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## Law and Culture in Early Zionist Literature

That law would be central when Zionism considered the issue of Jewish culture was clear from the movement's inception at the end of the nineteenth century. In fact, debate over the substance of the laws that would govern a future Jewish state was subsumed under larger meta-cultural polemic. At this early juncture, the movement had yet to establish legal institutions, and the debate over a future legal system had yet to begin. The issue was, however, intimated in a genre that aroused fervent discussion among Zionist intellectuals – utopian literature. Zionist thinkers and leaders from all currents composed works of the imagination portraying life in the future Jewish state in Palestine.<sup>1</sup> While few of these works addressed the law in a direct way, their brief references to the topic evinced profound cultural, and especially meta-cultural, differences that augured future debates.

Those differences are evident when two contrasting examples of such utopias are placed side by side. One is Elhanan Leib Lewinsky's *A Journey to the Land of Israel in Year 800 of the Sixth Millennium* (2040), published in 1892. Lewinsky was a member of the circle of secularized Zionist Jewish intellectuals of the Hovevei Zion movement who were active in Odessa during this period. The most prominent of them was Asher Hirsch Ginzberg, who wrote under the pseudonym Ahad Ha'am. The second is *Altneuland* (*The Old New Land*), published in 1902 by the founder of the World Zionist Organization, Theodor Herzl. The picture of the future state painted by Lewinsky is clearly influenced by the cultural Zionism (known at the time as "spiritual Zionism") taught by Ahad Ha'am, for whom Zionism was a national cultural enterprise aimed at renewing Judaism. According to this view, Zionist political aims were to be put off until the Jewish people

<sup>1</sup> Eliav-Feldon, "First Jewish Utopias."

underwent a fundamental cultural transformation that would prepare the nation for the future. Ahad Ha'am sought to accomplish this through large-scale educational and cultural projects, aimed principally at preserving Jewish cultural heritage while adapting it to the modern world, for the most part through secularization.

Accordingly, the society Lewinsky depicts is not religious, but its law is based on a secularized version of traditional Jewish law. Lewinsky noted in his utopia that, in the Jewish state, "the prevailing law will be the laws of the Hebrews." So, for example, he mentions a poster on a notice board in Jaffa that declares: "The District Court in Jaffa will notify the heirs of the late Palti ben Laish that they are to come to inherit their estate in the area of Be'er Binyamin, which is returning to them in the Jubilee Year."<sup>2</sup> Similarly, the Moses and Aaron Book Store stocks, in addition to nonfiction and scholarly works, encyclopedias and literature, *Hoshen Mishpat*, a classic compendium of Jewish religious law, "in four parts, with all the commentaries, on silk paper."<sup>3</sup> Personal and labor laws were based on "the Torah of Moses, in accordance with the glosses of the sages ... [which] stands against all of Europe's new laws on labor matters. According to these laws, there is no labor question and no property question in the Land of Israel, because there are no workers and no bosses, all are workers and all are bosses."<sup>4</sup>

*Altneuland*, like Herzl's earlier *The Jewish State*, depicts a state governed by the rule of law. A parliamentary democracy, it has a well-developed system of private law. It grants universal citizenship and respects human rights.<sup>5</sup> In fact, the civil and economic order that Herzl portrays is much like Lewinsky's. For both of them, the Jewish state is a welfare state based on the rule of law. The difference is not in the substance of the arrangements but in the fact that Lewinsky speaks of a country whose laws and culture derive from a secularized Jewish tradition, whereas Herzl in large part refrains from speaking of the Jewish state's law and culture as explicitly Jewish. Herzl prefers to stress that the Jewish state operates in accordance with the rule of law and modern civil procedure. It has a market economy based on the freedom of property ownership and contract, but its government also regulates the economy and society. Unlike Lewinsky, Herzl does not get into the details of legal norms or their cultural or legal source.

<sup>2</sup> Lewinsky, *Journey to*, 22. The title of Lewinsky's book refers to the year 5800 in the Jewish calendar (2039–2040 in the Gregorian calendar).

