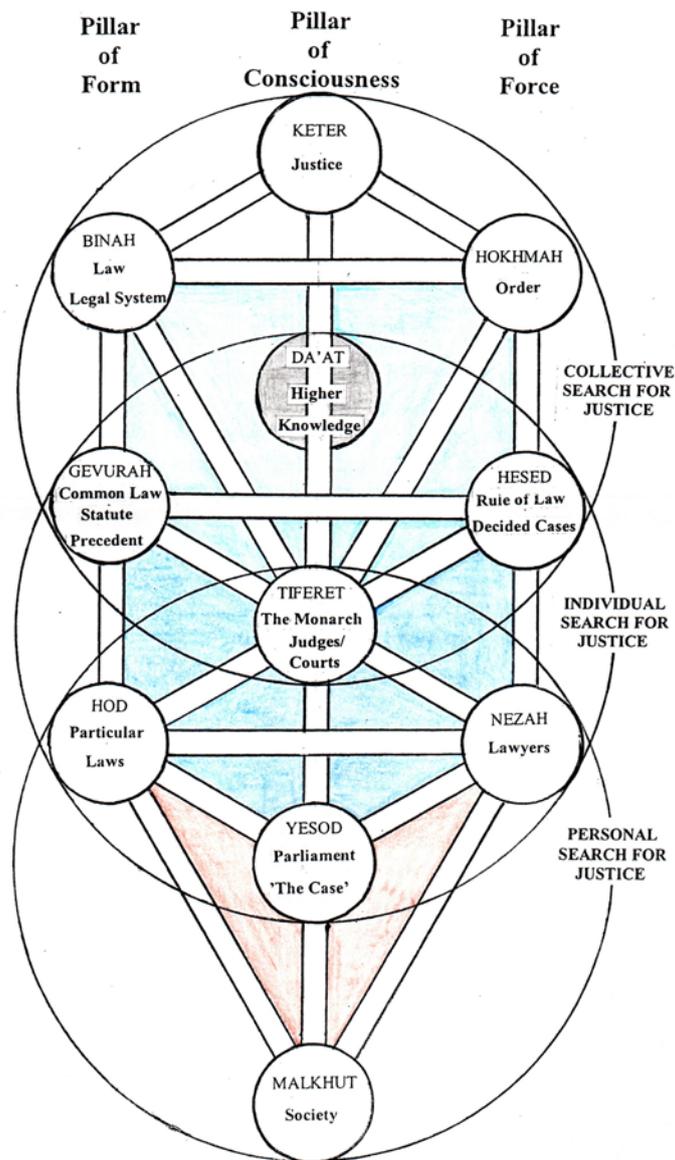


Justice, Kabbalah and The English Legal System

Justice is a perennially topical subject. The world can never get too much of it, as might be expected after Adam's Fall. The job of a Legal System is to mediate Justice to Society, and play its part in redeeming the Fall. The purpose of this article is to consider the principles involved kabbalistically, leaving on one side details of actual cases.



Tree of Justice

According to the maxim - 'Keter is in Malkhut and Malkhut in Keter.' If we clothe these sefirot with Justice and Society (see Tree of Justice above), the maxim springs to life. Justice needs Society to fulfil its purpose, while Society, at the bottom of the Tree, reaches up in yearning for Justice. If we follow the processes of involution and evolution whereby Keter seeks Malkhut and Malkhut Keter, we shall be taken on a journey. Perhaps the reader will allow me to act as guide in this adventure.

The journey will be that taken by the lightning flash, starting at Keter. As long as Justice remains at Keter it is full of potential, but needs to leave 'his Father's house' to actualise it. So the first step is to Hokhmah, at the head of the functional Pillar of Force. Here we find Justice through Order. This is the antithesis of chaos, and is the first great impulse to Justice – the Great Initiator. Without the Wisdom of choosing Order there can be no Justice.

The next move is across the Tree to the Pillar of Form at Binah. Here we find the Understanding that Justice mediated through Order is given the shape of Law, and, also, Legal System. Law is the Azilutic aspect of Binah, and Legal System the Beriatic aspect. As will be seen from the Tree, the sefirah contacts both Azilut and Beriah, shewn white and pale blue respectively. Dark blue and brown are the levels of Yezirah and Assiyah encountered later in our journey.

The concept of Law needs explaining. It is not what the man in the street understands as law, but the principle underlying it, the bedrock on which law is built. The point can be illustrated by the invention of fax. The question arose whether a contract made by fax was binding like a document under hand. The Court decided as a matter of Common Law that it was. The Court did not thereby make new law. That is not its job. It is there to declare existing law. How can it be existing law when the fax machine was newly invented? The potential of it being invented was part of the fabric of Binah. Binah is a comprehensive ground base of possibilities outside time. There are no gaps in Law at Binah from which the energy of Justice could escape. The declaration of a binding contract merely crystallized at the Yeziratic level what had always existed at Binah.

