

Jefferson Goes East: The American Origins of the Israeli Declaration of Independence

*Yoram Shachar**

The American Declaration of Independence served as a starting point for the drafting of the Israeli Declaration of Independence of 1948. Most of the original content was lost in the long process of translation and adaptation, but, using David Armitage's recent terminology, the Israeli text remained as "generically promiscuous" as its predecessor, combining a "manifesto" of justifications for the assumption of sovereignty, a formal proclamation and a proto-Bill of Rights. This Article depicts the work of Mordechai Beham, the Israeli Declaration's first draftsman, as a remarkable exercise in choosing contemporary, locally-valid "answers" to the fundamental "questions" posed by Thomas Jefferson and his contemporaries in 18th century America on human values, national identity, statehood, and God. The analysis is partially based in the current debate on "legal transplantation," arguing that the outstanding success of the Israeli Declaration stems from both the quality of the American original and the massive work of adaptation to Israeli soil.

* I wish to thank the members of the "Legal Transplants" group at the Institute of Advanced Studies in Jerusalem for their patient support, in particular Morton Horwitz who tried to energize me and Steven Wilf who tried to restrain me, both in vain. I am also grateful to my commentator Orit Rozin who taught me a lesson in critical empathy.

INTRODUCTION

Mordechai Beham was no Jefferson. A shy, mediocre lawyer in the service of a nascent ministry of justice in beleaguered Tel Aviv in April 1948, he possessed neither the greatness nor the audacity to draft a declaration of independence from scratch. So he copied. The result is a text that has been as phenomenally successful for Israel as the original for America. Like its American model, The Israeli Declaration of Independence has far surpassed its immediate purpose and impact, and has become a defining sacred text, constantly present in the nation's collective mind.

There were superficial similarities between the birth of America and that of Israel. Both states gained their independence from the British crown. Both were founded in a process of colonization by loosely-defined nations who drew significant parts of their identity from one version or another of a biblical myth. Both were committed at the moment of birth to some form of democratic rule, but excluded entire communities from the ongoing debate over the exact constitutional contours of their politics. Both states were envisaged as part of a regional realignment assembling a number of political entities in a loose union. On a different but technically relevant level, both enjoyed a long period of actual autonomy within colonial rule, enabling them to prepare for their independence in an organized form, down to the documentary details. Other similarities abound, but they are equally superficial. One hundred and seventy-two years and more than 10,000 kilometers apart, the soil of Tel Aviv differed from the soil of Philadelphia in as many ways as Beham differed from Jefferson. If planted in its original form, The American Declaration of Independence would not have lasted a single April day in the chaotic sands of 1948 Palestine.

Israeli independence was not an act of either rebellion or cessation. Israel did not detach itself from any existing or former specific government, but created an entirely new entity in the political void of the moment. But there is a flip side. Israel, unlike the United States, made a claim to antiquity. It asked the world to acknowledge its independence as an act of regaining a specific long-lost sovereignty. Whereas America relieved an absentee king of some newly-acquired territories, Israel reestablished an old kingdom on its own land. Other important differences abound, but enough has been said to introduce the main argument of the present Article, namely that the American Declaration bore fruit in 1948 Palestine because it was carefully engineered locally to fit the new soil. Like the best of transplants, it succeeded because it retained enough of the original substance to support a stable structure, while allowing new material to shape the final product.

Of the 33 paragraphs and 1,322 words of the American Declaration of Independence, only two paragraphs were in fact used and only a few words were included in the final text of the Israeli Declaration in their (translated) original form. The process of selection, elimination and adaptation began before a single word of the American Declaration was copied out by Beham, and continued for three weeks through a dozen consecutive drafts. Other influences converged on the text, new figures joined in the process of drafting, and knowledge of the American ancestry of the text gradually waned. It is almost certain that few of the political leaders who were involved in the intensive stages of redrafting on the last two days before independence were even aware of the concrete American genealogy of the document.

And yet, as in any case of successful parenthood, the American Declaration of Independence has left its greatest mark on its Israeli offspring by quickly giving it enough form and substance to face its own independent choices, and then letting it go.

Two examples will suffice as an introduction, a general one of form and a specific one of substance. Using David Armitage's excellent idiom,¹ the Israeli Declaration inherited the "generic promiscuity" of its American ancestor. At the same time a formal proclamation, a declaration of rights and an epic manifesto in defense of independence, it packs three potentially conflicting genres into one coherent text. The Israeli Declaration also places God in its concluding paragraph in exactly the same position as its American predecessor. Neither in absence nor in majesty, both "Tsur Israel" (צור ישראל, literally "Rock of Israel") and the American "Divine Providence" were summoned in the last paragraph of the respective texts to the signing ceremony in the role of part-underwriters, part-witnesses. Human endeavor, not heavenly hand, has created independence, so spoke the message both in Philadelphia and Tel-Aviv, but God was asked to keep an eye. This, however, is where the similarity ends. While "Divine Providence" may pretend to be global and universal, "Tsur Israel" does not. Of His many names in Jewish prayer, the Rock of Israel is not just the protector of Israelites, but an actual piece of their ancestral land. By this name more than any other, He is strictly ethnic and territorial.

In much of the present Article I import the metaphors of territoriality and human hand into the actual story of the document's drafting. Slightly modifying the earlier metaphor of deliberate parenthood, I use the

¹ DAVID ARMITAGE, *THE DECLARATION OF INDEPENDENCE: A GLOBAL HISTORY* 14 (2007).

contemporary verbiage of comparative law theory to describe the drafting of the Israeli Declaration of Independence as a striking success in irritation.² Jefferson is the irritant. He made a group of Jews scratch their heads in Palestine in search of identity and purpose in the same way he made his own contemporaries scratch theirs in Philadelphia. In his three "genres" he forced them to define the present in terms of both its past and its future. In drafting a narrative of past events leading to the creation of the new state and in defining its future internal purpose and external standing, he touched on the main questions of identity facing a political community. The fact that he did not succeed in imposing his own answers to all these questions is secondary. He may have wanted to keep the mainstream Christian God of his times out of the story, but he did scratch the secular skin of the text with his own strange Nature's God, raising an issue that would resound far beyond the first days of July 1776. By raising the issue of the identity of the sponsoring God, he raised a host of crucial identifying issues for all future users of the text, for by identifying their Gods they would identify themselves. Jefferson's own contemporaries added "Creator," "Supreme Judge," and of course "Divine Providence" to his original "Nature's God." In the words of Pauline Maier, they did so in order to better "state the convictions of the country's 'good people,'"³ but the "good people" were conventional devout Christians. What they meant by "Divine Providence" was not nearly as universal as Jefferson's esoteric "Nature's God," and the veiled attempt to conceal their parochial Christianity by seemingly abstract names defined the main tension at the heart of the American nation for centuries to come.

"Divine Providence" has at least two excellent literal equivalents in Hebrew, both easily recognizable by members of the Yishuv (The Jewish community of Palestine) of 1948⁴ and both more common, at least in secular circles, than "Tsur Israel." Beham could only have chosen the latter if he was irritated. Formal religiosity played a very small part in his life and God would probably have been left unnamed in his own ordinary speech, but he was not writing for himself. He too was expressing the "convictions of the country's 'good people,'" but in a different country and for different people, and it fell to him to define how they differed. The following analysis will show the many different ways in which he did so, but the American text also forced him to make a stand on religiosity, and he did. His "Tsur Israel" made

2 See Gunther Teubner, *Legal Irritants: Good Faith in British Law or How Unifying Law Ends Up in New Divergences*, 61 MOD. L. REV. 12 (1998).

3 PAULINE MAIER, *AMERICAN SCRIPTURE: MAKING THE DECLARATION OF INDEPENDENCE* 149 (1998).

4 They are "Hashgacha 'Elyona" or "Hashgacha Elohit."

no pretences to universality, and so he defined the core of political Zionism in the most eloquent way. It was a clear expression of specificity, as blatant as most self-defining expressions of the Jewish Yishuv of 1948. God was Jewish in Beham's Tel Aviv, neither Christian nor universal. He was protecting His chosen people on their return to the land He had promised them in antiquity.

