

English Abstracts

The Legal and Political Development of the Israeli Declaration of Independence: A Victory of the Bourgeois Democratic Concept

Uri Zilbersheid

Although the Declaration of the Establishment of the State of Israel (known popularly as the “Declaration of Independence” and the “Scroll of Independence”) was made in an historical period based on bourgeois values, the new welfare state ideology, supported by socialist political forces, had been developing since the mid-nineteenth century, with various advancements and setbacks. From its very beginning, Zionist history has been part of the world struggle between these two conflicting social value systems.

The struggle between these two modern political formations also took place at the judicial level. The judicial concepts of both formations also included their notion of democracy. The bourgeois democracy emphasized the sovereignty of the state, the equality of rights in their various forms, and civil rights, such as freedom of expression and the freedom of association in their abstract forms (without consideration of the material conditions necessary for their full realization). Democracy, as envisaged in a welfare state, puts the emphasis on the sovereignty of the people, and considers the state to be a means of furthering the wellbeing of the latter. It stresses social equality as opposed to the equality of rights, which is based on economic inequality. It, therefore, also fosters social rights.

A study of the “Declaration of Independence” shows that a tension between the judicial concept of the welfare state and the bourgeois judicial conception dominated its different drafts. However, the bourgeois notion of democracy eventually won the upper hand. In the different drafts, the study also reveals

the tendency of the bourgeois forces and their political allies in the socialist parties even to reduce bourgeois democracy, namely formal democracy, itself.

The first version of the “Declaration of Independence,” the “Shazar Declaration” (so named after its author, Zalman Shazar, the socialist leader who later became the third president of the State of Israel), was very close in its vision to the democratic conception of the welfare state. Thus, it spoke of the “equality of all dwellers of the State [of Israel].”

The four drafts prepared by Mordechai Böhm, a jurist working at the Department of Justice of the National Administration (the provisional government in its pre-Independence form), is characterized by a limited bourgeois democracy. These relatively unknown drafts do not go beyond the vague notion of a “free state.”

The first draft of the “Berenson Declaration,” written by Zvi Berenson, the legal adviser of the Labor Federation in the Land of Israel, soon became an arena of conflict between Shazar and three senior jurists in the Department of Justice of the National Administration. Shazar succeeded in integrating the concept of the sovereignty of the people into the seventh (and final) draft of that declaration. However, the concept of state sovereignty, integrated earlier into the “Berenson Declaration,” was maintained in full.

The “Lauterpacht Declaration” (named after the Jewish scholar Hersch Lauterpacht, a lecturer in international law at Cambridge University) speaks of the Jewish people as being sovereign in its own country, and constituting “equality for all the dwellers of our land” based on “social justice.”

In the “Sharett Declaration” (written mainly by Moshe Sharett, the first foreign minister of the State of Israel), the bourgeois democracy becomes more dominant: The “equality of all dwellers,” as declared by Shazar and Lauterpacht, becomes “equality of social and political rights,” which is a fundamental concept of bourgeois and formal democracy. The “Sharett Declaration” also mentions “national sovereignty,” which is conceptually akin to the sovereignty of the people.

In the “Ben-Gurion Declaration,” namely the “Declaration of Independence” itself, which was composed mainly by Ben-Gurion, the first prime minister of the State of Israel, the “social and political equal rights” remained unchanged. However, every expression denoting the people’s sovereignty was eliminated. The Declaration speaks instead of the Jewish people as living in its “sovereign state.” Ben-Gurion was opposed to any attempt to add such concepts as freedom of

expression and freedom of assembly to the list of rights, thus reducing bourgeois democracy in the Declaration itself.

The disappearance of the largely socialist Zionist narrative in the Declaration, telling the story of the creation of the State of Israel, bears witness to the fact that the multitude of socialist pioneers, as a social and political movement, had little influence on the leaders of the Labor Movement who headed the emerging State. Thus, not only did they fail to have the Declaration conceptually shaped according to the principles of the welfare state, but a declaration of independence was written for them and the rest of the Israeli citizens that offered only a limited bourgeois democracy.