Reviewing the journey so far, Justice, Law and Order clearly articulate the Azilutic level of the process of involution.

Legal System is the channel through which the energy moves, now in Beriah, until the non-sefirah of Da'at is reached. This is a kind of spiritual down-pipe through which the inspiration of higher knowledge may flow to illuminate and energize the unfoldment of Justice. We will consider later what circumstances in Yezirah and Assiyah favour this down-flow.

The journey then continues to Hesed, where the Rule of Law and Decided Cases are found. Rule of Law is the Beriatic aspect of Hesed (with some resonance of Azilut), and Decided Cases the Yeziratic aspect. Rule of Law is the archetype of Law prevailing, as it must if Justice is to prosper. These concepts are highly expansive of Justice.

Decided Cases has a clear Yeziratic character. Its significance at this place can best be illustrated with an anecdote. In my second year in Law Faculty a tutor one day stated

that nobody could say for sure what the law was. That sounded like a bomb-shell, but he was right! The law can only be stated definitively by the Court, after appeals have been disposed of, and then only on the particular facts of the case. Hesed is where such cases are, and is a crystal-clear receptacle for law in a state of pure certainty, the only place on the Tree with this characteristic. Earlier in the lightning flash fully-formed law does not exist, while later it becomes increasingly enmeshed in Yeziratic circumstances. The Rule of Law and Decided Cases make good partners because without the certainty of Decided Cases the Rule of Law would not make a satisfactory archetype. They also demonstrate how God's love of Justice manifests at this level.

As we continue our journey we cross to the Pillar of Form, where we encounter a crowded workshop of tools for the formation of Justice with the discipline of The Common Law, Statute Law, including subordinate legislation (orders, rules and regulations made under the authority of Statute) and European law. We also find the Doctrine of Binding Judicial Precedent. Here is what the layman understands as law. In my Faculty days the Dean one day said the volume of it was so great that if one person devoted his full time to study, a lifetime would be required to encompass it all. Since then the volume of new law has exploded in a way that could not be imagined then.

The Doctrine of Binding Judicial Precedent says that decisions of the higher courts are binding on themselves and the lower courts. This sounds like a bold attempt to achieve certainty, but no two cases are identical in every respect, and Counsel spend much time and energy at trial trying to distinguish one case from another, and the uncertainty is only resolved when the Court gives its decision and appeals are out of the way. Nevertheless, the Courts do follow earlier decisions unless there is a clear reason for not doing so.

It is now time to continue our journey, moving to the central Pillar of Consciousness, where we find the beating heart of Justice at Tiferet. The inhabitants are the Monarch and the Judges and Courts, who act in the name of the Monarch. A reminder of this fact is the historic name of "Queens Bench". The Courts have their own administrative support body, which oversees cases for trial, administering the relevant Orders and Rules, which enable procedures preparing for trial to be carried out in an orderly way. That is also found here.

The role of the Monarch calls for comment. He/she represents the essence of the whole Tree. He is the intermediary between Justice and Society. An interesting light is thrown on this by the case of Edward the Confessor. He was reputedly a saintly man, who administered healing to his subjects by laying on hands to cure 'the king's evil'. Healing could be compared to Justice as 'making whole' in an imperfect world. The Monarch also has the vital function of signing new laws into force. In our present-day constitutional monarchy He acts on the advice of Parliament, which sends agreed acts up the Central Pillar for the purpose.

The next step takes us to Nezah, where the Lawyers reside. They are the Barristers and Solicitors, the foot soldiers of the English Legal System. The full title of a Solicitor is now "Solicitor of the Senior Courts of England and Wales." He is the main point of contact with the public, while Barristers usually take instructions

(“Briefs”) from Solicitors. Barristers are experts in court procedures, and also often provide specialist advice in non-contentious matters.

One gets a strong sense of the eternally repeating nature of Nezah from the way Lawyers are chosen, trained and practice, and eventually retire or die. There is a constant stream entering and leaving the profession, and nobody is indispensable. Even the most brilliant Lawyers have to go one day.

We move back now to the Pillar of Form at Hod, where we encounter Particular Laws. In Assiyah members of Society are only concerned with laws relevant to their case, and these will be identified by the Lawyers from the heaving mass at Gevurah. They recognise the relevant laws. We shall look at this process further when we begin the return journey of evolution.

As we move towards the end of our outward journey we return to the Pillar of Consciousness, and find Yesod, with Parliament in residence. Is it possible Parliament is so low on the Tree? We recall that Yesod is the Foundation of Justice, so the location is, indeed, appropriate. Parliament is a debating chamber, and every debate is a serial projection of images as each speaking member presents his own view. Rules regulate the conduct of debates, and agreed business is incorporated by parliamentary draftsmen into acts ready, after the prescribed debates and consultations, to be sent up the Central Pillar to the Monarch for signature.

