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**THE STATE OF ISRAEL'S DEMOCRACY:
AN EXAMINATION OF THE TENSIONS AND IMPLICATIONS
OF A JEWISH AND DEMOCRATIC STATE**

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**Thesis Submitted in Partial Fulfillment of
Requirement for Ordination**

**Hebrew Union College-Jewish Institute of Religion
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ABSTRACT

This paper is comprised of six chapters and examines the following:

- 1) *Introduction*—This section provides a foundation for the reader to examine the historical, political, and sociological trends in the study of the State of Israel. I focus on Zionism, postzionism, nationalism, and Reform Zionism, and how these ideas shape impact Israel Studies.
- 2) *The Political State*—This section examines how Israel's political system emerged in the New Yishuv and how the political system works (focusing on the power of the Knesset and the Supreme Court). It also addresses some of the political challenges to Israeli society, such as its electoral system and questions concerning the status and impact of its Basic Laws.
- 3) *Current Challenges to Israel's Democracy*—The State of Israel has been forced to struggle with the potential dichotomy between being a Jewish state and a democratic state. This section explores the impact of security concerns on Israel's democracy, questions of its development as a civic society, and an analysis of Israel as an ethnic democracy.
- 4) *Case Study: Palestinian Israelis*—This section focuses on the struggle Palestinian citizens of Israel. I focus on Jewish citizens' attitudes towards the Palestinian minority and cite examples of discrimination due to their second-class status. These trends are discussed by examining issues concerning land expropriation, the Bedouin, budget allocations to the Palestinian Israeli sector, among other areas.
- 5) *Case Study: Challenges of the Orthodox Establishment*—This final section discusses early attitudes of the Orthodox Jewish community towards Zionism and Palestine. The Six Day War is a critical turning point when the Orthodox community shifts to the right, which has an incredible impact on the rise of a Jewish fundamentalism and intolerance. These trends are discussed by citing examples concerning conversion, religious pluralism, draft exemptions, among other issues.
- 6) *Afterword*—My conclusion that Israel can be democratic and Jewish, however, significant change must ensue.

I believe this thesis is an important contribution for Reform Jewish leaders in North America who are interested in developing a religious Reform Zionism. Much has been written about support of Israel, philanthropy to Israel, connection to Israel, etc. But as Israel become more secure and independent, what role can Americans play as partners with their Jews in Israel. I believe that this partnership has moved towards a concern with the Jewish character of the State of Israel; in other words, Jews in Israel and the Diaspora are beginning to ask what kind of Jewish state Israel should be. The place where we can forge alliances and share in building Israel is by working to strengthen its democracy, aspects of pluralism, and the rule of law.

Resources include books and articles from Jewish and Palestinian scholars in Israel and abroad, as well as Knesset legislation, and Supreme Court decisions.

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PREFACE

It was not until I was an undergraduate student studying in Israel that I began to grasp the complexities of Israel and Zionism. There were four experiences during 1990-1991 that left indelible marks on my emerging perspectives and interests. The first was standing at Latrun learning about Israel's War of Independence. Up until that moment I was told, as many are told, that the Arabs who lived in Palestine left on their own volition. My teacher at Latrun then said that Israeli scholars are beginning to uncover that this might not have been the case. That there were, in fact, instances when Palestinians were forced to leave their homes and villages.¹

The second was former PM Yitzhak Shamir's claim to have Israel reach from the Mediterranean to the Jordan—a renewed commitment to Greater Israel. He first began to re-voice this theme just before I left for Israel.² In the midst of a huge influx of Soviet Jewish *olim*, Shamir was committed to building infrastructure and settlements in Judea, Samaria and Gaza. The uproar emerged because it linked territorial expansion with the Soviet Jewish *aliyah*, which then vindicated Arab arguments against the mass immigration and put American loan guarantees at risk.

The third was on October 8, 1990. The crisis of the Intifada in Israel was heightened by the Persian Gulf Crisis. In response to Palestinians throwing rocks down from the Temple Mount, Israel's police responded harshly, which led to escalated violence. By the end of the day, 21 Palestinians were dead and almost 200

¹ See Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949* (Cambridge: Cambridge University Press, 1988). An abridged article, drawn from the concluding chapter of his book, is Morris, "The Origins of the Palestinian Refugee Problem," in Laurence Silberstein, ed. *New Perspectives on Israeli History* (New York: NYU Press, 1991), 42-56.

² *Knesset Record* 117: 3863-3886. See also *The New York Times*, June 21, 1990. "We need a large land for the large immigration." The uproar emerged because it linked territorial expansion with the Soviet Jewish *aliyah*. It also vindicated Arab arguments against the mass immigration.

wounded, as well as several Israeli policemen and civilians.³ Shortly thereafter, a wave of attacks against Jewish civilians within Israel-proper were conducted, including the murder of Iris Azouly, a young woman in the army who was walking in her Bak'a neighborhood. The response included attacks on innocent Palestinians, as well as left-wing Jews and Peace Now activists.

It is the fourth experience that brought these elements together for me and forever changed how I was going to forge a personal relationship with Israel. Thomas Friedman's *From Beirut to Jerusalem*⁴ explained the crucial struggle for Israel and Israelis to this day, as he learned it from Aryeh Naor. He explained that the Zionists have struggled to balance three, *perhaps* contradictory elements. They wanted to create a Jewish state, a democratic state, and a state that would be located in the historical homeland of the Jewish people (which included all of Palestine from the Mediterranean Sea to the Jordan River, but also areas that were Transjordan). The British, French, and United Nations continually promised this piece of land to both Jews and Arabs since the McMahon letters (1915).⁵ When the British suggested partition the first time, Ben-Gurion and his fellow Zionists asked, "What kind of nation do we want to be?" Ultimately, they decided that they should have a Jewish and a democratic state, and compromise on the extent of the Land, hoping to acquire the rest later. So was the state of affairs between 1948-1967—Israel was a Jewish state with a significant Jewish majority, a democratic state, and it was located in part of the Land of Israel.

³ See B'tselem, *Loss of Control: The Temple Mount Event—Preliminary Investigation* (Jerusalem: B'tselem, October 14, 1990).

⁴ Thomas Friedman, *From Beirut to Jerusalem*, rev. ed. (New York: Anchor Books, 1990), 253f.

⁵ Sir Henry McMahon, Britain's High Commissioner in Egypt, corresponded with Hussein ibn 'Alī, the emir of Mecca, regarding Britain paying a territorial price for Hussein's support of the British against the Ottomans. Territory was demarcated, but Palestine's future status was left vague and unresolved—was it to be designated to this new "independent" Arab territory, or would it remain under

In June 1967, Israel's victory left it with an occupation of the West Bank and Gaza Strip. Once again, it could have only two out of three of its objectives. One choice was to keep all the Land of Israel, including the West Bank and Gaza Strip, and to remain a Jewish state, but this would be at the expense of democracy because it would necessitate repressing Palestinians' rights. If they annexed the territories, it would be at the expense of keeping the Jewish character of the state, since there would soon be a Palestinian majority. The last option was to retain its Jewish character and its democracy, but then it would need to give up large areas of the West Bank and Gaza. (Transfer, discussed discreetly in pre-state times,⁶ as well as by Kach and Moledet in the 1980s, has never been a viable option.)

Friedman says the problem concerning each area of concern is exacerbated because from 1967 to 1987, Israel's leadership avoided making the choice of which element they would be willing to relinquish. As a result, Israel's democracy is under stress. It is not unstable, nor is it necessarily at risk. But real coexistence has not been achieved, Israel's Palestinian citizens are a national minority treated like a fifth column, the rule of law has often been threatened by radicals, enormous resources are channeled to the military, electoral reform is an ongoing issue, and a beloved prime minister has been assassinated.

The task that I have set before me is to try to discern the nature of the state of Israel and its society by exploring its history, sociology, and political culture. As someone who is about to become a rabbi and a life-long Zionist who is also committed to democracy, pluralism, and Reform Judaism, I must ask the question: Does the state

British rule.

⁶ See Benny Morris, *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999* (New York:

conform to its commitment to being a Jewish and a democratic state? It is my hope that this task will provide me with the resources to educate others on how a Reform Jewish Zionist can be a partner in building the State of Israel. Previous generations did so through visits to Israel and were partners in building Israel's infrastructure, highways, gardens, and playgrounds. Today, Diaspora Jewry still has a role to play as builders—but now we must work with Israelis to continue to build Israel's democracy and strengthen the rule of law.

I. INTRODUCTION

A student of Israeli society can easily observe a key tension that has been emerging quite clearly over the last three decades: the tension between being a Jewish state and a democratic state. It is difficult for some to understand how a modern country like Israel can still be struggling with fundamental issues of its democracy and the rights of its citizens. After all, so goes the argument, Israel is a Western, technologically advanced society rooted in the egalitarian, utopian ideals of Zionism, providing a home for every Jew based on egalitarianism and justice.

Israeli society cannot be so easily characterized. The social struggles, emerging since the 1950s and coming to fruition after the 1967 Six-Day War show a side of Israel that many American Jews are not aware of. Israel is challenged by discrimination against women, second-class status of Palestinian citizens, unequal distribution of resources to its citizens⁷ (among Palestinians and Mizrahim), religious coercion by the Orthodox Jewish establishment, etc. Two of the principle reasons for this include a Jewish majority that has retained a siege mentality, and a strong (but waning) ethos of collectivism and Zionism.

Knopf, 1999), 139-144.

⁷ Netty C. Gross, "Forsaking Our Children," *The Jerusalem Report*, March 29, 1999: 14-18. The article deals with children, Palestinian Israelis, Mizrahim, and *haredim*.

By no means do these challenges suggest that the inequalities and injustices within Israeli society should deter Diaspora Jews from being personally involved with Israel. On the contrary, I suggest that a better understanding of Israeli society—its societal tensions and political culture—will provide us with a unique opportunity to develop more honest relationships with Israel and Israelis, and visa versa.

One can see how Israel's political culture impacts its democracy by observing that Israel lacks key terms in its modern political vocabulary, indicating that the ideas behind them are weak: accountability, constituency, pluralism. Although English-sounding equivalents exist, they do so without a strong grasp of their meanings among the public. I suggest that these political concepts are not strongly rooted in Israeli political culture because Israel lacks a tradition of liberal democracy and is embedded in a socially collectivist orientation. Looking at the lands of origin of its citizens, there is no strong—if any—tradition of democracy for more than half of Israel's citizens (Mizrahi Jews, Jews from the Former Soviet Union, Palestinians, Ethiopian Jews, and *haredim*). Even if one could argue that within the pre-modern Jewish communities of the Diaspora there were some basic democratic traits contained in the religious impact on daily life, the overall context of the societies they inhabited clearly did not favor a democratic political culture.⁸ This idea, in conjunction with Israel's unique political development (beginning with the new Yishuv), and Israel's concentration on security issues illustrates why Israel still has tensions between the collective and the individual, between Orthodox Jewish authority and the non-Orthodox majority, and the different components of democracy.

⁸ Alan Dowty, "Jewish Political Traditions and Contemporary Israeli Politics," *Jewish Political Science Review* 2, nos. 3-4 (Fall 1990): 55-84; Dowty, "Minority Rights, Jewish Political Traditions, and Zionism," *Shofar* 10 (Winter 1992); See M. Shokeid, "Cultural Ethnicity in Israel: The Case of Middle Eastern Jews' Religiosity," *Association for Jewish Studies Review* 9, no. 2: 247-271.

The scope of this paper will explore Israel's political system; political culture as it relates to citizens' rights and the rule of law; the role of the High Court of Justice; and issues relating to ethnic democracy.

As Israel's political culture and democracy continues to evolve, we can see its impact on two critical domestic issues: the status of Palestinian Israelis and the interplay between Israel's Orthodox rabbinical establishment and the State. This survey will attempt to discuss each issue in its developing stages, often described in the following terms:

- 1) From the commencement of the First Aliyah (1882) to the establishment of the State of Israel (1948).
- 2) From the establishment of the state to the 1967 war. (Some may suggest that 1977 is the critical date because of Likud's rise to power.)
- 3) From 1967 to the present, as a mass of Arab residents were added to Israel's domain.

My research has been heavily influenced by a new mood in Israel and the Diaspora regarding Israel's history and how it deals with the challenges ahead. Before I explore the systems of government and political culture, I think it is helpful to identify the thinkers who have influenced my work.

Zionism and Postzionism

Ian Lustick's *Arabs in the Jewish State* begins with a personal word. In many ways ahead of the mainstream American Jewish community, Lustick says his provocative and groundbreaking book was researched out of his affinity towards and commitment to Israel. The book deals with Israel's mechanisms of control over its Arab citizens. He saw how those opposed to Israel's existence could use his research; however, he was still compelled to write it. He recognized as early as 1979 that if American Jews were going to have a serious relationship with Israel and Israelis, it needs to be an honest relationship. As a Jew and Zionist, he noted that his study would be difficult for those who love and care deeply about Israel. "However, harmonious relations between Jewish and Arab Israelis and the long-run security of the Jewish state require

a thorough understanding of the problem of the Arab minority and a rejection of taboos on its discussion."⁹

I have conducted my research in the same spirit. I am not, though, only interested in Jewish-Arab coexistence, but am concerned with a liberal Zionist—Reform Zionist, if you will—orientation towards contemporary Israel.

When Lustick and Thomas Friedman published their groundbreaking books, they were chastised and considered self-hating Jews. They challenged the taboos about posing a public critique of Israeli public policy.¹⁰ While today their perspectives are largely recognized as legitimate in Israel and the Diaspora, they might have been considered "postzionists" in today's jargon.

The ideas of classical Zionism do not need to be recounted here. For clarity, we can agree that Zionism maintained that the Jews have a right of return to its ancient homeland; Jews are a national group, as well as a religious one; immigrating to Israel is a high value; and the negation of the Diaspora was critical. Ultimately, there was an inextricable link between the people of Israel and the Land of Israel.

Jewish historians and sociologists in Israel and the Diaspora, among other academics in the social sciences, conducted their research from a Zionist perspective or with heavy Zionist influence. For instance, many studies were conducted about the State without mentioning its Arab citizens, their status, concerns, or institutions.

A younger generation of academics and journalists has emerged to challenge the long-standing dominant position of Zionism in Israeli society. Their detractors and critics have labeled them as "postzionists." These critics are committed to

⁹ Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National Minority* (Austin: University of Texas Press, 1980), xi.

¹⁰ Kenneth Jacobson, "Now is Not the Time to Speak Out," *Tikkun* (May/June 1988); Eugene B. Borowitz, "For Dissent on Israeli Policy," *Sh'ma* 6, no. 116 (September 3, 1976); Geoffrey Wigoder, "Israel—Public Debate is Irresponsible," *Sh'ma* 6, no. 118 (October 1, 1976).

protecting Zionism's dominant position in Israeli society. They are concerned that new critiques of Zionism or Israel will threaten Israel's ideological foundations and calls into question its *raison d'être* as a state. The term alone, "postzionism," attempts to reflect their position as outside of normative Jewish thought. It is not only non-Zionist, but potentially antizionist. Many will go further and link antizionism with antisemitism.¹¹

Myron Aronoff provides us with some helpful definitions.

[Antizionist refers to] those groups that reject all aspects of the Zionist civil religion and deny even de facto recognition of the right of Israel to exist as an independent state. They do not participate in the electoral parliamentary process, and individuals belonging to these groups (or categories) do not serve in the army. We define as non-Zionist those groups that reject Zionist civil religion (or at least its most central values), but give de facto recognition to the existence of the state of Israel and pragmatically cooperate with its institutions, including competing in elections. Some individuals belonging to these groups serve in the army but, when they do, are likely to engage in dissident activity.¹²

The term "postzionism," then, cannot be precisely determined. It can refer to those who claim to be part of the Zionist community or those who are outside of it or even opposed to it. It is clearly a gray area. Someone like Amnon Rubinstein sharply criticizes postzionists, but also could fit into its camp. Clearly a Zionist himself, as well as a voice for equality for Israel's citizens, Rubinstein believes that it is a healthy process for Israel and Israelis to confront its past and its myths. Despite his antagonism for postzionists, he respects one of Israel's advocates for a new historiography, Benny Morris, whose research is an important component for a society's growth.¹³

¹¹ See Laurence Silberstein, *The Postzionism Debates: Knowledge and Power in Israeli Culture* (New York: Routledge, 1999).

¹² Myron Aronoff, *Israeli Visions and Revisions* (New Brunswick, N.J.: Transaction Publishers, 1989), 130.

¹³ See Morris, "The New Historiography: Israel Confronts Its Past," *Tikkun* 4 (November/December 1990): 19-23, 79-86. See Amnon Rubinstein, *From Herzl to Rabin: The Changing Image of Zionism* (New York: Holmes & Meier Publ., 2000), 200-203. For leading critics of postzionism, see Efraim Karsh, *Fabricating Israeli History: The New Historians* (London: F. Cass, 1997); Shabtai Teveth, "The Palestine Arab Refugee Problem and Its Origins," *Middle Eastern Studies* (April 1990): 214-249. A series of articles appeared in *Ha'aretz* exploring the term postzionism and who belonged to this

However one understands postzionism and its relationship to Zionism, can agree that the postzionist camp is committed to democracy and has concerns about the exclusive nature of Zionism in the State of Israel. There is special concern for its non-Jewish citizens, particularly Palestinian Israelis. There are certainly a number of Israeli and Diaspora Jewish scholars who work to advance the democratization of Israel without identifying with the postzionist camp.

The scholarly debate is essential for Israel's development. It is this discourse that is not only identifying problems with Israel's democracy, it also helps to ascertain the nature of Zionism in the 21st century.

Pnina Lahav has described Zionism as "a coat of many colors." She understands it as rooted in two different perspectives that have often merged together and over the years have generated splinter themes. The Zionist movement has ranged from the polarities of catastrophe Zionism and utopian Zionism. "For catastrophe Zionists, Israel serves primarily as a safe haven from repetition of the various catastrophes that have befallen Jews in the past. In contrast, utopian Zionism stands for the proposition that Israel should be constructed as a model state."¹⁴

The circumstances of the Jewish-Arab conflict in Israel have required that the utopian aspects of Zionism become secondary in importance due to real security threats. However, utopian voices have always been present, from Martin Buber to Mordechai Bar-On and Meron Benvenisti, among others.¹⁵ But there are other voices that are totally opposed to the enterprise and who launch a critique from outside of

camp. See Uri Shohat, "Who Is a Postzionist?" (September 1, 1995). Responses by Amnon Rubinstein (September 12), Zeev Sternhell (September 15), Shlomo Avineri (September 22), and Baruch Kimmerling (September 29).

¹⁴ Pnina Lahav, *Judgment in Jerusalem: Chief Justice Simon Agranat and the Zionist Century* (Berkeley: University of California Press, 1997), xiii.

¹⁵ Although there is very little published on this, I think a contemporary Reform Zionism is similar to their voices; not the Zionism of Reform Jews (which is often towards the catastrophe perspective on

the camp—the Canaanites, Communists, and younger scholars such as Ilan Pappé and Zeev Sternhell. People like Benny Morris and Baruch Kimmerling are often associated with this latter group, but refrain from being classified as such (and seem to be more positivist in their orientations and allegiances).

Martin Buber

Buber was a committed Zionist. He saw Zionism as the ultimate political test of his religious faith. Zionism gave expression for the Jew to live out God's wish for a moral, just society. He wrote:

We shall accomplish nothing at all if we divide our world and our life into two domains: one in which God's command is paramount, the other governed by the laws of economics, politics, and the "simple self-assertion" of the group... Stopping one's ear so as not to hear the voice from above is breaking the connection between existence and the meaning of existence.¹⁶

He wrote and spoke extensively on Zionism and "national rebirth."¹⁷ He believed in the spiritual power of community—the practice of the religion of communal living. He wrote *On Zion*¹⁸ in its Hebrew original in 1944, in the midst of Hitler's Final Solution, the British denial of entry to Palestine by Jewish refugees, terror attacks against the Yishuv, and threats from the Arab League. Despite all that, his vision for Israel went beyond sovereignty and statehood, but instead he "[spoke] of Zion as a sacred mission, a command to found a just society and it initiate the Kingdom of God."¹⁹

Buber was suspicious of modern nationalism. He saw it as a narcissistic

the spectrum), but a coherent system of a liberal religious Zionism.

¹⁶ Martin Buber, Address Delivered at a Convention of Jewish Youth Representatives in Antwerp, 1932, in Buber, "And if Not Now, When?" *Israel and the World: Essays in a Time of Crisis*. Reprinted ed. (Syracuse University Press edition, 1997), 235.

¹⁷ See Buber, *On Zion: The History of an Idea*. Reprinted ed. (Syracuse University Press Edition, 1997); Buber, *Israel and the World: Essays in a Time of Crisis*; Buber, *A Land of Two Peoples: Martin Buber on Jews and Arabs*, ed. with Commentary by Paul R. Mendes-Flohr (New York: Oxford University Press, 1983).

¹⁸ Originally published in English as *Israel and Palestine—The History of an Idea* in 1952. The first Hebrew edition was *Ben Am L'Artso* (1944).

¹⁹ Nahum Glatzer, Foreword to *On Zion* by Martin Buber, vii.

expression of a group, preoccupied with self-interest over redemption or justice (which is why he split from Herzl's camp in his early years). The quest for political sovereignty and a Jewish majority would lead the Jews not only to spiritual atrophy, but also prolonged conflict with the Arabs of Palestine and the Mideast.²⁰ It turns out that Buber was correct. From a political perspective, he supported binationalism—an idea anathema to the Zionist leadership and still only seriously discussed in academia.²¹

Yoram Hazony, considering himself to be a maverick on the renewal of Zionism in this century, argues at length that Martin Buber is among the antizionist camp.²² He could not differentiate between Buber's commitment to Zion and Israel, and his belief that the Zionist Organization was pursuing policies that would alienate and repress another people. Buber understood, as many do today, that Israelis are not totally innocent in this conflict. He understood the necessity of a sovereign state, but having sovereignty as the single-most important goal creates a culture unconcerned over "a productive and dignified life for our people [sic]."²³

Mordechai Bar-On

A less well-known figure is Moredechai Bar-On, a retired IDF Colonel, former MK (Ratz), author, and Peace Now and New Israel Fund leader. He is another critic of Zionism in its present form, and yet he is a critic of the postzionist camp.

Zionism's concerns for immigration, settlement and sovereignty were relevant

²⁰ See Buber, *Israel and the World*, particularly the essays: "Nationalism," "Zionism and 'Zionism,'" "The Meaning of Zionism," and "A Letter to Ghandi."

²¹ See Ian Lustick, "Creeping Bi-nationalism Within the Green Line," *New Outlook* 31 (1988): 14-19; also Ilan Poley and Ofira Seliktar, eds. *The Emergence of a Binational Israel* (Boulder, Colo.: Westview, 1989).

²² Yoram Hazony, *The Jewish State: The Struggle for Israel's Soul* (New York: Basic Books, 2000), 189-193.

²³ Buber, "Let Us Make an End to Falsities!" (October 1948), in *A Land of Two Peoples*, 227.

in the revolution to "awaken the nationhood of the Jewish people."²⁴ But once sovereignty was achieved, it veered off course. People remained concerned with those very issues instead of maturing to a concern over coexistence.²⁵ He does not think Zionism is antiquated or oppressive, but the maximalist position has perverted its spirit and implementation.

