

Literary Legal Utopias— Alexander's Visit to Kasiah and Law at the End of Days*

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A. Introduction

A LONG LINE OF UTOPIAN THINKERS has asserted that Utopia, by nature, is lawless.¹ This perception is often founded upon a contention referring to human nature. According to this contention, ideal society is characterized by the perfection of its inhabitants. In Utopia, human beings live in constant harmony, and there are no conflicts that must be settled. Thus there is no need for governing rules.² Another contention, which complements the first one, is that society is ideal if there are no laws, which restrict liberty (Ramiro Avilés, 227). Law restricts liberty because of its coercive nature (Kelsen, 42). It also promotes conflict and makes it perpetual (Ramiro Avilés, 231). Thus, law is incompatible with Utopia because of law's inherently problematic attributes. Grant Gilmore describes this perception:

The better the society, the less law there will be. In Heaven there will be no law, and the lion will lie down with the lamb. . . . The worse the society, the more law there will be. In Hell there will be nothing but law, and due process will be meticulously observed. (Gilmore, 111)

According to an alternative view, "The utopian mode is distinguished by its pursuit of legal, institutional, bureaucratic and educational means of producing a harmonious society" (Davis, 371).³ Utopia, according to such perception, is a form of ideal society that imposes order through law.⁴

The aim of this essay is to put forward the contention that Utopias may, and perhaps must, include legal rules and adjudication pertaining to them. In this context I refer to the positive law. This is an accumulation of norms, which are, generally speaking, coercive orders of human of human behavior (Kelsen, 30–5). In Hans Kelsen's words,

[A]s a sanction-prescribing social order, the law regulates human behavior in two ways: in a positive sense, commanding such behavior and thereby prohibiting the opposite behavior; and, negatively, by not attaching a coercive act to a certain behavior, therefore not prohibiting this behavior and not commanding the opposite behavior. (Kelsen, 42)

The discussion will revolve around two literary expressions from Jewish sources. The first is an ancient legend recounting the voyage of Alexander of Macedonia to Kasiah, an imaginary kingdom located "on the other

side of the mountains of darkness".⁵ The second is a short story by Nobel Prize laureate S.Y. Agnon, "With Righteousness Shall He Judge the Poor", which was published in 1973 in Agnon's *A City in its Fullness* (541).

The two stories, which can be read as intricate Utopian parables, will be used in order to address the arguments supporting the notion of Utopia as inherently lawless and illustrate contradictions to those arguments, and by doing so, suggesting that ties between Utopian existence and the law are unavoidable.

B. Alexander of Macedonia and the King of Kasiah

The intriguing legend of Alexander of Macedonia in the Kingdom of Kasiah is frequently mentioned in various collations of ancient Hebrew legends (Frankel, 145). The following version is the one narrated in *Genesis Rabba*, the first volume of the *Midrash*—a collection of exegetical commentaries on the Bible (Halper, 16).⁶

Alexander of Macedonia paid a visit on the King of Kasiah, who dwells on the other side of the mountains of darkness. The king came forth to receive him, offering gold bread on a gold tray. [Alexander] said to him, "Do you really think I need your money?"

He said to him, "And don't you have anything by way of food to eat in your country, that you have come to my country? [I assumed you came for gold, not for bread. Otherwise, why bother to make the trip?]"

He said to him, "I came only because I wanted to know how you people administer the public interest."

He took a seat when the other went into session. Someone came and complained about his fellow, saying, "This man sold me a manure pile and I found a stash [a treasure—s.a.] in it." The one who bought it said, "I bought from him only a manure heap." The one, who sold it said, "I sold him the manure pile and everything in it!"

The king said to him, "Do you have a son."

He said to him, "Yes."

He said to the other, "Do you have a daughter?"

He said to him, "Yes."

He said to them, "Get them married and give the stash to the two of them as a dowry."

The king saw Alexander looking on, amazed. He said to him, "Don't you think I made a good decision?"

He said to him, "Indeed so."

He said to him, "And if the case came to you in your country, how would you people have judged it?"

He said to him, "The court would have put both litigants to death and taken the treasure for the king."

[The king of Kasiah] said to him, "Now tell me, does it rain in your country?"

He said to him, "Indeed so."

"Does the sun come out in your country?"

"Quite."

"Are there small cattle in your country?"

"There are."