Also at Yesod is ‘the Case’. How this is made – (‘make the case’ is an every-day expression) will be explained when we begin the journey of ascent.

The final step takes us to Malkhut, where Society lives, moves and has its being. This lowly location is where in a just Society Justice may be seen to be fully unfolded, the pinnacle of the Tree, if it is seen as rooted in heaven and unfolded in earth (upside down).

In Malkhut Society lives its day-to-day life. In a Society ruled by law, an individual needs to know how the law affects him personally, for the correct arrangement of his affairs, and, even more urgently, when he gets at odds with another person or body. For example, he wants to enter into an important contract. He approaches a Solicitor, gives him details, and asks for advice and a suitable document. The Solicitor identifies the relevant Particular Law/s at Hod, and prepares advice at Yesod. This is the Foundation of the transaction, and the basis for the document. Perhaps the other party, before signing, takes the same steps. There may be negotiation between the Solicitors, then the document is signed.

During the performance of the contract a dispute may arise. The aggrieved party consults his Solicitor, who takes the same steps as before, and prepares advice at Yesod, which is ‘the Case’, i.e. an image of his client’s point of view. The client instructs him to press his case with the other party, invoking the triad Nezah-Yesod-Hod. Perhaps the difficulty is not resolved and a ‘letter before action’ is sent. If this does not do the trick instructions may be given to commence proceedings.

If this happens, the parties pass up the central pillar, the liminal threshold (the path between Hod and Nezah) is crossed, and Tiferet (the Court) becomes involved. A writ

or summons is served alleging a breach of law and claiming a remedy. Every legal practitioner knows this step totally changes the atmosphere of the Case. The sometimes knockabout atmosphere of the great triad Nezah-Hod-Malkhut is changed by the sobering discipline of Tiferet with its Beriatric contact. The focus of the Search has moved from Personal to Individual, with the Collective equally involved as the Personal (see the large circles on the Tree). If the Case proceeds, and the great majority get settled before trial, it passes through the steps specified in the Court Orders and Rules, ready for hearing.

The Case now gets set down for hearing, and is heard. There is a great deal of input, and the sheer labour of getting there should not be under-estimated. There is the preparation by the Solicitors, evidence from witnesses (in many cases experts) and presentation by the Barristers. Let us suppose there is a good hearing. Everybody concerned accepts full personal responsibility for their part, and judgment is delivered. It may happen sometimes that the decision is not entirely what was expected, and there may be some novelty in legal interpretation, yet it is perceived by all parties to be just. There has been another input – higher knowledge from Da’at, which gives a special lustre to the Case. Articles are written in the legal press and academia get interested. In just a few instances the decision may even make the general news.

What made the crucial difference? I think it was the acceptance of personal responsibility, not the most popular of pursuits, but the most important. God helps those who help themselves. We then have a new Decided Case for Hessed.

The return journey has already taken us beyond the Personal to the Individual Search for Justice. Beyond lies the Collective. Ibn Gabirol, writing nearly a thousand years ago in his poem Keter Malkhut, helps us reflect on this journey from the point of view of the aspirant for Justice. The foregoing account has been basically factual, even sanitized, but the legal practitioner knows that, especially in an adversarial system, which the English Legal System is, it has engaged his whole being. Gabirol’s comments stand outside time, and are a peculiarly apt comment on the journey:-

“Lord, bear in mind, I pray, how long a while
“Through No-man’s-land my path Thou hast made wind
“And unwind, and assayed me in exile
“Like metal, in a crucible refined
“Of my main dross. I know the reason why
“My patience Thou didst try
“Is for my good; thy faithfulness stands fast,
“When Thou afflictest, ‘tis to amplify
“That benefit Thou bringest at the last
“Through testing toils; let, then, thy mercies, Lord,
“Be moved for me, and poured
“Out plentiful: thy fury’s entire might
“On me alone consume not, nor requite
“Me as my doings merit, but rebuff
“The angel who, to venge, destroys: say him ‘Enough!’

What effect has our adventure had on the Collective? We can only speculate that adding to the picture in Assiyah and Yezirah will have enriched the image of Justice in the mirror with which God (Justice) observes God (Justice in Society). With this in mind we may give thanks for being involved in God's purpose. Let Ibn Gabirol have the last word:-

“And for all this I am in duty bound
“To sing Thee hymns of gratitude and praise:
“In all Thou didst create let there abound
“Thy lauds; let them that sanctify Thee, raise
“Thrice-holy acclamation: let those seek
“Who know Thee for unique
“To tell mankind, and be thy glory told
“By them that glorify Thee: when they speak
“Who would extol Thee, be by them extolled,
“And when thine exaltation they proclaim
“Exalted be thy name:”

Chris Crichton

Note The quotations from ‘Keter Malkhut’ are reproduced, with permission gratefully received, from “Ibn Gabirol”, by Raphael Loewe, published by Peter Halban.