And yet, not all of this was inevitable. Coincidence and human agency were as much at play in the drafting of Israeli independence as in the act itself. Beham's timidity was probably the key factor in the initial evolution of the text. Others around him, equipped with more robust egos and greater experience, did not even pretend to express the "convictions of the country's 'good people'" when they made alternative starts, and they did not copy. History was generous in 1948 in offering real options, not hypotheses. A leading political poet-orator, a well-seasoned constitutional expert, a world-famous international lawyer and a group of particularly confident civil servants each created their own drafts and none started from a model, American or otherwise. As in all human creation, not least Jefferson's work itself, they all wrote in an environment of rich influences, but not from a specific model, and the results were very different both from each other and from Beham's draft. "What if" was very real in the fierce military and political upheavals of the day, and the "ifs" very concrete. If Moshe Shertok (Later Sharet), the Yishuv's leading emissary, had not challenged David Ben-Gurion's activist line on May 11th, Israel would probably have been declared in a Hebrew version of an "Act of Independence" drafted in New York by Hersch Lauterpacht, the leading international lawyer of the day. If Jerusalem had not been cut off from Tel Aviv by war in April, Beham would not have been asked to draft a declaration, and in May Lauterpacht's draft would have competed with a laconic "Proclamation" drafted in Jerusalem by Shabtai Rosenne, the imposing future legal adviser to Israel's Foreign Office, in collaboration with four other eminent local jurists. Neither Lauterpacht's "Act" nor Rosenne's "Proclamation" owed anything to the American Declaration of Independence, beyond occasional similarity, and neither mentioned God by any of His names. But Shertok lost favor and Lauterpacht's "Act" was rudely cast aside with him, Rosenne's "Proclamation" remained physically stuck in Jerusalem, and Beham's half-plagiarized modest beginning survived to be read by David Ben-Gurion and to become Zionism's sacred text.

Once read and inscribed in quasi-sacred font on fake parchment-like paper, the text of the Israeli Declaration took on a life of its own, and earlier traces of human hand were carefully removed by Ben-Gurion's propaganda machine. Beham has been eliminated from collective memory and with him all direct traces of the American ancestry of the text. And yet it is an

irony of history that Beham's earnest, richly-nuanced choice of Tzur Israel was later wrongly ascribed in common memory to Ben-Gurion's empty political trickery. Generations of Israelis have grown up on a narrative depicting some mediocre secularist politicians wasting their energies in the days and hours leading up to the Declaration on petty battles with their religious counterparts over the very mention of God, only to be saved by Ben-Gurion's clever ploy of a divine name, richly evocative to believers but almost vacuous to the heathen. "Tsur Israel," Israelis have been led to believe, was invented by Ben-Gurion to signify some stone quarry to the ignorant secular and a redeeming God to the faithful. In reality, party leaders did quarrel over the inclusion of God in the Declaration of Independence, but there was nothing petty about their argument, and Ben-Gurion did not create "Tsur Israel" ex nihilo. The choice of a strictly Zionist God was Beham's. It was made weeks before drafting moved to the party politics, in response to a crucial issue posed almost two centuries earlier by some of the most earnest political thinkers in Western history.

II. THE DRAFTING PROCESS⁵

A. Four Early Starts

Preparation for the creation of an independent Jewish state in Palestine had begun in earnest in December 1947, following the United Nations' adoption of the Palestine partition plan on November 29. The Jewish community, already politically organized under the British Mandate, created a number of administrative bodies entrusted with the detailed planning of an orderly transfer of power at the termination of the Mandate by spring or early summer 1948. While most government functions could continue with relatively little practical change, there were legal and administrative issues pertaining to the change of sovereignty itself that required particular attention. A constitution was required by the U.N. partition plan, and basic legal documents had to be drafted at least for the act of independence and for the immediate period following it. The internal politics of the Jewish Yishuv required some distribution of power among existing institutions, but most of the actual work was carried out under the auspices of the Jewish Agency in its Jerusalem headquarters.

⁵ For another version of the drafting process, see Yoram Shachar, *The Early Drafts of the Declaration of Independence*, 26 TEL-AVIV U. L. REV. 523 (2002) (Hebrew).

A full draft constitution was ready in January. Interesting as it may be for later constitutional development, only its "Preamble" is relevant to the present analysis. Drafted by Leo Kohn, a seasoned constitutional scholar in the service of the Jewish Agency's Political Department, the "Preamble" was the first ceremonial legal document prepared for the new state. Kohn intended it to be read aloud in the Constituent Assembly prior to the adoption of the constitution. The partition plan itself was unclear about the exact act of independence. Arrangements were made in it for the possibility that independence would precede the constitution, but nothing in it precluded simultaneity. The Zionist interest at the beginning of 1948 clearly may have favored a condensed timetable in which independence and the constitution would be declared and celebrated together. Indeed, the "Preamble" bears the clear marks of an inaugural text styled like a declaration of independence. The author's own intention to that effect became even clearer when independence was in fact declared in May without a constitution, and Kohn promptly removed the "Preamble" from later drafts. It can therefore be assumed with some confidence that Kohn's "Preamble" was originally drafted by him to be read as the inaugural announcement of the independent Jewish state. Written in high Zionist idiom, festive in style and laden with rich religious associations, the "Preamble" could well have served the ceremonial function of a declaration of independence.

In the event, Israel never adopted a written constitution and Kohn's entire excellent draft was soon cast aside and committed to oblivion, but if my interpretation of the intended function of the "Preamble" is correct, it may have had a very real negative effect in its short heyday in early 1948 on potential efforts to draft a separate "grand" declaration. For while some of the best young lawyers of the Yishuv worked diligently in nearby Agency offices to prepare the legal substructure of the new state, they seem to have paid little or no attention to the text of a declaration in the hectic months between January and April. The "Jerusalem Secretariat," led by the Canadian-born Bernard Joseph, were first ordered by him to prepare a "proclamation describing the events leading to the establishment of the state" only towards the end of the period. The result was a short English text in strict legal style entitled "Proclamation No. 1." Except for a single allusion to the "inherent right of the Jewish people," it merely uses the language of the U.N. partition resolution to announce the establishment of a "Provisional Council of Government" for the "administration of the Jewish State," and to request obedience from "all inhabitants." As suggested earlier, much of the character of the "Proclamation" may stem from the personal and professional style of Shabtai Rosenne, the leading international lawyer on the team. Though attached to a memorandum by Joseph dated April

22, it speaks of the "approval" of the "Provisional Council of Government" by the "Commission set up under the [partition] resolution," and it makes pedantic use of *opinio juris* terminology on the finer points of recognition of new states. In fact, the whole partition plan, including the "Commission" referred to in the "Proclamation," was hopelessly stalemated by the end of April, and the Jewish "Provisional Council of Government" was never "approved" as part of the original plan. What matters more in the present context is that, even if "approved," the mere announcement of a "Provisional Council of Government" in accordance with the U.N. partition plan would not have been a declaration of independence. At most, and by its own terms, it would have amounted to a step towards independence. Sure enough, there were hints in the "Proclamation" at a whole series of legal arguments that could be made later if the partition plan collapsed, but they only strengthen the impression that the Jerusalem "Proclamation" was, at best, a clever exercise in legal formulation rather than a declaration of independence in the American tradition. As suggested earlier, the terse style of the document was probably dictated by the personal preferences of Rosenne, but it is also fair to speculate that the "Legal Secretariat" worked on the assumption that colorful compositions like the "Preamble" and the speech described in the next paragraph were already available, and that plenty more could be produced by political leaders who were all adept at ornate speechmaking.⁶

Indeed, a third document came on the scene in April. It was a speech made by Zalman Rubashov (later Shazar) in the closing moments of the last meeting of the Zionist Actions Committee (הוועד הפועל הציוני) before the establishment of the State of Israel. Assembled in Tel Aviv between April 6 and 12, the Actions Committee had achieved unity among the main Zionist organizations in Palestine and abroad on a decision to establish the Jewish State. Attention was focused mainly on the concrete political and institutional decisions pertaining to the future state, but when consensus on the basic issues started to emerge, a committee of three was appointed to

6 Rosenne himself insists in a later account that the Secretariat only examined "the fundamental legal . . . structure of the declaration of independence," not its "political and ideological [structure]." He makes a similar formal distinction between law, politics and ideology in his allusion to the draft constitution ("Excluded from the competence of the [Secretariat] was anything to do with the constitution of the new state: that was a political matter . . ."). Shabtai Rosenne, *Revisiting Some Legal Aspects of the Transition from Mandate to Independence: December 1947-May 1948*, in *ISRAEL AMONG THE NATIONS: INTERNATIONAL AND COMPARATIVE LAW PERSPECTIVES ON ISRAEL'S 50TH ANNIVERSARY* 311, 317, 320 (Alfred Kellerman, Kurt Siehr & Talia Einhorn eds., 1998).