"Well I tell you, it is not on account of any merit that you have attained [that there is rain and sun in your country] but only on account of the merit of the small animals, as it is written, 'Man and beast you save, O Lord' (Ps. 36:7). 'Man you save' on account of the merit accrued by the dumb animals' do you save, O Lord". (Neusner, 340-341)

On the face of it, this story presents two diametrically opposed societies: a society that is focused upon sharing, giving, generosity and fairness, in contrast to a society which is ungenerous and avaricious. Indeed, such a reading easily comes to mind, and was suggested by a commentator who interpreted the story as a spiritual confrontation between an idyllic, just and peaceful community and a realistic, greedy and cruel one (Frankel, 146). Another commentator interpreted the story as positioning one extreme, the place of harmony, against another extreme—the place of division (Cosman). I contend, however, that a different reading is possible. Initially, the story indeed presents two dichotomous models. The Kingdom of Kasiah represents the first. Kasiah lacks any specific religious context.⁷ Its character is universal and does not require specific emblems of religion or nationality. Its location too, "on the other side of the mountains of darkness", remains mysterious and unspecific. The citizens of the kingdom are preoccupied with the effort to bestow their assets on others. This apparently gives the Kingdom of Kasiah the character of a Eutopia, that is a Utopia "that the author intended a contemporaneous reader to view as considerably better than the society in which the reader lived" (Claeys and Sargent, 1). Alexander of Macedonia's kingdom, on the other hand, represents a Dystopian model.

Yet, in fact, there are parallel features and similarities between the two kingdoms. Both kingdoms have a common hierarchical structure: their sovereign is a king who is also a judge. The Kasiahans, so it seems, practice lively commerce, which must be governed by law. At the center of the narrative there is a dispute which concerns the ownership of property. The dispute between the two Kasiahian antagonists does not ensue from avarice nor greed, but from altruism. However, the aspiration of each party to bestow the treasure on the other necessitates a legal procedure in order to decide between the conflicting desires and make the decision coercive. Kasiah, therefore, needs law and its coerciveness in order to settle disputes and to maintain peace. The parties involved are incapable of reaching agreement by themselves, and must resort to legal mechanisms. Even a dispute that is primarily motivated by altruistic motives requires resolution and may, if left unresolved, deteriorate into hostility and perhaps violence.

Let me now return to the argument according to which law is redundant in an environment habituated by morally perfect or virtuous people. In Kasiah people are virtuous. As Cosman puts it, Kasiah is a Utopian model because nobody there seeks his or her own good, and the main interest of each Kasiahian is giving and caring. Kasiah seems to be a sort of "golden age" Utopia, where the better way of life is achieved because people are intrinsically good. Yet, in that idyllic human environment, law reigns. As a matter of fact, in this context there is little difference between Kasiah, the

seemingly Eutopian realm, and Alexander's apparently Dystopian one. In Kasiah the social practice is excessive material generosity. In the kingdom of Alexander, the practice is quite the opposite. In both kingdoms, however, the legal conceptions of private property and ownership are of central importance, and are defined and enforced by law.

In Kasiah people compete in order to be more virtuous. Perhaps they do so because in their society virtue is recognized as a token of social respect and success, and perhaps some inner moral principle guides them. Be that as it may, they need law in order to finalize their generous intentions. Consequently, the social fabric in Kasiah is constructed and maintained by law. Thus, as this legend artfully illustrates, even in a society where all members are generous and moral by nature, law seems to be indispensable. In this sense, there is a basic resemblance between Kasiah and Alexander's kingdom. In both societies, it is the law that gives effect to prevailing social practices, and both are incapable of giving up law's coercive power.

C. Law at the End of Days

Dov Schwartz has described the interaction between law, justice and a Utopian future as follows:

What might be the image of the future anthropological model? How will the person of the messianic age be portrayed? If such a person will then lack evil urges and desires there will be no need whatsoever for educational and restrictive law. . . . By contrast, if the future anthropological model remains identical to the current model, and future persons will still possess internal urges, impulses and doubts, then religious law will be her or his safeguard. (18)

These two anthropological models are linked by Schwartz to two opposing messianic approaches: an apocalyptic approach which holds that humanity during the Messianic Age will be an "improved version" of the humanity known to us today, and a naturalistic approach which denies future changes in human nature.

