

In the Wake of the Immanuel Affair: Law, Culture, and Daily Life

During the summer of 2010, the public discourse in Israel centered on what became known as “the Immanuel affair.” The core of the problem was a series of Supreme Court decisions in which it was ruled that the ultra-Orthodox Beit Yaakov girls’ school in Immanuel, a settlement in Samaria, had instituted discriminatory and illegal segregation between schoolgirls of Ashkenazi origin and those of Sephardic origin.¹ The Court ordered that the discrimination be halted, and imposed harsh sanctions (in the form of fines and imprisonment) on the parents of students in the school’s Hasidic track who refused to comply with its orders.² In a single, dramatic moment the affair aroused many of the culture wars that have engaged public life in Israel for decades: the religion-state conflict; the rule of law and judicial activism; the relationship between the ultra-Orthodox community and the Supreme Court; the ethnic divide in Israel; legal pluralism and the multicultural challenge; the right to sectorial education and the principle of equality; cultural hierarchies and racism; politics and leadership in religious communities; and the differences between Ashkenazi and Sephardic ultra-Orthodoxy.

With the start of the school summer vacation at the end of the 2010 school year, the public tumult died down. For the few remaining schooldays, an ad hoc compromise was achieved — all the involved parties promised to comply with the orders of the court, and the parents were released from prison (since, as school was no longer in session, the infringement of the judicial order no longer existed).³ With regard to the next school year, the parents and teachers of the Hasidic track had already begun

1 HCJ 1067/08 “**Noar Kahalacha**” Association v. Ministry of Education (6 August 2009) [Heb]. (Henceforth: the **Immanuel** case.)

2 The **Immanuel** case (17 May 2010); the **Immanuel** case (15 June 2010).

3 The **Immanuel** case (27 June 2010).

to organize a framework whereby their daughters would study in a separate school. This school was to be defined as an “exempt institution” — this being the term applied to an institution that is authorized by the state but is not eligible for state funding. The school began to function alongside the Beit Yaakov school,⁴ under virtually the same conditions that had been in effect prior to the court proceedings. Immanuel thus returned to its usual day-to-day routine, illustrating the wide gap that separates the law from the reality it assumes to regulate. Nevertheless, the issues that were exposed in the fierce controversy evoked by the Immanuel affair remain with us, and they demand study and critical reflection.

A few months after the events of the Immanuel affair, a conference was held at Bar-Ilan University at which researchers from a variety of disciplines and institutions initiated a discussion on the significance of the affair, embracing its ethical, legal, political, societal and cultural aspects.⁵ This publication constitutes a continuation of that discussion — for indeed, the debate on Immanuel has not waned and remains a subject of widespread academic interest. Some of the articles in this volume have their origin in lectures delivered at the conference, while others represent later additions. As is not unusual for academic publications, a substantial time interval has elapsed between the events referred to in this collection and its publication. This hiatus has however enabled the authors to enjoy the advantages of distance and perspective. Consequently, this publication combines standpoints arrived at during the actual course of the affair with perceptions that were adopted after the dust of the controversy had settled.

The ten articles contained in this issue are aligned along three axes of analysis. The first axis engages with the institutional moment that initiated the affair, and which engendered the dramatic events that characterized its course — the legal proceedings

4 The **Immanuel** case (14 September 2010).

5 The conference, entitled “Between Sanctity and Legality: In the Wake of the Immanuel School Affair,” was held at Bar-Ilan University on 31 October 2010 (23 Heshvan 5771). The conference, which received support from the Faculty of Law, the Department of Sociology and Anthropology, and the ICEF International Fund for Education, was held in co-operation with the Rackman Center for the Advancement of Women’s Status and the university’s legal clinics system.

in the Supreme Court. Certainly, the Immanuel affair was not a legal issue at base. Its roots are to be found in cultural practices touching on belief and class, in a medley of institutional, economic, and discursive background conditions, and in political forces in both the communal and national arenas. Indeed, it is no wonder that when the Supreme Court eventually was called upon to play a role in the affair, it not only found it challenging to clearly and precisely formulate the substance of the illegality that it identified, but it also found difficulty in enforcing the correction of that illegality. Nonetheless, as has occurred in many of the controversies that have divided the Israeli public, the Supreme Court ruling on the affair was a constitutive moment, markedly affecting communal segregatory practices in the Israeli educational system, and profoundly influencing the always tense relations between the civil judicial system and the ultra-Orthodox sector in Israel. The legal process in the Immanuel affair incorporated some remarkable aspects: it included an unusual judicial assessment of the pedagogic content of the ultra-Orthodox educational system; it echoed the historic *Brown vs. Board of Education* case in the United States; and it led to a unique moment in the history of the High Court of Justice constituted by the imprisonment for contempt of court of a large group of individuals who were not parties to the original judicial proceedings but who sought to frustrate the practical outcome of the court's ruling, if not to actually violate it.

