

LAW IN THE KIBBUTZ: A RESPONSE TO PROFESSOR SHAPIRO

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Professor Allan Shapiro's article, "Law in the Kibbutz: A Reappraisal" raises several questions about my 1954 article, "Social Factors in the Development of Legal Control: A Case Study of Two Israeli Settlements." I shall formulate the major questions, as I understand them, and suggest the answers as well as I can.

Before doing so, let me restate the basic idea of the original article. It was that the *kibbutz* studied by me in 1949-50 (1) lacked legal control (i.e., sanctions administered by specialists for the purpose of controlling behavior); (2) had a powerful system of informal controls; and (3) that the lack of legal control resulted from the effectiveness of the informal controls.

Shapiro questions whether the *kibbutz* ever really lacked legal control. By legal control, I had in mind particularly the presence of designated sanction specialists. In this regard, the *kibbutz* had no sanction specialists and the *moshav* did. The *kibbutz* relied instead on generalized agencies to solve problems. It used the General Assembly, consisting of all *kibbutz* members, to enunciate norms and even, rarely, to pass judgment as to proper behavior in particular instances. The *kibbutz* General Assembly was not, however, specialized—as was the *Moshav's* Judicial Committee. The *kibbutz* also solved problems through the use of various administrative committees. None of these committees was established with the specialized purpose of social control, i.e., the administration of sanction against the violator of a norm to secure compliance. Deprivations may have been administered, though rarely, but not with the purpose of social control. If problems could be solved by rearranging physical conditions or work assignments to optimize the utilities of the participants in a dispute—so much the better. Alien to the work of these committees were such notions—characteristically associated with legal control—as complaint and defense, claim and liability, guilt and innocence. In this sense, I believe that at least relative to the *moshav*—if not absolutely—the *kibbutz* I studied lacked formal legal control.

Shapiro also asks whether such differences in social control as may have existed between the settlements were not related to initial differences of ideology: the *kibbutz* ideology rejecting law, the *moshav* ideology favoring it. If it could be shown that these different beliefs were present in the original ideology, prior to the founding of the first *kibbutz* (1910) or the first *moshav* (1920), that would suggest a plausible rival hypothesis to the one I presented. But Shapiro does not show that these beliefs preceded the initial settlements. Indeed, his reports cite meetings held no earlier than 1923. Thus we cannot assert that the views he cites preceded the establishment of this settlement form; they did not even precede the establishment of my two settlements, Orah and Kfara, since both communities were founded in 1921.

Moreover, several statements quoted by Shapiro from 1923-25 show *kibbutz* speakers favoring law, with such phrases as that law is a "good and necessary thing." One speaker says, "In order to remove the distress of which Tanhum spoke, I would not be afraid of adopting certain laws with the approval of all of us." And another speaker, citing recent growth in his settlement, says, "However, if we go and add people in a group, there is no alternative to the creation of laws." Even Shmuel Dayan's retrospective account in 1935, reporting a rejection of the idea of formally enunciated rules, dates the incident to which he refers well after Deganiah Aleph had been established.

Ideology, to be sure, may have played a part in the rejection of formal law—but if the ideology was enunciated only after these communities were established, it might have well been merely a reflection of the success of informal controls, an ideological concomitant of underlying social conditions, rather than a plausible explanation for the failure of law to develop in the *kibbutz*.

Shapiro (1976: 417) also suggests that recent changes in the *kibbutz* may disprove the original thesis. He starts with the observation that:

"Since [1950], almost all of those conditions which facilitated the development of informal controls, whose effectiveness, in Schwartz's view, explained the absence of legal institutions, have changed drastically. [Nevertheless, the] change in [these] conditions has not resulted in the development of legal controls, at least in Schwartz's sense of the term."

His argument seems to be as follows: If A (traditional *kibbutz* life) caused B (successful informal control) leading to C (the absence of legal control), then if the thesis is correct a decline in A should lead to a decline in B and therefore to a decline in C. My response is two-fold: (1) even if C did not immediately

decline following a decline in A, the thesis would not be disproved; (2) on the evidence presented by Shapiro himself there are signs that C has indeed declined; i.e., that the *kibbutz* has recently moved to some extent toward the establishment and use of external and internal legal controls.

The first point is primarily a matter of sociological reasoning. Even if legal controls had not developed as the conditions for informal control declined, that would not necessarily invalidate the thesis. The informal controls might still be more effective than those in the *moshav*. Also, the socialization and culture from the earlier period might survive, at least for a time, after the conditions producing them had diminished. And a society might need some time before developing legal institutions, even when the informal controls have failed—especially if ideological forces support informal as against legal controls.

The second point requires the sifting of evidence. From Shapiro's account, there are indications of a recent turn toward legal control in the *kibbutzim*. If so, then the decline in the effectiveness of informal control, plus the growth of legal control, would tend to confirm the original hypothesis.

Shapiro reports a growing tendency in some *kibbutzim* to promulgate written rules, whereas the behavioral norms were earlier known without writing by all members. He supplies, in the appendix to his article, a letter used in one *kibbutz* to transmit to the members a "compilation of regulations." It is a document which suggests transition toward formal legal control, with the Social Committee enunciating, promulgating, and adjudicating norms. The document precludes certain sanctions, those which "involve the negation of rights," but says that "denunciation, calling to order, etc." may be used. This appears to be an interesting device in which the power of public opinion remains the ultimate sanction, but a committee is distinctively empowered to evoke it. The document does not make clear whether the Committee is explicitly specialized for purposes of social control: we are not told whether its activities are limited to social control and whether it has exclusive powers in that regard. Although it falls short of full specialization, in these ways, it would seem at least to be transitional toward law.

Another instance of seeming transition toward legal control appears in Shapiro's account of the April Fool's prank. Shapiro reports that a number of teenagers caused extensive damage to a tractor used by the *kibbutz* and that they were called to a hearing before a representative of the Education Committee with

the Farm Manager present. We are told that they acknowledged their guilt, expressed repentance, and volunteered to help compensate for the damage. If these acknowledgments and undertakings were imposed on them or would have been had they not volunteered, the process would fit some of the main criteria of legal sanction. If the decision-makers were specialized, another legal element would be present. As recounted, the procedure seems still transitional. In both of these instances, however, there appears to be a move from the classic *kibbutz* pattern of informal control toward legal control.

It should also be noted, as evidence of growing development of legal control, that according to Shapiro there is now a tendency for some *kibbutz* members to invoke the Israeli police and for some *kibbutzim* to permit the partial collection of externally imposed fines from the personal funds of responsible members. In 1949-50, such intrusions by the police were strongly resisted. Their occurrence in recent years, as concomitants of declining informal controls, seems again to support the basic hypothesis.

It would be valuable to learn more about such a set of changes, if they exist. What sequence is followed in the development of legal control? What kinds of behavior came first under the jurisdiction of legal authorities? Is the development of legal control directly correlated with the failure of informal control or is the relationship more complex? Once established, do legal controls tend to erode informal controls? Many interesting issues of this kind might well be subject to illumination, if closely studied as they occur among societies in transition. Whether the *kibbutz* is such a society, as Shapiro's data seem to suggest, remains of course to be established.

In writing the original article, I noted (1954: 472) that the data, "do not constitute empirical verification of the theory [and that the] theory should be tested against data which did not contribute to its formulation, and which are more extensive than those presented here." I am grateful to Professor Shapiro for supplying additional data. I believe that they do not refute, and that they may even strengthen, the original hypothesis.

REFERENCES

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