

## ***English Abstracts***

### **The Immanuel Affair — The Dilemma Faced by Shas**

Yaacov Ben-Shemesh

The Immanuel affair raised the problem of ethnic discrimination against Mizrahi Jews in Israel in all its intensity. On the face of it, one might have expected that, as a political and social movement, Shas would be at the forefront of the fight against ethnic discrimination at the school in Immanuel. However, Shas's role in the affair was marginal. Not only did it fail to contribute to the struggle but, at certain stages, it even opposed and sabotaged it. In this article, the possible reasons for Shas's silence and its withdrawal from the arena are considered, and two complementary explanations are offered. The first — historical — relates to the development of Mizrahi Orthodox Judaism and the traditional effacement of Shas in the face of Ashkenazi ultra-Orthodoxy. The second — ideological — concerns the great ideological tension between the Supreme Court, regarded as the representative of Ashkenazi and liberal secularism, and the Shas movement. This tension, fueled by religious and political elements alike, made it difficult for Shas to manage a public campaign with the help of the Court. Additionally, as is shown in the article, this tension was reflected not only in ideological arguments, but also at the most personal level. Many of the leaders of the Shas movement found themselves in conflict, one way or another, with the judicial system.

All this created a dilemma within the Shas movement and fostered confusion within its ranks. Its leaders faced a choice between their commitment to ending ethnic discrimination and their opposition, in principle, to allowing the Supreme Court to decide the matter. In dealing with this dilemma, the movement chose to accord preference to its opposition to the legal system. Nonetheless, this was not

a uniform position, and the Immanuel affair also revealed internal tensions and divisions within the Shas movement. The Immanuel affair is not merely a story of Shas's silence, but also of the cracks in that wall of silence. In this article, I examine the critical voices emerging from Shas, and the social and ideological changes that they may foreshadow.

### **“With God’s Help, the Holy Land will Tremble”: Street Demonstrations by the Ultra-Orthodox as Cultural Performances**

Shlomo Guzman Carmeli

The article examines the “performative” aspect of demonstrations used as a cultural tool by the ultra-Orthodox community in Israel. The article is based on ethnographic fieldwork conducted from 2009 to 2011, which included participant observation in demonstrations, interviews with the organizers of the demonstrations and with the protesters, analysis of written material distributed during demonstrations, and a survey of ultra-Orthodox newspaper reports on the demonstrations. The article reviews the demonstrations and their role in building the ultra-Orthodox ethos of struggle. It analyzes three specific demonstrations using the “cultural performance” approach: 1) the ultra-Orthodox mass demonstration held in front of the Israeli Supreme Court on 14 February 1999. This demonstration is remembered as a demonstration of unity that led to ideological empowerment and created social boundaries; it is described in the article as a “constitutive performance.” 2) The demonstration by the *Edah Haredit* on 31 August 2010 at Sabbath Square in Jerusalem, directed against the desecration of Jewish graves at various construction sites in Israel; it is described in the article as an “internal performance” that sought to empower emotions, resolve conflicts and disputes, and create reconciliation and social consolidation. 3) The demonstration organized on 17 June 2010, at the peak of the “Immanuel School Affair,” which was intended to demonstrate reconciliation and unity but instead generated a “failed performance” due to the lack of clarity of “the other” against which it was aimed. It was thus transformed from a constitutive or unifying event into a segregated one — an event whose very existence the demonstrators

themselves would prefer to forget. The analysis emphasizes the importance of the dimension of structured indeterminacy expressed in the demonstrations, which, in the ultra-Orthodox context, constitute an act of a creative activity that seeks to not only protest or preserve the existing culture, but also to rephrase and challenge its values. This uncertainty is what transforms the performance dimension in demonstrations into a cultural tool of great potential, because inherent within the likelihood of a demonstration's success there also lies a scenario of potential failure.

### **The Sacrifice of the Girl: The Political Resistance Act in the Immanuel Affair**

Henriette Dahan Kalev, Ahikam Ferber Tzurel

The purpose of this paper is to explore the political power of resistance, and to examine the ability of a civil force to bring about social change. Active resistance as a political phenomenon is discussed in light of the "Immanuel Affair." This affair has provided us with an opportunity to deepen our understanding of the personal cost individuals pay when taking the initiative to struggle for freedom of choice, and of the expression and struggle for their rights within prevailing democratic rules in Israel.

In particular we concentrate on the price such individuals pay when they are caught between their actions to achieve equal rights and their desire to remain members of a community that deprives them of these rights. We examine the price exacted from the girl who stood at the heart of the affair, and from her family and friends for having turned to the courts of the state. Although we could not interview these individuals personally, we relied on the petitioner interview in order to examine these questions and to assess the political cost that "lying on the fence" requires.

We reached two conclusions: firstly, that community institutions in Israel, in this case ultra-Orthodox, are saturated with racism and discriminatory attitudes toward Mizrahim, especially Orthodox Mizrahim, and, secondly, that even if the petitioner had no intention of generating a revolutionary change against racism

toward Mizrahim through this struggle, the Supreme Court decision eventually set a revolutionary precedent on the issue.

