

שופט - משה לנדוי - מיכל שקד [Moshe Landau: Judge], Michal Shaked, Yediot Aharonot, 2012 (ISBN 978-9-6554-5473-4), 608 pp., pb NIS 128

A judicial biography is different from other biographies in that, in addition to the character of the subject, his or her judicial precedents are also crucial to the story. In this sense, Michal Shaked's book on Justice Moshe Landau, the former Chief Justice of the Israeli Supreme Court and the chief judge for the trial of Adolf Eichmann, is a fine example of judicial biography. Written by a well-educated insider who is familiar with the details of the individual cases and the persons involved and written in 'crystal Hebrew' with remarkably clear and succinct explanations of the cases and the jurisprudential issues, the book, which makes use of Landau's personal, unpublished memoirs and interviews by the author, evidences a deep respect, even honor, for the oeuvre and for the man who was Justice Moshe Landau.

Moshe Landau, Judge begins with the formative influences of Landau's childhood (Chapters 1 and 2). Shaked gives us a clear picture of Landau's father, a very principled person and dedicated Zionist who practiced medicine during the day and led an active life as a communal leader at night. Having foreseen the hopeless future for the Jews in Europe, he determined to leave early. The young Moshe was part of this, in Danzig between the wars and then in London where he pursued his legal studies and was active in the Zionist cause. The characters of both father and son – strong believers, hard workers, and precise analysts who stick to the facts – are clearly drawn.

In the section on Landau's judicial activity before the Eichmann trial (Chapter 3), Shaked describes Landau's judicial philosophy: The executive branch of the state has a wide discretion to do what it wants while the Court has the equally pressing responsibility to protect the people from those abusing the state apparatus. Further, social and political problems must be solved by the executive and legislative branches of government, not by the courts. This philosophy, rooted in British precedent upon which Israeli law rests, led Landau to a philosophy of judicial restraint coupled with judicial courage in containing the power of the state.

The first of Landau's famous groundbreaking decisions was a libel case in which police officials lied and the lower courts did not press the issue (the Volunteer Group cases). Landau sent the case back to the lower court instructing it to confront the evidence and reach a verdict in spite of the fact that the key police officer was the son of David Ben Gurion, then the very strong prime minister and the Court was still institutionally weak. In doing this, Landau established that the Court can exercise control over the police and can act independently of the power of the executive branch.

The Eichmann trial (Chapter 4), about which so much has been written, led to several groundbreaking decisions. Shaked confines herself to seeing the trial from Landau's point of view: What was he afraid of? What did he feel he had to control? How was he going to deal with the evidence of the witnesses which, from a strictly judicial point of view, was often not relevant to the case but which needed to be heard? How was he going to write the final judgment?

For Landau, the judicial issue came down to two matters: one in law and the other in fact. The legal issue was that the State of Israel had the right to try Eichmann in international law. The factual issue was that Eichmann was a dyed-in-the-wool antisemite who desired to kill as many Jews as he could precisely because he was a fierce antisemite (pp. 220–24). Landau did not enter into the more complicated issue of whether Eichmann's orders were illegal and Eichmann was guilty because he should have known that – an approach that developed in law many years later. Landau's decisions on the process of the trial, its legal basis, and Eichmann's guilt are decisive, and Shaked's summaries are lucid.

The third of Landau's groundbreaking decisions dealt with the question: What are the limits of governmental censorship when weighed against the right of the public to know (Chapter 5)? Landau ruled that, while according to prevailing British and hence Israeli law, the government could censor theater and movies but not newspapers; the government could not censor newsreels which are considered newspapers and embody the right of the public to know the facts (the *Film Censor Board* case). This case established that the public's right to knowledge was part of the guarantee of free speech, and eventually, it led to the end of all but military censorship.

The fourth groundbreaking decision dealt with the question: What are the limits of free speech, especially in the case of a political party that advocates overthrow of the state (Chapter 6)? Landau ruled that, while political groups were free to organize, their freedom was to be denied if they advocated the overthrow of the state (the *Al-Ard* case).

The fifth groundbreaking decision dealt with the question: Can the Supreme Court rule on the legality of laws enacted by the legislature, especially given the deference for English model that allows no such thing (Chapter 7)? Landau ruled that the government could not discriminate against political parties that were not yet represented in government, and hence, the Court could review Knesset legislation and overrule it when it contravened democratic ideals (the *Bergman vs. the Ministry of the Treasury* case).

The question of 'who is a Jew' in the eyes of Israeli law (Chapter 8) has a long history. Coalition politics had left the official determination of Jewish identity in the hands of the orthodox, and the Court generally had practiced judicial restraint, leaving these matters to the political

and legislative branches of government. But, are there limits? In general, Landau practiced judicial restraint and ruled that if there was religious a way out, even if it was uncomfortable for the applicant, one should take that way out. Three examples: Ethiopians would need to undergo rabbinic conversion even if that was personally painful because that was the remedy under the law. Persons seeking civil marriage were denied because there was a rabbinic marriage even if it was personally objectionable. One cannot register the child of a non-Jewish mother as Jewish. However, Landau, who was an avowedly secular Jew but respectful of Jewish law, ruled; if there were no religious way out (e.g. when a Jewish male of priestly descent wanted to marry a divorced woman, a union forbidden by rabbinic law), then that right should be recognized (the Shalit case). Shaked does a masterful job of presenting the very complex decisions on the Brother Daniel Rufeisen case of a Jew who saved other Jews during World War II, then converted to Christianity and became a monk, and finally moved to Israel and applied for citizenship as a Jew returning to the homeland.