draft a ceremonial "speech" at the end of proceedings. The actual work of drafting was assigned to Rubashov, and he composed the speech and read it to the assembly shortly after midnight on the 12th. Allusions to a "Bill of Independence" and similar terms had been made in the debate leading to the appointment of the committee, but it is doubtful whether any of the delegates involved assumed that the reading of the "speech" was not in itself an act of independence. At the time, the termination of the British Mandate was already set for May 14, but formal sovereignty still resided in the Mandate authorities on April 12 and a unilateral act of immediate independence was not even debated. The overall sense of the assembly was that it was merely setting the ground for the assumption of power on or shortly after the day the last of the British soldiers left the country. Still, independence was in the air and Rubashov's speech reflected the mood. Even more importantly, it reflected Rubashov's own personal style, and the minutes reflect the fact that he was selected for the task for exactly that purpose. Better known among Zionist leaders for his flowery sermons than for his action, he was often ridiculed for excessive romanticism and poetic fancy, and his official roles tended to be literary or merely symbolic. His ecstatic "Speech" delivered the same qualities. Seven times longer than Kohn's "Preamble" and four times longer than Rosenne's "Proclamation," it was an epic narrative of past agonies, present dangers and future salvation. Of the three "early texts" described so far, it was also the most similar in style to the American Declaration of Independence. It is indeed as "generically promiscuous" as Jefferson's text, and perhaps even more frivolous in its indictment of the British ("The hand that . . . opened the gates of our country to murdering invaders who . . . [threaten] to finish here the . . . work of the Devil of the World . . ."). Following a point made by Jay Fliegelman,⁷ Rubashov's text was also primarily written to be read aloud as an oration, not to be hung as a text on walls. Here too, if the American Declaration was the model, Rubashov's copy outdid it. Where Fliegelman needed the evidence of mysterious diacritical accents to prove the author's intention, there was no mystery in Tel Aviv. The Zionist Executive produced ample written texts on its own, as clear and concise as texts can get. What it needed was a ceremonial speech for dessert, and Rubashov delivered it in the best Hassidic midnight tradition.

A fourth document text loomed in the background by the end of April 1948, far more distinguished in pedigree than the first three, but far less

7 JAY FLIEGELMAN, *DECLARING INDEPENDENCE: JEFFERSON, NATURAL LANGUAGE, & THE CULTURE OF PERFORMANCE* 5 *passim* (1993).

relevant to the main target of the present analysis, namely the emergence of Beham's draft and the direct lineage of drafts leading from Beham's to the final text of the Israeli Declaration. Hersch Lauterpacht's "Act of Independence" was written for Israel in New York, but was first introduced to the local scene three days before independence. Rosenne in Jerusalem may have known of its existence in advance, but none of the many others directly involved in the texts under discussion. Moreover, once presented in Tel Aviv, it was quickly cast aside and ignored in the crucial last days of drafting. And so, while the three local "early texts" interacted with each other and with later drafts in different ways, Lauterpacht's "Act" was simply absent from the process. It is therefore described in the present context

Hersch Lauterpacht was a world-leading scholar of international law in the postwar years. Born and raised in Galicia (later Poland), he moved to England via Vienna and rose to become a professor of international law at Cambridge University and later a judge of the International Court of Justice. His theory of international law tilted against nationalism, and once installed in England he abandoned most of his former Zionist institutional affiliations. However, when personal involvement in the intense activities of different world organizations brought him to New York in early 1948, he assisted the delegates of the Jewish Agency to the United Nations there in different ways, culminating in a draft Declaration of Independence. Like Shabtai Rosenne in Jerusalem, Lauterpacht was mainly concerned with the minutiae of formal international law. He produced a lengthy text entitled "Declaration of the Assumption of Power by the Provisional Government of the Jewish Republic," in which he elaborated a complex legal argument for the recognition of the new state. But he also offered a single page entitled "The Act of Independence," styled as a ceremonial declaration and replete with ornate phrases recalling "ancient home," "cruel massacre," and even "Almighty God, the Lord of the Hosts." Both the "Act" and the "Declaration" deserve thorough analysis, but the present context justifies a single comparative note on the role of human agency in the creation of ideas and the texts that express them. Lauterpacht suggested towards the end of his "Act" that the signatories "Gratefully recall . . . the selfless help of the British Nation in laying the foundations of the National Home of the Jewish People." Whether Britain's role in Palestine in the early days of the Mandate was "selfless" would be a matter of controversy at any time, but the idea that Britain should be thanked for it in the chaos of 1948 after years of violent clashes with Zionism could only emanate from an exceedingly loyal Royalist. Rubashov, it should be recalled, made free use of the whole range of modern Jewish demonology to tie Britain together with Nazi ideology and murderous Arab mobs. Lauterpacht and Rubashov were born and raised

not far from each other in the shtetl culture of turn-of-the-century Eastern Europe, both sought cosmopolitan enlightenment in German academia and both shared strong Zionist convictions in their youth, but after the Great War Lauterpacht moved to England and Rubashov moved to Palestine, and in 1948 they spoke their own very different voices and the voices of their different respective communities. Rubashov remained a staunch Zionist and lent his exaggerated poetic voice to the strong feelings of betrayal shared by many Jews in Palestine. Lauterpacht spoke for the "British Nation" who felt equally betrayed by Jewish ungratefulness, but he used his own very personal voice to do so. England had given him safe haven from anti-Semitism and helped him rise to the fame and wealth he was denied in Galicia and Vienna. He was honestly grateful and he said so.

The final text of the Declaration of Independence read by Ben-Gurion on May 14 ignored the British Mandate altogether, except for a laconic allusion to its termination. I mention this point to stress again the role of human agency in the choice of texts and ideas. Earlier I downplayed Ben-Gurion's role in the choice of "Tsur Israel" as an optimal solution to the presence of God in the Declaration, insisting he merely retained Beham's choice. Now I stress Beham's original choice in steering a pragmatic course of silence between curse and praise for Britain on its way out. Various explanations can be offered for his choice, but I prefer the personal. Beham too was born in Eastern Europe, but he moved as a child to Mandate Palestine and grew up there, studied law in London, and worked for the British in Jerusalem when he returned. He was neither Lauterpacht nor Rubashov, but a bit of both. Never exposed to the fierce anti-Semitism of continental Europe, he could relate to the "British Nation" in simpler terms of mutual interest. His home was Jewish Tel Aviv, but London was good to him, and he did work for the British High Commissioner in Jerusalem. And so, when sheer coincidence burdened him with the task of defining Jewish independence, he resisted both the distant call of an angry Jefferson and the home histrionics of Rubashov and shifted the anger elsewhere. Consciously or not, he was able to grasp much better than either Rubashov or Lauterpacht the significance of the moment in its wider timeframe. Zionism was not a mutiny against immediate tyranny. If Jewish independence was a remedy of wrongs, it was not Britain who had committed them. The account had to be pushed way back in time and space, and the accountant had to see far beyond his time and place to make any sense of it.