<sup>3</sup> Lewinsky, *Journey to*, 26.

<sup>4</sup> Lewinsky, *Journey to*, 35.

<sup>5</sup> Herzl, *Old New Land*, 139; Herzl, *Jewish State*, 136–152.

Even during his lifetime, Herzl's position was seen as that of an assimilated Western Jew turning his back on Jewish tradition, including the new secular Hebrew culture that had emerged in Eastern Europe during the period of the Haskalah (Jewish enlightenment). In a venomous review of *Altneuland*, Ahad Ha'am censured Herzl's omission of a Jewish-Hebrew cultural dimension to his program. The society Herzl described, he charged, was one that mimicked Western Europe in a monkey-see-monkey-do manner. At the end of his essay, Ahad Ha'am wrote sarcastically that the plan of action presented in *Altneuland* would do very well for the national revival of the Nigerians.<sup>6</sup> The critique set off a stormy debate between supporters of Ahad Ha'am and those of Herzl.<sup>7</sup> Often depicted as a cultural debate between Eastern European intellectual Jewish modernists (the so-called Maskilim) and Central and Western European assimilationists, to a certain extent that was true. According to this common wisdom, the Jewish "cultural problem" was central for the former, who believed that Zionism ought to be primarily a movement for the renewal of Jewish culture. The Jewish state's main role, in this view, was to lead this cultural renaissance. In contrast, the Jews of Western Europe felt less cultural tension, because many of them had been able to integrate into general society. They were thus not only less concerned about the character of modern Jewish culture, but also believed that the adoption of universal liberal or social-democratic views was incumbent on the Zionist movement. As they saw it, such egalitarian and inclusive political approaches were progressive, and would allow different concepts of Jewish culture to flourish at the same time. Some later scholars have claimed that the Zionist movement decided in favor of the Western cultural and legal model, and against both the religious camp and the Maskilim, who viewed Judaism as a culture.<sup>8</sup> In contrast, others have maintained that this dichotomous template, which opposes cultural Zionism to political Zionism, is overstated, and that most jurists held cultural-national views, in varying degrees, while at the same time advocating the adoption of Western principles, such as the rule of law and other norms that have their source in modern Western law.<sup>9</sup>

My position is close to the latter, but I take one step further and argue that the dispute was not so much cultural as meta-cultural. By that I mean that the differences were about the very question of whether there ought to be a debate about culture. Herzl's position, I will show, expresses a fundamental and

<sup>6</sup> Ahad Ha'am, "Old New Land," 319.

<sup>7</sup> On the debate, see Goldstein, "Altneuland"; Laskov, "Altneuland."

<sup>8</sup> Mautner, *Law and the Culture of Israel*, 14–21.

<sup>9</sup> Likhovski, *Law and Identity*, 155–156.

consistent Zionist decision in favor of the establishment of institutions to carry out a plan of action.

Herzl's Zionist movement, it should be kept in mind, was born out of a belief that no Jewish culture could long survive if the Jews did not assert their claim to be a nation with a right to self-determination. For that reason, from its earliest days, Zionism put all its strength and efforts into creating a Jewish polity and building a civil society. Despite the internal tensions between religious and secular Zionists, and between advocates of the practical work of Zionist immigration and settlement and those who gave preference to political-diplomatic efforts, all were united against the cultural Zionists' insistence on setting practical Zionist action aside so as to first conduct an internal Jewish cultural discourse that would boldly face up to the issues of the secularization and modernization of Jewish society, and the ways to fashion a new Jewish culture.<sup>10</sup>