### **“Raising a Hand against the Torah of Moses”: On Litigation in the Civil-Secular Courts by the Ultra-Orthodox Sector**

Aviad Hacohen

The affair involving the segregation of the girls' school in the ultra-Orthodox community of Immanuel was an additional marker in the conflict between the Israeli legal institution, specifically the Supreme Court, and the ultra-Orthodox community. Within the space of 48 hours, the ultra-Orthodox sector organized two mass demonstrations, one in Bnei Brak and one in Jerusalem, in which hundreds of thousands of members of the ultra-Orthodox community participated. The demonstrators protested the Supreme Court's attempt to intervene in the running of the ultra-Orthodox school system.

One of the subtexts of the Immanuel affair exposed a growing phenomenon of recent years: it pointed to the fact that members of the ultra-Orthodox community were availing themselves of civil-secular judicial forums in an effort to obtain judicial remedies from these bodies.

This article is the result of many years of *methodological* academic tracking of legal actions and processes engaged in by members of the various factions of the ultra-Orthodox community in the civil courts. Based on scores of examples, this article examines the tension between the halakhic prohibition and the ideological principle of refraining from availing oneself of civil-secular judicial forums that are perceived as constituting “raising a hand against the Torah of Moses” and rebellion against Torah law, and the increasingly practiced trend of using these forums. The article examines the background of the phenomenon and suggests reasons for it — including the general process of “Israelization” of the ultra-Orthodox community, the decline in the value accorded to the rabbinical courts, the increasing involvement of the ultra-Orthodox sector in the legal discourse, pragmatism directed at “saving whatever possible,” and the institutionalization of the reciprocal relations between the ultra-Orthodox community and surrounding

society. At the end of the article, the implications of the phenomenon are examined. In the ultra-Orthodox sphere, the article points out the possible ideological, social, and behavioral implications of the phenomenon and, in the non-ultra-Orthodox sphere, the possible implications in terms of the tension between the religious court system and the civil-secular system.

### **Law and Procedure: Institutional Analysis of Supreme Court Rulings in Relation to the Ultra-Orthodox Community**

Amichai Cohen

The Israeli Supreme Court's judgment in the case of the ultra-Orthodox girls' school in Immanuel, discussed in this volume, is just one of several judgments in which the court has ruled in matters relating to the ultra-Orthodox community in Israel. Among these judgments are decisions in matters of funding ultra-Orthodox schools, recruitment of yeshiva students to the Israeli military, closure of roads in ultra-Orthodox neighborhoods during holy days, gender-separated public buses, and more. In many of these judgments, the court rejected the position voiced by the representatives of the ultra-Orthodox community.

Is there a guiding principle uniting these judgments? One position, supported by some scholars, is that the Israeli Supreme Court reflects the positions of the liberal sector of Israeli society. The attitudes of this group are diametrically opposed to the conservative views of the ultra-Orthodox sector. Hence, the collision between the Israeli Supreme Court and the ultra-Orthodox community is unavoidable.

The position offered in this article is that many of the court's judgments can be justified on a narrower basis — that of the court as a protector of the democratic process. In this role, the court has not only to protect the minority, but also to protect the majority from manipulating the system. This role is especially important in matters relating to the division of national resources between different groups in Israeli society.

I submit that some of the decisions of the court relating to the ultra-Orthodox community may be justified on exactly these grounds — the need to ensure that resources are properly divided and that no manipulation of the process is involved. It is further noted that when the court issues decisions regarding the propriety of

the process, other branches of government may amend the process in a way that will respond to the criticism of the court. In contrast, of course, if the reasoning behind the decision is based on constitutional values, as is often the case, the other branches of government are usually unable to reinstate the original decision in any way.

## **The Mizrahi Situation in Israel's Ultra-Orthodox Society and Reactions to It**

Nissim Leon

The Lithuanian yeshiva world and ideology played a leading role for the Jews of the Islamic countries by paving their way into the heart of ultra-Orthodox society. However, in the context of Israeli society, it soon became apparent that the ultra-Orthodox Ashkenazi Lithuanians sought to differentiate themselves from their ultra-Orthodox “Mizrahi Lithuanian” counterparts. The aim of this article is to provide an extended analysis of this context by describing how this situation manifests itself within the ideological melting pot of a yeshiva in conditions of ethnic isolation. The paradox engendered by this social reality will be presented, as well as findings from qualitative research examining the experiences of ultra-Orthodox Mizrahim when attempting to enroll into Ashkenazi institutions — and two paradigms of reaction that developed. On the one hand, a “Sephardic” version of Mizrahi ultra-Orthodox empowerment, manifested by a process of self-signification and distinction from Ashkenazi ultra-Orthodoxy; and, on the other hand, a Lithuanian ultra-Orthodox version that differentiates itself from the Sephardic version by creating Torah scholars of Mizrahi origin who adhere to the Ashkenazi conventions.

## **The Immanuel Affair and the Problems of Intercultural Encounter**

Menachem Mautner

The Immanuel affair is a good example of the problems that may arise in encounters between the institutions of liberal states and non-liberal cultural groups. Three major arguments will be presented.