To sum up the immediate scene before Beham first moved into it, there were three very different texts between Tel Aviv and Jerusalem, and a fourth in New York. Of the three local texts, one (Rosenne's "Proclamation") was purely legal in character and two were more ornate, but of these the first

(Kohn's "Preamble") was relatively restrained while the latter (Rubashov's "Speech") was excessive. There was, in other words, a wide range of texts available locally, and Beham's quest for foreign materials is therefore an issue in itself. For the moment, however, it is important to stress again a common theme among the three local "early texts," namely that none of them was deliberately drafted to serve as the central feature of a singular ceremony of full independence. Kohn's "Preamble" was primarily drafted for a constitutional event that could perhaps also serve as a ceremony of initiation for the new state. Rosenne's "Proclamation" was meant to serve as mere legal notice of an interim step on the road to independence, and even Rubashov's grand "Speech" was drafted as a declaration of intention rather than of actual independence. The crucial point here is that a "Declaration of Independence" had not been prepared because the exact form of "independence" was amorphous in the months leading up to it. The partition plan said very little about it, and the idea that it be declared unilaterally in a full formal ceremony was only formed at the last moment in reaction to both external and internal politics. In fact, so fluid was the shape of "independence" that two days before its declaration, Ben-Gurion still pushed a resolution through the cabinet (then dubbed מנהלת העם, "The People's Administration") to strike out all references to "independence" from the "Declaration" and call it simply "Declaration of the Establishment of the Jewish State." Concealment and propaganda did play a role in this, as in any other ambiguity surrounding the event, but there was also a stark reality behind it. Until the last moment (and in many respects even beyond it), "independence" was as fluid as the politics behind it. Strange as it may sound, I believe that "independence" was still so fluid in late April 1948 that Beham's choices, whether fully deliberate or not, may have played a meaningful role in shaping it. It was fairly clear on April 24 that some Jewish sovereignty would be declared on the termination of the British Mandate on May 15, but crucial details remained open. A ceremonial act of proclamation was envisaged, timed to prevent a political void and a possible change of heart by the international community, but it was not at all clear that it would take the shape of a unilateral declaration of permanent full statehood. I believe that Beham's timid adoption of the grandest of all independence texts as a model, and many of his later drafting choices, may have generated a sense of grandeur and confidence in the last crucial moments leading to independence. If both the act and the text of Israeli independence are epic rather than formal and if both endure beyond their immediate moment, it is perhaps partially because Beham went West in search of words.

B. Beham in Context

Mordechai Beham was born in the Ukraine in 1915 to Yehuda and Miriam. Shortly after the First World War the family moved to Berlin and in 1924 to Palestine. After a short stay in Jerusalem, Yehuda started a legal practice in Tel Aviv and, despite Miriam's early death, soon acquired a large clientele and considerable prominence in the growing local bourgeoisie. Mordechai was sent to the best schools in the Jewish Yishuv, but he never excelled. A single, orphaned child, he grew up in the shadow of a dominant father and shared none of his robust ego. Like many among the Mandate Palestine bourgeoisie, he was sent to London to study law. He graduated successfully from the University of London and joined the Middle Temple to become a barrister. Returning to Palestine, he got married and settled in Jerusalem to work as a lawyer for the British administration. In early 1946 he was summoned by his father Yehuda to replace a prominent partner, and remained in his office until late April 1948. Yehuda meanwhile held a number of prominent posts in the semi-official Legal Council established by the Yishuv in early 1948 to prepare legislation for the future Jewish State.⁸ When a proto-Ministry of Justice (dubbed the "Legal Department") was established in Tel Aviv in mid-April it was therefore only natural for Yehuda to offer Mordechai to Felix Rosenblueth (later Pinhas Rosen) who was put in charge of the Ministry. Jerusalem was cut off by war and most members of the "Legal Secretariat" were temporarily unavailable for the office. Moreover, the Zionist Executive of early April shifted the whole legal domain from Ben-Gurion's ruling party to a minor coalition partner dominated by German émigrés, and power therefore shifted from Bernard Joseph and his Jerusalem team to Rosenblueth in Tel Aviv. A parallel team had to be quickly recruited to start work from scratch under the imminent deadline of the end of the Mandate, now finally set for May 15, and "young Beham"⁹ was available.

On Saturday, April 24th, Rosenblueth issued a memorandum announcing,

The Legal Department considers that on the day of establishment of political independence it is imperative to publish the following laws:
A. A first proclamation pointing out in its introduction the chain of events leading to the establishment of independent rule and determining that the provisional government has assumed the authority and responsibility for the administration of the state

8 The "Legal Secretariat" mentioned earlier was in fact the coordinating organ of the larger Legal Council.

9 As he was referred to by co-worker Uri Heinsheimer (Yadin) in his personal diary.

The task was assigned to Beham. Sworn to secrecy for security reasons, he still confided in his small family over Sabbath lunch at his in-laws' that he was at a loss how and where to begin. They urged him to cross the street to Rabbi Davidowitz' home to look for sources in his extensive private library. He did, and emerged a while later with three pages of handwritten quotes in English. Three days later he submitted the first official Hebrew draft of the Declaration of Independence.

C. Beham's Drafts

1. The Verses

Beham copied down verses from four different sources he found in Davidowitz' library at 5 Arnon Street on the afternoon of Saturday, April 24, 1948. He started with the American Declaration of Independence, but then copied a few words from the lesser known English Bill of Rights of 1689 ("true, ancient and indubitable rights and liberties of the people") and the English version of Deuteronomy 1:8 in its entirety ("Behold, I have set the land before you: go in and possess the land which the Lord sware unto your fathers, Abraham, Isaac, and Jacob, to give unto them and to their seed after them"). Lastly, he scribbled down some notes relating to the U.N. partition resolution, referring to the original text but not quoting it in full (e.g., "Q. re resolution of U.N. given Provisional Council of Government has to be established by Commission . . .").

As for the American Declaration itself, he chose only the famous two-and-a-half paragraphs from the beginning and end of the document, completely leaving out the "long train of abuses" that makes up the bulk of the rest. He started with the obvious "When in the course of human events," moved to "We hold these truths to be self-evident," stopped in mid-paragraph with "[t]he consent of the governed," moved directly to "We, therefore, the representatives of the United States," and ended with "And for the support of this Declaration."

With the exception of the few personal words in reference to the U.N. resolution, the more than two hundred words scribbled by Beham on three letter-block pages are not his. And yet, the whole story of drafting the Israeli Declaration of Independence is encapsulated in these pages, for they already represent choice and adaptation. There was choice both in the selection of sources and in the selection of parts within the sources, and there was the beginning of deliberate adaptation in the handling of the U.N. text.

To appreciate the choice of sources, it is pertinent to sketch Rabbi Davidowitz and his library. Raised in strict Orthodoxy in his youth, he

became an active and successful progressive rabbi in America, but also excelled in English literary studies at Columbia University. Later moving to Palestine, he remained deeply religious but shed most of the external aspects of Jewish piety and concentrated on the translation of Shakespeare's works into modern Hebrew. Relatively affluent by marriage and modest in demeanor, he led a remarkable life of idealism and quiet spirituality, combining the best in Jewish and Western culture. Finally, his life choices evinced a deep commitment to both the American experience and the Jewish revivalist cause. He volunteered to serve as a rabbi in the American forces fighting some of the fiercest battles of WWI in Europe, and later moved to Mandate Palestine out of sheer idealism. Both metaphorically and materially, he personified the ideal meeting point between Jefferson's Declaration and Deuteronomy, a 17th Century Bill of Rights and a modern U.N. resolution recognizing the Jewish people's right to national revival in the ancient land of Israel. His rich private library reflected this mosaic of influences. If Beham the urban lawyer needed a dose of American idealist lore and a pinch of *Yiddishkeit*, mediated through serious scholarship and supported in hard copy, Davidowitz's personal library was the place to find it.

There is no record of Beham's personal interaction with Davidowitz. It is entirely possible that he was simply shown into the library and left to his own devices. But the move to Deuteronomy after the Anglo-American texts, the choice of the specific verse on the "Lord's Promise" and its subsequent inclusion in Beham's first draft, raises the strong possibility that Davidowitz was consulted, even if not in full knowledge of the end purpose of the sources. In his own quiet manner, Beham was as deeply secular as Davidowitz was religious. The Jewish bookshelf is vast, and the Old Testament would not necessarily be the natural first choice of an urban secular Jew in search of Jewish content to substitute for the specifically American or Christian content of the American Declaration. Even more importantly, the Old Testament itself is vast, and the "Lord's promise" would certainly not be the first choice of a secular Jewish lawyer in search of a single biblical punch line that would sway a non-Jewish world to the Zionist cause. Beham's main scholarly passion was the Hebrew language, and the fact that he copied out a Biblical verse from an English translation and later incorporated it in an entire first draft in English is in itself a strong indication that Beham first assumed that the Declaration would primarily be addressed to a skeptical non-Jewish world, not to a cheering Israeli crowd. It is again possible that he was politically astute enough to understand that the only non-Jew who really mattered at the moment was Harry Truman, whose Christian taste in the Bible resonated better with the "Lord's Promise" than with any other part of the Old Testament, but judging by Beham's general

inclinations, it is at least equally reasonable to assume that he spent the hours in Davidovitz's library under the influence of the latter's blend of convictions and sensibilities. That a Judeo-Christian God "swore" the land unto the Fathers of Israel was probably good enough for Conservative Rabbi Davidowitz as the sole reason for leaving a life of affluence and security in America and settling in Palestine. If affinity with Bible-belt Christian fundamentalism did in fact play a role in the choice of Deuteronomy 1:8, I prefer to assume it had more to do with the honest Jewish fundamentalism of Harry Davidowitz than with a manipulated image of Harry Truman.

