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Parasha Mishpatim 5769  
February 21, 2009

Rabbi David Steinhardt

Shabbat Shalom,

I am going to challenge you this morning. I am going to challenge you to think in categories that are more complicated than what we usually present in relation to Israel as we sit here in America. For us, Israel represents something very romantic. The subtleties of the political conversation that take place within Israel or amongst Israel's critics, and I would refer primarily to Jewish critics, is something we don't wish to engage in; rather we tend to take a monolithic view of Israel.

We understand that as a community living in the Diaspora and a community which for so long felt an existential threat. But, although Israel remains a nation that is threatened, existential threats today are not what they used to be. Israel is very strong and a very powerful nation. So, the issues that Israel has to confront have changed. I mentioned this last week as I introduced our speakers. I referred to the debate between Zionism and post-Zionism. Zionism, reflecting the need for a homeland that is a haven, a refuge for threatened Jewish communities, an end to the conditions of exile, a place of protection. And post-Zionism, developing the question of what type of nation we are, what's the nature of our government and institutions, what is our response to poverty, what type of social services do we offer, what's the nature of our economy, how do we treat minorities, what is our educational system like, how do we absorb immigrants, how do we treat the environment? You understand. I think that within THAT framework there is another conversation that is occurring and it is a very important conversation.

A few years ago, we in the Conservative Movement cried about the lack of rights the Masorti Movement receives. Orthodox synagogues receive state monies and Conservative and Reform synagogues don't receive any. Orthodox Rabbis have the legal right to perform weddings, Conservative and Reform Rabbis are denied that. The only conversions that are recognized in the State of Israel are the conversions that were accepted by the Orthodox rabbinate. That creates real problems for the liberal Jewish community. It was as if Israel belonged to the entire Jewish people, but not the religious dimension of Israel. So, for Conservative and Reform and Liberal Jews who are practicing religious people, Israel did not reach its fulfillment. We have more "rights" here!

The essential question is "Can there be an Israel," a Zionist State; Israel, a Jewish State and also a democratic state? That question is being debated

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and may be the most significant question Israel is faced with as it moves into the future. After all, one of the great points of pride, as we support Israel, is that she is the only democracy in the Middle East.

Yet, the recent election saw a candidate come to the fore, a man by the name of Avigdor Lieberman who gained startling popularity, 13% of the vote, with a revolutionary idea not only to give up territories of the West Bank and Gaza, but territories in Israel proper in order to get rid of as many Arabs as possible. He so feared the presence that an Arab minority presents in Israel and so fears the presence of that minority as a threat to the Jewish nature of the state, that he wants to redraw the map to get rid of as many Israeli Arabs as possible. Additionally, he wants to require loyalty oaths. Needless to say, the anti-Israeli, anti-Zionist, anti-Semitic press and pundits throughout the world have jumped on this as fuel for their Zionism equals racism slogan. But, Lieberman is described by lovers of Israel as a racist.

What I would like to do this morning is speak about the complexity of the issues and how, Israel is dealing with these types of challenges. If Israel doesn't confront the democratic nature of the state in a serious way it will represent a threat to the state. We understand then that the great threat will not be an external threat, but a threat that comes from within.

On May 14, 1948, at the Tel Aviv Museum of Art on Rothschild Boulevard, Ben Gurion stood up and announced to the world the birth of the State of Israel. "The United Nations," he said, "had recognized the natural rights of Jewish people to be masters of their own fate, like all other nations, in their own sovereign state." "Accordingly," Ben Gurion said, "a provisional government would be set up at once soon to be formalized by the constitution which shall be adopted by the elected constituent assembly no later than the first of October 1948." It is now February 21, 2009 and Israel has no constitution.

The Declaration of Independence with fewer than 1,000 Hebrew words remains the core text of Israeli democracy. One long sentence embodies the vision of the founding fathers of Israel. "The State of Israel will be open for Jewish immigration and for the gathering of the exiles. It will foster the development of the country for the benefit of all its inhabitants. It will be based on freedom, justice and peace as envisaged by the prophets of Israel. It will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex. It will guarantee freedom of religion, conscience, language, education and culture. It will safeguard the holy places of all religions and it will be faithful to the principles of charter of the United Nations." In other words, a democratic and Jewish state was born May 14, 1948!