So, for example, in the 1880s, more than a decade before Herzl founded the World Zionist Organization, Moshe Leib Lilienblum and other leaders of the Hovevei Zion movement rejected the demands of Judah Leib Gordon, one of the most prominent voices among the Russian-Jewish Maskilim. Gordon insisted that energies should be focused on overhauling the Jewish religion and Russian-Jewish society. He called for a culture war against traditional Jewish forces in Europe. In contrast, Lilienblum declared that the cultural battle over the character and definition of Judaism should be put off to the indefinite future, so as not to interfere with the incipient and still fragile movement to establish settlements in Palestine.<sup>11</sup> It was against this demand by the leaders of Hovevei Zion to muzzle the internal Jewish cultural discourse that Ahad Ha'am came out so passionately when he declared, in 1888, "This is not the way!" Furthermore, he was pessimistic about Zionism's prospects for large-scale settlement in Palestine. The conditions in that country, and the sorry state of Eastern European Jewish society, were such that, as he saw it, at most only a small Jewish entity with limited sovereignty could be established in Palestine, one that would not and could not serve as a magnet or refuge for Europe's millions of oppressed Jews. It could, however, serve as a cultural beacon for their identity as Jews and assist them in their daily effort to

<sup>10</sup> Sokolow, *To Our Teachers*; Borokhov, "Our Platform"; Lilienblum, "If Not Now"; Lilienblum, "On the Vicissitudes"; Don Yehiyeh, "Ideology and Politics" (discussing the opposition of religious Zionist and its leader Rabbi Yitzchak Yaacov Reines to cultural Zionism); Luz, *Parallels Meet*, 137–158; Holtzman, "Born Culture," 29–30.

<sup>11</sup> On the Gordon–Lilienblum debate, see Lilienblum, *Letters of Moshe*; Luz, *Parallels Meet*, 39–41. On Lilienblum's opposition to Ahad Ha'am, see Lilienblum, "Between the Imaginary"; "A Temple"; "To the Keepers."

wrestle with the tension between their desire to preserve their Jewish culture and their desire to assimilate into the modern world. He thus wanted to begin the Jewish revolution from the inside, by fashioning a modern Jewish culture that would preserve the ancient spiritual characteristics of Judaism, that “national I” and “spirit of the people” that beat within it, while adapting these, especially via secularization, to the modern world. Only such a society, Ahad Ha’am believed, could provide a spiritual foundation and motivating force for realizing Zionism’s goals.<sup>12</sup>

The demand to address questions of identity and culture was sincere, growing as it did out of painful and very real quandaries faced by modern European Jews. Those were especially acute in Eastern Europe. That region’s Jews did not have the option that their brethren in the West did, of assimilating as individuals into the local culture. As such, the cultural question was a burning public problem. The cultural debate raged in Eastern and Central Europe, in the small community that Jews from these areas built in Palestine, and of course in Hovevei Zion and Herzl’s Zionist movement. Hundreds of articles about it appeared in the Hebrew-language daily press and periodicals around the turn of the century. Books and pamphlets also addressed it, most of them published in connection with Zionist Congresses or other important convocations, such as the conventions of Russian Zionists in Warsaw (1898), Minsk (1902), and Helsingfors (Helsinki, 1906).<sup>13</sup> The “cultural polemic,” as it later came to be called, served as the framework for discussions of a number of matters relating to Jewish culture and identity – the debate between religious and non-religious Jews, between conservative Haredi (ultra-Orthodox) Jews and progressive religious Jews with secular educations, and between secularists holding different positions about Jewish culture. One group of secularists believed in a rigid “religious” approach to culture. Ahad Ha’am was the most notable member of this group, which maintained that at the basis of the manifestations of culture lay a Jewish “nature” or “spirit.” These secularists sought to preserve the core of Jewish culture by updating and secularizing it and adapting it to the modern world. Another group of secularists believed in an extreme, even revolutionary, dynamic approach to culture. This group, whose most prominent spokesman was Micha Josef Berdyczewski, and with which Nachman Syrkin was also identified, viewed Zionism as a total

<sup>12</sup> Ahad Ha’am, “At the Crossroads,” and especially “This Is Not the Path,” “The Jewish State,” and “The Spiritual Revival.”

<sup>13</sup> Holtzman, “Born Culture,” 25. The Helsingfors conference convened after the early Zionist cultural controversy had abated. But the questions of culture and “the work of the present” continued to roil the Zionist movement, and Russian Zionists in particular, as a result of the winds of change that swept through Czarist Russia after the failed 1905 revolution.