He strives to reconcile Zionism with democracy and ethics. He recognizes that Israel cannot realize Zionist ideology by denying Palestinians their rights.²⁶ It went astray when the goal moved from realizing Jewish nationhood to achieving control and power, thereby ending dependence on Gentiles.²⁷ He recognizes similar problems as Buber.

The Zionist movement, like the European nationalist movements of the nineteenth and twentieth centuries which inspired it, tended to conceive of sovereignty as an uncompromising claim of a nation to totally independent control over a defined territory, and body of citizens who have pledged their primary allegiance to the state in which they live. Zionism was, however, a latecomer among these national movements and achieved its sovereignty at a period when Europe and much of the rest of the world had started to move away from this exclusive concept and had begun to realize that the comprehensiveness of sovereignty must be reduced and compromised, in order to accommodate particular aspirations and the need for larger and more efficient units of economic and political development. The world at large had begun to learn the limits of national sovereignty.²⁸

Although the early Zionists did not often include peace as a critical component in Zionist ideology, Bar-On argues that it was always an implicit goal in the Zionist camp. However, it did not reach the top of the agenda until the Palestinians were able to go through their own evolution from a mandated, uncompromising armed struggle to the Madrid-Oslo peace process.²⁹

²⁴ Mordechai Bar On, "Post Revolutionary Zionism," *New Outlook* 6 (Oct-Dec 1983): 1-7.

²⁵ Ibid.

²⁶ Bar On, "Zionism into Its Second Century: A Stock-Taking," in Keith Kyle and Joel Peters, ed. *Whither Israel? The Domestic Challenges* (London: The Royal Institute of International Affairs and I.B. Tauris & Co. Ltd., 1993), 30-31, 33-37.

²⁷ Ibid. 33. See also David Biale, *Power and Powerlessness in Jewish History* (New York: Schocken, 1986).

²⁸ Ibid.

²⁹ This evolution is in large measure a response to what they consider a successful uprising beginning in 1988, their alienation after the Gulf War, and the loss of the Arab nations' Soviet backers.

Meron Benvenisti

Benvenisti is one of the most intriguing critics of Zionism, yet one who does not position himself outside of the Zionist camp. He is a sharp critic of Israel's post-1967 settlement policies. Benvenisti, the son of a prominent demographer, emerged from the labor Zionist youth movement and reached the position of Deputy Mayor under Teddy Kollek. He knows that raising questions about Zionism is tantamount to sacrilege. But after 100 years of conflict between Zionism and the Arabs, he argues that there needs to be a reevaluation of Israel's and Zionism's agenda.³⁰

He explores the Zionist enterprise, how it has taken shape, and finds many contradictions. The Zionist revolution that his parents and their generation experienced was awesome, indeed, yet there is not consistency between their universalistic desires and particularistic actions. He describes that part of his inheritance as a child was an affinity for the value of the land—*yediat ha'aretz*. He still maintains a special, sacred relationship with the land. But he feels that after the Six Day War, there was a change in how Israelis saw the land. *Moledet* (homeland) became sacred—tied to a right-wing messianism. "Our obsession with instilling *moledet*, together with our negligence of equally cherished values such as the brotherhood of man, social justice, and civil equality to all, had lead inexorably to chauvinism and xenophobia."³¹

In his different books, Benvenisti raises the issue of how Israel treats its own Palestinian citizens as a fifth column,³² citing land expropriation as a particular concern. Nevertheless, Benvenisti fully recognizes that the Palestinians would never have accepted a Jewish state if they were victorious and would have annihilated the

³⁰ Meron Benvenisti, *Conflicts and Contradictions* (New York: Villard Books, 1986), ix.

³¹ *Ibid.* 60.

³² *Ibid.*; Benvenisti, *Intimate Enemies: Jews & Arabs in A Shared Land* (Berkeley: University of California Press, 1995); Benvenisti, *Sacred Landscape: The Buried History of the Holy Land Since*

Jewish presence in the land. Although the 1948 war was inevitable, as victors, he argues that Israel has accepted a special responsibility to seek reconciliation with her neighbors.

Benvenisti is as connected to the "sacred landscape" as the Palestinians. But the land has been politicized. "It is not an encouraging sign when, after fifty or sixty years, it is still necessary to resort to the distortion of history—and to a conspiracy of silence—as educational devices. Intentional disregard for the Arab stratum of the landscape is actually indicative of the Zionist establishment's embarrassment, guilt feelings, and insecurity."³³

Looking at his articles in *Ha'aretz*, Benvenisti sees the conflict between Jews and Arabs in a shared land as exactly that—an intercommunal conflict. One that demands dialogue and cooperation towards coexistence, rather than boundaries and acts of forced separation.³⁴

I think he is ultimately concerned about how the old ways of Zionism have been perverted into a discourse on power and sovereignty. In some ways, it is not so different than Bar-On, or even the political perspectives of Buber.

Benny Morris

Perhaps the most well known and respected of the New Historians is Benny Morris.

One of his earlier books, *The Birth of the Palestinian Refugee Problem: 1947-1949*³⁵ is a moment of history on its own merit. His examination has raised questions of a "new historiography" with him as its most noble spokesman. Morris describes events of Operation Dani (July 1948) during the War of Independence. His account, based

1948 (Berkeley: University of California Press, 2000).

³³ Benvenisti, *Sacred Landscape*, 339

³⁴ Benvenisti, "All They Wanted was a Dip in the Sea," *Ha'aretz* May 11, 2000.

³⁵ Morris, *The Birth of the Palestinian Refugee Problem: 1947-1949* (Cambridge: Cambridge University Press, 1987).

on newly accessible archival material due to the Israel Archives Law,³⁶ not only differs from the IDF History Branch's classic chronicles of the events in Lydda and Ramle, but outright rejects the narrative, concluding that the area's Arabs were expelled under Lt. Col. Yitzhak Rabin.³⁷

Morris' concern is that Israel's historical accounts have been propagated in order to serve its interests—depicting the Zionists of the Yishuv and the State as a David against the Arab Goliath. He charges that Israel's historians deliberately censored out material that would reflect badly on Israel and its goals, and exaggerated other aspects in order to garner support (such as the Jews' weak military strength and insufficient arsenal).

A second factor for this new historiography is a new generation of historians and social scientists.³⁸ They have matured in a more open, self-critical Israel than their mentors who knew an Israel before the 1982 Lebanon War. Many of these scholars focus their attention to the establishment of the state and the 1948 war. They did so, not only because unanalyzed documents were made available for the first time, but, according to Morris, this was the pinnacle of Israel's history.

How one perceives 1948 bears heavily on how one perceives the whole Zionist/Israeli experience. If Israel, the haven of a much-persecuted people, was born pure and innocent, then it was worthy of grace, material assistance, and political support showered on it by the West over the past forty years—and worthy of more of the same in years to come. If, on the other hand, Israel was born tarnished, besmirched by original sin, then it was no more deserving of that grace and assistance than were its neighbors.³⁹

³⁶ Israel Archives Law (1955) was amended in 1964 and 1981. It has unclassified at least hundreds of thousands of state papers, memoranda, correspondence and minutes after being restricted for thirty years.

³⁷ Morris, "The New Historiography: Israel Confronts Its Past," *Tikkun* 3, no. 6 (1988): 19-20.

³⁸ See Avi Shlaim, *Collusion Across the Jordan* (New York: Columbia University Press, 1988); Ilan Pappé, *Britain and the Arab-Israeli Conflict, 1948-51* (New York: Macmillan/St. Anthony's, 1988); also see Tom Segev, *1949: The First Israelis*, rev. ed. (New York: Henry Holt, 1998); see also Baruch Kimmerling, *Zionism & Territory: The Socio-Territorial Dimension of Zionist Politics* (Berkeley: University of California Press, 1983).

³⁹ Morris, "The New Historiography: Israel Confronts Its Past," *Tikkun* 3, no. 6 (1988): 21. See Kimmerling, *Zionism and Territory*, chap. 7 on the Zionist movement identifying itself in a post-colonial era, yet practically resembles a colonialist enterprise.

Morris focuses this discussion on the question of refugees to advance his argument. Did the Arabs leave "voluntarily" as the Zionist myths suggest, or are the Palestinians correct in their arguments that the Zionists always advanced the idea of transfer. Morris believes the truth to be in the middle. While there was no formal Haganah/IDF, or Israeli campaign to expel Arabs from the area, there were Haganah/IDF expulsions initiated by individual commanders. Further, Morris has not found any evidence of Arab broadcasts of calls for Palestinians to flee. On the contrary, Haganah, Mapam and British records show Arab leaders' calling for the Palestinians to remain in their villages. Morris explains that there are numerous related reasons for the Arab exodus and it cannot be simply reduced to a single myth.⁴⁰

Morris suggests that this "new history" is a sign of Israel's maturing. He and Amnon Rubinstein, among others, considers this a healthy development not only for Israel and Jews, but could add to the purposes of peace and reconciliation by exploring a more balanced history of the early years of the yishuv and the state.⁴¹

Morris recognizes that what he and his colleagues are doing may be considered traitorous (at worst), ill-informed (at best), to many Jews and Israelis. Shabtai Teveth has castigated Morris and company in the pages of *Commentary*, arguing that these new historians have "sympathy" for the Palestinians (as do I), but also that their research is part of a desire to delegitimize Zionism.⁴²

⁴⁰ Ibid. 99.

⁴¹ We can only hope that Palestinians and other Arab historians are willing to do the same. See Avraham Sela, "Arab Historiography of the 1948 War: The Quest for Legitimacy," in Laurence Silberstein, ed. *New Perspectives on Israeli History*, 124-154.

⁴² Shabtai Teveth, "Charging Israel With Original Sin," *Commentary* (September 1989): 24-33. See also his three articles in *Ha'aretz*, each titled "The New Historians," (7 April 1989): 56; (14 April 1989): 76; (21 April 1989): 56. (Hebrew)

Teveth argues that this kind of research is not really new.⁴³ Martin Buber and his peers in Brit Shalom had similar sentiments and concerns. The members of Brit Shalom, which included Gershom Scholem, Arthur Ruppin, among others, believed that the Land of Israel belonged to both, the indigenous Arab population and the Jews returning to their ancestral home. As a result, they advocated a bi-nationalism—political and civil parity between Jews and Arabs (although they thought it would be within the confines of the British Mandate).⁴⁴

Aside from challenging aspects of scholarship, Teveth is suspicious because he believes that Morris indicts only Israel, which gives “apologists for the PLO like Edward Said” an opportunity to use the material for their benefit.⁴⁵ Teveth, thus, argues guilt by association. Morris responds that Said takes his conclusions out of context for propagandist purposes, and by using Said’s name in Teveth’s article, he advances his own “demagogic purposes.” In fact, many Palestinians are frustrated with Morris’ account because it does not unconditionally advance their own claims and authenticate their collective memory.⁴⁶

Morris is concerned that Israel’s history is explored and reported without bias or agenda. Although his reports lead to a critique of Zionist/Israeli leadership and policy at times, he also recognizes the nuances that plagued these same leaders—Arab nonacceptance of the UN Partition Plan and their ongoing threats to annihilate Israel. The Plan would have given Israel unnatural, indefensible borders and a 40-45 percent

⁴³He cites “The Jewish Colonies in the Land of Israel Are Built Upon the Misfortunes of the Arabs,” [New York] *Jewish Daily Forward* [n.d.], 1915.

⁴⁴ See Brit Shalom Statutes in Buber, *A Land of Two Peoples: Martin Buber on Jews and Arabs*, 72-75, also see “The Bi-National Approach to Zionism (1947)” 207-214. On Brit Shalom, cf. Ezekiel 34:25; Hagit Lavsky, “German Zionists and the Emergence of Brit Shalom,” in Jehuda Reinharz and Anita Shapiro, eds. *Essential Papers on Zionism* (New York: NYU Press, 1996), 648-670. See n. 286 below.

⁴⁵ See Edward Said. [?] in *al-Majalla* (October 28, 1988).

⁴⁶Benny Morris, “The Eel and History: A Reply to Shabtai Teveth,” *Tikkun* 5, no. 1 (March/April 1990): 20.

Arab minority. "Would any leader, recognizing the prospective large Arab minority's potential for destabilization of the new Jewish state, *not* have striven to reduce that minority's weight and numbers, and been happy, nay overjoyed, at the spectacle of the mass Arab evacuation? Would any sane, pragmatic leader *not* have striven, given the Arabs' initiation of hostilities, to exploit the war to enlarge Israel's territory and to create somewhat more rational, viable borders?"⁴⁷

There is more at stake here than history. It is a matter of trust in Israel's government and leaders. It is also about Israelis' confidence about the legitimacy to claim a state of their own.

Radical Left

There has always been a more radical voice within Israel, that of groups like the Communists and Canaanites. The radical left approach the Zionist movement and Israeli historiography from a similar perspective as Palestinian opponents. (We can also say that the Revisionist Zionist employed their own historians to counter the dominant Labor Zionist movement.)

Some of the most outspoken critics of the Israeli and Zionist establishment include Ilan Pappé and Zeev Sternhell, both of whom reject Morris' positivist perspectives on reporting history. They do not agree with the approach to not address ethical concerns in their research. Both see that Judaism's place in Israel's development is a barrier to developing a liberal democracy in Israel. Israel is so particularistic and nationalistic that reform is not possible. They reject the exclusivity that Israel's collectivist culture supports.⁴⁸

It is my opinion that the question of term postzionism is not an effective term

⁴⁷Ibid. 20-21.

⁴⁸Zeev Sternhell, "The Battle for Intellectual Control," *Politika* (Ratz) (December 1987): 18. (Hebrew).

to use. It appears to be an inflammatory polemical term without a commonly understood definition. From what has been explored thus far, I can conclude that it is conceivable that people considered postzionist, such as Bar-On, Benvenisti, and Morris are really post-classical Zionism. Perhaps they (at least the first two) are more in synch with Lahav's utopian Zionism or Buber's conception of national renewal and redemption—and have not rejected Zionism at all. I see their arguments as fair, legitimate perspective, distinct from the antizionism of the radical left.⁴⁹

Reform Zionism

In light of our understanding of utopian Zionism, I believe that Reform Zionism is rooted in a similar framework. Its political manifestations are similar to Bar-On's and Benvenisti's conclusions, and it appreciates Morris' histories. What is different is its liberal religious conception of Zionism—a new element in Zionist discourse.

The views of the earliest Reformers, both European and American, were clear.⁵⁰ They rejected Jewish nationalism and embraced their lands of residence as their "Zion." The early American reformers advanced an anti-Jewish-nationalist sentiment, clearly seen in the 1885 Pittsburgh Platform: "We consider ourselves no longer a nation, but a religious community, and therefore expect neither a return to Palestine... nor the restoration of any laws concerning the Jewish state."⁵¹ This new doctrine was so strong that the rabbis of the first CCAR Convention felt the need to sharply criticize American Jews who persisted in referring to themselves as a "Jewish

⁴⁹ Similarly, Yaron Ezrahi calls for a post-epic narrative in Israel in his *Rubber Bullets: Power and Conscience in Modern Israel* (New York: Farrar, Straus and Giroux, 1997).

⁵⁰ See Michael Meyer, "Liberal Judaism and Zionism in Germany," in Shmuel Almog, Jehuda Reinharz, and Anita Shapiro, eds. *Zionism and Religion* (Hanover, N.H.: Brandeis University Press and University Press of New England, 1998), 93-106; Michael A. Meyer, *Response to Modernity* (Detroit: Wayne State University Press, 1988); W. Gunther Plaut, *The Growth of Reform Judaism* (New York: World Union for Progressive Judaism, 1965).

⁵¹ "Declaration of Principles," 1885 Pittsburgh Rabbinical Conference.

nation" or a "Hebrew people."⁵²

As early as 1901, it becomes clear that Reform Judaism was not completely unified on this issue. While the CCAR was opposed to political Zionism, CCAR President Rabbi Joseph Silverman favored the establishment of Jewish colonies in Palestine.⁵³ In 1907, Rabbi Bernard Felsenthal, an active Zionist, recognized that "there are thousands of Jews who are real and honest reformers and at the same time real and honest Zionists."⁵⁴ He argued that the movement's anti-Zionist leanings were merely "a holding fast to erroneous opinions expressed by eminent men in former ages" and urged his fellow rabbis to address Zionism in the context of their generation and locale.

Pro-Zionist sentiments within the Reform movement began to increase due to a number of factors, including the Eastern European Jewish immigrants stronger orientation to Jewish peoplehood, Stephen Wise's leadership and founding of the Jewish Institute of Religion in 1920, and increased hostility towards Jews in Germany. A watershed moment emerged with the Columbus Platform (1937) where an official platform stated that Reform Judaism accepts the idea of Jewish peoplehood and nationalism.⁵⁵ Any serious remnants of anti-Zionist policy seemed to have disappeared with the founding of the State of Israel in 1948, when the Conference declared that "the establishment of the Republic of Israel fulfills a 2000 year-old dream of the Jewish people."⁵⁶

⁵² The resolution declared, "there is no Jewish nation now, only a Jewish religious body..." *CCAR Yearbook* 1: 25-26.

⁵³ *CCAR Yearbook* 11: 31, 81-82.

⁵⁴ *CCAR Yearbook* 17: 31. See also Jonathan Sarna, "Converts to Zionism in the American Reform Movement," in Almog, Reinharz, and Shapira, eds. *Zionism and Religion*, 188-203.

⁵⁵ The Conference still did not mention Zionism or call for a state, and it still saw Palestine as a solution for "many of our brethren" but not all Jews. Opponents founded the American Council for Judaism in 1942, but it always remained marginal.

⁵⁶ *CCAR Yearbook* 58: 93ff. The next year, Israeli Independence Day was declared a holiday that should be celebrated in the Reform synagogue, *CCAR Yearbook* 59: 181.

But what is the relationship between Zionism and Reform Judaism today?

From social and political perspectives, American Jews need to go beyond a the dominant American "mobilization" model—the practice of rallying political and financial support—to developing a have a real relationship with Israel and Israelis. A Zionism based on shared interests in democratic values, social justice, language, and Jewish tradition can create a revitalized, dynamic relationship between Jews of the Diaspora and Israel.

Allon Gal writes that "mainstream American Judaism has always emphasized minority rights, civil and political equality, and constructive internationalism. American Jews, especially the younger generations, are looking for a Zionism that would complete, not contradict, their liberal tenets."⁵⁷ His view of a renewed "post-classic Zionism" would bridge the communities and enhance both: "it would help Judaize American Jewry on the one hand, and Westernize Israeli Jewish nationalism on the other."⁵⁸ Together, we can combat the "powerful undercurrents of chauvinism and religious messianism... [which] threaten to undermine Israeli democracy."⁵⁹

A.B. Yehoshua spells out the issues in which he is concerned regarding the democratic nature of Israel. He asks, what kind of peace will Israel have if its own democracy is at a state of peril for its citizens. Yehoshua desires an Israel that is interested in bridging the socio-economic gaps between Mizrahi and Ashkenazi Jews, advancing the status of women, and improving social justice and equality for Israel's Palestinian citizens.⁶⁰

I believe a Reform Zionism should actualize Martin Buber's visions and make

⁵⁷ Allon Gal, "Why Zionism," *Sh'ma: A Journal of Social Responsibility*, 26, no. 513: 4.

⁵⁸ *Aliyah* is still a major component in his premise, although it is not included in this discussion.

⁵⁹ Allon 4.

⁶⁰ See A.B. Yehoshua, "Israeli Identity in a Time of Peace: Prospects and Perils," *Tikkun* 10, no. 6 (November/December 1995): 34ff.

pursuing peace a religious mandate. Certainly, Reform Zionism embraces many classic conceptions of Zionism: re-committing the movement to learning Hebrew, reading Israeli literature, visiting Israel, supporting Israeli institutions, considering *aliyah*, and forging relationships with Israelis. These notions are expressed quite well in the CCAR's Miami Platform.⁶¹ But there are other aspects that make a Reform Zionism unique.

For the religious Reform Jew, there are strong bonds to *Eretz Yisrael*, yet s/he believes in the sanctity of life over land⁶² and affirms the "legacy of our religious tradition's emphasis on justice as well as our Reform commitment to morality and ethics."⁶³ David Ellenson believes that this last point makes Israel the ultimate testing ground for the truth of Jewish teachings and values (an idea advanced by Buber).

Abba Hillel Silver can serve as a model for a Reform perspective on Zionism. According to Hasia Diner, Silver was drawn to Zionism through his understanding of democracy and Judaism. Silver's understanding of a "protest tradition" from the Prophets would improve democracy in America. The link between this protest tradition and Zionism was that it was rooted to *Eretz Yisrael*.⁶⁴ He never tied his principle to the State of Israel because the struggle over "what kind of Jewish State should Israel be" was not part of the discourse of his day. Survival was the primary objective for Israel. But we can extend it in our day and make a very compelling argument.

⁶¹CCAR, "Reform Judaism & Zionism: A Centenary Platform—"The Miami Platform." June 24, 1997. Miami, Fla.

⁶²See Jonathan Magonet, "Covenant and Holiness: Help or Hindrance in Seeking a Reform Theology of the State of Israel?" *The Journal of Reform Zionism*, 1, no. 1: 6-12.

⁶³David Ellenson, "Reform Zionism Today: A Consideration of First Principles," *Journal of Reform Zionism* 2 (March 1995): 13-19.

⁶⁴Hasia R. Diner, "Zion and America: The Formative Visions of Abba Hillel Silver," in Mark Raider, Jonathan Sarna, & Ronald Zweig, eds. *Abba Hillel Silver and American Zionism* (Portland, OR: Frank Cass, 1997), 49.

The 1999 CCAR Statement of Principles resolves: "We are committed to a vision of the State of Israel that promotes full civil, human and religious rights for all its inhabitants and that strives for a lasting peace between Israel and its neighbors."⁶⁵

The Miami Platform goes further:

Centuries of Jewish persecution, culminating in the *Shoah*, demonstrated the risks of powerlessness. We, therefore, affirm *Am Yisrael's* reassertion of national sovereignty, but we urge that it be used to create the kind of society in which full civil, human, and religious rights exist for all its citizens. Ultimately, *Medinat Yisrael* will be judged not on its military might but on its character.

Fortunately, two other scholars provide new and interesting perspectives on Reform Zionism. Drs. Lawrence Hoffman and Eugene Borowitz differ in theological perspective, but both believe that a religious Reform Zionism mandates one's involvement in the Land of Israel, but also the politics of Israel. Borowitz affirms that

at some elemental level of our Jewish being we know that Jewishness requires a biblical kind of politics, one that works to sanctify power. It takes a full-blown prophet and God's own inspiration to know clearly what needs to be done in any specific political situation, and we are not, despite our rhetoric, prophets. But we are, *haftarah* by *haftarah* their living disciples and we know we must be driven by their Jewish ideals."⁶⁶

He further writes, "And now political sovereignty has, for the first time in two millennia, given us the opportunity to effectuate God's demand for social righteousness in our own, self-determined collective life."⁶⁷

Hoffman argues that a religious Reform Zionism "demands a universal ethic rooted in Jewish particularity; and it charges individuals with the ethical and ritual obligation to pursue holiness in space and time."⁶⁸ His Zionism is rooted in a connection to the land (since our people and its relationship to God developed from this land) but our desire to build it cannot make us "ethically parochial."⁶⁹

⁶⁵ CCAR, A Statement of Principles for Reform Judaism. 1999 Pittsburgh Convention. May 1999.

⁶⁶ Eugene B. Borowitz, "What is Reform Religious Zionism," *The Journal of Reform Zionism* 2 (1995): 25.