The article by **Amichai Cohen** offers a critical study of the strategies of the Supreme Court in the Immanuel case, and considers the alternatives that it could have implemented in ruling on the "Noar Kahalacha" petition. Cohen applies insights from the theory of public choice in order to demonstrate the unique institutional fitness of the court in a democratic-coalitional system, which can justify activism when considering some of the petitions that relate to the ultra-Orthodox public, but can make it difficult for it to intervene in others, such as the Immanuel affair. The article by **Benjamin Shmueli** examines an alternative legal route to contend with the alleged civil wrongs that were caused by the enforced separation between the pupils at the Beit Yaakov girls' school. Instead of the injunctive route pursued by the petitioners in the Immanuel case — which was adopted by the court — Shmueli explores the possible applicability of a cause of action for damages to be awarded to the schoolgirls who were rejected from the Hasidic track, and evaluates whether such an action would be justified and what limits of compensation might be enabled by it. The article by **Aviad Hacoen** (who also played a role in the Immanuel case by acting as the petitioners' attorney in the High Court of Justice) deals with the phenomenon of litigation in the Israeli civil courts

by members of the ultra-Orthodox community. In one sense, the “Noar Kahalacha” petition signified a deviation from the Halakhically authorized communal convention that prohibits members of the ultra-Orthodox community from taking their cases to the Israeli civil courts. Hacoen shows that the reality is much more complicated, and that the Immanuel case constituted only a single stage in a prolonged and complex process of ultra-Orthodox exposure to civil litigation.

A second group of articles concentrates on the societal sphere, concerning itself with the ultra-Orthodox communities that gave rise to the Immanuel affair and that were influenced by it. The affair illuminated many of the tense confrontations and internal contradictions that are immanent in contemporary ultra-Orthodox life in Israel, and had the effect of bringing these issues into public view in a number of arenas, including the Supreme Court, the media, and the streets of Israel’s cities. Although the “Noar Kahalacha” petition in the Supreme Court was directed against the Ministry of Education, in fact the real parties to the conflict (as well as their backers and supporters) were almost all members of a community characterized by a shared cultural ethos that incorporates meticulous religious observance in the face of the challenge of Israeli modernism. At the same time, this internal communal conflict also reflected many of the tensions that confront the general Israeli public with regard to relations between Ashkenazim and Sephardim, between ultra-Orthodox Jews and secularists, between the center of the country and its periphery, and between the public and its leadership. The Immanuel affair required the various stakeholders to negotiate between differing identities, and sometimes even to choose where their loyalties should lie. It also enabled the general public to become exposed to the intensity and complexity of the underlying tensions that are immanent within Israel’s ultra-Orthodox community.

The article by **Shlomo Guzman Carmeli** investigates the evolution of the public demonstration as a dominant political instrument exercised by the ultra-Orthodox communities in Israel, which also found expression in the Immanuel affair. Relying on an ethnographic research on the phenomenon, he characterizes the protest demonstration as being a type of “cultural performance” — a performative activity that transmits messages aimed at the outside world, but which simultaneously also consolidates a collective identity on the internal plane. The article by **Avi Shoshana** and **Yona Ginsberg** provides an ethnographic study of the town of Immanuel itself. Shoshana and Ginsberg conducted a series of observations in the town, accompanied by interviews with its residents. In the process, they discovered a diverse and hospitable community

plagued by poverty, divisiveness, and marginalization. These authors use the concept of “heterotopia” to characterize the Immanuel space — perceiving it as a place of otherness and concealment, which also manages simultaneously to incorporate protest and opposition. The article by **Henriette Dahan Kalev** and **Ahikam Ferber Tzurel** focuses on the experience of the individual as perceived in the Immanuel affair. These two authors seek to conceptualize the experience of someone who presumes to defy his or her community in order to stand up for its principles. They focus on two figures — one actual, in the person of Yoav Laloum, the initiator of the petition to the High Court of Justice, and one abstract, in the form of a generalized image of the schoolgirl whose body constituted the vehicle both for the implementation of the discriminatory act itself and for the act of resistance to that discrimination.