Whether or not I make too much of Davidowitz's involvement in the choice of sources, it is eminently clear that the progression of choices reflects the evolution of a plan. I will at this stage gloss over the reasons for the first and crucial move, namely the choice of the American Declaration of Independence, but all later moves reflect an evolving plan to adapt the American text to local circumstances while maintaining its format in the main. Copying out the first and last parts of the American Declaration in full, but leaving out the rest, Beham clearly assessed at this early stage that both the opening rhetoric and the operative conclusion were sufficiently universal in both style and content to withstand relatively minor adaptations, while the "long train of abuse" was simply useless. The narrative part of the "manifesto" had to be written from scratch, and Beham's next obvious move was to search for relevant materials.

Whether he stumbled upon the English Bill of Rights of 1689, perhaps in some anthology of historic documents that also contained the American Declaration, or deliberately sought it out, the fact remains that he picked nine words out of nearly four thousand in the Bill, and I believe he did so for a single word that would determine the course of all later choices. Out of "true, ancient and indubitable rights and liberties of the people," only "ancient" added anything of value to the vocabulary of arguments he had already copied out from the American Declaration. Jefferson already talked about rights of "the people," and he used "inalienable" in basically the same sense as "indubitable," but for very good reasons he did not use "ancient." The English people of the Glorious Revolution had a strong sense of antiquity and often derived support for "their" political institutions from a shared perception of an old common past. Revolutionary Americans did not. They were, if anything, breaking their ties with the past and starting afresh. There were many in the Jewish Yishuv of 1948, perhaps the majority, who defined their communal identity in exactly these terms, and Beham could well have chosen to voice their view, but he chose otherwise, at least for a while. He chose antiquity as the key concept of the Zionist right to the Land of Israel.

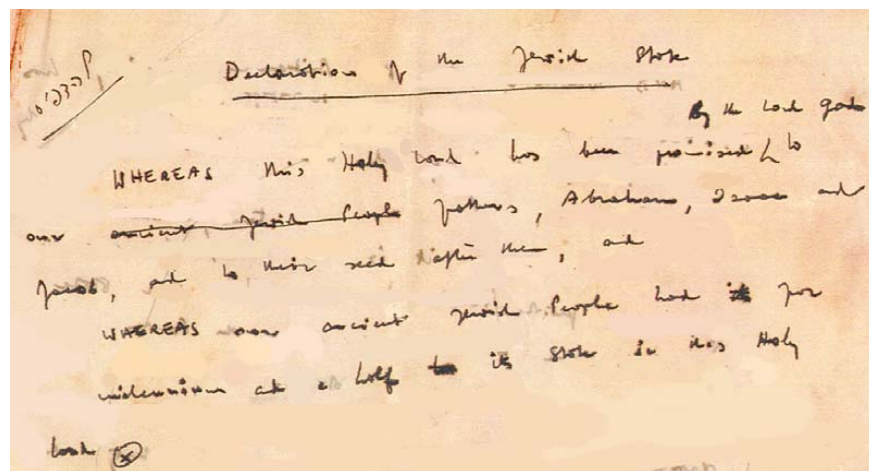
The preceding analysis of the source chosen, namely the "Lord's promise"

in Deuteronomy, merely shows the depth of this early commitment to antiquity. The argument could even be made that Beham, alone or with Davidowitz, dug so far back into mythology that antiquity lost its historical grip and became religious dogma, but later analysis will show that if this was the original intent it was quickly replaced by a much earthlier historical narrative. At this stage it is more important to stress the fact that if the "Lord's promise" had remained the main story of Zionism it would not have been a story of abuse. Jefferson's "long train of (human) abuses" would thus have been replaced by a singular event of blissful divine intervention. Again, this was not to be. Once out of Davidowitz' library, Beham's narrative of Zionism reverted to a trail of abuses, very human, very historic, and much longer in temporal range.

2. The English Draft

Beham's "English draft" was probably written within the remaining hours of Saturday, April 24. Again, there is no record to show exactly when and where the work was done, but the original manuscript exists, and for technical and textual reasons it is fair to assume that Beham first composed at least part of it in Davidowitz's library, and completed and reedited it later at home. In the following pages I concentrate on the construction of the "manifesto" in the first part of the text, leaving the declaratory part for later analysis.

Here is how the story of Zionism is first told in Beham's handwriting:



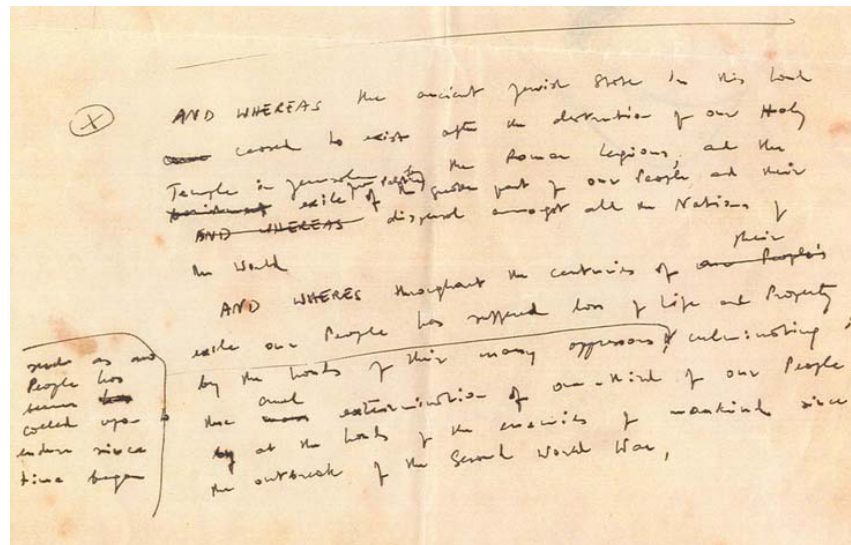
WHEREAS this Holy Land has been promised by the Lord God to our ancient Jewish People fathers, Abraham, Isaac and Jacob, and to their seed after them, and

WHEREAS our ancient Jewish People had for a millennium and a half its State in this Holy Land ⊗

The only addition made at this stage to the "Lord's promise" is an allusion to the "ancient state," adding history to myth, or performance to promise. As argued earlier, this is certainly a meaningful move that would determine most of the later ones, but, to use legal language, it remains in the realm of property, not wrongs, restitution or compensation. The simple argument made here is that Palestine belongs to the Jews in 1948 because it was granted to them in antiquity by the owner-in-chief, and because they had enjoyed full actual possession of the land for fifteen hundred years. The confident tone of the argument is accentuated by the fact that Beham moves at this early stage immediately from the first century to the twentieth, depicting the Balfour Declaration of 1917 in simple terms of "recognition" by the "opinion of mankind":

AND WHEREAS ~~the laws of Nations~~ the opinion of mankind, as expressed in the Balfour Declaration and in the Palestine Mandate. . . , recognized the historical connection of the Jewish People with Palestine

But the plot thickens. The mark ⊗ at the bottom of the "ancient state" paragraph reproduced above signifies the insertion of the following two entirely new paragraphs:



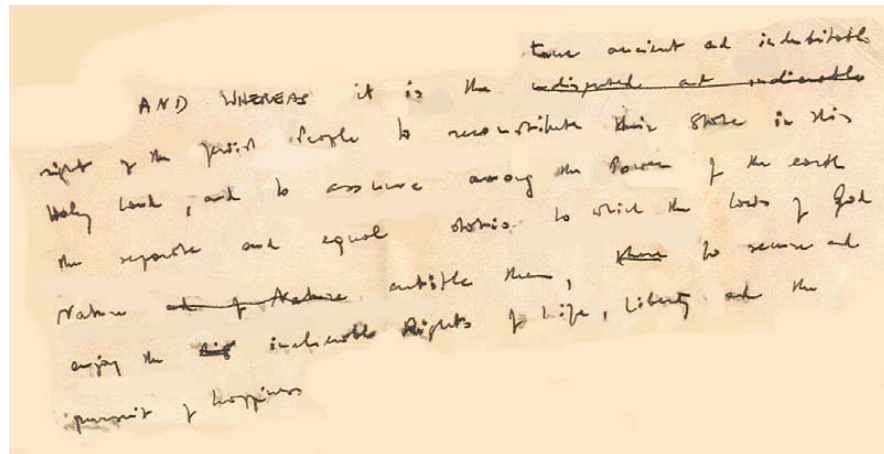
⊗ *AND WHEREAS the ancient Jewish State in this land ceased to exist after the destruction of our Holy Temple in Jerusalem by the Roman Legions, and the exile from Palestine of the greater part of our People and their dispersal amongst all the nations of the world*

AND WHEREAS throughout the centuries of their exile our People has suffered loss of life and property by the hands of their many oppressors, such as no people has been called upon to endure since time began, culminating in the cruel extermination of one third of our People at the hands of the enemies of mankind since the outbreak of the Second World War . . .

