## Hamilton, Madison & Jay in Jerusalem

washingtonexaminer.com/weekly-standard/hamilton-madison-jay-in-jerusalem

by Peter Berkowitz December 2, 2002



## **JERUSALEM**

WHATEVER may be going on in the cultural and intellectual life of other countries in the Middle East, here in Israel--in the midst of a bloody and protracted war, with its civilian population under constant threat of deadly terrorist attack, in the wake of the collapse of Ariel Sharon's national unity government and the calling of new elections, and as a severely ailing economy takes its daily toll--they have just held a remarkably well-attended conference on The Federalist.

Why The Federalist--Alexander Hamilton, James Madison, and John Jay's authoritative exposition of the principles of the American Constitution--in Israel? And why just now?

The immediate occasion for the conference was the publication of the first Hebrew translation of The Federalist. Both conference and translation are initiatives of the Shalem Center (disclosure: this magazine's editor sits on the center's board). Founded in Jerusalem eight years ago by a small group of enterprising intellectuals led by Yoram Hazony and Dan Polisar, late '80s Princeton graduates and then-recent immigrants to Israel, Shalem has in a short time grown into a respected and influential institution. It publishes a magazine in Hebrew (Techelet) and English (Azure) on Jewish politics and thought; it supports senior scholars from Israel and abroad (including Michael Oren, author of the New York Times bestseller Six Days of War); it takes strong stands on divisive public policy issues (such as the battle over the tendentious accounts some Israeli textbooks offer of the alleged injustice at the heart of the Zionist enterprise); and, last but not least, it is engaged in translating classics

of political thought into Hebrew. The Federalist is only the latest on a list that includes Friedrich von Hayek's The Road to Serfdom and Edmund Burke's Reflections on the Revolution in France.

Shalem, plainly, is a think tank with a point of view, and its success has redounded to the benefit of liberal democracy in Israel. For by the late 1990s when Shalem began to make its presence felt, Israel had gone more than 50 years (stretching back before the creation of the state) without a conservative party that drew sustenance from and argued for ideas. Which means that for more than 50 years, the Left in Israel had faced no serious challenge on the plane of ideas. And as most any classic of liberal thought will tell you (but many left-liberals in Israel seem to have forgotten), a dominant party deprived of a worthy opposition to prod and provoke it inevitably grows self-righteous, sluggish, and stale.

The appearance of The Federalist in Hebrew also comes at a time when debate about whether Israel needs a written constitution, and if so what kind, has begun to spread beyond the small circle of Israeli academics who had long championed the idea. Many on both the right and the left in Israel share the sense that the political system is in a state of disrepair, too vulnerable to the demands of the ultra-orthodox and to manipulation by tiny fringe parties, haphazard in its protection of individual rights, and unclear about the role of the Supreme Court and the status of judicial review. Given this emerging consensus, it was wise of the Shalem Center to seek out the left-liberal faculties of the Hebrew University of Jerusalem and Tel Aviv University to co-host the Federalist conference. And it was wise of the universities to agree to the project.

More than 600 Israelis--students, faculty, journalists, judges, and senior citizens--attended. The conference, which opened in Jerusalem and concluded the next day in Tel Aviv, was covered by Israeli television and featured in the newspapers. Panels ran the gamut from the diverse historical origins of the thought of Hamilton and Madison to the place of The Federalist in the history of political philosophy; from The Federalist's teaching on international law to its opinions about judicial review; from a survey of constitutional experiments around the world to a jampacked final session on the challenge of constitutional reform in Israel.

Of course, the question on everybody's mind concerned the relevance of The Federalist to the case of Israel. Opinions differed. The historians, taking a strange pride in the contemporary irrelevance of their knowledge, downplayed the possibility of drawing from The Federalist inspiration and insight for today. Those of us with a background in the history of political philosophy insisted on The Federalist as a source of both insight and inspiration. Not every aspect of The Federalist, of course, is equally enduring. And certainly the American Constitution cannot simply be transplanted to another nation, for institutions must be designed with a view to culture and circumstances. Nevertheless, we maintained that The Federalist's defense of the American scheme of constitutional government will prove relevant anywhere a people, undertaking to govern itself, bases this endeavor on an appreciation of

the importance in human conduct of self-interest, a commitment to the political doctrine that all legitimate power stems from the consent of the governed, and a belief in the moral premise of the natural freedom and equality of all.

The speech by Ruth Gavison, bringing the final session to a close, was a highlight of the conference. Small and slight in build, fierce and dominant in argument, Gavison, a professor of law at Hebrew University and a founder of the Association for Civil Rights in Israel, has been a prominent member of the Israeli Left for more than two decades. In recent years she has established herself as a leading critic of the left-liberal activism of the Israeli Supreme Court as well as an eloquent proponent of serious discussion of constitutional reform with various representatives of the Israeli Right about shared values and common goals. Her allies on the left have grown increasingly troubled. As in the United States, the sight of a liberal who respects the people and who embraces not merely the idea of diversity, but the reality of diversity, in particular political and intellectual diversity, can be very disconcerting for those we are generally accustomed to calling liberals. The spirit of Gavison's exemplary liberalism, which permeates her introduction to the Hebrew Federalist, was very much on display in her rousing speech to the conference.

Three lessons from her remarks—as it happens, pertinent in the U.S. context as well—stand out. First, democracy has weaknesses and disadvantages, and constitutions should be designed with a view to crafting arrangements, consistent with democracy, to counteract or mitigate those weaknesses. Second, government's first duty, which is the protection of individual rights, is not achieved only by a Bill of Rights. It is also, and perhaps primarily, achieved through artful institutional design, involving mechanisms for the channeling of self-interest such as the separation of powers, checks and balances, an independent judiciary, and systems of representation. And finally, if they are going to be legitimate and effective, constitutions cannot be imposed from above, however elegantly designed, however much they may reflect what some band of professors believes the people would embrace were they to give the matter due consideration. Rather, as the record of 1787 and 1788 suggests, constitutions must be based on actual agreement, hammered out by flesh and blood representatives of the rival and conflicting groups that constitute political society, and ratified by the people.

But as important as what The Federalist has to teach about liberal democracy in Israel is what the desire of Israelis on the right and left to learn from The Federalist teaches about liberal democracy in Israel. Vigorous public discussion of the principles of self-government is a mark of a liberal democracy's health. It is a cause for admiration that despite the tumult and terror all around, such discussion flows rich and raucous in that small, spectacular sliver of liberal democracy in the Middle East called Israel.

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