English Abstracts

State Commissions of Inquiry and Crises of Legitimation: The Or Commission and the Palestinian Citizens of Israel

Nadav Gabay

The Or Commission, which investigated "the clashes between security forces and Israeli citizens in October 2000," stands out in that its inquiries enjoyed neither governmental support nor public consent with regard to the Commission's objectives and the nature of the crisis under investigation. This article has two goals: 1) to analyze the exceptional investigatory practices employed by the Commission, in an effort to reconstitute the Green Line boundaries that were distorted by the October 2000 events and to increase the "legitimation effect" of its operation; 2) to discuss the unintended and long-lasting consequences that these exceptional investigatory practices have had on the institutional relationship between the State of Israel and its Palestinian citizens.

Different Types of Zionism: The Inclusion of "the Other" in Zionist Historiography in Israel

Allon Gal

This article discusses how Zionist historiography in Israel has undergone a transformation from an exclusionary approach to an inclusionary one. The exclusionary approach was dominant during the revolutionary period (roughly

1870 to 1970) of the renaissance of the Jewish people in the Land of Israel. The leaders of the pre-state Jewish community in Palestine and of the State during its early years implemented an ideology of inflexible Eastern European Zionism, which we may define as a "Zionism of transformation and *tekumah* (a term embracing the assertive, potent, and nationally comprehensive restoration of the Jewish people)." This Zionism originally evolved in an environment of widespread and intolerable anti-Semitism. For this reason, the Zionist historiography of that time tended to exclude other forms of Zionism. The underlying thesis of this approach held that only Eastern European Zionism (and with it a segment of Central European Zionism) represented the true and ultimate embodiment of Zionism. It arose out of a perception that emancipation — even where it had taken place — had failed, and that, consequently, the Jewish people was ultimately doomed, in the phraseology of the time, to either *shemad* (assimilation) or *hashmadah* (destruction) unless it pursued the solution provided by the revolutionary and state-oriented ideology of Zionism.

From the beginning of the 1980s, however, a historical-ethnic perception began to prevail in Israeli research into nationalism. This approach — in contrast to the modernistic-dogmatic perception — focuses on the development of different types of nationalism. The collapse of the Soviet Union and the Soviet bloc facilitated this heuristic transformation. Around this time — and this was especially the case in the English-speaking world — an innovative series of profound and creative research projects on subjects of Jewish interest threw light on a very heterogeneous spectrum of types of emancipation and anti-Semitism. These research projects were quite influential, and they laid the foundation for the evolution of a new theoretical approach, which maintained that a variety of types of Zionism took form under varying circumstances. Thus, the type of Zionism that evolved in the relatively comfortable conditions of the English-speaking countries was "a Zionism of dispersion and universal-mission orientation," which, while supporting the efforts to achieve Jewish sovereignty in the Land of Israel and indeed playing its own role in these efforts, nonetheless did not negate the Diaspora. Moreover, this Zionism generally placed great value on the democratic-pluralistic ethos, and hoped that the Jewish state would be exemplary in this sphere.

Yet another population group that played a forceful role in enriching the Zionist perception was the Mizrahi-Sephardic community in Israel. This community was

cognizant of its long roots and of the history of Zionism in the countries of its dispersion. This was a Zionism that focused on a pattern of "continuity, tradition and rebirth," and which had already found expression in waves of immigration to the Land of Israel as far back as the eighteenth century (although the numbers then were not very large). The public and academic pressure exerted by the Israeli Mizrahi community and its intelligentsia, as well as by other circles of critical thought in Israel, caused the Knesset in 1977 to legislate a policy entitled: "The Integration of the Heritage of Sephardic and Mizrahi Judaism." This is the policy that has been implemented in Israel's educational system, its academic and research institutions, and its ethnographic centers.

These new historiographical tendencies, which together contributed greatly to the erosion of the Eastern European monopoly, were strengthened by the liberal tendencies that have overtaken Israeli society and culture since the 1980s. All these aspects are discussed systematically in the first four sections of the article, and are considered from both the theoretical and the practical standpoints. The fifth section focuses on a comprehensive research project that was collated in a series of three scientific volumes entitled *World Regional Zionism: Geo-cultural Dimensions*, a work that is central to the inclusionary historiographical trend. The thirty or so investigators from Israel and the Diaspora who participated in this project aspired to complement, or amend, previous Zionist research with two particular objects in mind: to incorporate the Zionist situation in countries that had been excluded or ignored, and to illuminate and define the various types of Zionism (a total of six types) as they evolved and took shape in differing geo-cultural regions of the world.