Appearing after the concluding paragraph (still in the American "we . . . hereby pledge" formulation) on the same page, these new paragraphs were undoubtedly drafted as an afterthought, after the completion of the original draft. They were undoubtedly composed by Beham in the solitude of his own office, probably in the evening hours of the same Saturday. The scene can perhaps be depicted as the increasingly cranky reemergence of the "long train of abuses" out of the lengthening shadows of night. The whole mood of the "manifesto" changes, and once it conjures up the "destruction of our Holy Temple" it quickly climbs all the way to the very top of human oppression. Not only was the Temple destroyed by the "Roman Legions," he writes, but "our People" were exiled and dispersed "amongst all the nations of the world." In exile, he first writes, "our People" suffered "throughout the centuries . . . loss of life and property by the hands of their many oppressors . . .," but by the time he reaches the Holocaust he feels the need to retract his steps and insist in a whole new parenthesis that the "suffering in exile" was "such as no People has been called upon to endure since time began." The Jewish train of abuses, he seems to be saying, is longer than any other. Americans may have suffered at the hand of one oppressor, but the Jews suffered at the hands of many. Americans suffered for two centuries, but the Jews for twenty. Americans only suffered in America, but Jews suffered all over the world. History "since time began" is now mobilized not only to claim ancient ownership, but also to indict a wrong of global proportions; if Americans can complain, Jews can too, and they have a lot more to complain about.

I will later show how the change in the tenor of the claim affects the whole character of the remedy, but it is first necessary to return to the first stage of drafting and describe another major move by Beham to intensify the Anglo-American argument and adapt it to the Jewish cause. After adding the U.N. partition resolution to the Balfour Declaration and the

Palestine Mandate as contemporary acts of recognition, Beham concludes the "manifesto" in the following manner:



AND WHEREAS it is the ~~undisputed and undeniable~~ true, ancient and indubitable right of the Jewish People to reconstitute their State in this Holy Land, and to assume among the Powers of the earth the separate and equal station to which the Laws of God (&?) Nature ~~and of Nature~~ entitle them, to secure and enjoy their inalienable rights of life, liberty and the pursuit of happiness

This, of course, is a crude collage of both the English Bill of Rights and some of the famous opening passages of the American Declaration. Earlier I stressed the role of the English Bill in historicizing the argument for Zionism, but there is another characteristic of the Israeli Declaration of Independence that first emerges in this early collage. Building on Armitage's metaphor of "generic promiscuity," I call it "polemic voracity," by which I mean the tendency to amass arguments rather than choose between them. If 18th-century Americans of European descent could have claimed a right to reconstitute a long-lost American kingdom on the banks of the Delaware, much of the verbiage of their actual Declaration would have been redundant. Restitution of ownership after forcible expulsion can be claimed regardless of happiness, liberty or even life. Taking the point to an extreme, if Zionism argued from ownership it could promise misery, slavery and death, and still be valid. Going even farther back in Beham's genealogy of arguments, if the Land was God's to give, and if indeed He gave it to the Israelites, He could be left alone in any of the fancy incarnations invented for Him by Jefferson. "Nature's God" or even "Nature" had nothing to give that was not already

given by "Tsur Israel." But Beham appealed to them anyhow, and so would most of his successors until the final text of the Declaration.

The present paragraph raises another crucial point, relating to the "rights" genre of the Declaration. I take it to be David Armitage's position that the American Declaration of Independence speaks not only about the rights of the revolutionaries against their oppressors and against the world at large at the moment of independence, but also about the rights of all citizens of the new state against their own government. The "Bill of Rights" he sees in the American Declaration does not only justify the creation of an independent America, but also defines its own inner political shape. If that is the case, then much of it is lost in Beham's collage. It is not "all men" who are endowed with the rights to "life, liberty and the pursuit of happiness," but only the "Jewish People"; and equality, again reserved only for Jews, is only the external "equality of status" among "the Powers of the earth." The distinction need not be elaborated, not only because much of the early American commitment was vacuous, but also because a far more generous bill of rights did emerge in later drafts of the Israeli text. Of all the attributes of the local Declaration of Independence, its constitutional character was the one Beham had the least influence on, perhaps because it was also the weakest attribute of his main model.

3. *The Hebrew Draft*

Beham's English draft carries the inscription "to type" (להדפיס) in Hebrew, intended for an anonymous typist. The inscription indicates Beham's own assessment that his work was done and ready for submission. Its language is in itself an excellent indication of the fact that official business was conducted in Hebrew, and that English was first chosen by Beham for the document on the assumption that it would mainly be used for diplomatic and legal purposes. In fact, the English draft was probably never typed and Beham spent the beginning of the following week first translating the document literally into Hebrew and later redrafting parts of it in that language. English was entirely removed from the process of drafting all the way to the final text and beyond it. It is as if it had become clear, three weeks before independence, that the full original text itself would mainly be used for internal consumption, both during the actual event and in later years, and that secondary translation would serve all other needs.

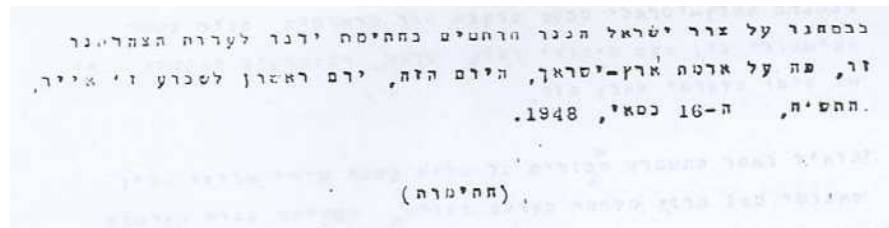
The literal translation of the text is in itself fascinating, but the present framework allows only two observations, chosen for their relevance to the underlying issue of migration and transplantation of texts.

The first is God's name. When he used English, Beham was spared the need to decide. He retained the "Lord" he had copied from St. James'

Deuteronomy 1:8 for the beginning of the document and Congress's "Divine Providence" for the last paragraph. But he had to decide on a translation, and he first chose "Tsur Israel" for both. I have referred to the latter choice earlier, but the former is equally interesting even if it survived for only a short while. Whatever the original motivation behind Beham's decision to copy out Deuteronomy from the English translation, it certainly became redundant once the text itself reverted to Hebrew. Why, then, didn't he use the divine name used in the original Hebrew script of Deuteronomy? The answer is that the explicit name Yahweh (יהוה) used in the original biblical text is strictly forbidden for secular use by Jewish tradition. Beham's excellent choice of "Tsur Israel" over scores of other potential alternatives is intriguing, but I only stop here to emphasize the double bind of competing influences he had to contend with. Adapting a text from a predominantly Christian world was certainly a major challenge, but the local scene had its own strictures. Adaptation was required even when he tried to move between the religious and the secular within his own culture. When Beham returned to his draft, he quickly changed "Tsur Israel" in the first paragraph to "God of Israel" (אלוהי ישראל), again making a choice. יהוה was out of bounds for all Jews, but even אלוהי spelled in full could be too explicit for a truly devout Jew. Divine names are a defining issue in traditional cultures, and whether he was conscious of it or not, Beham was maneuvering to find the exact Hebrew voice for himself and for the text he was composing.