A complementing distinction is the one between a delusional faith and a non-delusional faith. The concept of non-delusional faith was raised by Yeshayahu Leibowitz (13) and further developed by Eliezer Goldman. According to the delusional concept, which is close to the apocalyptic approach, the imperfections embedded in current human existence, such as "death, sin, urges, the unstable foundations of human consciousness, the inevitable confusion regarding good and evil", will all fade away and be forgotten at the end of time (Goldman, 361). The non-delusional concept, which resembles the naturalistic approach, does not anticipate such a miraculous occurrence, and within its framework "human reality must be accepted as it is and without the illusion that we can be rescued from it" (Goldman, 361).

According to Goldman, one of the most important distinctions between the two concepts is the attitude towards the law, and the connection between human beings and the law. The delusional concept rejects the law and refers

to it as a necessary evil that will eventually become redundant. By contrast, according to the non-delusional perspective, the law comprises a pragmatic attempt to regulate human social life. Since humanity is flawed, one cannot expect the law to be perfect. Goldman describes the non-delusional perspective of law as follows:

The shortcomings of the law reflect not only the conditions of the practical implementation of the principle, but also the shortcomings of the human "spirit" . . . there is no doubt that within the scope of the law we attempt to operate moral principles. The law, for example, is a clear-cut area for the exercise of the principles of justice. But defects of the law from the point of view of justice, besides being defects in the instrument of implementation, also reflect the ambiguity and the lack of clarity of the principles of justice *per se* . . .

In any event, the law is one of the cultural institutions which most clearly reflects the human situation as it is, with all its possibilities and constraints. As there is no room for delusions with regard to the law, it is not particularly popular with those pursuing delusions. By contrast, in the anti-delusional perspective, law is seen as a paradigm for culture in both its technical and "spiritual" aspects. (365-6)

These comments refer to Jewish religious law (*Halacha*). However, the question that they raise—to what extent a Utopian situation is linked to the absence of law—is relevant to the general perception of any law.

An answer to this question, similar in its inclination to the anti-delusional perspective described here, is illustrated by Agnon's story—"With Righteousness Shall He Judge the Poor". It opens with a gathering of disciples in the presence of their spiritual leader, Rabbi Meir. During the course of the conversation, the name of Rabbi Avraham David is mentioned, and Rabbi Meir tells his disciples of a conversation between himself and Rabbi Avraham David regarding the interpretation of the biblical phrase "with righteousness shall he judge the poor" (*Isaiah*, 11:4). "Why does the text involve the Messiah with the problems of the poor?" asks Rabbi Meir, and goes on to answer:

When in our days the Messiah King will come, the Holy One Blessed Be He shall seat him at his right side. Immediately, the seven leaders and the great lords and priests and prophets and kings, and also all the *Tannaim* [teachers] and *Amoraim* [interpreters] and all the sages of the *Talmud*, . . . and the greatest of the first arbiters and the rest of the righteous and upright will come, until the palace of the Messiah will be crowded with them and no room will remain for the rabbis. However, the most righteous of the rabbis will be allowed to sit at the entrance of the palace. And it will be a great honor to sit near the palace of the Messiah.

At that time whoever has a dispute with his friend will wish to be heard by the Messiah King. First will come the rich, who are accustomed to preference. As they come to the gate, they see the rabbi of their town seated there. They say to him: "Rabbi you are here and we have a dispute to be judged; perhaps our Rabbi will attend to us." Their Rabbi immediately attends to their dispute and judges them. Upon seeing the very rich who are litigating over huge sums, the poor who have disputes of minor value are suddenly taken aback and are ashamed to present their claims. The Messiah King calls to them and says: "My

brothers, my brothers, my beloved, my beloved, who have suffered with me in all my torment, come to me." And they go to the Messiah King.

The Messiah says to them: "My brothers what do you ask?" They tell the Messiah King: "This and that we have against one and another and we ask for judgment." The Messiah says to them: "You are litigants; if you wish, I shall judge you." They say to the Messiah King: "Our righteous Messiah, the dispute is for a trivial sum of money." The Messiah says to them: "My brothers, you have no need to be ashamed, your pennies are of value, you have labored hard to earn them and they are of greater importance than all the silver and gold in the world. Present your arguments." The righteous Messiah immediately attends to their case and judges them justly. And of this it is said: 'With righteousness shall he judge the poor'. (Agnon, 542)