And indeed, besides the three fundamental types of Zionism mentioned above, the research project drew attention to three intermediary types of Zionism: the "Zionism of identity and liberalism," a form of Zionism that evolved especially in Central Europe; the "Zionism of redemption," which took root in its various shades in the Balkan countries; and an in-between form of Zionism "between the Zionism of dispersal and the Zionism of *tekumah*," which was prevalent in such regions of Jewish immigration as South Africa and South America.

The trilogy defines Zionism in an open, sensitive, and realistic manner, and provides a basis for a new understanding of Zionism that is more all-embracing, more profound, and more perceptive than the conventional exclusionary narrative.

The work puts at the disposal of Diaspora investigators a mechanism that can serve to advance their research by virtue of the fact that it pays attention to the Zionist potential embodied in Judaism itself — whether in the expression of religion, community, or identity — while underlying the complex connections between the Jewish people and the wider society. This potential can find expression in the context of Jewish continuity as well as in the context of the Diaspora-Israel relationship. For those researchers who concentrate on investigating the renaissance of the Jewish people and the rise of the State of Israel, these volumes provide a basis for deep and innovative research in at least three fields: the "mystery" of the success of the Zionist project; the Jewish-Zionist basis of the Israeli state; and the democratic nature of Israel. For this reason, the final section of the article, which presents a concrete challenge and looks to the future, has been entitled "From Historiography to History."

Parental and Custody Struggles in Israel, Feminist Discourse, and Limits of Gender Equality

Yoav Mazeh and Guy Miron

Recent years have shown a growing public debate in Israel regarding the parental status of divorced parents, and, in particular, the status of mothers and fathers, the tender years' presumption, and the norm according to which mothers receive automatic custody over the children until the age of eighteen.

This debate focuses in recent years on the recommendation of the Shnit Committee, which has advocated against the tender years' presumption, and has called for the abolition of the term of custody.

This article examines the state of affairs regarding custody battles with an emphasis on the critical examination of the public discourse in this matter. In its first sections, the article presents the foundations of the "regime of truth" of maternal custody, and the transcription of the "good mother myth" into the legal and social systems. Subsequently, the option of joint custody is considered, the implications and vagueness of the term of custody are elaborated upon, and the

principles of the Shnit Committee recommendations are presented. The latter sections of the article focus on a critical examination of the public discourse, primarily a feminist discourse, which opposes the change of the current law despite the significant shifts that are taking place in the changing society.

Halakhic Discretion and Gender Bias: A Conceptual Analysis

Ronit Irshai

This article explores gender bias in halakhic discourse and examines the relationship between subjective discretion, seen as legitimate in the halakhic corpus, and gender bias, perceived as negative. After discussing and comparing legal-scientific critiques of formalism to Halakhah, it shows how leading halakhists like Rabbis Aaron Lichtenstein and Jonathan Sacks acknowledge the legitimacy of subjective discretion and similarly oppose halakhic formalism. Essentially, this article seeks to explain why subjective discretion is recognized as legitimate in Halakhah, whereas other subjective dimensions, such as gender bias, are denied. Using three models of feminist jurisprudence, which suggest ways in which law is exposed to gender bias, it analyzes their applicability to the world of Halakhah and the different meanings of the claims of gender bias in Halakhah. The article claims that gender biases often are denied in the Halakhah because they are truly transparent to halakhic decisors, all men, with shared gender assumptions about women. Put differently, because masculine ideology is the accepted, dominant norm, it remains latent and invisible, thereby enabling the ostensible appearance of gender neutrality and objectivity. Any exposure, even theoretical, of such a bias arouses opposition, because it reveals what supposedly does not exist. Assuming that masculinity and femininity are the products of social construction and not innate, this does not mean that men cannot share feminine ideology or create gender justice for women and vice versa. The main problem within the halakhic corpus today is not simply the existence of masculine gender biases (women have their own biases) but their one-sidedness. The entrance of women into the

realm of halakhic discourse may change this picture dramatically, at least in the sense of creating bias balance between the genders.