A more subtle, perhaps subconscious, example of the cultural undertones of "translation" stems from another short-lived choice made by Beham. As often mentioned earlier, he first copied out the last sentence of the American Declaration in full, including the mutual pledge to sacrifice "our lives, our fortunes and our sacred honor." He would soon discard this peculiarly American pledge altogether, but it is still present in the literal translation. When he first translated it into Hebrew he scribed the Hebrew equivalent of "our fate" (גורלנו), but then quickly corrected it to the Hebrew equivalent of "our property" (רכושנו). This small error can of course be played down as a simple oversight by a non-native speaker of English, but I think there was a lot more behind it, leading to his next decision to scrap the pledge altogether. Protestant candor about the centrality of private material wealth is alien to Jewish culture in all its mutations, and the idea that a solemn pledge of mutual allegiance should even refer to it probably took Beham by surprise. He was sufficiently familiar with English to realize his mistake, but the unease probably lingered. Jews can pledge their lives to each other, but to pledge their property or indeed their "sacred honor" would seem awkward or simply meaningless. Beham's solution illuminates another side of the human agency in the emigration of ideas, namely the professional. What the

signatories to the Israeli Declaration of Independence ended up doing under Beham's orchestration was simply "sign their hands in evidence." Here is how the last paragraph appears in Beham's Hebrew draft, almost exactly as it would be signed eighteen days later:



Relying on Tsur Israel, we sign our hands in evidence of this our declaration, here on the soil of the Land of Israel, this day, Sunday 7 Iyar 5708, the 16th of May, 1948 (my translation).

This, of course, is legalese. This is how contracts and affidavits were signed in Beham's law firm in the traditional English formats, complete with the dotted lines for "here in . . ." and "on the . . ." "Tsur Israel" is here acting as guarantor, not of a solemn pledge, but of a legal text, and the signatories are relieved of any personal obligation. They merely sign "in evidence." Symbolically, it seems, the move from Davidowitz's library to Beham's office is also a move from the inspirational to the professional, from the world of letters to the world of advocacy.

I have earlier insinuated that a similar trend occurred when the almost-naïve narrative of Zionism-as-divine-promise under Davidowitz's inspiration evolved into a history of wrongs. The trend reached its peak when Beham moved from literal translation to the final stage of redrafting. First, he subjected the story to re-periodization. In the English draft, the Holocaust was included in the long "suffering in exile" paragraph, preceding the Balfour Declaration and the U.N. partition resolution. That is how he first translated it into Hebrew. But in redrafting, he separated the 1939-45 Holocaust and moved it between the 1917 Balfour Declaration and the 1947 U.N. Resolution. One word, though, changes the entire tenor of the narrative. As mentioned earlier, the Balfour Declaration was originally depicted by Beham as evidence of the "opinion of mankind" on the "recognition" of the Jewish people's historic rights, and so it was first translated into Hebrew (. . . הכירו בקשר ההיסטורי . . .), but he later changed one word to read:

והוא יל ומצפון האנושות כפי שהוא בא לידי ביטוי בהצהרה כלפני
 וכנסת הארץ-ישראל מטעם טוענה הכר הלאומיים, הכיר בקשר
 ההיסטורי בין העם היהודי וארץ ישראל, ובנסיגה להקמתו טהור
 של ביתר הלאומי בארץ הזר,

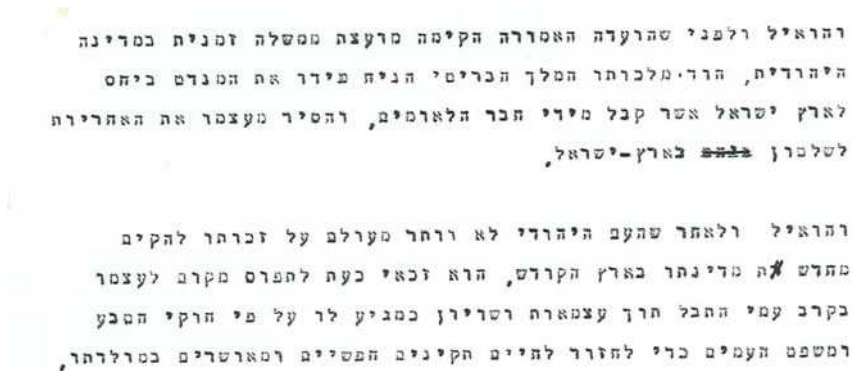
AND WHEREAS the conscience of mankind, as expressed in the Balfour Declaration and in the Palestine Mandate, recognized the historical connection of the Jewish People with Palestine . . . (emphasis added, my translation).

The whole story of exile and suffering now takes a new turn. The Palestine Mandate is now an expression of guilt rather than evidence. It is compensation, not restitution. Together with its new periodization, the narrative now reads like a legal process gone awry: The "nations" forced the Jewish people out of their ancient land and into "the world," only to inflict countless wrongs on them there. Conscience drove the oppressors to remedy their wrongs after WWI, but then they reverted to their old ways and inflicted a much greater evil in WWII. So when the nations took action again in 1947, the Jews added a measure of self-help to ensure payment. If the partition resolution fell apart, the Jews were not going to wait any longer.

There is, of course, a formal flaw in this line of wrong and remedy. If oppression was the root cause of international action in 1917 and in 1947, Palestine was not the oppressors' to give, any more than America had been in 1776. As Ben-Gurion so well understood in his brilliant final touches to the apologia, too much emphasis on Western misconduct could have undermined Zionism's Eastern birthright. But there is another flaw, well understood by Beham all along, relating to the legal argument from international action. If the U.N. partition resolution was a necessary act of granting, not of recognition, it could not be implemented by unilateral self-help.

Beham had been grappling with the disintegration of the partition resolution since he first put pen to paper in Davidowitz's library. He noted on April 25 that, since a Provisional Council of Government had not been established by the U.N. Commission for Palestine by April 1, the matter should have been referred to the Security Council. But he also copied out the provision that a Jewish State "shall come into existence in Palestine two months after the evacuation of the armed forces of the Mandatory Power." In his first formulations, in both the English draft and its initial Hebrew

translation, he merely listed, in three separate consecutive paragraphs, the failure of the Commission to establish a Council of Government, the termination of the Mandate, and the ornate "collage" of ancient rights quoted in full earlier. In his final major redrafting of the Hebrew version, he came up with a much better composition:



AND WHEREAS, before the [U.N.] Commission established a Provisional Council of Government in the Jewish State, His Highness the British King laid down the mandate he received from the League of Nations for the Land of Israel and discharged himself of responsibility for government in the Land of Israel

AND WHEREAS the Jewish People has never given up its right to reconstitute its State in the Holy Land, it is now entitled to assume its place among the powers of the earth with independence and equality according to the laws of nature and international law, in order to return to a normal, independent and happy life in its homeland . . . (my translation).

The argument he finally extricates here from the failure of the U.N. partition mechanism is, of course, an argument from "vacuum." The U.N. failed to act in time and the caretaker disappeared. Government has to be established, and a previous owner is stepping in to take charge.

It was probably this need to weave the argument-from-ownership into the political realities of the day that prompted Beham to strip his collage of most of its previous ornamentation and rebuild it in plain form. Rights are no longer "true," "indubitable" or even "inalienable." God gives way to the law of nations, and self-determination becomes a functional group right.

Much more can be said about the last paragraph of Beham's Hebrew manifesto in its new form and about the relationship between it and the

preceding parts, but enough has been said to serve my main purpose, namely to depict the drafting of the Israeli Declaration of Independence as a vibrant, dynamic process of fusing together a myriad of vaguely shaped thoughts vying for position and dominance. Beham's draft, though a first stage in a process that would keep evolving for almost another two-and-a-half weeks, itself underwent within three days much of the entire range of options open to the Jewish story, from mythology to history, from ancient past to recent times, from ownership to wrongs, and from the sublime to the mundane.

4. Later Drafts in Sketch

Beham's Hebrew draft was submitted to the Legal Department and typed out as the official "First Draft" of the Declaration, dated April 27, 1948. The present context allows only a brief sketch of the rest of the drafting process leading to the final text read out by David Ben-Gurion seventeen days later in a ceremonial session of the People's Council.

Work on the Declaration was confined to the Legal Department for fifteen days before it moved to the political arena. The Department produced seven official drafts altogether, composed in quick succession by the Department's small staff aided by two of Rosenblueth's close acquaintances. Beham first remained deeply involved in the process, but over time his influence waned. Uri Heinsheimer (Later Yadin), Zvi Berinson and Moshe Sielberg took the lead and Rosenblueth made the official final decisions. Far different from Beham in both character and stature, all four exerted massive influence on the document. The second draft, dated May 4, cut Beham's draft by more than half, and though many of his ideas and phrases would later seep back into the text, much had disappeared.