Firstly, exclusion is a particularly injurious type of discrimination. On the face of it, the Immanuel affair is one of blatant and highly injurious exclusion. However, an intercultural encounter may raise problems of two types: the problem of understanding the meaning of a practice taking place in another culture, and the problem of normatively evaluating such a practice. It may be the case that the Immanuel affair represents a problem of the first type.

The second argument is that when a liberal state takes coercive measures against a practice of a non-liberal cultural group, the state needs to justify its measures to the adversely affected citizens. In the Immanuel affair, the Court exercised coercive measures against ultra-Orthodox citizens, justifying its actions mainly on its liberal tradition. The Court could not have acted otherwise, but this kind of justification was unacceptable to the citizens coerced by it. Some preliminary thoughts on how to address this problem will be offered.

The third argument is that a state institution may implement a hierarchy of measures against problematic cultural practices of non-liberal groups. The most moderate means is to encourage civil society action aimed at social change. The most extreme means is criminalization. In the Immanuel affair, the Court took the extreme step of exercising criminal sanctions. However, while civil society actions for social change may succeed in cases of intercultural encounters, criminalization is usually doomed to failure. Nonetheless, it might be the case that the petition submitted here contributed to the mobilization of civil society activists against the exclusionary practices of the ultra-Orthodox group.

## **In the Wake of the Immanuel Affair: Would it not be Better for Religion to Detach Itself from the State?**

Daniel Statman, Gideon Sapir

Not infrequently, a call for the separation of religion and state is heard in Israel. As a rule, this call comes from the liberal-secular sector of the population. From the secular point of view, the group that interferes in the realization of the liberal vision is the religious bloc, which unfairly exploits its political power in order to further its interests. This article examines the opposite argument, which maintains that the separation of religion and state would actually serve the interests of religion. According to this argument, religion should refuse to be connected to the state, even if this connection is legitimate from a liberal point of view. The article presents different versions of this argument and discusses them critically.

## **Invisible Space: Ultra-Orthodox Heterotopia in Immanuel**

Avi Shoshana, Yona Ginsberg

Through ethnographies in Immanuel and interviews with its residents, this article examines the unique influences of the environment on social relationships and actions taken by individuals and groups. The findings of the ethnographies illustrate the dramatic heterogeneity of the population in Immanuel (made up of ultra-Orthodox Ashkenazim and Mizrahim, newly religious Mizrahim, a group of newly religious ex-convicts, and a group of “drifters”), and show the blatant disregard of the members of the various groups for each other. They also reveal the large number of deserted apartments and buildings in the town. The findings from the interviews present explicit definitions of Immanuel as “a different place.” They report the dialectics between the general “invisibility” of Immanuel in the media as compared to its visibility when critical incidents occur (such as terrorist attacks, the Immanuel controversy, and reports of sexual harassment). They also stress the yearning of the interviewees to leave Immanuel, and the paradoxicality of the environment (manifested by the simultaneity of cultural prejudices and protest).



With this background in mind, we suggest using the heterotopian concept of Michel Foucault for the complex comprehension of the Immanuel environment. The discussion indicates the “otherness” of Immanuel (heterotopia), and the relationships between social control, heterogeneity, and social protest.

### **Humiliating Segregation in the Ultra-Orthodox Educational System: Tort Law Aspects and Policy Considerations in the Wake of the Israeli Supreme Court Decision in the Immanuel School Case**

Benjamin Shmueli

The Immanuel affair relates to the separation of the general educational track from the Hasidic track in a private school for girls in the town of Immanuel. The affair was considered by the Israeli High Court of Justice to be a case of invidious discrimination ensuing from ethnically based segregation — a practice that violates dignity and equality. On the surface, this was an extremely appropriate case not only for obtaining an injunction from the administrative judicial system, but also for instigating an ex post facto tort action for compensation to the segregated individuals for the harm suffered by them. Two such claims were indeed submitted, both of which were eventually resolved by compromise.

The question whether tort law — by ordering the payment of compensation — is indeed the appropriate instrument for the ex post facto resolution of rights violated by invidious and humiliating discrimination is a complex one. It can have a variety of answers, some of them deriving from the various aims of tort law. Thus, if one regards compensation as an aim, then it seems that it would be appropriate to adopt a policy of granting compensation in such cases in order to restore the situation ex ante. Another apparent aim of tort law would be for it to act as a deterrent against the humiliating practice of segregation, a practice that violates human dignity. By this deterrent effect, the excluded group would be empowered, although it is not certain that deterrence would be effective in a case like this, and that all the defendant bodies would change their conduct by being obliged to make monetary compensation. The distributive aspect is also more complex than it appears at first sight.

This article will view the issue from the standpoint of a pluralistic theory of tort law, a theory that examines all the objectives of tort law. It will then attempt to evaluate — by looking at the nature of the injurious action and the characteristics of the plaintiffs and the defendants — which of these aims should be predominant in the circumstances of this case, and which should be given preference over all the other possible aims. The conclusion to be drawn is that while tort law does indeed have a place in such cases, not every suit against every possible defendant would necessarily accord with its aims. In keeping with this conclusion, the article will indicate which tort suits are more advisable in such cases as opposed to those that are less advisable.