⁶⁷ Ibid. 26.

⁶⁸ Lawrence Hoffman, "Reform Religious Zionism: Celebrating the Sacred in Time and Space," *The Journal of Reform Zionism* 2 (1995): 34.

⁶⁹ Ibid. 33. For more on ethics and Zionism, see four essays in Elliot Dorff and Louis Newman, *Contemporary Jewish Ethics and Morality: A Reader* (New York: Oxford, 1995). They are: Irving

Zionism is not a religion, although it is often confused to be movement among the branches of Judaism. Perhaps, for some it is. I think Zionism is a social and political expression of the ideals of Jewish thought. A Reform Zionism is not simply a pro-peace movement akin to Americans for Peace Now or the New Israel Fund. It is much more. It is an outgrowth of the religious thought emanating from Reform Judaism. Reform Jews world-wide have the opportunity to make Zionism a movement for Jewish renewal—advancing peace, pluralism, and justice along with Israelis. Continuing the process of building Israel's democracy as partners can be a dynamic expression of this Reform Zionism.

Nationalism—Comparisons with Israel

This paper is not meant to deal with the history of nationalism's ideas, so I will try to avoid such areas. However, it may be helpful to reflect on some parallels in global affairs that may shed light on Israel's complex situation. First, it will be helpful to advance what I mean by "nationalism."

Nationalism is a doctrine invented in Europe at the beginning of the nineteenth century. It pretends to supply a criterion for the determination of the unit of population proper to enjoy a government exclusively of its own, for the legitimate exercise of power in the state, and for the right of organization of a society of states. Briefly, the doctrine holds that humanity is naturally divided into nations, that nations are known by certain characteristics that can be ascertained, and that the only legitimate type of government is national self-government.⁷⁰

When one thinks of the development of nationalism in the 18th and 19th centuries, it is common to think of Britain and France as models.

The "enlightenment" nationalism of the eighteenth century Western Europe and America, conceived in reaction to the absolutist regimes of the previous period, featured:

1. Liberal democracy, individualism
2. Detailed consideration of political and economic structures
3. Hopes for material and social benefits here and now
4. Confidence in human progress
5. Human initiative essential

Greenberg, "The Ethics of Jewish Power"; Judith Plaskow, "Israel: Toward a New Concept of Community"; David Hartman, "Living with Conflicting Values"; Einat Ramon, "The Ethics of Ruling a Jewish State with a Large Non-Jewish Minority."

⁷⁰ Elie Kedourie, *Nationalism*. 3rd ed. (London, 1966), 9.

6. Commitment to universal reason, truth, justice

The Romantic nationalism that burgeoned in nineteenth century Germany, Italy, and the Balkans was far more ethnocentric, revolutionary, and absolutist. Hegel's concept of *Volksgeist* was taken to extreme lengths, and the fulfillment of national destiny, sometimes with a religious component, became an absolute value. Forms of government tended to authoritarianism, and it was accepted that the only legitimate form of government for a people was self-government as a nation-state on its own territory.⁷¹

I believe that there are certainly influences from this Western version of nationalism on Israel, but I think that a stronger influence is shown in the second case, particularly the ethnonationalist paradigm in Serbia. In Serbian ethnic nationalism from 1840-1914, "leaders base their collective appeals on common culture, language, religion, shared historical experience, and/or the myth of shared kinship, and they use these criteria to include or exclude members from the national group."⁷² The Serbian state recognized that its people had a weak political consciousness, however the state, too, was weak compared to its Austrian and Ottoman neighbors. It was too weak to institute a civic nationalism such as found in Britain.

Jack Snyder writes that Serbian nationalism is strengthened in the 1830s with its goals to become a modern state. The peasantry supported the Serbian leader Milos and his populist assemblies, and the bureaucracy opposed the local notables. The central government used the state school system to advance its nationalist aspirations, and argued that a strong independent Serbia would protect it from foreign domination.⁷³

Snyder also notes that there were democratic institutions in place early in its development, including the right to vote for peasants. An 1818 constitution instituted a secret ballot, barred censorship of the press, and banned emergency rules

⁷¹ Norman Solomon, "Zionism and Religion: The Transformation of an Idea," in Alan J. Avery-Peck, William Scott Green, Jacob Neusner, eds. *The Annual of Rabbinic Judaism: Ancient, Medieval, and Modern*, vol. 3 (Leiden, Boston, Köln: Brill, 2000), 150-151.

⁷² Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton and Company, 2000), 169.

regulations. However, procedures were often violated, thus "liberal civic principles were a thin basis for rallying loyalty to the state." Furthermore, although there were liberal statutes, the rule of law did not exist: "government ministries instructed judges not to apply them literally and to make rulings instead 'according to conscience and conviction and with a regard for popular justice and customs.'"⁷⁴

The major split in this history as a parallel is when the populist Radical Party came to power in 1889 and increased civil disorder rather than consolidating the rule of law. I find some similarities with Israel in the sense that a number of elites created a nationalism from the center, and strove to get more popular support, based on ethnicity and without the longstanding traditions of rule or sovereignty as other nations had. By emphasizing ethnic nationalism, Serbia sought to strengthen its weak status and put the Serbs in a dominant position in an ethnically diverse region.

Snyder, in his study of the development of nationalism in Germany, Britain, France and Serbia, argues that as these prototypical cases developed, "increasing democracy and increasing freedom of the press gave rise to popular nationalism that resulted in violent conflicts with other nations."⁷⁵ Further, ethnic nationalism arises, like civic nationalism, in eras of expanding democratic political participation, but its institutions cannot advance more sophisticated civic loyalty. Although the Yishuv's institutions were strong, they were pseudo-governmental. They still were unable to challenge the British or Arabs effectively. It engaged in mythmaking to encourage the popular nationalism and mass cultural themes.⁷⁶

Snyder notes that hybrids between different models are possible. Serbia under

⁷³ Ibid. 173.

⁷⁴ Ibid. 176. Quoted from Michael Petrovich, *A History of Modern Serbia, 1804-1918* (New York: Harcourt Brace Javanovich, 1976), 402.

⁷⁵ Ibid. 181.

⁷⁶ Ibid. 182.

Slobodan Milosevic demonstrates both counterrevolutionary and ethnic models of nationalism. Israel today would likely exhibit aspects of civic and ethnic models, thus advancing the dominant ethnic group (Jews) yet maintaining a formal commitment to other individuals within the state.

Many political scientists characterize the 1990s as a period for the re-emergence of ethnic nationalism due to the breakup of the Soviet Union—in some ways similar to the 19th century. These ethnic nationalisms emerge in multi-ethnic countries in transition. One must, though, not look at republics or states only in terms of the past decade. Yugoslavia has had difficulties in its transition to a democracy. But the problems were not only due to inter-ethnic and inter-religious conflict, but also because of long-lasting economic problems, lack of homogeneity, and a legacy of brutality that existed during World War II, where both Serbs and Croats fought over ideology as much as ethnic hatred.⁷⁷

Even though there was tranquillity for 40 years, the hostility remained latent.

Marina Ottaway notes,

as in most countries, ethnic nationalism had conflicting expressions in Yugoslavia. Serbian nationalism aimed at keeping Yugoslavia together, strengthening the federal government, and limiting the autonomy of the republics and regions. The Greater Serbia embracing all territories where Serbs lived was Yugoslavia itself. But Slovenian and Croatian nationalism was a drive to break away from the federation, which was seen as a vehicle for Serbian control. Thus nationalism was simultaneously a centralizing and a disintegrating force.⁷⁸

It is unfortunate that nationalist aspirations continued to escalate, challenging democratic innovation. The political opening in 1989-1990 was an opportunity for transition. However,

a political opening provides greater opportunities for all forces, not just new democratic ones... Nationalism reduced the chances that the opening would lead toward democratization.

⁷⁷ Marina Ottaway, *Democratization and Ethnic Nationalism: African and Eastern European Experiences* (Washington, DC: Overseas Development Council, 1994), 14f.

⁷⁸ *Ibid.* 18-19.

Bogged down in internal conflict and war against each other, the new republics moved farther than ever from a democratic transformation.⁷⁹

Similarities are clear here—there has been ethnic conflict preceding potential nexus points. For Israel, these political openings may have included two wars (1948 and 1967) and two political “upheavals” (1977—Begin, 1992—Rabin)⁸⁰ and the peace process that started in Madrid 1990 and turned into Oslo. But the conflict between Jews and Palestinians was founded earlier in the century.

Ethnic nationalism seems to be the primary source of conflict among nations in recent years. Snyder writes about different approaches concerning managing ethnic cleavages within emerging democratic nations.

Snyder's comments on hegemony are particularly relevant. Although distasteful to Western liberals, it can be an effective tool to prevent ethnic conflict. There are different levels of hegemony. Repression may be the most severe, as practiced in the Soviet Union, but some maintain that any level of hegemony will lead to increased ethnic conflict.⁸¹

Israel seems to fit more readily in his second category: “Domination works more reliably when it is tolerated by those who are deprived of power yet decide that being second-class citizens is better than being first-class rebels.”⁸² The economic status of Israel's Arabs, compared to Israel's Jewish citizens is clearly at a disadvantage. They enjoy greater civil rights, economic standards of living, educational opportunities, and political power than living in other Arab countries or even in a future Palestinian state adjacent to Israel. A similar scenario was when a

⁷⁹ Ibid. 19.

⁸⁰ It may be possible that this newest upheaval is also an opening for change. The February 2001 election brought Ariel Sharon to power and he is the first to explore the possibility of having the Arab parties in a coalition government.

⁸¹ Ibid. 323; See Ted Robert Gurr, *Minorities at Risk*, chaps. 2-5 (Washington, DC: US Institute of Peace, 1993).

⁸² Ibid. 323.

Jewish community functioning as a corporate society under another state's sovereignty was given autonomy for its community, similar to Armenians living under Ottoman or Russian rule.

"Such hegemonies work best when tangible side benefits are reinforced by ideological justifications of ethnic subordination. Sometimes this is accomplished by the fiction that status inequalities are based in neutral legal criteria, not on ethnic ascription."⁸³ For example, Arabs denied certain mortgage benefits because they never fulfilled national service requirements. "In this system, discrimination is partially constrained and masked by the need to maintain the appearance of a rational-legal equality. As a result, Arabs who profit from the system have an opportunity to work the constraints to their advantage and to justify their acquiescence to it."⁸⁴

As I mention below, while such a model may have some advantages as Sammy Smooha argues regarding his model of "ethnic democracy," there can be drawbacks.⁸⁵ Snyder believes that by withholding civic equality to ethnic minorities, the rights of the majority can also be put at risk.⁸⁶ He notes how the Armenian expulsion of ethnic Azeris was soon followed by censorship for Armenians, in general.⁸⁷

I think it is significant that Snyder notes that "Ethnic hegemonies are less objectionable as temporary expedients than as permanent vehicles for civic inequality... Unfortunately, few dominant ethnic groups are prescient enough to

⁸³ Ibid.

⁸⁴ Ibid. 324. For further reading, see Sammy Smooha, "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," *Ethnic and Racial Studies* (July 1990).

⁸⁵ Ian Lustick, "Stability in Deeply Divided Societies: Consociationalism Versus Control," *World Politics* 31, no. 3 (April 1979): 325-44; Kenneth McRae, "Theories of Power-Sharing and Conflict Management," in Joseph Montville, ed. *Conflict and Peacemaking in Multiethnic Societies* (New York: Lexington, 1991), 93-106.

⁸⁶ Snyder 324. See Liah Greenfeld, *Nationalism* (Cambridge: Harvard University Press, 1992).

⁸⁷ Ibid. See Michael Specter, "Drift to Dictatorship Clouds Armenia's Happiness," *New York Times* (Jan. 3, 1997): 1, 12.

liquidate their own hegemonic position voluntarily through gradual civic reforms."⁸⁸ Israel is facing this quintessential question relating to its existence. As of now, it does not want to cede its dominant position. The question I would like to have answered is: can Israel maintain a Jewish dominant culture while guaranteeing equal civil and human rights for its citizens and national minorities?

Democracy has ushered in an era of equal recognition.⁸⁹ Today, ethnic groups and sub-cultures within states and societies are demanding appropriate recognition. At the same time, Charles Taylor notes the development of the "politics of difference."⁹⁰ One might think that this contradicts the previous statement, but what is offered is not a universal standard of equality—identical rights for all—but the recognition of the distinctiveness of an individual or group. This principle rejects second-class citizenship. The challenge to the society is to recognize precisely those things that make a person or a group different and make that a basis for differential, but not discriminatory, treatment.⁹¹ The problem with this scenario is that, right or wrong, Israel at this time does not want to encourage a national minority considered potentially hostile to develop and activate Palestinian identity.

Partition is not an easy solution either, even though it is often discussed today. The nationalism that led Croatia to secede was a threat to the rights of the Serbian minority within the borders of a new country. The Serbian nationalism within that new Croat entity constituted a threat. A similar scenario occurred when Czechoslovakia partitioned into Slovakia and the Czech Republic. However, this latter scenario was more successful in keeping civil strife in check. Slovakia adapted

⁸⁸ Ibid.

⁸⁹ Charles Taylor, "The Politics of Recognition," in Amy Gutmann, ed. *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), 25-73.

⁹⁰ Ibid. 38.

⁹¹ Ibid. 39.

internationally recognized principles concerning ethnic relations. South Africa, too, has been successful in transitioning from apartheid to democracy. Apartheid's system of racial segregation was coupled with the establishment's incitement of conflict among the different Black nationalist groups. A compromise agreement leading to the 1994 elections brought ethnic concerns into the political realm of the country. Thus one can conclude that in multi-ethnic societies that are in the process of instituting democracy, it is not suppression of ethnic or national identity that will prevent conflict, but recognition of their diversity and accommodation into the political system—components still lacking in Israel.⁹²

In the 1990s, when one ethnic group claims self-determination, it is often perceived as threatening to minorities. These minorities respond with nationalism. The conflict is sown. However, conflict can be avoided depending on how the minorities are treated. "The European cases suggest that a crucial factor in preventing the onset of the vicious circle is the treatment of minorities: how they are dealt with by the countries in which they reside, how they relate to neighboring countries where that ethnic group constitutes the majority, and what their own demands are."⁹³ These factors have a strong impact on the potential for conflict. Thus, discussion of self-determination is central. In terms of Israel's administration of occupied territories, it is clear that the stress on Israel's democracy is serious, and the Palestinians self-determination is inevitable. These principles can also be applied to Israel's Palestinian minority. One only needs to briefly note that the current escalation in violence in response to the Al-Aqsa Intifada (beginning September 28, 2000) is a clear indication of how disenfranchised Palestinian Israelis feel. Their move, as a collective entity, to

⁹² See Marina Ottaway, *Democratization and Ethnic Nationalism*.

⁹³ *Ibid.* 11.

boycott the recent Israeli elections also shows the potential for escalating conflict due to the repression of their collective rights and human rights.

Minority Rights

Israel's internal conflict between Jews and Palestinians is more than an ethnic issue.

The terms used in this discussion are tricky, since it is appropriate language, but there are other "ethnic" concerns in Israel, i.e. ethnic cleavages between Jews of Ashkenazi descent and Sephardi/Mizrahi descent. Some researchers will consider the intra-Jewish cleavages as "communal" problems, rather than ethnic ones. Israeli society and its democracy are overburdened by deeply divided cleavages based on politics, religion, class, ethnicity, and nationality.⁹⁴ Indeed, these challenges not only make Israel a multicultural, multi-ethnic society, but its social system and structure is based on the relationship of the majority to the minority. Who that minority is changes in different contexts. This paper will focus more on nationality, but when we discuss minority rights, much of the research is written in terms of ethnic conflict. I state the above only to distinguish Israel's unique situation.

David Lake writes that ethnic conflict stems from "the fear of the future, lived through the past." "Given a fear of future exploitation, the party that is likely to become weaker may choose to fight now rather than later. Thus, the ethnic security dilemma is better termed an 'insecurity dilemma.'"⁹⁵ In other words, when a minority group feels threatened, it conjures up its group's memories and myths that may have

⁹⁴ See Alan Dowty, Alan Dowty, *The Jewish State: A Century Later*. Chaps. 7-9 (Berkeley: University of California Press, 1998); Sammy Smooha, "Class, Ethnic, and National Cleavages and Democracy In Israel," in Ehud Sprinzak and Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study* (Boulder & London: Lynne Rienner Publishers, 1993), 309-342.

⁹⁵ David A. Lake, "Policy Brief 3: Ethnic Conflict and International Intervention," University of California Institute on Global Conflict and Cooperation, March 1995. <<http://www-igcc.ucsd.edu/>>. The first phrase was coined by Vesna Pesic, a professor at the University of Belgrade and a peace activist in the former Yugoslavia.

been dormant and advances them. It is not the identities, per se, that are in conflict—it is about fear of the future.

In Israel, both sides have sufficiently expressed this fear—Jewish Israelis' fear of annihilation, Palestinians' fear of being subjugated and assimilated. I find it ironic that part of "Jewish memory" includes living as minorities and being subjected to the whims of the majority (a major factor in the development of Zionism). The Palestinians seem to desire the same thing.

In 1959, Yigal Allon commented on Israel's Arab minority in the context of the Zionist perspective of Jews living in the Diaspora as a national minority. I think it still speaks to many—if not the majority—of Jewish Israelis today.

It is necessary to declare it openly: Israel is a single nationality Jewish state. The fact that an Arab minority lives within the country does not make it a multinational state. It only requires that the state grant equal citizenship to every citizen of the state, with no differences based on religion, race, or nationality.... The Arabs have many states; the Jews have one state only. The Arabs of this country must understand that they also must make a substantial contribution toward the alleviation of Jewish suspicion regarding most of the Arab population.⁹⁶

Allon provides a common insight among Jews in the Diaspora and in Israel. Jews have advanced a moral claim to their presence in Israel, often without considering the parallel interests of Palestinians. Although the Palestinian minority has formal procedural rights, as a collective entity—as a people—they are still not recognized. In the context of what has been showed thus far concerning ethnic democracy, nationalism, and nationhood, what should be addressed concerning minority rights?

A useful definition of Minority Rights is: the access to resources needed by a minority or relatively powerless group in a society in order to function as a legitimate group in equity with the majority or relatively powerful group. It is difficult to determine the precise nature or amount of such rights; these depend on various

⁹⁶ Yigal Allon, *A Curtain of Sand* (Israel: Hakibbutz Hameuchad, 1959), 322, 337 (Hebrew) qtd. in Lustick, *Arabs in the Jewish State*, 65.

definitions of justice in a society and the power relations among society's different groups. Certain basic rights, such as voting, are often considered universal while others, such as the right of the minority group to learn its language and culture, vary from one society to the other. Since the majority could deprive the minority of rights by democratic vote, the term "minority rights" will refer here to those rights granted by majority will alone.⁹⁷

Consistent with Jewish Israelis' tension between the ideas of a Jewish state and a democracy is the public's attitudes towards having a large national minority. While Israelis have a deep commitment to abstract principles of democracy (procedural democracy), they have as strong a disdain for minority rights.⁹⁸

Edy Kaufman reports that a *Dahaf* survey illustrates that respondents of fifteen to eighteen years of age were asked if it is permissible to restrict the democratic rights of Arab citizens; 33 percent agreed, 60 percent opposed. On the other hand, 49 percent believed the Arabs in Israel have too many rights and that these need to be restricted.⁹⁹ After reviewing extensive data, Kaufman concludes, "the salient preference for democracy is for Jews only."¹⁰⁰ Furthermore, he cites Aryeh Naor who argues that the attitudes of youth are not radically different from others with regard to issues of intolerance. "The lesson for us is no different from that taught by recent history: there is no such thing as selective or partial democracy...Curtailement of human rights—and it makes no difference what

⁹⁷Charles W. Greenbaum, Leon Mann, and Shoshana Harpaz, "Children's Perceptions of Minority Rights: Israel in a Cross-National Perspective," in Kimmerling, *The Israeli State and Society*, 134ff.

⁹⁸This is illustrated in: Van Leer Institute, "Political and Social Positions of Youth—1987," which showed that 80 percent of youth support democratic forms of government, however, approximately 80 percent indicated that Jews have more rights to Israel-proper than Arabs (compared to two-thirds that said Jews have more rights than Arabs to Judea, Samaria, and Gaza). Reported in *New Outlook* (February 1988): 21-22.

⁹⁹"Survey of Youth Opinions," *Dahaf* (March 1986) (Hebrew), in Kaufman, "War, Occupation, and the Effects on Israeli Society," in Kaufman et al., *Democracy* 95.

¹⁰⁰Kaufman, "War, Occupation, and the Effects on Israeli Society," 95.

justification is cited for forsaking a step—will sap our democracy, and those who seek to curtail Arabs will end by curtailing the rights of Jews as well.”¹⁰¹

How Israel responds will lead to two types of responses: authoritarian nationalism or pluralist democracy. We have learned from Woodrow Wilson's efforts to encourage self-determination in the international arena that not every “nation” can emerge as an independent state.

The minorities for which statehood was not a viable option were to be protected not only by the formation of democratic systems in which individual rights were recognized, but also by the recognition of their special rights as groups. The League of Nations established a system of minority treaties that guaranteed its protection to minority groups. This was a recognition that respect for individual rights did not constitute sufficient protection against both discrimination and forced assimilation but that the rights of the group as a whole also must be recognized.¹⁰²

But after WWII, the United Nations was not as concerned about minorities concerns. The main issue was decolonization, which led to new sovereign states that often showed little interest in their own minorities. There is nothing mentioned in the UN Declaration of Human Rights about minorities rights.¹⁰³ When ethnic conflict became so destabilizing, the UN adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992),¹⁰⁴ which protects ethnic groups from discrimination, advocates for their inclusion in national and regional political and economic affairs, and encourages the state to help them protect and preserve their own cultural, linguistic and religious practices.

¹⁰¹ Aryeh Naor, “The Bad Seed,” *Yediot Achronot*, April 21, 1987, in Kaufman, “War, Occupation, and the Effects on Israeli Society,” 96. Naor, former cabinet secretary for Menachem Begin, added: “There is an organic link between xenophobia and antagonism toward any dissent, whether by the press or by other gadfly critics. There is a link between the inchoate fear of Arabs *qua* Arabs, and the fear of anyone who is different from the majority—whether this difference lies in ethnic origin, way of life, or personal opinions. Such mental associations are nothing new: We’ve already seen such things elsewhere in history. The only difference is that now we are the ones doing it: We, the offspring of the victims of anti-Semitism, now ironically display these same thought patterns among ourselves.” See n. 86, above.

¹⁰² *Ibid.* 57.

¹⁰³ United Nations Declaration of Human Rights, <<http://www.un.org/Overview/rights.html>>.

¹⁰⁴ United Nations General Assembly, 92nd plenary meeting, A/RES/47/135, 18 December 1992, <<http://www.un.org/documents/ga/res/47/a47r135.htm>>.