The opening of the story, which deals with the order of seating in the palace of the Messiah, distances us from reality. Lords and great priests, prophets and kings, *Tannaim* and *Amoraim* fill the palace and surround God and the Messiah who is seated on his right while the great rabbis sit outside. However, at this stage it becomes clear that this festive spiritual assembly does not negate the need to deal with material, earthly disputes. Rich and poor gather at the entrance of the palace. Their aim is not to bask in the holy atmosphere, as might be expected, but to obtain their day in court. All kinds of conflicts, so it appears, need settling even in Utopia. In the messianic vision laid out in this story, people are still dedicated consumers of law. The rich do not lose their wealth and the poor remain poor, property disputes continue to arise, and the services of adjudication remain as essential as ever. Law becomes indeed more accessible to the poor and the weak, those who in daily life are always placed at "the end of the queue", but that is only a difference in detail. The town rabbis, who have not yet internalized the change which the Messiah is about to introduce, hasten even in messianic times to deal with the demands of the rich, who continue to litigate about their treasures. The Messiah himself does not seek to make the litigation habit disappear, but rather aims to improve the standing of the poor. Making his judicial services more accessible to the poor is in the nature of "positive discrimination" or affirmative action, which actually promotes the use of law.

How can one explain the surprising agenda of the Messiah? Why is promoting affirmative action which benefits the poor litigants one of his first moves? The answer is simple. Agnon's Messiah acts according to the way Agnon perceives human needs. The Utopian agenda is determined not according to the preferences of human beings; that in Agnon's view will never change. Agnon does not offer a very flattering portrait of humanity, and his Utopia has a sharp ironic flavor. Yet, one may detect a note of compassion, for the pathetic, unavoidable weaknesses of humankind.

The Messiah is depicted in this narrative as a benevolent, compassionate judge, who is able to provide excellent legal services. Constructing legal rules, sitting as a judge and settling conflicts are essential parts of his routine functioning. In the story, Law represents the lively flow of existence, and the continuous human discourse that involves all kinds of interactions,

dealings and emotions. Thus, Law, which is the tool that adequately addresses this complexity, appears to be a basically positive phenomenon, and not a necessary evil. This narrative suggests a negation of the contention that sees law incompatible with Utopia because of Law's inherently problematic attributes. The story subtly addresses the speculative dichotomy of "the worse the society, the more law there will be" (Gilmore, 111), by suggesting (to adapt Gilmore's phrasing), that the better the society, the best Law there will be.

D. Law and Adjudication

In the two stories dealt with here, law emerges as a paradigm for the technical and spiritual aspects of society, to use Goldman's terminology. Law is the mechanism used in order to finalize the noble aspirations of the Kasiahans, as well as the cruel tendencies prevailing in Alexander's kingdom. Law is used in order to benefit the poor and to settle conflict in the messianic kingdom. Law, according to the Utopian scenes illustrated in those two texts, is ever present, and reflects the human condition, for better or worse. Therefore the links between human beings and law seem to be inextricable even in a Utopian context. Being human, according to this paradigm, means being a consumer of law. Law, according to this perspective, is not perceived as external to existence, but as one of the components establishing and defining it, as pertinent to being human.

Claeys and Sargent distinguish between two fundamental Utopian traditions: Utopias of sensual gratification and Utopias of human contrivance (Claeys and Sargent, 2). In the center of the Kasiah narrative are people who appear to be substantially different from humans, as we know them. The Utopia there is derived from the virtuous character of all the inhabitants of Kasiah. Thus, the Kasiah model includes an aspect that could be located within the sphere of the "sensual gratification" Utopian tradition.

Agnon's narrative, on the other hand, depicts ordinary human beings, very similar to people, as we know them. The Utopia in his story is derived from external circumstances—the arrival of the Messiah. Among other things, the Messiah initiates changes in the legal regime, and the Messiah himself renders improved legal services to the poor. That aspect is close to the "human contrivance" Utopian tradition, which focuses not on perfect humans or perfect morality, but rather on some scheme or stratagem that makes the lot of poor people significantly better.

Yet there are important similarities between the situations presented here. Both stories suggest reference as to the role of law in general and the role of adjudication particularly, within their Utopian context.