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But what does it mean in practice? Does open Jewish immigration certified by the "law of return" in 1950 discriminate against non-Jews? Might the civil liberties of the non-Jewish minority be circumscribed in the name of a larger Jewish collective? These are very difficult questions. In 1955 Israel's Supreme Court headed by the Kentucky born Justice Shimon Ogrinot, (that's right Kentucky) ruled in a landmark case that an Israeli Arab nationalist party can be banned from running in Knesset elections because it advocated the dismantling of the Jewish state. Citing the Declaration of Independence, Ogrinot affirmed in his legal opinion that "Israel was established as a Jewish state in the land of Israel fulfilling the age old striving for the redemption of the people." On the other hand in the year 2000, the National Religious Party denounced the court's decision the Ka'adan Case, which permitted an Arab family to build a house on State owned land in a Galilee village designated as Jewish. The Jewish character of the state, ruled Court President Aharon Barak, does not permit Israel to discriminate between its citizens.

We have to look at it and ask, "What is the Jewish character?" Is the Jewish character religious, or national, or both? To what extent should it be expressed to the public sphere? Theodore Herzl, who was hailed in the Declaration of Independence as the spiritual father of the Jewish state, addressed this issue a half century before Israel's founding. In 1896, Herzl wrote, "....shall we end by having a theocracy? No, indeed not. Faith unites us, knowledge gives us freedom. We shall therefore prevent any theocratic tendencies from coming to fore in the part of our priesthood. We shall keep our priests within the confines of their temples in the same way we shall keep our army within the confines of their barracks. Army and priesthood shall receive high honors in our state as their valuable function deserves. But, they must not interfere with the administration of the state that confers distinction upon them or they will conjure up difficulties without and within."

It hasn't really worked out that way for the state of Israel to the chagrin of many Israelis and Zionists and many lovers of Israel and Zion. For others, however, the omnipresence of Jewish law and tradition and Jewish life is the foremost justification of the State's existence.

So, you understand what the issues are and what the problems are. Are they resolvable? I think they are. But, I don't think the issues of democracy, of freedom and human rights, as well as the issues of Jewish statehood; independence and autonomy are simple issues. I think that just as American democracy continues to evolve and to work itself out, and we accept that, the same thing will be the process of Israeli democracy visa vis religion.

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Let me share a story from the Talmud. There is a debate in the Babylonian Talmud regarding the question as to whether the oven that had become impure can become purified. A debate among sages resolved not by the presence of a Divine intervention, but majority rule. At the end of the story the Prophet Elijah says that God at that very hour was laughing, enjoying the fact that the human process had overtaken the heavenly process for determining law. In other words, for the rabbis of the Talmud there was an ongoing tension between a culture of revelation and Halacha and the concept of majority rule. It is important to note that, the rabbis had already absorbed, two thousand years ago, a central democratic principle into the most sacred arena of their culture. That principle, that democratic principle of the majority ruling, whether it be in the courts or whether it be amongst the population is a critical dimension to democracy and a dimension that can be applied with absolute security for a Jew who is rooted in traditional Judaism. In other words, human processes need to be applied in decision making. Therefore, the notion of a theocratic state must be viewed as being anachronistic and in fact, history has taught, dangerous.