Before the dissolution of the Soviet Union, the Commission on Security and Cooperation in Europe (CSCE) had focused its efforts on international relations. After new challenges concerning minorities emerged, it began to advance specific arguments for nations to consider. Two documents, the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (June 1990) and the Geneva Meeting of Experts on National Minorities (January 1991) both advocated strengthening democracy as the only appropriate response to ethnic conflict, not increasing nationalism. It was not only discrimination that needed to be thwarted, but also assimilation. To fight the latter, a state must consider "appropriate local or autonomous administrations."¹⁰⁵

The second communiqué of the Meeting of Experts reiterated the need for democracy, but it also recognized the need for collective rights. "Members of national minorities had the same political rights as all other citizens, but also the right to be represented as minorities. Similarly, the experts stressed that tall issues concerning minorities had to be settled through negotiations and consultations between the government and the representatives of the minorities seen as a collectively."¹⁰⁶

The Council of Europe adopted similar resolutions: European Convention for the Protection of Minorities (Feb. 1991) and a European Charter for Regional and Minority Languages (1992). This illustrates how a consensus emerged in Europe relating to democratic approaches to ethnic conflict.¹⁰⁷

While not directly related to events in Europe, it may be argued that Rabin's

¹⁰⁵ Ibid. 60-61. "Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE," (June 5-29, 1990) Section IV, 30-35. Contact CSCE for text.
<<http://www.csce.gov/helsinki.cfm>>.

¹⁰⁶ Ibid. 61. See "Report of the CSCE Meeting of Experts on National Minorities" (Geneva: CSCE, July 1991), Section III. The Council of Europe adopted similar resolutions: European Convention for the Protection of Minorities (Feb. 1991) and a European Charter for Regional and Minority Languages (1992).

1992 election victory was part of the same international wave of addressing ethnic conflict in states. His election victory marked a second *ma'apach* (upheaval)¹⁰⁸ marking the beginning of Israel's more forthright debate on its existing principles and values (i.e. nationalism and Zionism) in light of existing inconsistencies and weaknesses in its democracy and society.¹⁰⁹ More than previous administrations, Rabin's election campaign put domestic concerns on the national agenda, such as bridging socio-economic gaps between citizens (particularly Ashkenazi and Mizrahi Jews, as well as Palestinians and other new *olim*), the status of women, and the status of Israel's Palestinian minority.

II. THE POLITICAL STATE

Thus far, I have introduced some preliminary comments on trends in academe relating to Israel studies and nationalism. This will serve as a helpful foundation as I move on to explore Israel's political system and institutions in order to grasp the challenges Israelis face as living in a Jewish and democratic state.

Democracy in the New Yishuv

The influence of the second and third *aliyot* to Palestine set the scene for the State of Israel's political culture. Their fusion of socialism with collectivist pioneering ideals emerged as the dominant sociopolitical perspective in the Yishuv and in the state. The institutions created in the Yishuv set the scene. The fact that by 1926, 70 percent of Jewish laborers were members of the Histadrut indicates the centrality of the institution to the people.¹¹⁰ The Histadrut and the Jewish Agency became sources for employment, economic enterprise, and political development. After the Histadrut and

¹⁰⁷ Ibid.

¹⁰⁸ A term associated with Menachem Begin's 1977 election victory.

¹⁰⁹ See Joel Peters, "The Nature of Israeli Politics and Society," in Kyle and Peters, eds. *Whither Israel?*, 1-17.

¹¹⁰ Eva Etzioni-Halevi, *Political Culture in Israel: Cleavage and Integration Among Israeli Jews* (New

the Jewish Agency, perhaps the next critical institution created at this time is the Haganah, due to Arab opposition to the burgeoning Zionist movement.¹¹¹

Although most of the Zionists of the new Yishuv were not citizens of Palestine, the Jews developed a community framework with its own political system whose authority derived from its members. The challenge to this non-state was when there was a mingling of residential areas among different ethnic, religious, linguistic groups.¹¹² We can characterize the Yishuv as a "state in the making"—"a distinct social, political system despite its status as a minority, non-sovereign community in Mandatory Palestine and its reliance on Jewish diaspora resources for demographic growth, economic development and maintenance of political institutions."¹¹³

Ehud Sprinzak acknowledges the challenges that emerged from the Yishuv with the founding of the State:

The founding fathers of Israel acted generally within a democratic milieu but did not spend much time clarifying their conception of democracy or refining the appropriate institutional framework for the new Jewish State. Intensely preoccupied by their past memories, as well as by the Eastern European ideologies of their time, they responded to other pressures rather than the question of democracy or the nature of good government. Such ideas as normative pluralism or minority rights were not part of the agenda. This negligence... was to have a very high cost for the regime in later years.¹¹⁴

Yonathan Shapiro further illustrates the challenges by articulating the differences between Western and Israeli democracies through two primary components of Western democracy:

formal procedural democracy, as reflected in universal suffrage, in voting procedures, and in the guarantee of unimpeded competition between groups striving to partake in political decision-making; and the liberal component that protects the rights of individuals as

York: Praeger, 1977), 7.

¹¹¹ The Haganah originated in 1920 among other small militia-defense groups in response to the need for a defense group independent of the British. When Hashomer disbanded, Achdut Ha'Avodah set up the Haganah. In 1920, the Haganah moved to the Histadrut's authority, which had a larger constituency.

¹¹² Dan Horowitz, "Before the State: Communal Politics in Palestine Under the Mandate," in Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers* (Albany: SUNY Press, 1989), 31.

¹¹³ Horowitz 29.

¹¹⁴ Ehud Sprinzak and Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*, 6.

minorities. Liberal democracy not only expounds the principle of majority rule, but also provides for restraints to be imposed on the majority in order to safeguard the rights of individuals.¹¹⁵

The founding fathers came from a region of Europe where liberal values never successfully emerged. "In the early years of the twentieth century, the struggle against czarist totalitarianism passed into the hands of socialist and collectivist revolutionaries who gave preference to the social and political rights of the citizen and accorded low priority to civil rights."¹¹⁶ By 1948, Israel's political culture was deeply rooted in procedural democracy.¹¹⁷

Since the early Zionists came from oppressive regimes, none of them had a familiarity with the rule of law in a legalistic sense: "For Jews who never even experienced the rudimentary elements of democracy, such as free elections, free press, and majority rule, the niceties of the rule of law, impartial public administration, and civil service were completely irrelevant."¹¹⁸

Jewish Nationalism Strengthens Collectivist Orientation

While the Zionists were concerned with democracy as they understood it from socialist, British and other Western liberal models, Zionism emerged after other nationalisms were already underway. This Jewish nationalism was concerned with those who shared the same national identity. As a consequence of living among other nations and their respective nationalist orientations, they knew the place of minorities was problematic.

¹¹⁵ Yonathan Shapiro, "The Historical Origins of Israeli Democracy," in Sprinzak & Diamond, eds. *Israeli Democracy Under Stress*, 67.

¹¹⁶ Ibid.

¹¹⁷ See also Bernard Avishai, *The Tragedy of Zionism* (Farrar Straus Giroux, 1985), 92-93; John Sullivan, Michal Shamir, Patrick Walsh, and Nigel Roberts, *Political Tolerance in Context: Support for Unpopular Minorities in Israel, New Zealand and the United States* (Boulder: Westview, 1985), 61.

¹¹⁸ Ehud Sprinzak, "Elite Illegitimacy in Israel and the Question of Democracy," in Sprinzak and Diamond, *Israeli Democracy Under Stress*, 177. See note 8, above.

The founders of the state were more concerned with a Jewish state in secularized traditional terms: the right of Jews to return to their land and national sovereignty. Yonathan Shapiro argues that the foundation for Israel's political system emerged after the end of WWI, up until WWII. With the *aliyot* coming from Eastern Europe, the immigrants created a system that grew out of their political experiences.

Collectivism was the dominant principle in both socialism and the Eastern European version of nationalism. The most basic socialist principle, explained one of the ideologues of the Zionist-socialist camp, was 'the striving to turn the individual into an integral part of society.' Unlike Western nationalism, which identifies nationality with citizenship in the state, nationalism in Eastern Europe was identified with the ethnic group. This type of nationalism is also known as integral nationalism, in contrast to the Western version, which stressed the rights of the individual citizen.¹¹⁹

"Furthermore, Zionism functioned in a Middle Eastern context where ethnoreligious particularism—the delineation of all rights and privileges according to group identity—was the rule even before the advent of modern nationalism."¹²⁰

The traditions of self-government that were permitted by pre-modern authorities were helpful to the new Zionists. They knew how to function as a closed corporate society. However, when the situation arose to deal with another nation/people, they were ill equipped. The pre-modern *kehillah* would have dealt with the non-Jew in the Jewish community based on halachic concepts of *ger*. The stranger would have been tolerated—given individual protections and humane treatment; however, there would certainly not have been any recognition of collective identity. Laws concerning the *ger toshav* were the only relevant laws for a Diaspora existence. Having authority over another people was never tested.¹²¹

In its inception as a cry for national self-determination free of foreign domination, nationalism had been the ally of liberal democracy, but by the latter part of the century it was becoming

¹¹⁹ Yonathan Shapiro, "The Historical Origins of Israeli Democracy," in Sprinzak and Diamond, eds. *Israeli Democracy Under Stress*. Boulder & London: Lynne Rienner Publishers, 1993: 66.

¹²⁰ Alan Dowty, "Minority Rights, Jewish Political Traditions, and Zionism," *Shofar* 10, no. 1 (Fall 1991): 23.

¹²¹ Ibid. 29. Lucian Lazar, "Judaism and Democracy: Incompatible or Complementary," Jerusalem: Oz Veshalom-Netivot Shalom, n.d. <<http://www.ariga.com/ozveshalom/judaism/juddem.html>>

increasingly particularistic in its concrete manifestations.¹²² Not only did the position of Jews and other minority groups in the new nation-states of Europe become increasingly uncomfortable, but this new and narrower nationalism also reinforced and legitimized the particularism that was already basic to Jewish tradition and experience. The idea that different rights pertained to Jews and to non-Jews paralleled similar distinctions being made by dominant national groups and others throughout Europe. Thus neither Jewish tradition, nor the modern nationalism out of which Zionism grew, provided much ground for the recognition of groups of non-Jews as national entities with equal rights.¹²³

Furthermore, there was a latent distrust of liberalism. A key ingredient to Zionist ideology was the negation of the Diaspora (*shlilat haGolah*). There was a belief that liberalism was a Western phenomenon, and those Jews who emigrated to the West were subject to overbearing assimilation and intermarriage.¹²⁴

Centralized Government

Israel was founded as a welfare state, providing for the needs of all its citizens. This perception exists today: "The Israeli public expects government not only to safeguard its national security but also to serve as a vehicle for fostering social and economic development."¹²⁵ Supreme Court Justice Itzhak Zamir clarifies: "The state, according to this concept, bears responsibility for protecting the weak, providing basic services, such as social security, education, health, and supervising private enterprise so as to serve the public interest."¹²⁶ This model provides for vast powers for the Executive given by the Legislature. Thus, there are many administrative authorities, empowered by the Legislature, to perform tasks or provide benefits. Some are regulated specifically by the Legislature, others are given hardly any legislative standards or

¹²² See Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton and Company, 2000).

¹²³ Dowty, "Minority Rights, Jewish Political Traditions, and Zionism," 30. See the similar analysis by Jeff Halper, "The Intifada and Israeli Society," *Association for Israel Studies Newsletter*, 4 (Fall 1988): 11.

¹²⁴ Bar On, "Zionism into Its Second Century: A Stock-Taking," in Kyle and Peters, eds. *Whither Israel?*, 24.

¹²⁵ Joel Peters, "The Nature of Israeli Politics and Society," in Kyle & Peters, eds. *Whither Israel?*, 6.

¹²⁶ Itzhak Zamir, "Administrative Law," in Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel* (Oxford: Oxford University Press, 1996), 20.

guidance (such as the Israel Lands Authority) so they function almost independently.¹²⁷

Unlike the United States, Israel was not created with the same standards of checks and balances. Israel's legislature, the Knesset, is supreme over the other branches. Its enactments obligate all other authorities. It also is the source of the power of the other branches. In America, the Constitution establishes the three branches with equal status. The Knesset functions as legislature and constituent authority. A Knesset law is supreme and can supersede any previous law by requiring the appropriate majority.¹²⁸

The new Yishuv developed political and agricultural infrastructures. The political result was that Israel emerged with a "democratic centralism" after its founders built the political order in response to "urgent institutional requirements."¹²⁹ Not only were the institutions at the center, but only those who were connected to the mainstream Zionist vision had entry into places of power and authority.

Zionism constituted the root cultural paradigm of Israeli political culture. "Within the general Zionist framework, socialist Zionism, revisionist Zionism, statist Zionism and religious Zionism (through the different political movements and parties identified with them) have competed with one another for power and the right to claim their version to be the *true* interpretation of the Zionist vision."¹³⁰ This debate set the parameters of legitimacy in Israeli politics. Those who do not accept or even reflect its major tenets (e.g., Arabs and non-Zionist Orthodox Jews) have been historically politically marginalized.¹³¹

¹²⁷ Ibid. See Israel Lands Administration Law (1960) § 2. This is very significant as will be shown below, concerning land expropriation.

¹²⁸ Sometimes it cannot be a simple majority, but must be a "special majority" of all Knesset members if the law is entrenched, as are certain Basic Laws. For more a discussion of entrenchment of Basic Laws, see David Kretzmer, "The Supreme Court and Parliamentary Supremacy," in Zamir and Zysblat, 307. See also *Bergman v. Minister of Finance* (1969) 27(2) PD 785 HC 98/89. For comparisons between Israel and the US, see Shlomo Slonim, ed. *The Constitutional Bases of Political and Social Change in the United States* (NY: Praeger, 1990); Gary Jeffrey Jacobson, *Apple of Gold: Constitutionalism in Israel and the United States* (Princeton: Princeton University Press, 1993).

¹²⁹ Myron J. Aronoff, "The Origins of Israeli Political Culture," in Sprinzak and Diamond, *Israeli Democracy Under Stress*, 48.

¹³⁰ Myron J. Aronoff, *Israeli Visions and Divisions* (New Brunswick, N.J.: Transaction Press, 1989), 128-129.

¹³¹ Aronoff, "The Origins of Israeli Political Culture," 49. Aronoff notes: The polarization of political parties in recent elections has strengthened the Orthodox parties and made the Zionist parties somewhat less paternalistic toward the Arab voters. These trends, if strengthened, could lead to future governments being dependent on either Arab or non-Zionist religious parties. This would lead to

Dan Horowitz suggests that the lack of sovereignty encouraged the Yishuv's leadership to develop coalitions. The culture of bargaining and compromise led to a pattern for decision-making that was limited to the political center. As a result, sub-groups had to conform to some degree to the dominant Mapai, and compromise replaced majority rule.¹³² This not only impacts the culture of governing in Israel, but it effectively excludes minority (i.e., non-/anti-Zionist) voices.

The advantage to joining Mapai in these coalitions was the access smaller parties had to resources controlled by the national center, such as immigration certificates for movements' members in the diaspora and land allocations.¹³³ The labor parties (mostly Mapai) "organized vocational and ideological training of future immigrants while they were still abroad, organized their immigration and their economic, social, and cultural absorption, and continued their political socialization upon their arrival in the country. In doing so, they succeeded in incorporating large numbers of newcomers into their ranks."¹³⁴ They further advanced their position by using the politically affiliated education system. Eztioni-Halevy describes three trends that emerged since there was no centralized school system in the Yishuv: the labor trend, the general trend, and the religious trend. "The labor trend was more zealous than was the general trend in inculcating the pupils with its ideology."¹³⁵ This in conjunction with the youth movements fostered a strong labor-socialist-collectivist

significant revisions of the Zionist paradigm. For further discussion on this possible scenario, see Ian Lustick, "The Political Road to Binationalism: Arabs in Jewish Politics," in Ilan Poley and Ofira Seliktar, eds. *The Emergence of a Binational Israel* (Boulder, Colo.: Westview, 1989), 97-123. To a limited degree, the scenario was present during the Rabin/Peres Government when they were criticized for not having a "Jewish majority" to pursue the Oslo peace initiatives.

¹³² Horowitz, "Before the State: Communal Politics in Palestine Under the Mandate," 45. See also S.N. Eisenstadt. *Israeli Society* (New York: Basic Books, 1967).

¹³³ See Dan Horowitz and Moshe Lissak. *Origins of the Israeli Polity* (Chicago: University of Chicago Press, 1977), 175-181, 213-230.

¹³⁴ Eztioni-Halevy, *Political Culture in Israel*, 8.

¹³⁵ *Ibid.* 9.

ideology that would support Mapai. The center-right alliances were present but did not develop as strongly until later.

Horowitz argues that "lacking a constitutional framework to stipulate the rights of the individual vis-à-vis the system, the individual could realize his 'citizenship' in the organized Yishuv virtually exclusively through membership in a movement or party organization."¹³⁶ There was, then, a very practical purpose for affiliating in such ways, which further empowered Mapai and set the tone of Israel's political culture.

Party Dominance Develops Collectivist Culture

Mapai and its different permutations were the dominant party until shortly after the Yom Kippur War (1973). Yonathan Shapiro argues that Israel's party system, certainly up until the Likud's rise to power, fit into the classification of a "dominant party system." He cites Maurice Duverger: "A Dominant party... is a party that is not a majority party but gains more votes than other parties and clearly outdistances them for a continuous period of time. This advantage enables it to become the society's only ruling party, even though it always needs the support of other parties to form coalition governments."¹³⁷ Dominance is created "as a result of historical and structural circumstances that prevail at the formative period of the existing party system."¹³⁸

Israel's formative history begins with the Zionist movement. As Jewish *olim* arrived in larger numbers after the Russian Revolution (1905), the main issue before them was to find work. An extremely powerful mechanism evolved to address their

¹³⁶ Horowitz, "Before the State: Communal Politics in Palestine Under the Mandate," 45.

¹³⁷ Maurice Duverger, *Political Parties: Their Organization and Activity in the Modern State*. (New York: John Wiley & Sons, 1955), pp. 307-312. Qtd. in Shapiro, "The Historical Origins of Israeli Democracy," 75.

¹³⁸ Ibid.

needs: the establishment of the Histadrut in 1920, which was headed by Labor's political predecessor, Achdut Ha' Avodah, and then Mapai.

The Histadrut emerged as the center for providing services for the Yishuv. The other main power at the time was the Jewish Agency, the quasi-governmental body that gave financial support to the Histadrut (yet also encouraged a competing private sector as well). In the mid-1920s, during a financial crisis in Palestine, the Jewish Agency and the Histadrut had a power struggle. Political factions emerged, yet all the leaders realized that they lacked the "coercive power of the Communists in Soviet Russia, [so] they proposed to gain the laborers' confidence by proving that their party was willing and able to improve their working conditions and standard of living. In exchange they demanded that the workers be loyal to the party and its leaders, most especially during elections."¹³⁹

Elitism evolved where those in positions of leadership held a blatant superiority over the common folk. From the early days of the Yishuv, voluntary political bodies carried out many functions usually carried out by the government bureaucracy. This gave rise to a marked degree of politicization, manifested in the pervasiveness of political criteria in all walks of life.

Well before the establishment of the state, haggling for power and influence was commonplace. Hashomer Hatzair—a minority party within the Histadrut with 15-20 percent of the constituency—challenged the Histadrut to gain more influence. Hashomer Hatzair was strong enough to constantly threaten that it would leave the Histadrut, thus, weaken the entire power structure. Its threats turned into a *de facto* veto power. "The Mapai machine agreed to supply Hashomer Hatzair's kibbutz movement and urban groups with the material resources they badly needed in

exchange for their loyalty to the majority party and the Histadrut."¹⁴⁰ Similar occurrences happened in the 1930s when Mapai made arrangements with other factions, including the religious parties.

In return for the religious party's acceptance of the authority of the Mapai leadership and the readiness to join the coalition in the WZO... their members were granted access to the Histadrut labor exchanges and health services.... Mapai further agreed that the Sabbath and the religious dietary laws would be observed in all organizations supported by the WZO.... Last, but not least, Mapai agreed to allocate... positions in the WZO bureaucracy to members of the religious parties.¹⁴¹

Mapai became the dominant ruling party in the Yishuv, and all the other minor parties were dependent on Mapai for their existence. On the other hand, Mapai depended on these minority Zionist factions as well, whereas without them, Mapai would not have had the power to which they aspired. This dominant party structure was then transferred to the State of Israel, and it remained until the 1970s.

Alon Pinkas suggests that part of the problem with party dominance and the demands of Mapai and its successors was that other Western states developed their ideology before their institutions. In Israel, the reverse occurred. "Instead of democratic ideology shaping the structures and contours of a democratic system, formal institutions preceded the substantive elements of democracy and shaped the Israeli polity for many years to come."¹⁴² Thus, the Yishuv's institutions and the State of Israel have focused more on representation rather than tolerance, the rule of law and individual rights.¹⁴³

¹³⁹ Ibid. 72.

¹⁴⁰ Ibid. 73.

¹⁴¹ Ibid. 74.

¹⁴² Alon Pinkas, "Garrison Democracy: The Impact of the 1967 Occupation of Territories on Institutional Democracy in Israel," in Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict* (Boulder, CO: Lynne Rienner Publishers, 1993), 65. See Dan Horowitz and Moshe Lissak, *Trouble in Utopia* (Albany: SUNY Press, 1989), 144-146.

¹⁴³ One can argue that the first signs of a shift were in the 1953 court decisions of *Kol Ha'am* and *Al-Ittihad*.

I believe the transition point for this system occurred after the Six Day War. There began a gradual trend to be concerned with individual matters due to economic development and prosperity, and there was an increasing amount of discontent with the old school of politicians—particularly after the Yom Kippur War. But the system did not break until 1977 when Menachem Begin would mobilize disenfranchised Jews (especially Mizrahim) to bring him to the premiership. Nevertheless, the impact of party dominance on the collectivist nature of Israel as a society and Jewish Israelis in particular remained.

Edy Kaufman suggests that the early years of the state were such that they were on their way to normalizing its democracy. In a sense, its development was advancing to address liberal-democratic concerns/attitudes, but the Six Day War changed that. There was a shift that pushed the state and its institutions backward in terms of shaping its democracy.

Following the Six Day War, Yochanan Peres noted a marked increase in an already existing hostility towards the Arab minority in Israel.¹⁴⁴ The socialist model is challenged and social patterns change to encourage greater emphasis on individual achievements. But the political culture in Israel, which developed in the beginning of the new *Yishuv*, has created the foundation for a collectivist society that is mistrustful of advocates for individualism and pluralism.

But there have been major accomplishments since the early 1970s. Many of Israel's most successful *amutot* organized during this period. Sufficient economic development, combined with the greater integration of second- and third-generation Israelis, began to influence citizens to be concerned with the social and political fabric of their society. Perhaps, too, the decline of the Labor party motivated Israelis

to make demands for their well-being after realizing that the state was not going to provide for all of their needs as it was once considered.

Proportional Democracy System

One cannot discuss Israel's government and model of democracy without acknowledging its proportional system of democracy. Many scholars and activists claim that Israel's system of proportional democracy (despite the direct election of the prime minister) contributes to an atmosphere of ineffectiveness due to the fact that Members of Knesset are not responsible to a local constituency. There is just one national constituency, and Israelis vote for the party—not the individual—that will best serve this constituency.¹⁴⁵

There are many political factions due to a very low threshold of votes in order to gain entry into the Knesset: 1.5 percent of the national; the equivalent of 40,000 votes in the 1992 elections vote (prior to the 1992 elections, it was only one percent). Mapai's dominance in Israeli politics and the Histadrut after the establishment of the state, masked the weaknesses in this political system:

Israel enjoyed a dominant-party system such that the general election would merely help to determine which of the smaller parties was to join Mapai in coalition. The blackmail potential of the small parties was thus severely limited. What has changed since 1977 is not so much the proliferation of small parties as the relationship between the two major blocs, Labor and Likud, which have developed a closely competitive relationship, commanding the support of roughly equal portions of the Israeli electorate. This gives the smaller parties considerable blackmail potential.¹⁴⁶

This argument is clearly illustrated through the entrenched positions of the Orthodox parties over the last fifteen years. With 27 seats in the 1999 Knesset, the Orthodox parties have tremendous exploitative power. They celebrated an increase by four seats since the 1992 elections, which was considered a huge gain compared to

¹⁴⁴ Yochanan Peres, "Ethnic Relations in Israel," *American Journal of Sociology* 76 (1971): 1021-47.