Jewish revolution. Its members maintained that adherence to traditions of the past would be detrimental to the creation of a new Jewish culture, modern and vital, that grappled boldly with the challenges of the modern world. A third group, that of Hovevei Zion and Eliezer Ben-Yehuda, did not come down firmly on either side of the debate over the nature of Jewish culture and identity. They maintained that Jewish culture was simply “what Jews do,” and focused on the objective national cultural characteristics that connect all Jews, such as the Hebrew language and the yearning for the Land of Israel.

Each of these positions had, of course, variations and sub-variations, and many of the participants in the discourse expressed a mixture of different ideas. The poet Hayim Nahman Bialik, for example, clearly took the more rigid cultural position, but had no compunctions about declaring that “all that is being created in Palestine by Jews . . . is also a part of Judaism.”<sup>14</sup> Every Zionist writer and intellectual took part in the debate. As the cultural polemics heated up, they all realized that the meta-cultural question had to be answered: Was the argument over culture the principal problem that needed to preoccupy Europe’s Jews, and the Zionist movement in particular, or should Zionism focus on taking concrete action to settle in Palestine and build Jewish communities there?

The emergence of the Zionist movement further fanned the flames of the cultural debate, granting it a framework and new dimensions. Following the establishment of the World Zionist Organization in 1897, a meta-cultural debate ensued between the advocates of the centrality of culture and the supporters of diplomatic action, immigration, and settlement. The issue was taken up on the floor of Zionist congresses and in the Zionist press.<sup>15</sup> The demand to give priority to the spiritual and cultural came not only from critical intellectuals who did not join the Zionist Organization, such as Ahad Ha’am and Berdyczewski, but also from many delegates to the congresses, who viewed culture as one of the principal issues that needed to be debated. Keeping faith with the Russian Haskalah tradition of Judah Leib Gordon, their principal demand was that the Zionist movement devote itself not only to the “work of the future,” meaning the efforts to establish a Jewish national home in Palestine, but also to the “work of the present” (*Gegenwartsarbeit*), meaning the full range of problems faced by Diaspora Jewish communities,

<sup>14</sup> Bialik, “The Question”; Luz, *Parallels Meet*, 137–202.

<sup>15</sup> Lilienblum was well aware that his debate with Gordon paralleled the cultural controversy in the Zionist Organization. See Lilienblum, “Peace Thoughts.”

in particular education and culture.<sup>16</sup> While people made enthusiastic speeches on culture at Zionist Congresses and other gatherings, they had trouble agreeing on a definition of culture, and they were unable to translate their flowery rhetoric into practical action. For example, the Second Zionist Congress resolved to set up bodies devoted to promoting the Hebrew language and Jewish culture, and appointed committees charged with carrying out the decision. It also produced directives on the subject. But nothing was done in the period before the next Congress. No funds were provided, and no practical action was taken. For all intents and purposes, the decisions were set aside. An essayist and translator, Reuven Brainin, complained after the Second Zionist Congress, with no little justice, that “Our best Zionists and members of Hovevei Zion, our authors and thinkers, speak morning and night about Hebrew culture, but none of them have offered a proper explanation of that pair of words, on which our little world stands.”<sup>17</sup>

At the Fifth Zionist Congress, held in 1901, the loudest voices in the cultural debate came from the Democratic Faction, composed largely of young intellectuals from Eastern Europe who had studied at German universities.<sup>18</sup> The faction had thirty-seven members, from among the eighty delegates from Russia; the ones whose names are most familiar today were Chaim Weizmann, Martin Buber, and Leo Motzkin. The faction protested the undemocratic procedures of the Zionist Organization under Herzl’s leadership. In particular, its members claimed that Herzl was deliberately keeping the Zionist movement from taking up the question of Jewish culture, despite its fraught significance for the world’s largest concentration of Jews, those of Eastern Europe. They claimed that the culture question was not nearly as vague and as controversial as Lilienblum, Herzl, and the movement’s other leaders feared. Later, in its working program for 1902, the faction defined Jewish culture: “the products of the Hebrew spirit in the past and present as they are an integral part of human culture as a whole.”<sup>19</sup> But the members of the Democratic Faction were unable to explain what this meant, or derive any concrete action from it. Nevertheless, the issue was debated passionately at the Fifth Zionist Congress in 1901, which reiterated its commitment to cultural activity. Yet, once again, no funds were allotted, no body to address the issue

<sup>16</sup> On the cultural debate, see Luz, *Parallels Meet*, 137–158; Holtzman, “Born Culture”; Almog, *Zionism and History*, 84–176.