The process of change accelerated in the last two days before the act of declaration. In fact, the Legal Department's draft submitted to the People's Administration was formally rejected by the Administration on May 12 and drafting was entrusted to a committee of five, each representing a political faction. A meeting was scheduled for May 13 and Moshe Shertok, the most senior of the five, worked through the night to produce his own draft as a basis for debate. Shertok's opening phrases, containing his own version of a Zionist manifesto, were indeed freshly written, and if he had persisted to the end he would have created a new text. But either fatigue or his life-long proclivity for compromise took over, and large chunks of the Legal Department's draft were reincorporated into Shertok's text. Other parts were reintroduced in response to pressure by committee members in their official morning debate. And so, the committee's draft, which was presented to the People's Administration by the early evening of May 13,

was a heavily-edited version of the Legal Department's draft rather than a new document.

The last stage of drafting, mostly confined to the same Thursday evening less than a day before independence, is a story of the political and literary genius of David Ben-Gurion. He led most of the members of the People's Administration in a vicious attack on Shertok, vilifying him for almost all aspects of the text and practically deposing him from the drafting process. Pretending to form another drafting committee, he commandeered the text and quickly made a number of truly brilliant amendments while retaining the bulk of its form and content. Brushing aside a few remaining obstacles, he orchestrated the actual ceremony of independence on Friday, May 14, to create a lasting impression of a prophet-leader reciting his own divinely inspired sacred text. The politicians among the draftsmen were artfully cast in the role of quarrelsome apparatchiks that had been wasting the leader's time, and professional contributors were completely struck out of the story of drafting. Some of them, like Berinson, Sielberg and Heinsheimer-Yadin, later rose to positions of great prominence in Israel and were eventually awarded their proper place in collective memory, but Beham remained unknown, and with him the first steps from Jefferson's text to the first draft of the Israeli Declaration.

Still, despite the involvement of more than a dozen draftsmen and a series of major textual changes, the final text of the Declaration of Independence remains the last link in a chain that begins with Beham's hand setting pen to paper to copy the words "When in the course of human events it becomes necessary . . ." The present context does not allow a full elaboration of this theme, but two examples illustrate the lasting effect of Beham's solution to the adaptation of American formulae to Israeli circumstances.

How were the signatories described in the Declaration? The American Declaration described them as "We . . . representatives of the United States." Beham first simply replaced the "United States" with the "Jewish People," but later realized the need for a more sophisticated formulation, reflecting the complexity of Zionist politics. "Representatives of the Jewish People" thus became "elected representatives of world Jewry in the Diaspora and the Jewish community in Palestine" (נבחרי היהדות העולמית בתפוצות והיישוב היהודי (בארץ ישראל)). I have described the momentous meaning of this transformation elsewhere,¹⁰ but here suffice it to say that Beham alludes by it to one of the crucial issues of national identity behind the creation of the State of Israel.

¹⁰ Yoram Shachar, *The Hebrew Community and the Zionist Movement in the Declaration of Independence*, 98 ZMANIM 32 (2007) (Hebrew).

Was the state created by Zionist Jews everywhere or only by those who chose to settle in the Land of Israel? Beham chose not to decide and ascribed the creation of the state to both on an equal basis. Each of the later drafts made meaningful changes in the exact definition of each of the "parents" and in their order, but the basic idea of an indecisive "double parenthood" was retained all the way to the final text. Ben-Gurion read "We . . . representatives of the Hebrew community and the Zionist movement" (נבחרי הישוב העברי והתנועה (הציונית), and double parenthood became an official reality that would haunt the nascent state for decades to come. As always in historical analysis, it is impossible to assess whether it would have entered the Israeli Declaration if Jefferson had not felt the need to link the membership of the Continental Congress to the preexisting political institutions that empowered them, and if Beham had not felt the need to match Jefferson with a hinted allusion to the preexisting institutions behind the People's Council. The fact remains that both Jefferson and Beham made their basic choices, and they remained in the respective final texts.

The same applies to Beham's choice of "Rock of Israel" as a protective divine entity behind the Zionist human effort.¹¹ It was Beham's sophisticated adaptation of the American idea of closing the Declaration with "reliance on the protection of Divine Providence," and except for a moment of hesitation in one of the later drafts, it was retained all the way to the final draft. Despite carefully orchestrated folklore, neither the decision to mention God in the Declaration, nor His exact role, place or name in it, were originally made by David Ben-Gurion. He adopted decisions made in America, transformed by Beham, and accepted by later participants in the long process that led to the final text.

III. CONCLUSION — BEHAM'S CHOICE

The Israeli Declaration of Independence was neither an ordinary act of legislation nor a formal constitution, but its unique nature as the constitutive act of a new sovereign nation-state puts the main issue in the "legal transplantation" debate into even sharper focus. Beyond tort, crime or contract, is there a universal template for the creation of a state, readily applicable to different nations in different times?

The lesson the Israeli story teaches us is that foreign models can only achieve true universal relevance as templates for questions, not answers,

¹¹ See *supra* p. 591.

and even then only as an option. All four of the alternative texts of Israeli independence composed by Beham's contemporaries before he entered the scene were original creations, none resembling the American model or any other. Three of them were composed by lawyers, among whom there is no greater professional proclivity to borrowing than among, say, poets or architects. Beham felt the need for a template because he was timid, not because he was a lawyer.

But why did he choose Jefferson's text? Here too a lot depended on purely personal circumstance. Thinking in terms of broad legal-family affiliations, it is tempting to link Beham's choice of an American text to his English legal education and to his practice in the British administration, but Hersch Lauterpacht, as committed as he was in 1948 to the Anglo-American world, would have probably studied recent civil European episodes of independence (e.g., the short-lived post-WWI Baltic states) had he felt the need for a model. Beham could not. He probably chose the American Declaration of Independence because, like the majority of mankind, it was the only declaration he ever knew and the only one available to him in the home library of a Tel Aviv urbanite on a Jewish Sabbath.

So Beham's first two choices were bred from mediocrity. He needed a model because he lacked the confidence to start from scratch, and he chose an American model because he knew no others. But there was no mediocrity in the choices he made in the long process of adaptation, i.e., in the process of drafting Israeli answers to a long list of questions asked in Christian America two hundred years earlier.

Let me clarify. There was no choice in the very need to adapt creatively. It was dictated by the very fact that the list of questions was so long. If the American Declaration had been less "promiscuous" and confined itself to, say, a laconic legal announcement of sovereignty, adaptation could have been mechanical. But Jefferson's America chose to pose a vast number of questions about itself in its constitutive text, and mechanical adaptation was therefore not an option in Tel Aviv.

So Beham had to be creative, but he did not have to succeed so magnificently. He found answers that captured the essence of Israel better than any of his contemporaries and set the Declaration on the road to enduring success in the heart of the nation it was written for.

A last crucial question remains. If Beham was no Jefferson, and if so much of the choice involved in the text was personal, why were so many of his crucial choices adopted by his seniors and by the political leadership that followed? Neither Ben-Gurion nor any of his partners in leadership planned in advance to read a grand "promiscuous" text of nineteen paragraphs, starting with the birth of the nation and ending with a colorful allusion to the

"Rock of Israel." They did not even define the exact function of the text in advance. Was it to function mainly as a diplomatic text for external use? An administrative decree for immediate internal purposes? A rousing political speech? An epic poem to be recited in schools by future generations? Each (and other options) would have called for different emphases, a different style, even a different language. The fact that Beham received no instruction beyond the cryptic call for "An introduction . . . pointing out . . . the chain of events leading to" independence, and the fact that he only moved from English to Hebrew midway in his drafting process, shows that the format of the Israeli Declaration as a rich multifunctional Jeffersonian text evolved from Beham's own choices, not from any functional or stylistic rational predetermination.

It may seem odd to a nation accustomed to think of its Declaration of Independence in terms of heroic leadership and semi-sacredness to accept the fragility of its actual history, but the fact remains that the political heroes of the day adopted the choice of a civil servant who remained anonymous and made it their own without recognizing its origin. Not a word was ever mentioned in the political debates of the day, or for years to come, about the American origins of the Declaration.

This, therefore, is the highest mark of excellence for both Jefferson and Beham, and through them to all great authors and translators: that their work excelled without reference. Beham's adaptation of Jefferson's text succeeded because it was an excellent adaptation of an excellent text.