Did it Really Hang On One Vote? The Meeting of the People's Administration on the Eve of the Establishment of the State of Israel

Ariel L. Feldestein

This year, Israel marks the sixty-first anniversary of the establishment of the State. It is an opportune time to study anew the discussions on the People's Administration, founded on the eve of the declaration of statehood. In this paper, I will examine the course of the discussions and the voting regarding the Declaration of Independence as reflected in the primary sources, in the oral interviews with members of the People's Administration, and in the historiographic descriptions.

Historians interested in discovering how the People's Administration voted on the American proposal will not find the answer in the protocol of the meeting. The protocol does not provide a voters' list, nor does it describe how the vote was split. However, Slutsky, Teveth, Bar-Zohar and Avizohar did mention names in their findings. A re-examination of this issue is important, since the impression gained from the primary sources, both the protocol and the oral documentation, differs from the one gained from historiographic descriptions — and it is this impression that has influenced the shaping of the “collective memory” regarding those who voted in favor of the American proposal. The latter have been portrayed as unwilling to take responsibility for declaring the establishment of a Jewish state

and as being willing, at that crucial time, to forfeit the future of the Jewish People. In this article, we will attempt to clarify the breakdown of the vote, and prefer to leave open for discussion those issues that, up until now, have been considered closed and definitive.

**From Within and From Without:
National Identity in Israel and its Reflection in the Changing Images
of the National Other**

Yaacov Yadgar

This paper studies the development of Jewish-Israeli national identity, as reflected in the construction of the image of the national “other” by several leading representatives and producers of Israeli national culture. The article mainly discusses two central moments in the construction of the Jewish-Israeli national identity, as constituted through the representation of two “others” — one external to the Israeli ethnonational collective, and the other internal to it — as well as through the interaction between these two images. The paper is based on a narrative-interpretive analysis of op-ed columns and commentaries against the background of seven critical events that took place in the Jewish-Israeli collective consciousness between 1967 and 2000.

Based on this analysis, the paper argues that the continuous construction and re-construction of Jewish-Israeli national identity has been continuously oscillating between two “significant others” — the “Arab” and “the religious extremist” — as historical events function as a catalyzers for the development, reaffirmation, and rewriting of this identity. The article outlines a continuous development, revolving mainly around the re-focusing of the national gaze from the outside inside; a transformation from the construction of “the Arab” as an external “other,” toward the “religious, peace-opposing extremist” as a significant internal “other.”

Religion, Class, and Political Action in Religious-Zionism in Israel

Nissim Leon

This paper will attempt to shed light on the complexity of Religious-Zionism's political existence, this time not through the discussion of ideological or theological questions, but through a sociological view of the relationship between religious ideology and politics, and social existence in the "New Middle Class" perspective. As an example, the paper examines the place of the New Middle Class in moderating the political protest within Religious-Zionism against the Disengagement Plan. Those who have studied the meaning of the moderate response to the Disengagement Process among Religious-Zionist publics have focused on the Religious-Zionist discourse and the ideology reflected in it, and less on the conditions of life and existence in which this discourse takes place. Thus, for example, the moderation was explained by an early ideological line of thought known as "statist."

In this paper, I wish to argue that the "statist" approach does not stand alone; it is not isolated from the conditions of existence in which the Religious-Zionist individual, public, and community acted — and in this I include the development of Religious Zionist life in the New Middle Class perspective. The statist approach, more than it regulated the tension between the State and Religious-Zionism, regulated the existential tension within which the New Middle Class publics in Religious-Zionism find themselves in face of the total demands of the political-national project and the pressing social-economic reality to which they are bound in daily life. This life course of the New Middle Class plays an important and critical role, if not in moderating the radical potential of political trends in Religious-Zionism, then, at the very least, in limiting it to the margins of the camp.

The Amish, the Rule of Law and Freedom of Religion: The Culture of Compromise in American Democracy

Benyamin Neuberger

This paper deals with the unusual relationship of the Amish community with the American nation. The focus will be on the culture of compromise in American democracy, which has characterized the interaction of the Amish with the nation since the foundation of the United States in the eighteenth century. Our hypothesis is that compromises were possible, both because of the nature of Amish society — characterized by high work ethics, modesty, self-reliance, and non-violence — and because of the American culture of compromise in matters of Church and State. What makes the relations between the Amish and the American nation so distinctive is the ability to find compromises on nearly all problematic issues — even when the conflict relates to matters of principle (such as freedom of religion, communal autonomy, the rule of law, equality before the law), or to different notions of individual rights and liberties (e.g. compulsory education or medical dilemmas, like immunization). The causes of friction are rarely matters such as wages or the allocation of resources, which are easily amenable to pragmatic solutions. Solutions that were acceptable to all were nevertheless found in most cases. The cumulative impact of these understandings amounts to an overall policy of compromise between the Amish and the American nation.