¹⁴⁵ See Asher Maoz, "The System of Government in Israel," *Tel Aviv Studies in Law* 8, no. 9 (1988): 10f.; Allen Zysblat, "The System of Government," in Zamir and Zysblat, *Public Law in Israel*.

¹⁴⁶ Vernon Bogdanor, "The Electoral System, Government, and Democracy," in Sprinzak and

earlier election results. As part of their agreement to enter into the Netanyahu Government, they demanded that the religious *status quo* be "reinforced" through legislation (which actually destroys the so-called *status quo* and augments the power of the Orthodox Jewish establishment).¹⁴⁷ When Shimon Peres was prime minister in 1996, he tried to accomplish the same agreement to support his peace initiatives, but failed. More recently, Ehud Barak wooed the largest Orthodox party Shas (17 seats) and included them in his broad coalition. This outraged many of his supporters since it was considered as buying Shas' support for his peace initiatives, funding their debt-ridden schools in return.¹⁴⁸

The rigidity of the national list system seems to suppress accountability of the government to the people. The point is illustrated further when, after the elections (or, as in 1996, *before* the election), the government forms its coalition without the input of the voters. "Because there is not constituency representation, it is difficult for local interests to secure attention and develop that sense of communal and civil responsibility essential for a well-functioning democracy."¹⁴⁹ Max Werber stated: "Within a country-wide proportional list system only two types of nomination systems and leadership patterns may evolve: either a charismatic leadership backed by a party machine, or a nomination system based on manipulation and bargaining by

Diamond, *Israeli Democracy Under Stress*, 86.

¹⁴⁷ For an interesting discussion, see Charles Liebman and Eliezer Don-Yehiya, "The 'Status Quo' Agreement as a Solution to Problems of Religion and State in Israel," chap. 3 in *Religion and Politics in Israel* (Bloomington: Indiana University Press, 1984).

¹⁴⁸ Education Ministry officials agreed to grant the Shas educational network a special allocation of NIS 8.5 million in accordance with understandings reached in secret discussions at the end of October 2000. The deal was struck the same day Shas agreed to grant PM Ehud Barak's government a one-month "security net" to keep it from toppling. (Ha'aretz Services. [Shas school system to get NIS 8.5 m.] Ha'aretz, November 1, 2000.)

¹⁴⁹ Bogdanor 87.

party politicians and functionaries.' Under Ben-Gurion, Israeli politics approximated the first pattern; more recently, it has approached the second."¹⁵⁰

In an effort to address the problems of a proportional list system, the Knesset passed a new Basic Law: The Government (14 April 1992) which replaced the 1968 version. The first time it was implemented was 1996, which instituted the most dramatic change—the direct election of the Prime Minister who was given enhanced powers. A frustrating outgrowth of the ability to cast one vote for Knesset members and another for the Prime Minister is that Israelis' Knesset votes have been much more focused on ethnic concerns and domestic issues, and the vote for the Prime Minister was more concerned with security considerations. This left a Knesset in conflict with the Prime Minister. Instead of strengthening the dominant parties, sectoral interests were strengthened; the result has been increased coalition extortion and a political stalemate between the Knesset and the Government.

Groups like the Public Committee for a Constitution for the State of Israel, the Movement for Quality Government, and the Israel Democracy Institute, all encourage electoral reform. They are exploring such issues as raising the threshold of votes to enter the Knesset to five percent of the popular vote, as well as direct elections for part of the Knesset. Their hope is that this would provide a less divided Knesset, more accountable to the electorate.

Israel's High Court of Justice & The Rule of Law

When the British began its rule over Palestine in 1920 (the Mandate actually started in 1923), the British inherited the laws and legal institutions in place during the Ottoman Empire's 400-year rule over Palestine. It is a conglomeration of Moslem

¹⁵⁰ Qtd. in Ibid. 88; Max Werber, *Politics as a Vocation*. Cited in Avraham Brichta, "1977 Elections," in Howard R. Penniman and Daniel J. Elazar, eds. *Israel at the Polls, 1981: A Study of the Knesset Elections* (Washington, DC: American Enterprise Institute, 1986), 20.

traditional law, colonial European influences, the Ottoman code (the *Megelle*—a modification of the *sharia*), and Young Turk modifications. This made Palestine's system of laws highly convoluted and difficult to apply. The British saw that it was an antiquated system, inappropriate for an emerging modern society. They gradually undertook an anglicization of the legal system during the Mandate. The greatest influence, then, was the British Article 46 of the Order-in-Council (1922), which provided for the adoption of "the substance of the common law and the doctrines of equality in force in England insofar as there were lacunae in the local law, and as the circumstances of Palestine permit." This gave Palestine access to the long history of British law.¹⁵¹

Although the British brought their legal traditions, liberalism was not consistent, as seen through the following example: "The Defense (Emergency) Regulations, enacted in 1945... suspended all conventional rights. They provided for the confiscation of private property; for strict control over speech; and administrative detention, deportation, and even a suspension of the civil judiciary in favor of military courts."¹⁵² All of these powers were often exercised over Israel's Arab population after the War of Independence.¹⁵³

Israel's High Court of Justice is often seen as Israel's greatest protector and advocate for personal liberties. It has been used by civil liberties groups and individuals to advance social justice when the Knesset has failed to do so. Although

¹⁵¹ Allen Zysblat, "System of Government," in Zamir and Zysblat, *Public Law in Israel*. 2; See also D. Friedmann, "The Effect of Foreign Law in the Law of Israel: Remnants of the Ottoman Period," *Israel Law Review* 10 (1975): 192ff.; Ibid. "The Infusion of Common Law into the State of Israel," *Israel Law Review* 10 (1975): 324-377. For text of the Order-in-Council, see n. 414 above.

¹⁵² Pnina Lahav "Rights and Democracy: The Court's Performance," in Sprinzak and Diamond, *Israeli Democracy Under Stress*, 130.

¹⁵³ Bernard Joseph commented, before the establishment of the state, that "civil liberties, in Palestine, is either a matter of the past or of the future." Bernard Joseph, *British Rule in Palestine* (Washington, DC: Public Affairs Press, 1948), 226. Qtd. in Lahav 130.

recent studies indicate that the Court shares in the public's trust, it is dependent on the Knesset for authority. Furthermore, if there is a primary weakness of the Court, it is the fact that it has historically sided with government and military positions on security, conscious that its decisions can be abrogated through statutory procedures. Thus, its record as civil rights guardian is tempered.

Supreme Court President Aharon Barak is much more positive: "the Supreme Court has introduced, over the years, what has been described as a judge-made bill of rights and a system of high standards in public life."¹⁵⁴ Lahav disagrees with Justices Barak and Itzhak Zamir and their upbeat reviews of the Court's human rights record. While all agree that the court has often led the charge, they differ on the activist nature of the court.

According to Lahav, Israel's High Court has two major weaknesses, the lack of a tradition of judicial review and the state's lack of a constitution to guide it. She argues that as the last of the major Israeli institutions to be established, the Court was the weakest branch of government since its inception in September 1948. The new State of Israel already had a functioning bureaucracy and a political culture which embraced a majoritarian, party-dominated approach to democracy "which regarded the legislature as the final authority in matters of law and which had concomitantly rejected (or postponed) the pledge to enact a constitution."¹⁵⁵

In its early years, a culture of judicial restraint was imposed upon it. The existing reality was that the judges served under the existing colonial model of government without any protection or tenure (although the Knesset granted

¹⁵⁴ Aharon Barak, Foreword to *Public Law in Israel* by Zamir and Zysblat, viii.

¹⁵⁵ Lahav, "Rights and Democracy," 126. See below, "Basic Laws and Constitutionalism."

themselves extensive immunity).¹⁵⁶ Once the Judges Law (1953) was passed providing judges tenure, the judiciary began to assert its independence. The judiciary, seeing itself as being responsible to the law and not to Israel's executive or legislative powers, thought it could finally address the lack of liberalism in political culture. Yet, there was still no system of checks and balances as in the United States. Thus, moments of judicial activism were easily thwarted by the Knesset's legislative process, since only very few provisions were entrenched laws (those laws requiring a special majority of the Knesset in order to change the law).

The Zionist parties' main interest concerning rights was to extend the right to vote to all groups, including Palestinian Arabs and new immigrants, in the first Israeli elections in 1949. In conjunction with the right to vote was a demand for "social rights."¹⁵⁷ Lahav states, "the legislative record of the early 1950s is very impressive in terms of the social rights granted to Israelis: from the Women's Equal Rights Law of 1951, to the right of elementary education, social security, and mandatory compensation and vacation."¹⁵⁸ These social rights however, in a practical manner, were established to serve the Zionist-oriented members of society—thereby leaving out the new Mizrahi immigrants¹⁵⁹ and Palestinian Israelis.

¹⁵⁶ The Knesset Members Immunity (Privileges and Duties) Law (1951).

¹⁵⁷ Although enthusiastic about universal suffrage on the national level, there were many problems concerning voting for women in the early years of the Yishuv. As early as 1903, Orthodox factions protested women's inclusion in the vote representatives of the Yishuv. It was not until 1925 that women could vote. Local governments did not mandate equality in voting until 1941. Even on those *moshavim* and villages that are independently incorporated, one-quarter do not allow women to vote on the local level. Cf. *Poraz v. Mayor of Tel Aviv* (1987) the Court mandated Tel Aviv's mayor to allow women to vote for the Tel Aviv Chief Rabbinate's office.

¹⁵⁸ Lahav, "Rights and Democracy," 130. Superseding legislation would slowly chip the Women's Equal Rights Law away. A 2000 amendment to the Women's Equal Rights Law (Amendment No. 2) establishes the obligation of adequate representation of women at centers of decision-making, protection against violence and trafficking in women, rights over their bodies, and other social rights (while still leaving inequalities stemming from the Orthodox establishment's hold on personal status). See Knesset Committee for the Advancement of the Status of Women, *Report Presented to the Special Session of the United Nations General Assembly on Women 2000—Beijing +5*, 2000.

¹⁵⁹ See Tom Segev, *The First Israelis*.

Social rights, contrasted to individual rights, were consistent with the collectivist nature of society for which Ben-Gurion advocated. It is also consistent with the dominant socialist position. The same sentiment is illustrated in a 1951 debate over a written constitution. PM Ben-Gurion stated: "In a free state like the State of Israel there is no need for a bill of rights...we need a bill of duties...duties to the homeland, to the people, to *aliyah*, to building the land, to the security of others, of the weak."¹⁶⁰ Ben-Gurion's opposition to a constitution won and the legislature was the supreme governing body in Israel. The Court affirmed and defended this ethos when the Lehi Group was outlawed and appealed to the Court for redress. The Court upheld the ban based on the prevailing idea that "every citizen is required by the entire public to sacrifice his liberties for the public good."¹⁶¹

An insight into the matter is illustrated when the Court was asked to determine the status of Israel's Declaration of Independence as a legal document. In a case that did *not* relate to national security, but rather, to Israel's dire housing shortage, the Court held that the Declaration of Independence did not have any legal validity and could not be invoked in a court of law. Thereby, the Court accepted the concept of democracy as pure majoritarianism and rejected the idea that there are limits on the legislature.¹⁶²

The aforementioned Judges Law of 1953 was the turning point, enabling the Court to address the issue of freedom of speech when the government temporarily shut down two opposition communist newspapers in *Kol Ha'am v. Minister of the*

¹⁶⁰4 Divrey HaKnesset 819 (1950).

¹⁶¹*Brun v. Prime Minister* (1948).

¹⁶²Lahav 132. See, *Zeev v. Gubernick* (1948). Since the Declaration stipulated that a Constitution was to be enacted, it was thus not a constitution. It only expressed the "people's vision," but was not a legally binding document.

Interior (1953).¹⁶³ For the first time, Justice Simon Agranat, in an unanimous opinion, announced that the right of free speech was the cornerstone of Israeli democracy. *Kol Ha'am* totally changed the concept of rights in Israeli legal discourse and is the most quoted opinion in Israeli jurisprudence. Yet, the case also maintained the state's broad definition of the interest in national security. However, Agranat argued that some actions, even by an extreme opposition, do not threaten the state; therefore, certain individual rights could not be voided for reasons of the state.

The highlight of the case was the new significance accorded to the Declaration of Independence. Although past Courts rejected the Declaration as a foundation for rights in Israel, Agranat reinterpreted the previous opinions, declaring: "[The Declaration.] to the extent that it reflects the vision of the people and the core of its beliefs, we are obligated to pay attention to its contents, when we come to interpret...the laws of the state."¹⁶⁴

Lahav notes that from 1953 through the 1960s, resulting from the new prominence of the Declaration of Independence and the new exercise of judicial activism, the Court delivered a number of landmark opinions that expanded civil liberties in Israel. "Freedom of speech and its intimate relationship to freedom of association were recognized and given priority, even against considerations of terrorism and national security... and freedom of religious worship (to the Reform Jewish movement) was guaranteed, thereby denying monopoly to Orthodox Judaism."¹⁶⁵ The Court was gradually asserting itself, so it seemed, as a guardian of individual liberties.

¹⁶³ H.C. 73/53, 87/53 (1953) 7 PD 871.

¹⁶⁴ The Court concluded its decision quoting US Supreme Court Justice Louis D. Brandeis in the case of *Whitney v. The People of the State of California* (47 S.Ct. 641, 649 [1926]): "Those who won our independence believed that freedom to think as you will, and to speak as you think, are means indispensable to the discovery and spread of political truth: that without free speech and assembly, discussion would be futile."

¹⁶⁵ Lahav 137. See *Israel Peretz v. Kfar Shmaryahu* H.C. 262/62, P.D. 16 (1962).

However, the trend moved towards a more conservative orientation in 1965 with the *Shalit* case,¹⁶⁶ the first time the Court dealt with the "Who is a Jew" issue.

The Interior Ministry refused to register an Israeli army officer's children as Jewish because his wife was not Jewish, citing halachic sources. Lahav points out the critical ingredient in the discussion: "It should be clear from the start that the categories of nationhood and religion were mixed in this case, and that Shalit was interested in registering his children as Jewish in the national, not religious, sense of the word."¹⁶⁷

The case was resolved after all nine justices were assembled to render its opinion supporting Shalit's case. Yet, due to the political climate at the time and the Eshkol government's refusal to remove the nationality requirement for the population registry, the legal ruling was rendered moot after NRP threatened to leave the government coalition. The Knesset changed the laws determining the criteria for the registry, and maintained the nationality requirement.¹⁶⁸ (This criterion is currently being discussed again.) It should be remembered that the remedies provided by court might be only temporary. At the time of this case, the court could not overrule the legislature, to whom a coalition government can always resort if it is determined to carry through its course of action.¹⁶⁹

The impact of the reversal through the legislature, Lahav argues, led the Court to return to judicial restraint. She writes: "Two of the senior justices, who had hitherto participated in building the jurisprudence of civil liberties, abandoned the liberal

¹⁶⁶ *Shalit v. Minister of the Interior* H.C. 58/68, P.D. 23 (2) (1969).

¹⁶⁷ Lahav 139.

¹⁶⁸ Law of Return (Amendment No. 2) 1970.

¹⁶⁹ The Basic Law: Human Dignity and Liberty was not enacted until 1992.

camp and retreated into a position of judicial restraint and 'process jurisprudence' that shuns judicial intervention in substantive matters that are not 'purely legal.'¹⁷⁰

I found it interesting that the legal literature emanating from the United States during the Warren Court's era did not influence Israeli jurisprudence more strongly. Although it is an intriguing question, the reasons are clear: Israel's borders were vulnerable and its citizens were legitimately preoccupied with security. There was an increase of terrorist attacks, the escalation of the 1967 War, the War of Attrition, followed by the Yom Kippur War. The perception of this vulnerability exists till today and still influences the Court.¹⁷¹ As in the United States, the High Court often leads the society towards a more progressive outlook and conception of democracy, but their decisions are not made in a legal vacuum with total impartiality. Political currents often impact their rulings, not to mention their appointments.¹⁷²

The Israeli Court's style began to change, gradually, with the appointments of Justices Meir Shamgar and Aharon Barak, in 1975 and 1978, respectively. Both joined the Court with interests in civil liberties that characterized the American Warren Court. In the early years of their participation on the Court, they were often the dissenting opinions concerning individual rights. As the 1980s approached, they were the senior voices on the Court and challenged the existing doctrine of judicial restraint and conservatism.

¹⁷⁰ Lahav 140.

¹⁷¹ See "Under Siege" below. For an interesting opinion on Israelis' perception of and concentration on security-related matters, see Shulamit Hareven, "Israel: The First Forty Years," *Yediot Aharonot*, serialized in February 1, 12, and 26, 1988. Reprinted in *The Vocabulary of Peace* (San Francisco: Mercury House, 1995), 95-124.

¹⁷² See U.S. Supreme Court decisions: *Korematsu v. United States*, 323 U.S. 214 (1944) and *Hirabayashi v. United States*, 320 U.S. 81 (1944); in both cases, the Court affirmed the right of the government to place Americans of Japanese descent under curfew or evacuate them from their homes to "assembly centers." The cases were based on military orders to prevent sabotage and espionage. Also see David M. O'Brien, *Storm Center: The Supreme Court in American Politics*, 5th ed. (New York: W.W. Norton, 1999) for a discussion on how the American Court influences and is influenced by US politics.

Alon Pinkas suggests that the transformation in the Court's position and attitude was the 1979 landmark decision on the Elon-Moreh settlement in Samaria, when the Court ruled that the Jewish settlement was illegal. Despite testimony from Chief of Staff Lt. Gen. Rafael Eitan on its value for security considerations, others, including Ezer Weizmann, objected (particularly because it was during the Camp David peace process).¹⁷³ This case was significant on many levels, including that it challenged the government from thinking that it could circumvent the rule of law.¹⁷⁴

Eyal Benvenisti makes an important observation alluded to earlier:

One important trait of the High Court's case law...is its policy of deference to the discretion of the military authorities whenever the latter invokes security considerations. In such cases, the Court's scrutiny is usually confined to an examination of whether the act is *ultra vires* [beyond the legal power or authority of a person], and whether the reasons for cited security measures are actually a cover for irrelevant or illegal considerations.¹⁷⁵

This does not only concern considerations in the Territories, but has been applied in principle to considerations within Israel.¹⁷⁶ Although the concern about discrimination exists and is warranted, Benvenisti also recognizes that in the midst of high conflict it is difficult for the Court to gather its evidence in affidavits and to challenge the motives of the authorities. There are times when the Court's investigation is further hindered when the Minister of Defense issues a Certificate of Privileged Evidence

¹⁷³ Pinkas 76. *Izat Muhamed Mustafa Dwaikat et al v. State of Israel* H.C. 390/79, 34 (1) PD 1 (1980)—The "Elon Moreh Case." See Daphna Sharfman, *Living Without a Constitution: Civil Rights in Israel* (Armonk, NY: M.E. Sharpe, 1993), 101-105.

¹⁷⁴ Supreme Court Justice Itzhak Zamir, predicates the rule of law on three basic principles: "1) Formal—citizens have a duty to abide by the law as it was interpreted by the court; 2) Institutional—The duty to abide by the law is not only legal but involves conscience. Because the law stems from a representative power and thus enjoys legitimacy, the rule of law is in the institutional sense the rule of democratic law as opposed to the rule of tyranny; 3) Essence—The rule of law should mean the rule of just law. Democratic law does not necessarily mean the rule of justice." Pinkas 71. See Yitzhak Zamir, "The Rule of Law in the State of Israel," *Ha'Praktit*, special issue (Spring 1987): 61-74 (Hebrew).

¹⁷⁵ Eyal Benvenisti, "Judicial Review of Administrative Action in the Territories Occupied in 1967," in Zamir and Zysblat, *Public Law in Israel*, 376.

¹⁷⁶ *Ibid.* See *Abu-Gosh v. The Military Commander of the Corridor to Jerusalem* (1953) 7 PD 941, 943.

declaring that necessary evidence is not available for review because of security considerations.¹⁷⁷

There have been instances where the Court has questioned severity of measures, such as deportations or house demolitions, and has reprimanded soldiers for specific acts. All the while it has insisted on procedural grounds being followed.¹⁷⁸ In 1948, a very tense time, Ahmed al-Karbutli was put under administrative detention. The Court declared that his rights were violated since he was denied an appeal as stipulated in Article 4 of the Defense (Emergency) Regulations (1945). "The law applies not only to the citizen, but also to the authorities. Furthermore, the government, whose duty is to ensure that the citizen obeys the law, must first serve as an example by itself obeying the law... This is one of the basic principles of the rule of law."¹⁷⁹

It is therefore, not a one-sided picture. The court has matured over the years. But the Defense (Emergency) Regulations still permits house demolitions, suppression of political expression, administrative detention, and deportations. The Court has condoned such acts, however, its most significant act of courage has been its ruling that the Shin Bet's use of torture was illegal.¹⁸⁰

Referring to the West Bank and Gaza,¹⁸¹ Lahav addresses significant problems concerning human rights: "The Court has sanctioned the most blatant violations of rights, from the right to free speech, freedom of the press, the right to demonstrate,

¹⁷⁷ Eyal Benvenisti 376. Yet a Justice can reveal that evidence anyway if he feels that the interests of justice are superior.

¹⁷⁸ Ibid. 376-377.

¹⁷⁹ *Ahmed Al-Karbutli v. Minister of Defense et al.* H.C. 48 (8), P.D. 2 (1949).

¹⁸⁰ See section "Under Siege" above.

¹⁸¹ For more on the status of territories, see Meir Shamgar, ed., *Military Government in the Territories Administered by Israel 1967-1980—The Legal Aspects* (Jerusalem: The Hebrew University, Faculty of Law, Harry Sacher Institute for Legislative Research and Comparative Law, 1982); Erik Cohen, *Human Rights in the Israeli-Occupied Territories 1967-1982* (Manchester: Manchester University Press, 1985); Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton University

the right to freely associate, the right to freedom of movement, the right to property, and the right to pursue an education."¹⁸²

Some disagree with Lahav's overarching assertions. Supreme Court President Aharon Barak has stated:

Obviously, democracy is allowed and obliged to protect itself. Without security the democratic state could not be established. Nevertheless, it should not be forgotten that security is not only the army; democracy is also security. Our strength is in our moral force and in our cohesion to democratic principles, more so when great danger surrounds us. Indeed, security is not a goal in itself. Security is a means. The goal is the democratic rule which aids the government of the people to realize civil rights.¹⁸³

Barak defends the Court in the spirit of its role as arbiter and lawmaker. He says that law has a social function: "A Supreme Court does not merely solve disputes; it also creates law. It closes the gap between law and life. It preserves democracy both by protecting the political process and by guaranteeing human rights...[Yet,] stability without change is stagnation; change without stability is anarchy."¹⁸⁴ The Court must follow, to some extent, the values and needs of the society. On one hand, I think that this is a rationalization, for as much as the Court sided with military authorities because of "the social order," its other advances in civil liberties may have been against Israelis' desires. Despite his argument about objectivity, the jurist cannot be totally objective on any court. Even he equates democracy with human rights, illustrating his interest to adjudicate more liberally. More significantly, Israel's jurists, like jurists from any nation, are part of the elite. It should not be expected that they would side with those fighting against the jurists' own nation. Therefore, it should not be surprising that it sides with the majority on questions of security.¹⁸⁵

Press, 1993).