<sup>17</sup> Brainin, “Second Zionist.” And see also Holtzman, “Born Culture,” 25–29.

<sup>18</sup> On the Democratic Faction, see Klausner, *Opposition to Herzl*; Luz, *Parallels Meet*, 138–140, 149–157.

<sup>19</sup> Motzkin, “Program and Organization.” According to Holtzman (“Born Culture,” 298, note 40), it was Israel Klausner who formulated this working program.

was established, and for all intents and purposes nothing was done.<sup>20</sup> The Congress's preference for political and economic action was clear in its decision to found the Jewish National Fund (JNF, *Keren Kayemet* in Hebrew), an organization charged with purchasing and settling land in Palestine, which stood in sharp contrast to the vague decisions regarding the promotion of culture and national education. The former decision was carried out, and the JNF became one of the most important and influential Zionist institutions. Only years later were the plans to establish a Hebrew University and national cultural and literary institutions actually carried out.

In other words, at the end of the nineteenth century the majority of the Zionist leadership had already utterly rejected the cultural Zionist position. The first to reject it were Hovevei Zion, followed by Herzl and his loyalists, the members of the early labor movement, and the leaders of the religious Zionists. True, Herzl was compelled to accept the demands of the Russian Zionists that the cultural question be addressed by the Zionist Congresses. But at the Third Congress, in 1899, he confessed that he did not understand what the argument was about. Furthermore, when delegates spoke on the issue, he made a show of leaving his place on the dais.<sup>21</sup> After Herzl's death, as well, the cultural position was rejected by the practical Zionists, led by Chaim Weizmann, the labor movement, and the Revisionists. The Zionist movement as a whole viewed cultural Zionism as a useless and even dangerous tendency. It was useless because culture alone could not save Judaism from its predicament of assimilation and depletion, and certainly could not save the Jews from their many troubles. There could be no future for Jewish culture without a sovereign political entity that would make it possible for that culture to flourish, and without a civically aware public committed to strengthening that entity. What was the point of interminably arguing cultural questions when there were no institutional, social, and political guarantees of the existence of such a culture?

Furthermore, the Zionist mainstream consistently viewed the insistence on plumbing matters of the spirit, education, and the shaping of a modern Jewish culture as a real threat. The majority maintained that the culturalists were mistaken in their belief that all that was good and beautiful in traditional Judaism could be preserved while at the same time fashioning a new, enlightened, and modern Judaism that could be inculcated in the Jewish masses.

<sup>20</sup> Luz, *Parallels Meet*, 152–153, 188–190; Holtzman, “Born Culture,” 30.

<sup>21</sup> Herzl was compelled, at the Fifth Zionist Congress of 1901, to offer a half-hearted statement that he supported the cultural effort (Luz, *Parallels Meet*, 149–150), but it seems to have been a tactical political move.



In fact, the project was a bumpy road with no clear contours. From the dawn of the Haskalah, Jews had argued over what defined Jewish culture, which parts of traditional Judaism ought to be preserved and which abandoned, and what the Jewish attitude toward foreign cultures ought to be. Zionism's leaders knew that the cultural debate would demand precious resources, threaten the unity of the Zionist movement, and thus be detrimental to its ability to carry out the weighty tasks it faced. It could even deteriorate into a culture war. Lilienblum summed it up after the Third Zionist Congress in 1899:

If the good of our people is precious to you, if you are true Zionists, advocate Zion alone... We have not yet gained purchase on Palestine and have not established our governance there, so we have no need for ministries of higher education and matters of the spirit. Much work lies ahead of us, much for many decades and thousands of people – do not destroy our unity, let no person demand of his compatriot what he will not give up under any circumstances. Unite around one goal: practical action; in matters of the spirit let each person do as he sees fit. I say: remove the sign of envy and animosity from the sanctuary of action of the Zionists.<sup>22</sup>

It was not an unfounded fear. The cultural polemic of the turn of the century was the principal cause of the formation of distinct Zionist parties. It gave birth not only to the Democratic Faction but also to Mizrahi, which aimed to be an organized religious force within the Zionist movement that would oppose demands to debate issues of culture and the attitude toward religion. In the end, it also prompted the labor movement to organize itself as a separate bloc within the Zionist Organization.

Even though the goal of Zionism was, in the final analysis, to ensure the survival of the Jews, and even though the Zionist movement defined itself as the national movement of the Jewish people, it opposed, from its earliest days, substantive decisions about the nature of Judaism, and in particular formal attempts, including legal ones, to define Judaism, the Jewish people, and Jewish (later Israeli) culture.<sup>23</sup> The movement did not, of course, entirely disregard Jewish wishes regarding identity and culture, for the simple reason that no national movement and no nation-state can entirely ignore that issue. Indeed, the movement firmly rejected the Uganda plan and other territorial options for a Jewish state, understanding that the aspiration to shape an exemplary Jewish national society could not be realized if it were detached from Zion symbolically and practically. In keeping with this, the Zionist

<sup>22</sup> Lilienblum, "Symbol of Jealousy."

<sup>23</sup> See Tsurumi, "Neither Angels."

movement explicitly recognized, on a number of occasions, that it needed to engage in cultural and educational activity as well, especially with regard to the Hebrew language and establishing a Hebrew university. Such were the decisions favoring action in the cultural sphere that were passed (if unenthusiastically) by the Congresses of 1898 and 1901, and a firmer decision passed by the Tenth Zionist Congress in 1911, as well as that passed by the Third Convention of Russian Zionists, held in Helsingfors, in 1906. It was at that Congress that the Zionist movement explicitly accepted the need to act also to answer the needs of Diaspora communities.<sup>24</sup> But, for the large part, the movement always preferred practical action and the effort to establish a state and an independent civil society to the risky discussion of culture and the nature of Judaism. In those few cases in which the leaders of the Congress were given no choice but to address the issue, the debate ended with general and vague declarations, but no operative decisions or allotment of funds.<sup>25</sup> The Zionist conventional wisdom was that the culture of the Jewish state would be Jewish in any case, since most of its citizens would be Jews, and because the state framework would express and support the culture of the Jewish majority.<sup>26</sup>

Herzl's and Lewinsky's different opinions aligned with the two sides of the meta-cultural question. Their two books present, of course, two different cultural worlds, East versus West, but the difference between their utopias, like the fundamental difference between Ahad Ha'am and Herzl, indicates that there was not just a profound cultural disagreement between them, but even more so a meta-cultural dispute about whether the cultural debate (or, in fact, culture war) should take a central place in Zionist discourse and action. Herzl did not delve deep into the substance of culture and law in the Jewish state, because he was primarily interested in achieving the goal of an independent state and the shaping of its government and its legal system. From his acquaintance with the different parts of European Jewry, the Eastern Europeans in particular, he knew that the cultural debate was furious and difficult and could not easily be resolved, and that focusing on it was liable to place at risk the achievement of Zionism's political goal. That being the case, he chose to remain silent about culture. He evinced this approach to culture as early as 1895, when he wrote in his diary that a fight could break out because of a

<sup>24</sup> But, even then, many in the Zionist leadership stressed that their principal concern was poverty and discrimination against Jews, rather than the cultural and identity issues faced by the Jews of modern Europe.

<sup>25</sup> Luz, *Parallels Meet*, 152–153.

<sup>26</sup> Compare to 1937 Ze'ev Jabotinsky's speech to the Royal Commission that took up the partition of Palestine into Jewish and Arab states. Jabotinsky, *Works*, vol. 5, 224.