But, a Jewish democratic state does provide certain challenges. Based on the thought of Moshe Halbertal, I would like to indicate four aspects of the nature of the Jewishness of the state. The first is we have a problematic history. We have existed for two thousand years without the power to defend ourselves. As a people without the power to defend ourselves, we experienced tremendous oppression, pogroms and exile and ultimately a Holocaust. A Jewish state gives the Jewish people an absolute right for self-determination. A core aspect of the Jewish state is that it has physical and political power gained through its economy and other means to dictate to some degree the political well-being of the Jewish people. This leads then to the fact that a Jewish democratic state needs to have a law of return. Jews, wherever they are, can get immediate citizenship in the state. Is this justified? Well, Halbertal says it is a form of affirmative action for the Jewish people and I believe that when we look at our recent history and the contemporary history of the Jewish people, whether it was during times of fear in South America or whether it was during times of oppression in the Former Soviet Union or the potential destruction of the Jews of Ethiopia, the fact of a Jewish state accepting its citizens immediately justifies the need. Having said that though, the sensitive reader or the sensitive thinker or the sensitive viewer of the political situation would say that there has to be a Palestinian state that allows the Palestinian people to have their own law of return. We have to understand that. Why would a Palestinian refugee from Lebanon have more of a right of entry there than a Kuwaiti? It is a racist state. The reason is because the Palestinians have a justifiable claim for a homeland, historically, as we do for our state. And just as we will have to

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compromise the boundaries of that state, the Palestinian people will also have to compromise the boundaries of their state.

The third is the idea of the symbols of public sphere. What is the calendar that determines public life? The symbols, the language, these in a Jewish state are all Jewish. In France they speak French. The public symbols have to do with their history, the flag, and civil holidays and so on. In the United States, Memorial Day, the Fourth of July, we have our own calendar. In a Jewish state, it is a Jewish calendar. The language is Hebrew. The symbols are the symbols of the Jewish people.

The final aspect of the Jewish state is that it must be a sponsor of centralized education committed to the understanding of Jewish history and the Jewish culture of the people of the state. But, also committed to the expression of the varieties of Jewish culture and the varieties of religious expressions. In order for Israel's Jewish character to coexist with the democratic nature then, there must be a regard for non-Jewish minority. Today, the reality is a significant population of Israeli Arabs. Arabic and Arab culture should be taught. The civil rights of all non-Jews, economic rights, access to resources, to political representation and to land, everything that every citizen gets must be available to every citizen whether they are Jewish or whether they are Arabs. If we discriminate against them, we fail to be loyal to the combination of Jewish values and the values of a democratic state. Our obligation includes dedicating some of the resources of the state to foster Arab culture for the Arab citizens. According to Halbertal, it includes allowing for an Arab public space where appropriate, also, making Arabic a second official language and allowing the community to follow its own calendar. That's a constraint on the Jewishness of the state. But that is a response to the reality of a multi-cultural state.

The second element, according to Halbertal, is the intra-Jewish one. Herein, we know that since the 19<sup>th</sup> century there has been a rift between Orthodoxy and Reform and secular Jews. Later on the Conservative Movement was formed and grew. Each one of these reflected a Jewish people, a Jewish identity, Jewish learning, and some type of Jewish observance whether it be cultural or religious. Together, they make up the Jewish people. We cannot have a state that legislates religious laws according to the views of one group of Orthodox Jews. Jews have been arguing how to observe a Shabbat for as long as there have been Jews. So, the state cannot be simultaneously the State of the Jewish people and a Jewish state in a religious sense. As soon as you legislate then you alienate a large portion of the Jewish people. It is in the interest of the Jewish state not to engage in the coercive mechanisms of a state in issues that pertain to the religious or secular identity of its people.

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It seems to be simple! But, it is not at all. It is very complicated stuff. Perhaps it needs to begin with the creation of a constitution and election reform. On the bottom line, it is all informed by the values of our people, which continue to unfold.

This week is a perfect week for me to speak about this, because we read Parshat Mishpatim. Parshat Mishpatim begins with the laws about the treatment of slaves. We don't believe in slaves. We believe it is an unethical, immoral, a damned practice but yet what we see in our tradition in the very beginning was a way of dealing with the reality of the world with the most ethical sensitivities. So, now slavery is absolutely forbidden. But now we have new issues to deal with, taking the morality and the ethics of a tradition, the precedence of law and using all of that with the establishment, God willing, someday a "more perfect" state for the Jewish people. Courts of law and a democratically elected government help make us better. We need a Jewish state. History has shown us that. But, we need a Jewish state that represents the best in democratic principles and the best of humanity.

Shabbat Shalom,  
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