The understanding reached between the Amish and the American nation fits the general culture of compromise in matters of Church and State in American democracy. The basis of all these compromises is the First Amendment, which states that “Congress shall make no law respecting the establishment of religion and prohibiting the free exercise thereof.” Even this one sentence is, in a way, a compromise. The first part (“Congress shall make no law respecting the establishment of religion”), the Establishment Clause, is designed to defend the nation against the rule and undue influence of one religion or church; while the second part (“Congress shall make no law . . . prohibiting the free exercise thereof [of religion]”), the Free Exercise Clause, is designed to protect the religious liberty of individuals, groups, and churches. It is true that American democracy does in principle support separation between Church and State — a separation which, on the face of it, is an extreme

model in church-state relations. American separation, contrary to the French model, however, has its origins in empathy, not in hostility toward religion. The American concept of separation is in fact a compromise between two basic approaches — separationist or strict separation, and benevolent or accommodationist separation. Policies toward the Amish oscillate between these two approaches, albeit with a clear tilt toward accommodationism.

The Imagined Communities of Archaeology: On Nationalism, Otherness and Surfaces

Michael Feige

Archeology in Israel has played an important role in forging the national identity, by suggesting a connection to the ancient past and the common origin of the Jewish people. This paper examines the encounters between Israeli archaeology and three of its Jewish “others”: new immigrants in development towns, the ultra-Orthodox community (*haredim*), and West Bank settlers.

As the encounters occurred in different times through Israeli history, the paper shows how both Israeli nationalism and archeology changed over time. Through those transformations, archeology became less relevant for constructing national identity, and even developed a critical perspective toward its own involvement in strengthening national myths. The three cases discussed illuminate the importance of the non-Jewish “other,” the Palestinian Arab, when using archeology for national purposes.

“According to the Laws of Moses and Israel” The Essence of Marriage According to the Halakhic Decisors of the Twentieth Century: Civil Marriage as a Test Case

Ariel Picard

The modern era brought with it “civil marriage,” that is, the option of marriage and divorce outside a religious framework. Culturally, an interesting situation

has emerged, with two different systems of marriage, based on different values, coexisting within Jewish society — religious marriage and civil marriage. The halakhic discussion regarding the halakhic validity of civil marriage expresses the scholars' attitudes toward key questions in the matter of marriage: How is marriage defined? Who decides its validity? What is the decisive act? What is the significance of the ceremony? When religious culture examines the civil options for marriage, it is forced to examine in depth its own perception of marriage. This paper seeks to employ insights from the areas of anthropology and sociology in order to understand the social significance of marriage and its consequences for the religious systems.

The first section of this paper is devoted to an historical and anthropological examination of the institution of marriage in various cultures, and of the transformation taking place in Western countries regarding this institution. The second section of the paper analyzes the responsa of two halakhic decisors of the first half of the twentieth century, Rabbi Henkin and Rabbi Price, who ruled that a woman who marries through a civil marriage requires a *get* (religious divorce) in order to marry another man. These positions generated responses by halakhic decisors who claimed that there was no halakhic validity to civil marriage, and therefore no need for a *get* to dissolve it. The disagreement between the decisors reveals basic attitudes as regards the character and significance of marriage in Jewish Halakhah, and also reflects different approaches to religion and state. The last section of the paper discusses the unique method of Rabbi Yosef Rosen, "the Rogatchover," who argued that civil marriage creates an in-between status that is identical to a "Noahide" marriage, and requires a different kind of *get*. This position was quoted at length in a 2004 ruling by the Great Rabbinical Court of Israel, which based on its premise a new halakhic model whereby the rabbinical court offers a couple who married through civil marriage the possibility of undergoing a civil divorce, to be performed by the rabbinical court itself.

This paper concludes with a practical suggestion regarding the construction of a model that will enable egalitarian civil marriage *and* divorce within the framework of Halakhah, which recognizes Noahide marriages and divorces; as the Great Rabbinical Court put it, "and the people of Israel are also children of Noah."