In the first story we find two kingdoms and two kings who act as judges.² Seemingly, the two kingdoms represent opposite perceptions of law. In Kasiah law is a means for achieving moral intentions, while in Alexander's kingdom Law is used in order to achieve robbery. But one should note that, although the judicial authority that takes "the wealth of

both", acts abusively, the Law itself in Alexander's kingdom is not inherently negative. The basic presumption prevailing there must be that adjudication should be conducted according to certain fundamental rules, and according to certain basic expectations. The litigants in Alexander's kingdom act according to these expectations when they come to be judged. One might assume that the two litigants brought their case to be judged because they expected some kind of justice, and did not really expect to be killed and robbed by the King. Indeed, their expectations are not met, but that is that is because the judicial authority betrays the basic rules of the system. Thus, the abusive ways of the authorities turn Alexander's kingdom into a Dystopia, but do not necessitate a sweeping conclusion as to the nature of law and adjudication in general.

In Agnon's story adjudication is depicted as an element of messianic existence. Adjudication might be based upon a formal legal system, but it might be also based upon other means that are considered suitable for resolving disputes, such as arbitration or mediation. However, Agnon's audience is aware that the Messiah does not engage in arbitration or mediation, but in practicing judgement according to specific legal rules—the rigid highly formalistic rules of Jewish law known as *Halacha*. That is to say that substantial law is an essential characteristic of the messianic days. The Utopia that Agnon illustrates here is characterized not only with the abundance of disputes and the availability of adjudication in order to resolve them, but also by the use of a conventional legal system. As noted, similar characteristics are to be found in the earlier narrative since *Halacha* which, in spite of being believed to be of divine origin, still functions as a law system in all respects including rules of social behavior, law enforcement and adjudication frameworks.

E. Conclusion

Utopia, writes Northrop Frye, is in the nature of a "speculative myth" (323). Literature offers us a vast array of speculative models. My comments dealt with one possible model, according to which law is an important part of the speculative Utopian myth. This model was illustrated here by using two narratives, created centuries apart. Both stories refer, in some detail, to imaginary societies. Both suggest unseverable links between Utopia and law. They carry relevance not only to general perceptions of law as a cultural phenomenon, but also to sub-issues within the legal sphere, such as sources of legal authority and adjudication.

The connection between women and men and law according to the perception suggested in the two stories is eternal, and comprises, perhaps, part of the definition of being human. Both narratives illustrate the how serves as one of the fundamental components of Utopian mode, and of idyllic existence. Actually, it constitutes, promotes and protects such existence.

The law-based Utopian model is compatible with what may be termed the prototype of the biblical "End of Days." In that vision, law is a central

factor. Peace and harmony are preserved with the assistance of the law, and one of the central roles of God within this vision is the judicial function: "a judge among many people" (*Micah*, 4:3; cf. *Isaiah*, 2:4). The same prophet proclaims in his famous vision of messianic days: "But they shall sit every man under his vine and under his fig tree" (*Micah*, 4:4). As this vision asserts, the affirmation of private property and private ownership is preserved in a Utopian situation, and perhaps even creates the Utopia and guards it. According to this particular speculative myth, Law is one of the factors that constitute the Utopian situation.

NOTES

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1. For a description of utopian visions of this type, see Goodwin, 110–15; Goodwin and Taylor, 108–12; Gilmore, 111.
2. See Eliav-Feldon, 107; Douzinas and Warrington, 3. For famous poetic representations of this idea see Hesiod, *Works and Days*, in Claeys and Sargent, 7; Ovid, *Metamorphosis*, *ibid*, 8.
3. Davis distinguishes the utopia from other types of ideal societies, such as the perfect moral commonwealth, that do not require such measures as law (Davis, 27).
4. For an elaborate discussion of Utopia as a particular model of ideal society which is never lawless see Ramiro Avilés.
5. For further discussion of the legend see, i.e., Wallach. For general discussion of court narratives and their usage in Jewish contexts see Wills, 1–38.
6. The greater part of midrashic collections is exegetic and homiletic. Some of the books are arranged in accordance with the order of the biblical passages upon which they are based, while others are groups of homilies delivered on the important Sabbaths and festivals. The language of this branch of literature is mostly Hebrew, and is very fluent and sometimes poetic. See Halper, 16.
7. But compare to Wallach, 63–75, who sees the legend as a representation of a confrontation between Hellenism and Judaism.
8. As to the question whether the King of Kasiah is acting as a judge or an arbitrator, I contend that since the King exerts his authority according to a prevailing legal system, and in accordance with the rules of this system and with the expectations of the legal services "consumers", he is performing a formal act of adjudication.

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