The issue of the 'occupied territories' or the 'West Bank' is probably the most knotted question in Israeli law. It is the point where Israeli law and international law meet. It is also the point where military security and human rights meet. Chapter 9 is devoted to Landau's views and decisions on this set of issues.

Two brief introductory notes: First, the Hague convention (1907) does not allow an occupier to take land or goods except in the case of military necessity, and the 4th Geneva Convention (1949) does neither allow an occupier to transfer citizens into occupied territory, nor to destroy property except for military reasons. Second, the State of Israel originally regarded the land that constitutes the West Bank as 'occupied territories' which are under jurisdiction of the military power but whose current law remains valid unless it contradicts military edicts. Later, the State of Israel regarded the West Bank as land that was not taken from a previous state (there was no 'Palestine' and Jordan never annexed the West Bank), and hence, these lands were viewed as not 'occupied'. Furthermore, the 'settlements' were voluntary and hence not population transfers.

In these legal and political muddy waters, the Army seized public and privately owned lands, always on grounds of security and sometimes on grounds of security plus settlement as an extension of security. Slowly, cases wended their way to the High Court of Justice. In two groundbreaking decisions (the Bet El and Taubas cases), Landau ruled that the Court did have jurisdiction over cases involving the seizure of private property but not over the seizure of public property as such a jurisdiction would revert to an international court. However, in ruling that the Court did have jurisdiction over seizure of private property, Landau asserted, and the Army and the government assented, that the

'territories', although not annexed by the State of Israel and hence, in a narrow sense, not within the jurisdiction of the Court, were nonetheless within the jurisdiction of the Court and that the actions of the Army were reviewable by the Court. In this way, Landau asserted the right of the Court to rule on the seizure of private lands, the right of individual Palestinians to appeal to the Court, and the right of the Court to review military and security decisions made by the Army.

Generally, Landau and the Court supported the military's judgment on security issues. However, in another groundbreaking decision (the Elon Moreh case), Landau realized that the government and the Army had colluded and claimed security as a justification for seizing private property and, further, that they had lied to the Court. Landau ruled that there was no security issue at stake and that the private property had to be restored. He, thus, set the course for the Court to review critically military and security decisions of the government and the Army. Shaked presents all this and adds later developments in Israeli law on this difficult subject, always making clear her own position.

Chapter 11 is devoted to another security issue: the use of physical force in questioning prisoners. After his retirement from the Court, Landau was asked to chair an inquiry that looked into the death of prisoners at the hands of the Israeli internal secret service (the Line 300 case), a report that resulted in yet another groundbreaking decision. Ever the well-tempered clavier, Landau ruled that a state has the right and obligation to protect its citizens but that a person sworn to destroy the state has lost some of his protection. Hence, a state may use 'a moderate degree of physical pressure' to extract information from a subject it is questioning. However, Landau ruled that 'the pressure may not reach the degree of physical torture or abuse of the person being examined, and not to a serious blow to his dignity' (quoted on p. 520). To make his point clear, Landau attached a (still) secret protocol that is said to examine a large range of interrogation techniques and to prohibit some while permitting others. Shaked, who disagrees with Landau's decision on this, presents his position fairly, even respectfully. She also adds the later developments in Israeli law, again always making clear her own position.

Chapters 10 and 12 are devoted to the questions: What happened after Landau retired? And, how did Landau react? The Court moved away from judicial restraint and, under Justices Shamgar and Barak, became very activist. A series of 'liberal' decisions followed. Landau objected, but in vain. Still, he continued to receive many public honors as the last of the 'old school'.

Moshe Landau, Judge is a very good book precisely because it is a good judicial biography. Shaked has given us not only a clear picture of the man but also a clear picture of the innovative and courageous rulings he issued, rulings which protected the individual from the abuses of the

state and extended the 'rule of law' to the government, the Knesset, the Army, and even the security services.

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The Entangled Trinity: Quantum Physics and Theology, Ernest L. Simmons, Fortress Press, 2014 (ISBN 978-0-8006-9786-0), 205 pp., pb \$39

The aim of this work consists in answering the following formative question which is part of the Introduction (pp. 1–3): 'What can the current scientific understanding of the natural world contribute to our reflection in a Triune fashion on the relationship of God and the world?' (p. 1). In the mind of the author, Professor of Religion and Director of the Dovre Center for Faith and Learning at Concordia College, the theory of the Entangled Trinitarian Panentheism represents a coherent response to all aspects of the relationship between God and the universe. The scientific discoveries in the modern age, for example, the achievements brought about by theories such as Relativity Theory and Quantum Mechanics, are adopted by the author in order to uphold the existence of a perichoretic evolving relation within the Divine Trinity. Therefore, Creator and the world are in a mutual interaction, following a panentheistic arrangement.

Part 1 (pp. 5–53) of this book is devoted to the illustration of the 'Foundational Concepts' – namely, faith, knowledge, theology – as interrelated subjects to make the mystery of existence clear and search for the ultimate. The contingency of existence leads to the encounter with the Holy as transcendent fullness, for human existence is juxtaposed between time and eternity, and between finite reality and infinite perspective. Notwithstanding scientific advances, science is not enough to explain physical, and above all, biological phenomena which need interrelated levels of explanation. Modern physics is just such a clear instance of that kind of complexity as it implies a change in ontology, from conceiving being as substance to its recognition as dynamic interaction. That is the establishment of a divine sacramental presence in the natural world. Thus, according to the author, panentheism, as an active involvement of God, is the only plausible response to the challenges of science. A vision of becoming grounded on a relational ontology allows scientific thought to interact with theology in the contemporary age.