¹⁸² Lahav, *Israeli Democracy* 145.

¹⁸³ Justice Aharon Barak, qtd. by Judith Karp in "Finding an Equilibrium," *Israeli Democracy* (Fall 1990) 27. Qtd. in Kaufman 129.

¹⁸⁴ Aharon Barak, "The Role of the Supreme Court in a Democracy," *Israel Law Review* 33, no. 1 (1999): 11.

¹⁸⁵ Ruth Gavison, "The Role of Courts in Rifted Democracies," *Israel Law Review* 33, no. 2 (1999):

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A recent example of the above is *Roe v. Minister of Defense*¹⁸⁶ where President Barak upheld administrative detention orders for Lebanese citizens in Israel. The ultimate concern in the case was the possibility of these detainees to be used to negotiate the release of Israeli POW/MIA's. He needed to maneuver through the challenges of national interests and human rights.

A decisive triumph for the Court is its decision in *Association for Civil Rights in Israel v. The Ministerial Committee for Matters Relating to the GSS and the Head of the GSS* (1999) to stop torture of suspected terrorists during interrogations.¹⁸⁷ After five years of evasive deliberation, a nine-justice panel decided that the security service's violent interrogation methods—shaking and the use of “moderate physical force” during interrogations—are against international law forbidding torture.¹⁸⁸ Practices such as violent “shaking” of suspects during questioning, sleep deprivation, tying suspects in contorted “banana” positions, putting fetid sacks over their heads, keeping cells freezing cold in the winter, and beating them all year round, no longer exist.¹⁸⁹

There is good reason for the public to have confidence in the Court. Among Palestinians, it has a mixed record. The political phenomenon of reinforcing undemocratic policies as described above “breeds cynicism about the rule of law that

257. For comparison, G. Spann, *Race Against the Court* (New York: NYU Press, 1993), argues that American courts did not protect Blacks without public support.

¹⁸⁶ Not published. Hearing, February 1996. Text at <<http://humrts.huji.ac.il>> (The Minerva Center for Human Rights, The Hebrew University of Jerusalem).

¹⁸⁷ *ACRI et al v. The State of Israel, The General Security Service et al.* Sept. 6, 1999. Cf. “Symposium on the Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity (The Landau Commission Report),” *Israel Law Review* 23, nos. 2-3 (Spring-Summer 1989).

¹⁸⁸ United Nations, Universal Declaration of Human Rights (1948), Article 5, <<http://www.un.org/Overview/rights.html>>; United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), <<http://www.un.org/documents/ga/res/39/a39r046.htm>>.

¹⁸⁹ Gideon Levy, “A Year Without Torture,” *Ha'aretz*, September 3, 2000.

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one gives one set of rights to Jews and another to Palestinians.”¹⁹⁰ It is not surprising, then, that Palestinian Israelis have a low confidence on the court, police, and other major Israeli institutions representative of Israeli democracy precisely because of this description.¹⁹¹

However, there are several opposing groups to the Court's increasing strength. When the Court intervenes in security matters (i.e. human rights issues), even members of the Government and Knesset have criticized the Court. In addition to personal threats against the Justices' safety (particularly President Barak), the Court's very authority has been under attack, particularly by *haredi* leaders frightened by civil liberties legislation and court decisions that thwart Orthodox domination of Judaism in the public sector. Yael Yishai argues that suspicion of the Court by political moderates is due to the Court's recent challenges to the collectivist culture in Israel. Organized interests that promote individual rights and social justice are seen with the same suspicion.¹⁹²

An illustration is the Orthodox parties' November 1999 effort to pass a Knesset resolution calling upon the Supreme Court to "to avoid becoming involved in value-based, *halachic*, ideological or political issues." The resolution, passed by a majority of 14 to 10, added that the Knesset objects to the approach of Supreme Court President Barak that "everything is subject to judgment" and asserted that the Supreme Court should be expanded to enable the representation on it of all sections of the nation.¹⁹³

¹⁹⁰ Lahav 146.

¹⁹¹ Elia T. Zureik and Aziz Haider, "The Impact of the Intifada on the Palestinians in Israel," *International Journal of Sociology of Law* 19 (1991): 485.

¹⁹² Yael Yishai, *Land of Paradoxes: Interest Politics in Israel* (New York: SUNY Press, 1991): 259.

¹⁹³ The resolution was drafted by the United Torah Judaism Party and supported by Shas, the National Union and the Likud. Knesset members from Shinui, One Israel, the Center Party and Hadash voted against the resolution. NRP members did not vote. See Michal Sela and Yael Meyer, "The Knesset

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Other examples include the 1999 protest by Orthodox parties outside of the Supreme Court, gathering 250,000 people. On July 12, 2000, the Supreme Court upheld the verdict finding former Shas political leader Aryeh Deri guilty of taking bribes, fraud and obstruction of justice. While the Court reduced the verdict and the sentence for technical reasons, the Court did not bend to the considerable intimidation and chose to uphold the rule of law—holding all public figures to equal standards. In effect, the Court found that no one is above the law and everyone must bear the consequences of their actions. The following day, *Ma'ariv* had as its headline: "Shas declares war on the Supreme Court." According to press reports, after the verdict, Rabbi Ovadia Yosef declared that the Supreme Court follows "the doctrine of the *goyim*" and was "led astray by Satan."¹⁹⁴

Basic Laws and Constitutionalism

Why did the Court grow to be increasingly concerned with personal freedoms? Lahav argues that it may be attributed to the "increasing maturity of Israeli democracy, to the rise of citizens' groups committed to political and civil liberties (most notably the Association for Civil Rights in Israel), and to the concomitant enhanced sensitivity in the academic legal world to a jurisprudence of rights."¹⁹⁵ Yet, the lack of a written constitution in Israel and the want of a comprehensive bill of rights seem to make the efficient functioning of the legal system more difficult. "The fact that there has been

Attacks the Supreme Court," *The Pluralist* (e-mail) (Jerusalem: Israel Religious Action Center, December 2, 1999). The day after the resolution passed, Coalition Chairman MK Ophir Pines (One Israel) collected 61 signatures of Knesset members calling for urgent reconsideration of the issue. MKs from One Israel, Likud, Meretz, Yisrael B'Aliyah, the Center Party, Shinui and two Arab parties, Balad and the National Democratic Alliance, supported the initiative.

¹⁹⁴ *Ma'ariv*, July 13, 2000. Qtd. in Yael Meyer, "Renewed Campaign Against the Supreme Court," *The Pluralist* (e-mail) (Jerusalem: Israel Religious Action Center, July 13, 2000).

¹⁹⁵ Lahav 147.

little political interference in the domain of the judiciary so far is no guarantee that such action will not take place in the future."¹⁹⁶

Ruth Gavison discusses a debate over whether the Knesset has the right to advance a constitution. Israel's first body to be assigned the task was the Constituent Assembly, called to be established by the United Nations. The Yishuv, however, created a Provisional State Council and Government that was to govern until a Constituent Assembly would prepare a constitution. This occurred according to the Constituent Assembly (Transition) Law (1949), but then the Transition Law (1949) transferred power to the First Knesset. This Knesset debated the question of establishing a constitution, but for reasons too long to discuss here, a compromise ensued in the Harari resolution (1950). This mandated the Knesset Constitutional, Legislative and Judicial Committee to prepare a draft that would be "composed of separate chapters so that each chapter will constitute a basic law by itself. Each chapter will be submitted to the Knesset as the Committee completes its work, and all the chapters together shall be the State's constitution."¹⁹⁷

It seems that the debate over whether the Knesset has the power to create a constitution or not has been resolved in the affirmative. Some say that Israel already has one, comprised of its Basic Laws.

Justice Haim Cohn has argued that:

It makes no difference whether we will have a written bill of rights or we continue living without it...Even without a statute defining and laying down the various human rights, all those rights which could possibly or foreseeably be so defined and laid down are in actual practice legally recognized, protected and enforced. We derive these fundamental rights and freedoms not only from the constitutional conventions which form part of the common law of

¹⁹⁶ Arye Carmon, Foreword to *Israeli Democracy Under Stress* ed. by Sprinzak and Diamond, xv.

¹⁹⁷ The Harari Resolution, *Divrei Haknesset* 5: 1743, June 6, 1950. Ruth Gavison explores the different arguments by legal scholars over whether Israel's Knesset is able to bind itself in law, and thus create a constitution, or must it create again a Constituent Assembly. See Gavison, "The Controversy over Israel's Bill of Rights" *Israel Year Book on Human Rights* 15, no. 113 (1985): 115-122; Itzhak Zamir, "Rule of Law and Civil Liberties in Israel" *Civil Justice Quarterly* 64 (1987): 65f; Kretzmer, "The New Basic Laws on Human Rights," in Zamir and Zysblat, 145, n. 14.

England, and are thus *mutatis mutandis*, the residuary law applied here as long as no other law has been enacted on the subject matter; but it has been held time and again that the State of Israel, as a modern parliamentary democracy, will uphold and protect all those individual liberties that are of the essence of the rule of law and which may now be regarded as forming a part of universally recognized principles of international law.¹⁹⁸

Cohn's conception of the rule of law was beyond the scope of enacted law—it reached to principles and ideas of democracy and human dignity. Cohn, as attorney general and as a Supreme Court Justice, has been one of Israel's vanguard jurists, advancing the Court's authority in human rights concerns.

Justice Barak argues that the Basic Laws comprise Israel's Constitution, developed piecemeal as addressed in the Harari Resolution. As such, the Court is able to create "judicial law" on the basis of the Basic Laws.¹⁹⁹ Not only have these laws provided the legal framework for advances in civil liberties, the laws have contributed to the process of changing Israel's political culture. Barak was concerned about these laws, stating that rights laws have "a hope and a fear. The fear is of a crisis of legitimacy... if officeholders believe, even mistakenly, that a court that overturns a law has damaged democracy. The hope is that the constitutional changes will alter our legal and political culture."²⁰⁰

Others maintain that the recent Basic Laws give more power to the Court, but Israel still lacks a constitution and bill of rights. Ruth Gavison expresses concern over the "Constitutional Revolution" that has been discussed since the 1992 Basic Laws were passed. No matter how significant the laws are in Israel's constitutional process, Israel has not established a constitution. Shortcuts, such as PM Ehud Barak's recent

¹⁹⁸ Haim Cohn, "The Spirit of Israel Law" *Israel Law Review* 9 (1974): 459ff., qtd. in Zamir and Zysblat 5.

¹⁹⁹ Barak, "The Role of the Supreme Court in a Democracy."

²⁰⁰ Moshe Negbi, "Surprise! We Have a Bill of Rights," *The Jerusalem Report* (23 February 1995): 55.

attempts to create a constitution, can potentially further divide Israel's population.

She prefers to see the Israel's leaders go through a proper constitutional process.²⁰¹

MK Amnon Rubinstein was cognizant of the weaknesses of the Court as noted above. Aware that he would not receive comprehensive support for a Bill of Rights or a Constitution, he proposed legislation that would at least partially resolve the problem of having a legislature totally unrestrained by judicial review or a constitution. Rubinstein's efforts resulted in two Basic Laws: The Human Dignity and Freedom (sometimes translated as "Liberty") Act (1992) and The Freedom of Occupation Act (1994). The expressed purpose of these laws is "to protect human dignity and liberty, in order to anchor in a Basic Law the values of the State of Israel as a Jewish and democratic state."²⁰²

Moshe Negbi observed that these laws "limit—for the first time ever—parliament's authority to pass legislation violating specified rights."²⁰³ The Freedom of Occupation Act has obstructed religious coercion by providing a foundation for the Court to overthrow a ban on importing non-kosher meat (which the Knesset later reversed).²⁰⁴ The second law, however, broadened the reach of civil liberties in general. When Aharon Barak was Deputy Chief Justice, he interpreted "human dignity" very broadly, incorporating a wide range of personal rights. Barak stated that "the concept of human dignity necessarily implies human equality."²⁰⁵ As President of

²⁰¹ Ruth Gavison, *The Constitutional Revolution: A Description of Reality or a Self-fulfilling Prophecy?* (Jerusalem: Israel Democracy Institute, 1998). (Hebrew)

²⁰² Amnon Rubinstein, "The Struggle Over a Bill of Rights in Israel," in Daniel J. Elazar, ed., *Constitutionalism: The Israeli and American Experiences* (University Press of America, 1990). Note that the text was based on a Likud bill presented to the Fifth Knesset 1960s.

²⁰³ Moshe Negbi, "Surprise! We Have a Bill of Rights," *The Jerusalem Report* (23 February 1995): 55.

²⁰⁴ A provision of the Meat and Meat Products Law was declared invalid in *Meatrael v. Minister of Commerce and Industry*, 47(1) P.D. 521 (1993). The Labor coalition amended the Basic Law so not to alienate Shas, on which it depended.

²⁰⁵ Negbi 55.

the High Court, Barak has taken his legal philosophies and made them legal precedents, using these exact laws.

As Justice Cohn argued above, before the Basic Laws on human rights, the Supreme Court filled the void concerning civil liberties. *Kol Ha'am* illustrated that civil rights, as understood internationally, was part of Israel's legal system. But David Kretzmer refers to laws with such a status as "soft legal principles." Although legally binding, they do not restrict the power of the Knesset to overturn them easily.²⁰⁶

The following is another example of a successful advancement of civil rights. However, despite the outcome, the state of religious freedoms is still a matter of concern. The Court functions to settle disputes between the Executive and an individual seeking redress. But it is also the "guardian of the rule of law"—it has often ruled to make "discrimination...forbidden by any administrative authority in its private law dealings, such as buying, selling, or letting property."²⁰⁷ *Peretz v. Kfar Shemaryahu* (1962) is a perfect example, where a Progressive Jewish congregation wanted to hold religious services in the Town Hall. They were permitted for Rosh Hashanah and Yom Kippur, but they were denied use for Sukkot.²⁰⁸ Obviously, the municipality received pressure from Orthodox opponents and tried to argue that since there were other venues for Jewish worship services, they did not need to create disunity by permitting this group to worship. Justice Haim Cohn argued that religion and ritual observance are not only related to *halachah*, but to faith. The worshippers could not pray in another synagogue comfortably, and the publicly owned property

²⁰⁶ David Kretzmer, "The New Basic Laws on Human Rights: A Mini-revolution in Israeli Constitutional Law?" *Israel Law Review* 26, no. 2 (1992): 238-249, rev. version in Zamir and Zysblat, *Public Law in Israel*, 142, 143 n. 6. See *Kol Ha'am*; *Kahane v. Broadcasting Authority* (1987) 41(3) PD 255 (freedom of speech); *Dahaar v. Minister of the Interior* (1986) 40(2) PD 701 (right to travel abroad); *Poraz v. Mayor of Tel Aviv* (1988) 42(2) PD 309 (equality).

²⁰⁷ Zamir 40.

²⁰⁸ *Peretz v. Kfar Shemaryahu* (1962) 16 PD 2101.

could not be limited to some citizens, but not to others. Furthermore, it marks a case where the Supreme Court could intervene in a local authority's dispute because a matter concerning the rule of law and the public interest was involved.

Since this case law is based on soft legal principles, some still maintain a Bill of Rights is necessary as part of a new constitution. This would enable the Court to advance key decisions despite Knesset action. It is this point that makes judicial review an important component for a democracy.²⁰⁹

Judicial Review

Before 1995, the Supreme Court had only exercised judicial review over legislation that was inconsistent with entrenched clauses of Basic Laws. There are only a few such clauses in the basic laws and the activity of the Court was minimal in this area. However, in November 1995, the Supreme Court declared that it had the power of judicial review of Knesset legislation that violates a basic law, regardless of whether it has an entrenched clause. Thus, the Court confirmed the normative superiority of Basic Laws over ordinary legislation. This is a major constitutional development that some have called a "revolution" in Israel's constitutional law.²¹⁰ The combination of the two new basic laws on human rights and the Court's embrace of judicial review has ushered in a new era in the protection of human rights in Israel.

The transition point is *United Mizrahi Bank v. Migdal Cooperative Village*²¹¹ where President Barak opined that the 1992/1994 Basic Laws constitutionally grounded judicial review. It did not matter that the Basic Law: Human Dignity was

²⁰⁹ Ruth Gavison disagrees. In her "The Role of Courts in Rifted Democracies," she argues that democracies where there is significant social rifts, the Court should refrain from an activist nature, which could increase those rifts. It should try to remain as "appliers of law," rather than as Barak sees his role as a law-maker. In the same argument, she discusses at length how judicial review is not necessarily critical for a democratic country, citing England and Holland as democracies without a standardized process for activist judicial review. Yet, the former ACRI chairwoman does believe it should be more active concerning human rights violations.

not entrenched (it did not need a special majority), as is the Freedom of Occupation law. Both, joined with previous Basic Laws, became the framework for Israel's Constitution.

Judicial review in the field of public law has occurred by greatly loosening the threshold requirements of standing and justiciability. Normally, an applicant can bring a case only if s/he has standing—a personal interest in the matter. Here, when an administrative authority has acted contrary to law, and no one has a personal interest (or someone who does but does not want to come forward), “then the victim may be the rule of law.” As the guardian of the rule of law, the court will hear a case where there is no personal interest if the matter is alleged to reveal corruption, abuse, or if it may effect constitutional principles.²¹² This has enabled such groups as the Association for Civil Rights in Israel, Adalah—The Legal Center for Arab Minority Rights in Israel, and the Israel Religious Action Center to bring cases to the Court.

The issue of justiciability is also unique in Israel. At one time, issues would not have been justiciable before the Court when they related to significant political issues, such as *haredi* students being drafted.²¹³ Such obstacles to justiciability have been removed by the time Major (Res.) Yehuda Ressler made his last attempt to challenge the exemption to yeshiva students, where in 1988 the Court recognized his right of standing and sought create a new standard of when it would be appropriate to

²¹⁰ See David Kretzmer, “The New Basic Laws on Human Rights.”

²¹¹ (1995) 49(4) PD 221.

²¹² Zamir 40. *Ganor v. Attorney General* (1990) 44 (2) PD 485 also addressed standing of public petitioners. The attorney general did not prosecute banking executives suspected of corruption, leading to a crisis on the Israeli stock exchange.

²¹³ Ibid. See *Ressler v. Minister of Defense* (1988) 42(2) PD 441. H.C. 40/70 *Becker v. Minister of Defense* (1970) 24(1) PD 238 is one of the first cases on this matter that was dismissed due to non-justiciability and standing. An earlier *Ressler* case, brought in 1982, was also dismissed because the Court saw the issue as a political issue, and did not think it appropriate to opine (H.C. 448/81 *Ressler v. Minister of Defense* (1982) 36(1) PD 81).

intervene in the inner workings of the Knesset.²¹⁴ (Yet Barak's and Shamgar's conclusion was that the Defense Minister did have the power to grant deferments, a conclusion that Supreme Court President Barak would reverse in 1998, leading to the formation of the Tal Commission.²¹⁵)

The result of the above developments has given Israel's Supreme Court the ability to make its own law. Thus, as Aharon Barak has said, "For better or for worse, the Supreme Court has introduced, over the years, what has been described as a judge-made bill of rights and a system of high standards in public life."²¹⁶ Today, because of the Basic Laws, the Supreme Court has ruled that it is empowered to review the legality of any new law and invalidate a law that conflicts with these Basic Laws.

Survey of Groundbreaking Court Decisions Advancing Civil Liberties and Human Rights

It is worthwhile to mention a few of the High Court's landmark cases from the early

80s to the present²¹⁷:

- *Miaari v. Speaker of the House* (1986)—the Court overruled the Knesset speaker's suspension of the parliamentary immunity of a representative of the Progressive Party for Peace.
- *Lea Shaked v. The Minister of Religious Affairs* (1987)—the Court ruled to place a woman, Shaked, onto her religious council which was previously reserved only for men.
- *Dr. Neomi Nevo v. The National Labor Court* (1987)—the Court ruled that it was discriminatory to force women to return earlier than their male colleagues.
- *Anat Hoffman v. Jerusalem Municipality* (1989)—the Court recognized the right of Reform and Conservative Jews to serve on Religious councils.
- *Gamal Sufan v. The Judge Advocate General* (1989)—the Court demanded that a senior officer who ordered violent treatment of demonstrators in the occupied Territories be prosecuted.
- *Hava Pesaro Goldstein v. The Minister of the Interior* (1993)—the Court recognized Goldstein's Reform conversion to Judaism performed within Israel and mandated that he be registered as Jewish in the Population Registry.

²¹⁴ For more on standing and justiciability, see Shimon Shetreet, "Standing and Justiciability," in Zamir and Zysblat 265-274.

²¹⁵ Formed to examine routine deferments in army service for yeshiva students, the committee is headed by former Supreme Court Justice Zvi Tal.

²¹⁶ Aharon Barak, Foreword to *Public Law in Israel*, ed. by Zamir and Zysblat viii.

²¹⁷ Most of the cases below were litigated by the Association for Civil Rights in Israel. See ACRI Docket as cited. For more information about ACRI, see Esther Hecht, "Freedom Fighters," *The Jerusalem Post Magazine*, 18 April, 1997, pp. 11-15.

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- *Alice Miller v. The Minister of Defense* (1994)—the Court gave the right to women to participate in Air Force pilot aptitude tests.
- *Adir Steiner v. The Ministry of Defense* (1996)—the Court ruled that the IDF needed to provide the same-sex partner of a deceased army officer with the commemorative status granted to opposite-sex surviving partners.
- *ACRI et al v. The Ministerial Committee for Matters Relating to the GSS and the Head of the GSS* (1999).
- *Ruthie and Nicole Berner-Kadish v. Ministry of the Interior* (1999)—the Interior Ministry was compelled to register a lesbian woman who adopted the biological son of her life partner as the child's second mother in census registration and on her identity card, based on an adoption certificate issued in the United States.
- *ACRI v. the Jewish Agency for Israel, the Israel Lands Authority, and Katzir Cooperative Association* (2000)—the state may not discriminate between Jews and Arabs in land allocation, even land held by JAFI or ILA.
- *Adalah v. Ministry of Religious Affairs* (2000)—the Ministry of Religious Affairs was ordered to rearrange its cemetery budget to make certain the Arab sector receives its fair share. Virtually the entire NIS 17 million sum was allocated to the Jewish sector.
- *Adalah, ACRI, et. al. v. The Municipalities of Tel Aviv-Jaffa, et. al* (pending)—Court agreed with the petition and suggested that Arabic wording to municipal signs in Tel Aviv-Jaffa, Ramle, Lod and Upper Nazareth (where there are heavy concentrations of Palestinians). Attorney General asked for an extension to review the case (November 2000).