The articles by Nissim Leon and Yaacov Ben-Shemesh extend the scope of the discussion by demarcating the position of the Immanuel affair within the overall political context of Mizrahi ultra-Orthodoxy in Israel. **Nissim Leon**’s article deals with the sources of the cultural phenomenon of Mizrahi ultra-Orthodoxy, and with the inherent conflicts that confront many members of this community in Israel who, although they possess a specific ethnic-cultural identity, simultaneously aspire to be accepted into competing circles within a hierarchical social system. The article by **Yaacov Ben-Shemesh** focuses on the Shas movement, which constitutes the most prominent political manifestation of the challenge posed by Mizrahi ultra-Orthodox identity. Ben-Shemesh analyzes the permanent tension between statism and factionalism that Shas incorporates. He describes the evolution of the antagonistic attitude to the Israeli justice system espoused by the leaders of Shas, and, in this context, he examines the significance of the choice made by rabbinical and political personalities identified with Shas to submit a petition to the High Court of Justice in order to realize their collective demands.

The third group of articles is based on the extremely unusual combination of circumstances that characterized the Immanuel affair, and utilizes this situation to revisit longstanding questions of political liberalism. The affair included several elements that challenged certain basic assumptions in the liberal-democratic discourse. It motivated a non-liberal group to demand recognition for its segregated way of life by utilizing arguments that derived directly from that very same liberal discourse — arguments that touched on issues of equality, freedom of religion, and multicultural tolerance. It aroused group action directed at noncompliance with a judicial order, which eventually

culminated in full and demonstrative group compliance with punitive orders for its enforcement (fines and imprisonment). It also obligated the non-religious majority in Israel to reformulate its attitude to communal practices, some of which were foreign to it (isolationist religious education) and others with which it had some familiarity (ethnically-based exclusion).

The article by **Menachem Mautner** seeks to put some order into the complex ethical challenges posed by the Immanuel affair. He discusses the limited ability of the liberal political (and legal) system to understand, to respect, and to internalize arguments that derive from religious imperatives — lacking in rationality in its view — or to give credit to actions that it regards as incompatible with its basic moral assumptions. Mautner proposes a scale of preventive measures that can be implemented to confront challenges of this kind, and he casts doubt on the power of criminal (or quasi-criminal) law instruments to achieve their intended results. The article by **Daniel Statman** and **Gideon Sapir** deals with the notion of a separation between religion and state, applying it to the tension aroused by the Immanuel affair when the two spheres came into conflict with each other. Statman and Sapir examine the traditional arguments in favor of separating state and religion, and find the majority of these arguments not sufficiently convincing. Specifically, they are of the opinion that, on balance, religious communities may benefit from a connection to the state, even at the price of being subjected to a supervisory authority of the kind exercised over the Hasidic track in Immanuel.

Naturally, this publication cannot encompass all the issues aroused by the Immanuel affair, and it does not express many of the arguments and standpoints that the affair generated and that it would be appropriate to place on record. For example, the current discussion does not offer an independent study reflecting the viewpoint of the members of the Hasidic community in Immanuel. For although these individuals were perceived as the implementers of the discrimination, their own subjective experience was that they themselves were the objects of persecution during the course of the affair. Similarly, this collection does not sufficiently encompass the gender aspects that characterized the affair. In the legal field, it does not fully clarify the complex doctrinal issues that were discussed in the Supreme Court judgment, nor does it deal with the procedural innovations that characterized the court's handling of the petition. For this reason, although we believe that this collection of articles is rich in content, we consider it to be only a chapter in the continuing discourse on the

Immanuel affair and its repercussions on public life in Israel. Our hope is that this publication will make a significant contribution to that discourse.

We wish to express our thanks to two of our colleagues who contributed importantly to the creation of this volume: Miriam Bitton of the Faculty of Law at Bar-Ilan University, who was our partner in organizing the “Between Sanctity and Legality” conference; and Hanan Mandel, the Assistant Editor of the periodical, who was a full and close partner in the complex process of preparing this volume.

Ori Aronson

Avi Shoshana

Guest Editors