

INTRODUCTION

The *Israel Law Review* reached its jubilee volume in 2017. We are proud to mark this jubilee with a special, retrospective issue of the journal.

When the *Israel Law Review* was launched in 1966 by the Faculty of Law at the Hebrew University of Jerusalem, contributions to it concerned almost entirely domestic issues. The *Review* served as a showcase for Israeli scholars, who did not have easy access to foreign periodicals. It contained articles on topics as diverse as debt and contract in common law, the treatment of mentally sick offenders, Babylonian legal sources, and errors in administrative tribunal decisions.

By the 1990s the profile of the *Review* had started to change, as the journal began to carry international scholarship as well as Israeli contributions. In 2009 its mandate changed, when its management was transferred to the Minerva Center for Human Rights at the Faculty of Law and it became a journal of human rights, public law and international law, focusing on law in times of tension and conflict. Since 2012 production and publication of the journal has been in the hands of Cambridge University Press, while the Minerva Center for Human Rights continues to carry out the editorial work.

International law has featured on the *Review's* pages right from the outset, reflecting the significance of this area of law for Israel and Israeli scholars. By 1966, the *Review* had carried contributions by Norman Bentwich, Julius Stone and Yoram Dinstein. Later issues included articles by Shabtai Rosenne, Yehuda Blum, Ruth Lapidoth, Martti Koskenniemi, Jochen Frowein, Kai Ambos and other international lawyers and scholars. Many issues have focused on international human rights law and international humanitarian law, and have seen the participation of Nigel Rodley (until recently co-editor-in-chief of the *Review*), David Kretzmer, Frances Raday, Eckart Klein, Aharon Barak, Lech Garlicki, Ruth Gavison, Richard Posner, Mark Tushnet, Arthur Chaskalson, George Fletcher, Jeremy Waldron and Lorraine Weinrib, to mention but a few.

Alongside established, internationally renowned authors, the *Review* prides itself on bringing to the fore the work of up-and-coming researchers, seeking to set the scholarly agenda for the future. The *Review* also aims to increase the diversity of its contributors and to be as inclusive as possible in terms of gender, race and other social markers, as well as geographically and ideologically.

To celebrate our fiftieth volume, we chose to step back and take a look at the *Review's* continuing contribution to the legal world. To do so, we selected one article from each decade of the *Review's* existence, which we believe has had a lasting impact on scholarly debate, and even beyond. To demonstrate this impact, we invited prominent scholars and practitioners to reflect on the selected articles, whether doctrinally, by reference to developments that have taken

place since the publication of the articles, or in any way of their choice. We are proud to present here the fruits of this project.

In 1968 Yehuda Blum published his article 'The Missing Reversioner: Reflections on the Status of Judea and Samaria', which addressed Israel's status in the West Bank. It has been argued that this article was the cornerstone of Israel's legal policy regarding the applicability of the law of occupation in the territories that came under its control in 1967. In an apt piece of timing marking 50 years of Israeli occupation, Eyal Benvenisti, in his reflection 'An Article that Changed the Course of History?', revisits Blum's article, criticising his argumentation and specifically its implications for the applicability of the Fourth Geneva Convention.

In 1977 Raphael Walden published a study of the character of customary international law, 'The Subjective Element in the Formation of Customary International Law', focusing on the subjective element. The intractability of this fundamental issue, which pertains to the very existence of international law, has persisted through the years, leading the International Law Commission to take up the 'identification of customary international law' as one of its work topics. Omri Sender and Sir Michael Wood, in 'A Mystery No Longer? *Opinio Juris* and Other Theoretical Controversies Associated with Customary International Law', illustrate the progress that has been made over the decades in elucidating questions relating to customary international law, especially with regard to its subjective element.

International human rights law leapt to the forefront of international discourse in the early 1990s. Eyal Benvenisti's 1994 article, 'The Influence of International Human Rights Law on the Israeli Legal System', considered the impact of this change, and specifically Israel's ratification of the major international human right treaties, on the Israeli domestic system. Today, Barak Medina, in 'Domestic Human Rights Adjudication in the Shadow of International Law: The Status of Human Rights Conventions in Israel', examines Israeli practice, highlighting the limited role of international human rights law in the jurisprudence of the Israeli Supreme Court and offering a critical evaluation of this state of affairs.

The fourth decade is represented by Ruth Gavison's 'The Role of Courts in Rifted Democracies' from 1999. Gavison argued that, especially in situations of deep conflict, courts should safeguard their independence and credibility by viewing themselves primarily as appliers of law in specific cases, and as defenders of arrangements basically made in the political branches. Shaheed Fatima takes up the theme of the legitimacy of courts in 'Courts, Legitimacy and the Rule of Law', in which she notes the experience of United Kingdom courts in the *Miller* litigation concerning the UK's proposed departure from the European Union. She argues that the media reaction to the judgments demonstrates that challenges to the legitimacy of courts are not limited to their lawmaking activities but also to their role of applying law. She calls on other branches of government to respond to attacks against the judiciary and uphold judicial independence.

Finally, the article chosen for the fifth decade reflects the growing place of immigration in international discourse, both within and beyond international human rights law. In 'Rights in Immigration: The Veil as a Test Case' of 2010, Gila Stopler put forward a normative framework for assessing the place of rights in immigration within the context of liberal theories of justice.

She distinguished between entry into a country, citizenship, and residence as three distinct stages for balancing individual rights against other interests, and maintained that time spent in a country is one of many considerations in the balancing exercise. Now, in 'All you Need is Time? Discrepancies between the European Court of Human Rights Case Law and Liberal Normative Theory on Long-Term Migrants', Başak Çalı scrutinises the jurisprudence of the European Court of Human Rights and demonstrates that failing to accord independent normative weight to time spent not only creates a tension in the translation of liberal normative theory to legal policy, but reveals a deeper tension in liberal theories of migration between national liberalism and cosmopolitan liberalism.

As noted in its mission statement, the *Israel Law Review* examines the application of legal norms under conditions of conflict and political uncertainty, highlighting the relevance of the Israeli experience in these fields to other parts of the world and that of other societies to Israel. This collection of articles and reflections indicates that many of the legal uncertainties and challenges facing us today are not entirely new; although political, social and economic developments reveal additional nuances for legal scholars to contend with. The *Israel Law Review* will continue to offer its readers timely engagement with such issues through high quality, cutting edge scholarship.

We wish you an enjoyable read.

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