III. CURRENT CHALLENGES TO ISRAELI DEMOCRACY

I have shown that Israel's state and society faces a major challenge: the relationship between being a Jewish state and a democratic state. Dan Horowitz and Moshe Lissak effectively address several major dilemmas that underline the Israeli democratic culture and I believe emerge from this fundamental tension:

1) representative versus participatory democracy; 2) rule of law and individual rights versus considerations of *raison d'état*; 3) application of freedom of political organization versus the imposition of restrictions and limitations; 4) collectivism versus individualism in relation to the confrontation between social mobilization for collective goals and the protection of individual rights; and 5) universalism based on normative principles versus particularism based on ad hoc decisions.²¹⁸

Alan Dowty also recognizes the tensions just addressed: "Public opinion polls continued to show that, despite a general support for democratic values, support for democracy has its weak points in popular feelings of support for the idea of a strong leader, in willingness to limit minority rights, and the tendency to subordinate

²¹⁸ Dan Horowitz and Moshe Lissak, *Trouble in Utopia*, 252-257.

political rights to security considerations."²¹⁹ We can safely say at this point that Israel has not developed as a liberal democracy, rather some consider it (for better or for worse) as an "ethnic democracy."²²⁰

One cannot explore Israel's democracy without recognizing the critical importance of security as a factor. The left-right spectrum is defined in Israel almost solely on security issues.²²¹ (For example, Menachem Begin was one of the strongest advocates of a Constitution and Bill of Rights in the 1950s, against Mapai's opposition.²²²) Nevertheless, its stability thus far has been dramatic. It has succeeded in maintaining democratic institutions despite ongoing security threats and civil strife. Its achievements have grown despite its tension between security issues and the rule of law. "It is easy to resort to emergency legislation [Defense (Emergency) Regulations of 1945] whether it is necessary or not, but it is extremely difficult to jettison this course of action once adopted, for it appears to be effective and is eventually assimilated into public notions of vital security."²²³

Pinkas believes that despite the resiliency of Israel's institutions, there is a growing conflict between democracy and the rule of law on one hand, and the public's perceptions of being (constantly) under siege. The challenge is most clearly illustrated in Israel's thirty-three year-long occupation that inhibits the development

²¹⁹ Alan Dowty, "Jewish Political Traditions" 76. See especially the 1995 survey of 1200 Israeli Jews and Arabs by Sammy Smooha and As'ad Ghanem in Ghanem, "The Palestinians in Israel—Part of the Problem and not the Solution: Their Status if Peace Comes," in Tamar Hermann and Ephraim Yuchtman-Yaar, eds. *Israeli Society and the Challenge of Transition to Co-existence*. Proceeding of Symposium, November 21-22, 1996. (Tel Aviv: The Tami Steinmetz Center for Peace Research, Tel Aviv University, 1997), 59ff.

²²⁰ See p. 39 and 90 on "liberal democracy."

²²¹ Eztioni-Halevy 42.

²²² Michael Mandel, "Democracy and the New Constitutionalism in Israel," *Israel Law Review* 33, no. 2 (1999): 265. See *Knesset Debates*, February 1, 1950, reprinted in Itamar Rabinovich and Jehuda Reinharz, *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations 1948-Present* (Oxford University Press, 1984) 45; also, Amos Perlmutter, *The Life and Times of Menachem Begin* (Doubleday & Co., 1987), 250ff., and Peter Medding, *The Founding of Israeli Democracy, 1948-1967* (Oxford University Press, 1990), 39, n. 17.

of a civil society, both a prerequisite and a cultural outcome of democracy.²²⁴

A. Under Siege

To understand Israeli society, we need to address the fact that, until recently, the politics have been the politics of survival. Its Jewish citizens have justifiably seen themselves as under siege. The affects of ongoing strife and war must take a heavy toll on a democratic nation's citizens, its resources, and its democracy itself. The collective memory of Israel includes pre-state conflicts: Arab led raids on Jewish targets, acts of terror, large-scale rebellions (1919, 1929, 1936, and 1947). Later factors include the Shoah and post-establishment wars (1948,²²⁵ 1956, 1967, 1973, 1982, and 1991). In addition, there have been sporadic wars of attrition, terrorist attacks, as well as the Palestinian Intifada in 1987 and the current conflict/Intifada beginning September 2000. The annihilation of Israel was a self-declared goal of each Arab nation till recent years. It is not surprising to learn that Israelis referred to those periods between wars as "neither war nor peace," or "less war," or "beleaguered war," or "latent war."²²⁶

Gad Barzilai argues that democratic values and security considerations clash in Israel because they inherently contradict one another: "While democracy offers human freedom and the conditions for pluralism and individualism, warfare demands

²²³ Pinkas 80.

²²⁴ Pinkas 81. For a discussion on Israel's lack of a "civil society" concept in Israeli political culture, see Gad Barzilai, *A Democracy in Wartime: Conflict and Consensus in Israel* (Tel Aviv: Sifriyat Poalim, 1992), Part 4, chap. 2 (Hebrew).

²²⁵ I separate the War of Independence into two stages: a civil war, November 1947 through May 1948, characterized by guerrilla warfare between the Yishuv and the Palestinian Arab community; and a conventional war, from May 15, 1948-early 1949, between Israel's IDF and Syria, Jordan, Egypt, Lebanon and Iraq, and small expeditionary forces from a number of other Arab countries, like Yemen and Saudi Arabia (many were Arab Legionaries). See Benny Morris, *Righteous Victims*, 189-252.

²²⁶ Yoram Peri, "The Arab-Israeli Conflict and Israeli Democracy," in Sprinzak and Diamond, *Israel Democracy Under Stress* 344. For further reading, see Dan Horowitz and Moshe Lissak, "Democracy and National Security in a Protracted Conflict," 51 *Jerusalem Quarterly* (Summer 1989) 3; Itzhak Galnoor, "Israeli Democracy in Transition," in Peter Medding, ed., *Israel, State and Society, 1948-1988* (Oxford: Oxford University Press, 1989) 126.

mobilization, considerable centralism and the imposition of a range of restrictions on the scope of individual freedom."²²⁷ It is logical, then, that civil liberties and concerns for socio-economic disadvantages would be secondary in priority during such difficult times.

Pinkas argues that Israel's ideology and political system was maturing precisely at the point of the 1967 war.

Israeli society had a well-defined external threat against which it developed a clear consensus, supported by a degree of social cohesion and general acceptance of democracy. That trend was reversed with the occupation, when ideological disputes eroded the social cohesion and national consensus and consequently the effectiveness of the democratic system.²²⁸

Pinkas leads us to question how the situation in Israel is different prior to 1967. Further, prior to 1982, all of Israel's wars have been defensive in nature. Since the Lebanon War, the tensions and contradictions between war and democracy have increased in severity. This leads Barzilai to his ultimate concern:

As the Palestinian-Israeli intercommunal conflict has developed in intensity, it has produced further problems of non-governability, which in turn have led to Israel employing yet more considerable force against Palestinians and sometimes even against Israeli Arabs. If much more time elapses without the appearance of clear signs of the conflict abating, it could eventually spur the political establishment into using emergency laws, on a daily basis, to prevent dissent among the Israeli population.²²⁹

While I think that Barzilai takes his argument to an extreme, his premise is true. The level of force and repression has, at times, been extreme. Despite this premise, Israelis and the Court are advancing a liberalizing agenda for the State. This leads me to observe an interesting situation. On the other hand, as of this writing, Israel has instituted a State Commission of Inquiry to investigate the deaths of thirteen Palestinian Israelis killed in clashes with Israeli police in Umm el Fahm, Jat, Nazareth, Ma'awia, Arrabe, Sakhnin, Kufr Manda, and Kufr Kana. The Palestinians

²²⁷ Gad Barzilai, "Democratic Regimes During the War and Post-War Periods: Israel from a Comparative Outlook," *International Affairs* 54, nos. 1-2: 24.

²²⁸ Pinkas 66.

²²⁹ Barzilai 21. For a description of a garrison state, see Harold D. Lasswell, "The Garrison State," 46 *American Journal of Sociology* (1941) 455-467. See also n. 86 below.

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claim that the police opened fire on an unarmed crowd of Palestinian civilian protestors.²³⁰ This is precisely what Barzilai is concerned about. On the other hand, the Government instituted a state commission to examine the incident. This is a highly significant development in Israel's approach to deal with Palestinian Israelis' claims of discrimination.

The occupation of these territories has led to an increased security-oriented worldview, increased anger and mistrust against the Other, and inhibits the potential for social change. Nevertheless, Israel's collectivist, Zionist nature still leads the majority of Jews to suspend their differences in the face of hostility from an Arab enemy. We can see this today as Israel faces an angry Palestinian minority, as well as a violently aggressive Palestinian Authority. If there was ever doubt about this, Ariel Sharon's election as prime minister should clarify this point.

Israel has already had more than its share of wars and conflicts. It has been living with a formal state of emergency since its founding. The Israel Defense Forces (IDF) is an outgrowth of the unfortunate demands for defense for the Jews of the new Yishuv and has evolved as one of the major Zionist symbols, as well as a central institution of the state. Its place in society has a tremendous impact on the state and society: it has raised the status of women, advanced equality of opportunity for Mizrahi Jews, provides additional training and education to disadvantaged segments

²³⁰ The incidents took place between October 1-8, 2000. At first, a non-binding committee of examination was formed. After much pressure, PM Barak replaced the committee with a state-sanctioned Committee of Inquiry in November, according to the Commissions of Inquiry Law (1968). See Mohamed Zidan, Chairman of the High Follow-Up Committee for the Arab Citizens in Israel, "The Arab Citizens of the State of Israel vs. the State of Israel" an indictment presented to Israel's Commission of Inquiry. <<http://www.adalah.org/indictment.htm>>. Also, Dan Izenberg, "Israeli Arabs describe alleged police abuse," *The Jerusalem Post* (January 29, 2001).

of the population, and it serves as the networking venue for professional relationships.²³¹ Pinkas notes:

Security gradually evolved into a separate sphere of public and state affairs, quite distinct from other domains of life. It became set apart to the extent that it constituted an entity of activities and references that it gained dominance and supremacy in the political culture. By no means was it independent of other areas of national life. On the contrary, security encompasses economic and social domains that in other countries are only remotely connected to national security.²³²

The "security situation" became the sacred cow in Israel.²³³ Anyone Jew who challenged it could have been considered a "self-hating Jew."

Pinkas is concerned that the occupation has made security the dominant component of Israeli society, threatening institutional democracy in Israel. He acknowledges that the security situation warrants serious attention, but the impact of incorporating the Territories under Israeli rule has heightened the collective's perceptions about security threats and has had an adverse impact on the rule of law. The fact that the occupation has resulted in the creation of more than one legal system in the same territorial unity is by its very nature discriminatory. Prior to 1967, the development of Israel's democracy was a maturation process.²³⁴

Because of the heavy toll Israel and Israelis have paid because of security issues, Pinkas believes that the Israeli public has a high degree of tolerance when it comes to security matters. "The Israeli public and body politic comfortably assume that having certain democratic rights suspended or civil rights infringed upon is perfectly permissible and justifiable if done in the name of security." This assumption applies equally to military censorship of the press, as well as to policies in the territories. Pnina Lahav has shown how the Supreme Court has often refrained from

²³¹ All these points, and more, also have parallel negative ramifications on women and minorities, due to the male-dominated and aggressive nature of the army.

²³² Pinkas 67.

²³³ See Dan Horowitz, "Israel and Occupation," *Jerusalem Quarterly* 47 (Summer 1987).

²³⁴ Pinkas 70; Horowitz, "Israel and Occupation" 29.

challenging security matters until recent years. The 1984 "Number 300 bus incident" is an extreme illustration of the State's disregard for the rule of law when the General Security Service overstepped its bounds by murdering captured terrorists.

The decision of Israel's president to pardon the head of the Shin Bet and his close officials... caused an extraordinary public outrage in Israel. The Court was urged to hold the pardon decision premature and therefore illegal. The argument was that the pardon should take place after the trial and a conviction, not before such events take place. The Court ruled two to one to reject the petition, thereby asserting the legitimacy of the pardon.²³⁵

In terms of concern for Israeli democracy, the place of the military in society and the Jewish citizens' fair concern for their security has had two major side affects:

1) the attitude that important issues other than security are luxuries and cannot be properly addressed until after they are no longer under siege, and 2) the Palestinian citizens in Israel, as well as their counterparts in the territories, have been inextricably linked to hostile Arab states—thus, equating Palestinians and Arab states as a single unit, all focused on Israel's destruction. This refers to Palestinians citizens, as well as those in the territories.

Israel is at a crossroads. Israel's administration of the Territories, with Israeli Jewish citizens living in those areas and Israeli authority is given to the military and the Government, results in creating a state within a state. The source of legitimacy has been the emergency-time regulations and legislation which has serious implications for any democracy.²³⁶ The Defense (Emergency) Regulations of 1945 were British laws at the time of the Mandate. There are two interesting comments to be made

²³⁵Lahav 145. See *Barzilai v. The Government of Israel* (1986). President Chaim Herzog later declared that his pardon saved the Shin Bet from crumbling. While the critics' argument is interesting, American jurisprudence accepts the right of a president to pardon a person before a trial. President Ford pardoned former President Nixon, President Bush pardoned Iran Contra Affair defendants, including former Defense Secretary Casper Weinberger. Cf. *United States v. Klein* (80 U.S. 128 [1871])—the power to pardon is granted to the President without limit; *Biddle v. Perovich* (274 U.S. 480 [1927])—the President pardons because the public welfare will be better served.

²³⁶For an analysis of the military as legislator, see Amnon Rubinstein, *The Constitutional Law of Israel*, 2nd edition (Tel Aviv: Schocken, 1991) 93-131 (Hebrew). On the Defense (Emergency) Regulations, see Menahem Hofnung, *Democracy, Law and National Security in Israel* (Brookfield, VT: Dartmouth Publishing Company, 1996); Alan Dowty, "The Use of Emergency Powers in Israel,"

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about these laws. The first is that the pre-State Zionists, including Menachem Begin, found this legislation appalling and discriminatory—when it was used against the Yishuv. The second is that it has been in use and extended till this very day. Only in recent months has Minister of Justice Yossi Beilin tried to let it lapse and transfer appropriate powers through legislation.²³⁷

Emergency legislation in both Israel proper and the Territories can be enacted through three ways: 1) mandatory legislation (the Defense Regulations)—these empower a military commander to exercise legislative, judicial and executive orders; 2) administrative legislation—a government minister can issue orders under Section 9 of the Law and Administration Ordinance (1948), whereby the executive branch now has legislative powers and can bypass normal procedures to expedite an action; and 3) Emergency Legislation through primary legislation by the Knesset. (The concern here is that whatever the Knesset may repeal to protect individual rights, a Cabinet member can execute through Section 9, as stated above, thereby circumventing democratic practice.)

Questions have been raised concerning the principle of “equality before the law” among Jews and Palestinians in the Territories, which illustrate a “legal dualism marred by discriminatory characteristics.”²³⁸ He argues that a separate set of laws was created for Israel citizens (Jews) and non-Israeli Jews living in the Territories.

Shulamit Hareven contends that Israelis unnecessarily perpetuate a siege mentality. She states that the primary tension in Israel does not relate to security, but rather “an array of societal tensions.”²³⁹ These tensions relate to poor absorption, a

Middle East Review 21: 34-46.

²³⁷ The Knesset did extend the law on July 24, 2000, by a vote of 24-8. Gideon Alon, “State of Emergency Extended at Last Minute,” *Ha'aretz*, July 25, 2000.

²³⁸ Pinkas 74.

²³⁹ Hareven 98.

weak tradition of democracy among citizens, and most of all, Israel's heavy emphasis on the collective.

Cogent historical reasons brought about a situation in which not only are the individual's needs ignored and his stresses unnoticed... but in which a constant process is at work that relentlessly represses the individual's needs and feelings. We behave as though only the plural exists, completely oblivious of the fact that the plural is made up of a great many singulars, and when things are bad for each of them, they aren't good for the whole either.²⁴⁰

This perspective is rooted in Israel's founders' ideology of "the submergence of the individual."

Hareven contends that competing ethnic groups, many of whom have been repressed and alienated from the larger Israeli society, have produced anger and resentment—this being at the heart of the societal tensions in Israel. Security is just a projection—it is easier to put responsibility on Arabs. The underlying tension, therefore, is "that of the individual against the society," and one can only change that from within—a much harder task.²⁴¹

B. Jewish State and Civil Society

Israel is unique in that the State of Israel is described as a democracy, but the dominant national group is not "Israeli" citizens, but Jews. Israel's *raison d'être* is to attend to the needs of Jews—Jews within the State, as well as to Jews in the Diaspora, albeit to a lesser degree. The outcome is that those who are not Jewish, particularly Palestinians, are considered as second class citizens. This produces many conflicts regarding Israel as a "civil society." Clashes are inevitable between the Jewish social structure and the aspects of democracy—which emphasizes equal rights and equal treatment for all its citizens.

²⁴⁰ Hareven 109.

²⁴¹ Hareven 112.

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According to Ira Sharkansky Israeli society has exceptionally wide and diffuse “margins.”²⁴² Aside from state-owned operations, there also exist unique public bodies—the Histadrut, Jewish National Fund, and the Jewish Agency (JAFI)—whose existence preceded Israeli sovereignty. They are quasi-governmental agencies that provide a wide-range of social services. JNF and the JAFI, according to their own constitutions, function for the benefit of Jews only.²⁴³ They support local cultural enterprises, funding for social services (i.e. programs to help the elderly, disabled, etc.), help in the development and leasing of land, and help support the development of new rural localities.

The anomaly in Israeli society is the socio-political position of Arab citizens in Israel. While formally given equal rights as part of the democratic polity (i.e. the right to vote in elections), they are in reality far more subordinate than Jewish Israelis to the will of the (Jewish) politicians who manage the state.²⁴⁴

Michael Shalev has shown in his examination of the Histadrut's relationship to Arab workers that there is both "institutional permeability of the state/society boundary," and the "balkanization" of Jewish and non-Jewish state/society relations. By exploring the relationship between the Palestinians and the Histadrut one can see the political and economic dynamics of the labor market in shaping the distinctive pattern of state/society relations in Israel.²⁴⁵ We can mark this development by observing the following:

²⁴²Ira Sharkansky, *Wither the State? Politics and Public Enterprise in Three Countries*. Chatham, NJ: Chatham House, 1979.

²⁴³ In recent years, local Jewish Federations, particularly The Jewish Federation of Greater New York, has given thousands of dollars to Palestinian Israeli initiatives. They are currently exploring a more serious initiative and are discussing what exactly Federation's role should be in supporting Palestinian Israeli projects with American Jewish communal funds. John Ruskay, HUC-JIR, January 25, 2001.

²⁴⁴See Sammy Smooha, "Existing and Alternative Policy Towards Arabs in Israel," *Ethnic and Racial Studies* 5, no. 1 (1982): 71-98.

²⁴Michael Shalev, "Jewish Organized Labor and the Palestinians: A Study of State/Society Relations in Israel," in Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*.

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Aggressive attempts to bar Arabs from holding jobs, to permitting their flexible utilization (conditional on Jews abdicating their preferential right to employment), to participating in the construction of a rather rigid nationality-based segmentation of the job structure. The corresponding role to the Histadrut as a mediator between the state (or before 1948, the Jewish "political center") and civil society has also passed through several major transitions. The labor organization has moved from performing yeoman service in presenting the Arabs as the national enemy of the Zionist movement and uniting all Jews of Palestine in national solidarity; to operating on the state's behalf as an agency of political control and mobilization of Arab citizens....²⁴⁶

Pre-sovereignty, there are two perspectives on why the Arabs were excluded from the labor market. The first was the socialist values the Second Aliyah brought with them—by hiring Arabs, the Jews would be setting themselves up as overlords and the Arabs as the proletariat.²⁴⁷ An alternative idea is economic, relating to competition for jobs. Some thought that Jews needed the work and needed to promote independence (*kibbush ha'avodah*—"conquest of labor") but others saw it as fanaticism. Ultimately, the nationalist ethos overpowered the socialist one. Jews of the Second Aliyah wanted a return to the land, wanted better working conditions, and wanted to replace Arabs with Jews for manual labor.

As the socialist Zionist factors began to wane, and Arab opposition to Zionism increased (along with assaults against Jews and Jewish settlements), then the idea of "Hebrew Labor" emerged. By 1931, the Histadrut made this policy as *olim* were increasingly arriving in Palestine, which further agitated the Arabs. Now the labor market conflict became closely intertwined with the national struggle between Arabs and Jews. Jewish employers wanted cheap labor, and the Arabs could provide it. But as more Jewish unskilled workers arrived, they needed to be absorbed and trained.

²⁴⁶Shalev 94.

²⁴⁷ The Bilu's 1883 regulations mandated that its members interact with Arabs and learn Arabic to avoid confrontation. They encouraged the use of Arab workers on Bilu owned land. See Benny Morris, *Righteous Victims* 42-43.

Hebrew Labor was as much ideological as it was practical, but it left the Arabs unemployed and unemployable.²⁴⁸

The Histadrut set up a central Arab Department to foster Arab sympathy, but as aliyah increased, the Arabs were kept out of the labor market. The trend continued once the state was founded. The Employment Exchange Law (1958) instituted a policy of local preference, which effectively stipulated that Arabs are not to be offered work in Jewish areas unless the job cannot be filled locally. This emerged as labor shortages increased.²⁴⁹

This discussion of labor in the Yishuv is a good illustration of the tension between the egalitarian spirit of the day and Zionism. The Jews saw it as a moral virtue to create a Jewish state—in whatever territory of Palestine they could—to insure their survival and prosperity. Thus, the Zionist myth included the value of Jews returning to their homeland. The indigenous Arabs were only offered the opportunity to benefit from the prosperity that the Jews would bring to the region.

Civil Society / Jewish Nationalism

As the Yishuv labor market illustrated, some scholars are claiming that there has always been a struggle between Zionism and democracy. Erik Cohen wrote that Zionism in the Yishuv was "committed to both civil universalism and national particularism, without sensing their inherent contradiction: Israel was to be first and foremost a *Jewish* state."²⁵⁰

Looking strictly at its symbols, we can see it expressed, from its official calendar of Jewish holidays, its name, flag, anthem, and political rituals. Although not used religiously, these secularized symbols show the continuity of the Jewish state

²⁴⁸ See Gershon Shafir, *Land, Labour and the Origins of the Israeli-Palestinian Conflict 1882-1914* (Cambridge: Cambridge University Press, 1989).

²⁴⁹ Shalev 101

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with Jewish history. In contradistinction to this idea is Israel's commitment to formal democracy. Israel's Declaration of Independence expressed Israel's ideal of democracy for all its citizens, but certain sectors have experienced treatment to the contrary because of the dominant Jewish perspective. (It addresses individual rights, not collective/national rights.)

Normal Solomon clarifies the issue:

Nationalism should be distinguished from nationhood. Nationalism depends on transforming ethnic characteristics such as language and social custom into ultimate values for which the individual citizen is prepared to kill or die. Nationhood demands no such transformation, but rather a sense of community, of belonging with others through shared history and geography, and to some extent language and social custom; such values are by all means cherished by members of the nation, but they do not define the nation exclusively nor are they transformed into absolutes.²⁵¹

Baruch Kimmerling recognizes that since 1977, with the advent of a Likud Government and a more entrenched position concerning the Territories, Israeli leaders began to use the term *Eretz Yisrael* to describe Israel's national collectivity, rather than the legal term "State of Israel."²⁵² The first term refers to a primordial connection to a collectivity—a community—with its own symbols, myths and memories. The latter term reflects a more universal perspective, where the entity is more concerned with governance than memory.

