

## **Constitutionalism of Nation-Building, Deconstruction of Legal Justice: A Perspective on Legal Research and Writing in Israel**

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This article is a primary endeavor to unveil two types of distinctively different traditions of legal research by Israeli scholars who have mainly published (in Hebrew, English, and Arabic) in the fields of law and society, law and governance, law and public policy, and constitutional law. The first is a tradition of constitutionalism of nation-building that aims to conceptualize, consolidate, frame and articulate the legality and legitimacy of the Jewish nation-state as a democratic and Jewish state. Hence, this article identifies the historical and genealogical origins of such a trend of legal ideology and legal thinking from the outset of the Israeli academia till nowadays.

I have identified three generations of scholars in that broad paradigm. The first generation was mainly composed of political Zionist activists who were professors of law and political science, and was very much influenced by Continental jurisprudence. They were drafting bills of human rights and proposals of a written constitution for what they had imagined as a Jewish and democratic state. They were followed by the second generation of scholars, mainly composed of justices and professors of law, who mainly underscored the creation of a modern Israeli civil code and the principles of constitutional law, with or without a written constitution. In 1995 the Israeli Supreme Court altered the judicial doctrine that has allowed the Court since 1995 to declare a parliamentary law as null and void if it severely contradicts the values of Israel as Jewish and democratic. The second generation promoted and legitimated such a major reform in Israeli constitutional law.

The third generation is divided between scholars who have advocated the more traditional constitutionalism, like the second generation, and those (mainly religious Zionists) who have protested against 'the constitutional revolution' and have pointed to the need to legally prefer the values of Israel as a Jewish state over its values as a democratic state.

The second and alternative trend in scholarship, which I denote as criticism of legal justice, has challenged the first tradition mentioned above. This reflects the upsurge of identity groups and minorities in the forefront of the Israeli public arena. Thus – and inter alia – feminists, Mizrahi Jews, Israeli Arab Palestinians, and Orthodox national Jews have articulated an alternative perspective to the constitutionalism of nation building. They have deconstructed the premises as if state law is unified and as if there is one legal culture that is bound to promote state law, its national interests and constitutionalism. Alternatively these scholars have explicated and analyzed the legal ramifications of the socioeconomic divide, the meaning of law from alternative perspectives to state law, the unnecessary centrality of national security arguments and emergencies in Israeli law, the ramifications of the 1967 military occupation, gender and sexuality in law and feminism, the paradoxes and tensions in defining Israel as Jewish and democratic, the multiplicity as well as unexpected consequences of legal histories, and the difficulties of the legal profession in advancing democracy.