Identification out of Identity

Orna Raz

This article seeks to illuminate the manner in which the Jewish heritage finds expression in Israeli judicial rulings as a means of achieving goals that transcend the legal substance of the rulings. Incorporation of the Jewish heritage in judicial decisions serves as an instrument of identification because it relates to the cultural identities of the litigating parties, and thus provides a response to litigators who are in distress. The article analyzes three judicial rulings, each of which uniquely exemplifies a different aspect of this practice and which, when taken together, create a multidimensional image. The first case is an example of how the use of the Jewish heritage in a ruling can assist a court in transcending its judicial role in both concept and practice. In this case, the judge addressed a unique message to the litigants whose claim had been rejected, and thus helped them to better understand the issue and to reconcile themselves to the situation. The second case illustrates how references to the Jewish heritage can serve the court in achieving identification, understanding, and empathy with a litigant. The final case emphasizes the unique value of a judge's decision to incorporate in his ruling precisely the same sources from the Jewish heritage that the defendant had himself cited in order to justify his actions. In this case, the judge's reliance on these very same sources was aimed at communicating with the defendant in terms taken from his own cultural milieu in order to persuade him to abandon his previous pattern of behavior, and to improve his conduct in the future. In all three cases, the use of the Jewish heritage was not alien or exogenous to the judicial context, but rather was connected inherently to the cultural identity of the participants in the judicial proceeding.

The article demonstrates that the unique characteristics of the Jewish heritage allow a conceptual deviation from the limitations of the legal discourse and the

subjective perception of the judge. These characteristics include the fact that the Jewish heritage was formulated over many eras and in many places, that it is not subservient to the patterns of thought, the professional categories, and the restrictive rules of legal discourse, and also that generally it is not influenced by popular culture or by modern perceptions such as Western liberal thought, capitalism, and utilitarianism. By relating to the Jewish identity of the parties in a case, or to his own Jewish identity, the judge can touch upon the entire range of human experience, including beliefs, emotions, hopes, and aspirations, and can create a feeling of identification between himself and the litigants.

Finally, the article points to the fact that the ability of the court to identify with the parties by relating to their Jewish identity can facilitate the resolution of conflicts, and can provide a more complete answer to the needs of the litigants. These unique qualities can serve as an inspiration for broadening the use of the Jewish heritage in the judicial process to benefit from its many potential advantages.

Exile, Strangers, and Sovereignty: Reflections on the Biblical Tradition

Avi Sagi

Over the centuries, Jewish thought has proposed two dichotomous answers to the question of the connection between the people of Israel and their land. According to one approach, the Land of Israel is the natural location of the Jewish people. According to another approach, which has gained wide resonance in modern thought, the Jewish people are essentially non-territorial. Their mission is to live in exile, outside the Land of Israel. Both these approaches seek to anchor their view in the biblical tradition. In this article, I attempt to shed light on the biblical thought dealing with this issue. The analysis offers a new perspective for discussing the meaning of exile in Jewish tradition, which is opposed to trends in modern Jewish thought on the one hand, and to the classical tradition on the other.

My central claim rests on the biblical distinction between the exile and the stranger (*ger*). Exile is life outside the Land of Israel, and negative value attaches

to it in biblical thought — the sins of the people led to it. The experience of exile strengthens the longing and the yearning for the Land of Israel, which is where the Jewish people should live. The *ger* concept in the Bible generally relates to aliens and points to their legal status. And yet, it is ascribed also to the Jewish people. In this use, it does not denote a legal status but traces the contours of an ideal pattern of existence: to be in one's home but to live through the not-at-home experience. This is a required experience for the people of Israel, constitutive of their identity, which essentially implies a denial of the consciousness of sovereignty. It creates a new human standing in the world and enables the development of new attachments to the territorial space, to God, and to the Other, dictating a unique perception of the home space. The Bible holds that a person's home, as well as God's home, are open spaces, as represented by the open doors conveying the relationship between the owner and the Other. This analysis entails moral and political implications, some of which are suggested in the Bible itself.

Passivity and Negation: The Image of the Arab in Religious-Zionist Thought (1902–1949)

Dov Schwartz

This article traces four adjustments in the image of the Arab in Zionism in general, and in Religious Zionism in particular, from the beginning of the Zionist movement until the end of the Yishuv period: 1) From a passive to an active type; 2) From a noble type, who blends with nature and the Holy Land, to an enemy that seeks to conquer the land; 3) From a type that acknowledged the contribution of the Yishuv to the improvement of his status to one who denied this; 4) From characterization as an individual to a (Palestinian) nation.

My claim is that Religious Zionism tended to become more extreme than secular Zionism for the following reasons: 1) Preaching is a key feature of the Religious Zionist rhetoric; 2) The theological view of the Land of Israel's special properties; 3) The messianic motif.