals, and thugs who became, particularly in the eyes of the country’s youth, role models to be quoted and emulated. On the other side, representatives of the law—judges, lawyers, and police officers—were depicted in these same films and television shows as cranky, hypocritical, and useless bureaucrats.

No doubt, at least for a time, Israel benefited from its image as a society that nurtures fearlessness and lack of inhibition. Moreover, the public clearly deemed the rewards of such an image great enough to tolerate the gradual but inexorable erosion of public norms and moral standards. In the early 1970s, for instance, the journalist Amos Elon wrote with obvious fondness about Israelis’ aversion to authority. In his collective portrait *Israelis: Founders and Sons* (1971), Elon pointed out “the advantages of living in a society which continues to maintain a remarkably low level of coercive discipline without disintegrating into sheer chaos.” He continued:

It is not that the authorities, whoever they may be, are flagrantly negligent in their exercise of their tasks. But it is possible at times to observe, in the manner in which authorities go about their duties, a kind of mischievous gentlemen's agreement with the governed which allows a relatively high but still tolerable amount of disorder, and a violation of civil discipline in the interests of the mannerism, selfishness, eccentricity, custom, or anomaly of the individual. There is a baroque quality in the elaborate ritual through which this is achieved, in the histrionics of both enforcers of the law and the enforced, the appellants and the appellees. In fact, though not in theory, Israel is a permissive society. Notwithstanding the pressures for change, in the name of order and efficiency, it has continued so long because it apparently agrees with one of the deepest national traits.

Decades later, Elon has left Israel in disgust, and the "permissive" quality he once praised has undermined much of what was best in the Jewish state. The mischievousness of the sabra has long since lost its youthful charm. Now, it is nothing more than a weak pretext for criminal behavior. Indeed, Israelis of all stripes are party to this attitude—politicians and bureaucrats, businessmen and plumbers, professors and taxi drivers. Only in such an atmosphere of personal and public lawlessness could Minister Ruhama Avraham-Balila, the government liaison to the Knesset, respond to the police investigation of Olmert by saying: "So what? True, this is not the first investigation, and not the second, and not the third, and not the fourth, and I don't know whether it will be the last. But what's the big deal? Who exactly is bothered by it?"

Of course, despite all of this, Israel is neither a banana republic nor a failed state. It has proved its resilience as a democracy in the face of constant threats to its security and frequent political and economic crises. The Israeli press, among the freest in the world, exposes cases of corruption with almost militant spiritedness. So, too, does public opinion

overwhelmingly reject, albeit with a hint of hypocrisy, flagrant displays of dishonesty. And perhaps most important, the Israeli legal system has not hesitated—despite its frustrating tardiness—to act against lawbreakers at all levels of society.

But the general outlook is not encouraging. More and more Israelis display political apathy and disinterest in public affairs. Worst of all, they are becoming morally desensitized. Such a mood makes it possible for corruption to spread at an alarming rate. The fact that the state's leadership sets such a bad example certainly does not brighten the prognosis.

In light of these disturbing trends, the courts may seem like the sole remaining guardians of the rule of law in Israel. Perhaps because of this, since the early 1980s the judiciary has grown in strength while consistently undermining the authority of other branches of the state. Ironically, this vigorous judicial activism, orchestrated by former Supreme Court chief justice Aharon Barak, has not strengthened the stature of the Law in Israeli society. In fact, it has had quite the opposite effect: The Supreme Court's effort to extend its authority over every aspect of Israeli life is viewed by many as an outrageous attempt by a secular, liberal Ashkenazi elite to preserve its social and ideological hegemony through judicial fiat. The reaction may not have been swift, but it was decisive: Following a golden age of two decades, during which it enjoyed unprecedented influence and prestige, the Supreme Court today is locked in an intense power struggle with other players in the public arena who consider its "rule of law" little more than judicial tyranny.

For all its flaws, however, the Israeli legal system deserves our full support in its battle against corruption. But this is not enough. Contempt for the Law is deeply ingrained in the cultural foundation on which the Jewish state rests. To deal with this problem, we need, first and foremost, an intensive educational endeavor on a national scale. Nothing less will do. All those institutions entrusted with the upbringing of future generations—the family unit, the schools, even the army—must be recruited to the cause.

They must work to instill a healthy civic consciousness in Israeli youth. They must help to mold a people which does not simply fear the law, but also regards it with genuine respect.

This process can only begin with a soul-searching look at our own history. Israelis must lucidly reevaluate their legacy and identity and apply the necessary remedies. Such examination does not entail forsaking Zionism, of course. Rather, it means pushing it forward, past its half-century-old arrested adolescence. The youthfully rebellious sabra has served his historic purpose. It is time for Israel to grow up.

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