Charles Liebman comments on Kimmerling, maintaining that the state is detached from its citizens, yet it is responsible *for*—and in a democracy *to*—all its citizens. "The state is conceived as having an interest of its own, independent of the interests of its citizens."²⁵³ On the other hand, the concept of Community "refers to a group of people who share or believe they share some characteristic and/or value

²⁵⁰ Erik Cohen 69.

²⁵¹ Solomon, "Zionism and Religion: The Transformation of an Idea," 149.

²⁵² Baruch Kimmerling, "Between the Primordial and the Civil Definitions of the Collective Identity: *Eretz Yisrael* or the State of Israel?" in Erik Cohen, Moshe Lissak and Uri Almagor, eds. *Comparative Social Dynamics: Essays in Honor of S.N. Eisenstadt* (Boulder: Westview Press, 1985), 262-283.

²⁵³ Charles Liebman, "Conceptions of 'State of Israel' in Israeli Society," *The Jewish Quarterly* 47

identity—the civil identity. Similarly, Kimmerling argues that Diaspora Jewry is a frontier of the Israeli state and society, and it is thus permitted to be involved and contribute to the collective identity.²⁵⁷

Cohen teaches that there are two principles by which adherence of the individual to the community is determined: "Citizenship in the state and membership of the nation."

The former determines the criteria of formal participation in the political community: Insofar as the state is based on universalistic laws and democratic institutions, it grants all its citizens formal political equality. The latter determines the criteria of substantive participation in the political community: insofar as the principal symbols of this community are national. This participation will be intrinsically particularistic—limited to the members of the national majority, or to those members of the minority who seek to join that majority, thus changing their ethnic identity. Minorities who seek to preserve their distinct ethnic identities are in a precarious position in such a nation state; they are called upon to perform their civil obligations and exercise their civil rights and to show loyalty to the state; but in the nature of the case they remain marginal to the political community and their loyalty remains suspect.²⁵⁸

Nations that seek to maximize its sense of unity and community, even among disparate ethnic groups try to create a "civil religion." When the civil religion espoused is rooted in actual religious symbolism or motifs, it places constraints on the groups wanting to be incorporated into it. This situation is distinguished as a "civic religion" where the political realm includes religious character.²⁵⁹ The creation of a civil / civic religion has broad appeal to traditionalists, as well as to the more secular folk who still maintain primordial connections to the symbols and values espoused.

Israel's founders sought a liberal state committed to both civil universalism and national particularism. They, as do many today, did not see any contradiction. Israel the Jewish state chose Jewish symbols—religious symbols that have been secularized and nationalized—to proclaim continuity of the Jewish-Israeli state with

²⁵⁷ Kimmerling, "Between the Primordial and the Civil Definitions of the Collective Identity: Eretz Yisrael or the State of Israel," 286-92.

²⁵⁸ Erik Cohen, "Citizenship, Nationality and Religion in Israel and Thailand," in Kimmerling 67.

²⁵⁹ Charles Liebman and Eliezer Don-Yehiya don't distinguish between the two. See *Civil Religion in Israel: Traditional Judaism and Political Culture in the Jewish State*. Berkeley: University of California Press, 1983; Also, "The Dilemma of Reconciling Traditional Culture and Political Needs:

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Jewish history. But the state was also to be committed to democracy—an enlightened democracy that provides equal rights to its citizens, regardless of nationality or religion.²⁶⁰ This was enshrined in Israel's Declaration of Independence, despite the fact that it was often at odds with the reality of Israeli governance for the beginning part of statehood.²⁶¹ As Israel evolved as a state, it has had to continually confront the unresolved conflict of being universalistic in outlook and particularistic in character.

A growing cleft emerged between the progressive institutionalization of the universalistic principles of citizenship by the administration and especially the judiciary, which, enhanced, within limits, the exercise of civil rights and access to opportunities for all citizens, and the progressive trend within the Jewish community towards a particularistic symbolic emphasis on membership in the Jewish nation, rather than citizenship of the state, as the basic principle of adherence to the political community.²⁶²

The concern about this Jewish state/democratic state tension is how far it may swing in either direction. What is the cost of advancing one over the other? Cohen claims that there has been a trend towards a new-traditionalist Jewish nationalism that, while reinforcing ties among Jews, it "de-emphasizes the modern, civil character of the state."²⁶³ Cohen says that this development can be seen in four stages:

- 1) The gradual "post-revolutionary" disenchantment of members of central strata in Israeli society, including much of the second generation, with the pioneering-socialist ideology of the founders.²⁶⁴
- 2) The re-assertion by [Mizrahi] immigrants and their progeny of their traditional Jewish world-view, after the partial failure of the Israeli establishment to "modernize" and "secularize" them.²⁶⁵
- 3) The Six Day War of 1967, which on the one hand, reinforced traditional and messianic conceptions of Israel following the occupation of the whole of the biblical Land of Israel, and, on the other, brought under Israeli domination about a million Arabs, who are not citizens of the state; and,
- 4) The October War of 1973, which damaged the prestige of the old-timer leadership and shook the confidence of the wider public in the ideological and political premises which it represented.²⁶⁶

Civil Religion in Israel," *Religion and Politics in Israel*. Bloomington: Indiana University Press, 1984.

²⁶⁰ Anita Shapira, "Socialist Means and Nationalist Aims," *Jerusalem Quarterly* 38 (1986): 14-27.

²⁶¹ See n. 161 below, *Brun v. Prime Minister* (1948).

²⁶² Cohen 70.

²⁶³ Ibid. See also Erik Cohen, "Ethnicity and Legitimation in Contemporary Israel," *Jerusalem Quarterly*, 28 (1983): 111-124; Liebman and Don-Yehiya, *Civil Religion in Israel*.

²⁶⁴ See S. N. Eisenstadt, *The Transformation of Israeli Society* (London: Weidenfeld and Nicolson, 1985), 409ff.

²⁶⁵ See Moshe Shokeid, "Cultural Ethnicity in Israel: The Case of Middle Eastern Jews' Religiosity," *Association for Jewish Studies Review* 9, no. 2 (1984): 247-271.

²⁶⁶ Cohen 71. See Peled 432.

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In most Western countries, the emergence of nationalism ultimately replaced religion as the primary argument for political power. "In contrast, Jewish religion is central to Israeli culture because of the strong historical and cultural link between Jewish religion and Jewish nationalism.... This linkage between religion and the state has strengthened the collectivist component of Israeli culture."²⁶⁷

Ahmad Sa'di critiques Israeli society for what he believes is a contradictory position on Israel's Arabs. Israel, he argues, wants the Arabs to modernize and be less radical, yet they should not develop their own nationalist consciousness. "In other words, the state modernizes the Arabs but they should not develop a national identification! The 'modernized' Arab could be either like Rashed Bey—in Herzl's *Althenuland*—a Western educated young man who praises Zionism, or the collaborator...."²⁶⁸

Democratic Responses to Ethnic Nationalism

Baruch Kimmerling writes that there is no such thing as a pure democracy, rather it is expressed along a continuum. Some are better than others, but no state is without flaws.

However, in order to classify any regime, as "democratic" at least four *necessary* (but not sufficient) *conditions* must persist. These necessary conditions seem to include (a) periodic and free elections, including the possibility to change the ruling political elites or parties through such elections. (b) Sovereignty of the people exercised through a legislative system constructed by parliament, according which the judicial system operates. No independent or parallel legislation and judicial system can be compelled by the state. (c) Equal and inclusive citizenship and civil rights. (d) Universal suffrage where every vote is equal to the other.²⁶⁹

²⁶⁷Shapiro 66. The lack of separation of religion and state has also hindered the development of democracy to its fullest potential, granting the legitimacy of individual rights. The political aspects of religion in Israel have often been the source for discrimination against specific groups, such as women, gays and lesbians, and non-Orthodox Jews. See Levi Weiman-Kelman, "Surmounting the Ideological Divide," *Reform Judaism*, Spring 1997.

²⁶⁸ Ahmad H. Sa'di, "Israel as Ethnic Democracy: What are the Implications for the Palestinian Minority," *Arab Studies Quarterly* 22, no. 1 (Winter 2000): 28.

²⁶⁹ Baruch Kimmerling, "Religion, Nationalism and Democracy in Israel," *Constellations* 6, no. 3 (1999) <<http://pluto.huji.ac.il/~mskimmer/reinat.HTM>>. The article maintains that the first condition is the only one in place in Israel. The second is not satisfied because there is a parallel law for the Territories. The third condition is addressed throughout this thesis. The fourth is not satisfied because

Many think that the solution for conflicts within nations is to strengthen democracy. Robert Rothstein writes that unchecked democracy itself may be a problem. "Democracy often encourages politicians to manipulate ethnic and communal conflicts for their own benefit...increasing the likelihood that ethnic or other groups will organize to pursue their own interests; therefore, the democratic process itself can undermine national unity, complicate the allocation of resources, and make effective government more difficult."²⁷⁰

Sammy Smootha describes Israel's system of democracy as an "ethnic democracy"²⁷¹ and defines it as a polity combining "the extension of political and civil rights to individuals and certain collective rights to minorities with institutionalized dominance over the state by one of the ethnic groups."²⁷² These minorities are by definition in a subordinate position, but they can "avail themselves of democratic means to negotiate better terms of coexistence."²⁷³ Smootha argues that this is a valid and effective mode of conflict management. There are many nations that are plagued with internal strife and conflict between different groups, based on

of the opinion of most Jewish citizens that questions of national significance necessitate a "Jewish majority," thus Palestinian Israelis' votes are not considered as equal as others (hence, they have never been in a coalition government).

²⁷⁰ Robert L. Rothstein, "Democracy and Conflict," in Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict* (Boulder, CO: Lynne Rienner Publishers, 1993), 26. See also Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (New York: W.W. Norton and Company, 2000), chap. 3-4.

²⁷¹ Smootha calls it "ethnic democracy." Yoav Peled refers to it as "ethnorepublicanism." Sammy Smootha, "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," *Ethnic and Racial Studies* 13, no. 3 (1990): 389-412; Yoav Peled, "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State," *The American Political Science Review* 86, no. 2 (1992): 432-443; Eliezer Schweid calls this "Jewish democracy," see, *The Idea of Judaism as a Culture* (Tel Aviv: Am Oved, 1986). The underlying premise is that in a Jewish state Jews are entitled to "collective rights," whereas Arabs would possess only "individual" citizen rights. Baruch Kimmerling argues that the most appropriate terminology is "ethnocracy" as shown in Oren Yiftachel, "Israeli Society and Jewish-Palestinian Reconciliation: 'Ethnocracy' and Its Territorial Contradictions," *Middle East Journal* 51, no. 4 (1997): 505-519.

²⁷² Smootha, "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," 391.

²⁷³ Ibid. 410. See also Smootha, "Ethnic Democracy: Israel as an Archetype," *Israel Studies* 2 (1997): 98-241.

race, language, ethnicity, nationhood, and religion (Bosnia, Rwanda, Iraq, Lebanon, Northern Ireland). Smootha believes that having an appropriate level of control of the non-dominant minority can maintain stability.

Smootha explores consociational democracy and liberal democracy as options before determining that Israel is best characterized as an ethnic democracy.

Arend Lijphart argues that consociational democracy is the best mode in ethnically diverse societies. Its advocates do not believe that political or economic development would sufficiently address key issues in countries with significant internal conflict.²⁷⁴ This model is based on a system where there is no favoritism to one ethnic group or another—the state is dedicated to equality between minorities and the majority, and all are entitled to live in peace and security. The system of government necessitates power-sharing, where stability is an outgrowth of its coalition. It is a proportional representation system that includes a mutual veto between the parties in critical areas of interest, proportionality in the allocation of opportunities and offices, and an important degree of ethnic autonomy.²⁷⁵ “Consociational systems are well-anchored in social structure, as reflected by identity symbols common to all subcultures and voluntary cooperation among them, indicating a non-zero-sum perception of differences. In contrast, the political regime in societies deeply divided on a community basis is characterized by the prominence and centrality of the community dichotomy.”²⁷⁶

²⁷⁴ See Arend Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977); Lijphart, “The Power-Sharing Approach,” in Joseph Montville, *Conflict and Peacemaking in Multiethnic Societies* (New York: Lexington, 1991), 491-510. See a critique in Ian Lustick, “Stability in Deeply-Divided States: Consociationalism versus Control,” *World Politics* 31 (1979): 325-344. Also see Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 569-576. Horowitz advances an alternative—cross-ethnic alliances; Horowitz, “Making Moderation Pay,” in Montville, *Conflict and Peacemaking in Multiethnic Societies*, 451-76.

²⁷⁵ Rothstein notes that this approach may be more appropriately called “consociational oligarchy.” Rothstein 27, 38 n. 34.

²⁷⁶ Horowitz, “Before the State: Communal Politics in Palestine Under the Mandate,” 49.

What is challenging for Israel and its supporters is the idea that "the critical variable [in nations with ongoing discord] is not democracy per se but rather the role of the state in any regime. If ethnic conflict is politicized by competition to control a biased state, then movement toward a neutral state may be needed to help resolve some ethnic conflicts."²⁷⁷

Liberal democracy is essentially concerned with the rights of the individual and the collective. Assimilation, often an implicit condition of liberal democracy, is a positive response to groups in conflict, however it is only successful when ethnic groups have similar features. While there are similarities in values, culture, language, the historical conflict has limited common ground between Israel and the Palestinians. While Jews from Arab lands have cultural bonds to Arab culture, its ties to Jewish culture and to Jews are still stronger.

Aside from the above types of democracy, there is still one other option: territorial change—the forms of partition, repartition, and unification.²⁷⁸ Obviously, it can be used in nondemocratic modes, in terms of repression, denial of rights, and transfer of populations. "Once intermingled cultural groups have fought, it is likely that their subsequent cohabitation in the same state will be wary, and consequently that they will fight again in the future... A number of scholars have been making the case for ethnic partition as the best solution for certain cases of very highly mobilized nationalist enmities."²⁷⁹ This is the mode that Israel is exploring along with the Palestinian Authority, but not for its Palestinian citizens.

²⁷⁷ Rothstein 27.

²⁷⁸ See Sammy Smooha and Theodor Hanf, "The Diverse Modes of Conflict Resolution in Deeply Divided Societies," *International Journal of Comparative Sociology* 33 (1992): 26-47; Smooha, "The Viability of Ethnic Democracy as a Mode of Conflict Management: Comparing Israel and Northern Ireland," in Todd Endelman, ed. *Comparing Jewish Societies* (Ann Arbor: University of Michigan Press, 1997), 268; Snyder, *From Voting to Violence*, 325-327.

²⁷⁹ Snyder 325. He refers to Chaim Kaufman, "Possible and Impossible Solutions to Ethnic Civil

In an ethnic democracy, the majority's superior status reaches all levels of society, ranging from national symbols (state emblem, anthem, language, holidays, religion, and immigration policy) to high offices (only trusted, loyal individuals will reach sensitive positions of leadership and security). "Since the state is considered to be the expression of the national aspirations of the dominant group, the nation takes precedence over the state or civil society."²⁸⁰

This may seem to be a contradiction to democracy, but Smoocha argues that it is a democracy if four types of rights are given to all its citizens (this does not relate to the Palestinians in the Territories). These rights include:

Human rights (including dignity, physical safety, and equality), social rights (including entitlement to health, housing, employment, minimal income, and education), civil liberties (including the rights of assembly and association, freedom of the press, and independent judiciary), and political rights (including the right to vote and stand for election, a multiparty system, change of governments through fair elections, and lack of military or foreign intervention in the political process).²⁸¹

Further, the following are the necessary conditions that generate and sustain ethnic democracy:

1. The dominant group constitutes a solid numerical majority, capable of ruling alone without the necessary support of the minority. Lijphart lists this condition as militating against stable consociational democracy.
2. The dominant group perceives the minority as a threat. The threat may be directed against national security, culture, political order, or the well-being of the dominant group.
3. The dominant group espouses ethnic nationalism and believes in its inalienable right to a separate political entity. This national sentiment legitimates unequal statuses between majority and minority.
4. The dominant group opts for political democracy for all because of ideological commitment, expediency, or necessity. The dominant majority may reluctantly turn to ethnic democracy when it must extend democracy to the minority.
5. The dominant group is an indigenous majority, and the nondominant group is an immigrant minority. Indigenous status may serve as a basis for superior claims by the dominant majority.
6. The dominant group is a homeland community with a sizable diaspora. The need to protect and repatriate the diaspora can become a sufficient ground, in the eyes of the majority, to prefer the diaspora to the resident minority.
7. The dominant group enjoys ethnic dominance long before the introduction of democracy. It can force democracy to adapt to the long tradition of structured ethnic dominance.

Wars," *International Security* 20, no. 4 (Spring 1996): 136-75; and other works cited by Daniel Byman and Stephen Van Evera, "Hypotheses on Causes of Contemporary Conflict," *Security Studies* 7, no. 3 (Spring 1988): 49-50.

²⁸⁰ Smoocha, "The Viability of Ethnic Democracy as a Mode of Conflict Management," 268.

²⁸¹ *Ibid.* 269.

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8. The dominant group exercises flexible and extensive control over the minority.²⁸²

Smootha acknowledges the problematic discrepancies between Jewish and Palestinian citizens, yet maintains that this model has preserved democracy in the Jewish State, precisely because the Jewish majority *want* the state to be a Jewish state.

Contradictions in the system are highlighted by the restrictions on certain individual and collective rights, as well as the opportunities for the full expression of the minority's national identity. However, it is not a *Herrenvolk* democracy, which is limited to only the dominant group, as it was under South African apartheid.

Smootha does not apply this schema to the occupied territories, but as these conditions existed in Israel there have been different models initiated with regard to subgroups: consociational democracy to accommodate the *dati'im*, and a mixture of mechanisms to include the nondominant Jews from Arab countries.²⁸³

As it will be shown below, Israel's ethnic democracy has liberalized its treatment of Palestinian citizens in recent years. It is part of a trend of general democratization that is impacting other sub-groups within Israel, such as women, gays and lesbians, the disabled, and impoverished. The trend will continue until ethnic democracy in Israel collapses or moves to a more Western-style democracy, or it may simply continue to liberalize.²⁸⁴ Oren Yiftachel argues that "it is unlikely for an indigenous minority in a biethnic society, like Israel, to resign itself to the limitations and inequities of ethnic democracy, hence escalation and confrontation are inevitable."²⁸⁵ Smootha counters, arguing that despite the need to increasingly engage

²⁸² Ibid. 271-272.

²⁸³ Ibid. 273. See Sammy Smootha, *Israel: Pluralism and Conflict* (London: Routledge and Kegan Paul, 1978).

²⁸⁴ Smootha, "The Viability of Ethnic Democracy as a Mode of Conflict Management," 301.

²⁸⁵ Qtd. in Ibid. See Oren Yiftachel, "The Concept of 'Ethnic Democracy' and Its Applicability to the Case of Israel," *Ethnic and Racial Studies* 15 (1992): 125-35. Palestinian Israelis have been a long-lasting loyal and civil group within Israel. Yiftachel may have predicted the future in light of the current crisis in Israel where Palestinian riots within Israel-proper were expressions of solidarity with

in nondiscriminatory practices and recognize the Arabs in Israel as a Palestinian minority with the ability to contribute significantly to Israel as loyal citizens, Israel will remain a Jewish state, despite whatever concessions will be made to the Palestinian minority. To move to a consociational model would mean that Israel would become a binational state—one side Arab, the other Jewish.²⁸⁶ To engage in a liberal democracy would mean to make the state neutral—a state for all of its citizens as a secular-democratic state. Amy Gutmann argues that “liberal democratic states are obliged to help disadvantaged groups preserve their culture against intrusions by majoritarian or ‘mass’ cultures.”²⁸⁷ Therefore, “the transformation of Israel into a consociational or liberal democracy would require two fundamental but related changes: a shift of Zionism from integral and exclusive to open and inclusive nationalism; and the separation of Judaism between ethnicity, nationality, and religion. Both are unlikely developments in the near future.”²⁸⁸

As Israel enters the peace era, it may very well enter into a consociational democratic model. But just as Israel is indeed liberalizing in many ways, there is also the potential for loss of those achievements and increased marginalization.²⁸⁹

While Smootha's observations may be correct, I find it very problematic that this is the model that Israel has adopted—whether purposefully or inadvertently. As a

Palestinians in the Territories, as well as feelings of alienation, marginalization, and repression.

²⁸⁶ Binationalism was promoted by very few, particularly by such academics as Dr. Martin Buber (and the members of Brit Shalom). More recently, see Ian Lustick, “Creeping Bi-nationalism Within the Green Line,” *New Outlook* 31 (1988) 14-19; also Lustick, “The Political Road to Binationalism: Arabs in Jewish Politics,” in Ilan Poley and Ofira Seliktar, eds. *The Emergence of a Binational Israel*, 97-123.

²⁸⁷ Amy Gutmann, ed. *Multiculturalism: Examining the Politics of Recognition* (Princeton: Princeton University Press, 1994), 5.

²⁸⁸ Smootha, “The Viability of Ethnic Democracy as a Mode of Conflict Management,” 302.

²⁸⁹ Two illustrations: 1) After PM Netanyahu's election, there was a regression of the liberalizing trends towards Palestinian Israelis in public policy. 2) After Camp David II, the Knesset, concerned about PM Barak's negotiations over the status of Jerusalem, passed an amendment to Basic Law: Jerusalem (1980) to prevent him or his successor from giving Jerusalem to a Palestinian state by requiring 61 MKs to change the borders of the capital (November 27, 2000).

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result of my limited reading about ethnic conflict, it seems that Israel ultimately will need to adapt another model. Smootha acknowledges that ethnic democracy is a "second-rate democracy." It is not a Western model, as consociationalism and liberalism are. The levels of control and domination that exist will change over time—perhaps becoming more like consociationalism at times and more authoritarian at others. But his point is that it is a stable regime. Nevertheless, I do not believe that it can remain viable and continue to repress the national rights and delay recognition of Palestinian Israelis.

Palestinian critique of ethnic democracy

The first and strongest critique is that ethnic democracy is no democracy at all, but a justification to legitimize nondemocratic behavior within a Western-style state. Nur Masalha suggests that Israel does indeed have characteristics of a *Herrenvolk* democracy, "in which the Zionist settlers imposed on the Palestinians who remained under their control after 1948 a highly controlled political franchise, including restrictions on the freedom of expression and political organization, social segregation and economic exploitation."²⁹⁰

In the past, the classical response by social scientists was that Israel is an enlightened, Western, democracy that happens to live in a dangerous neighborhood. Ahmad Sa'di says that this demagogic line of explanation can no longer be accepted as Palestinian Israelis compromise 19 percent of Israel's citizenry (almost one million Palestinians within the Green Line).

Palestinian academics' responses are based not only on symbols and culture, or even the lack of equal opportunities, but that the state is *legally* considered both Jewish and democratic. It is not simply a characterization, but is explicitly delineated

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in legislation, case law, and Israel's Declaration of Independence. Critics argue that it is impossible to retain two contradictory systems. Sa'di critiques Smootha, saying, "ethnic democracy does not offer any solution to the inherent contradiction between the particularistic nature of Zionism/the Israeli state on the one hand and its use of universalistic legitimizing discourse on the other."²⁹¹ Sa'di makes a good point, but he has one major error. While Smootha is sympathetic to the critic, he is not arguing that the Jewish characteristics of the state or the Jews' dominant status should be changed, nor is he suggesting that there is a contradiction. He recognizes that the Jewish public want to maintain a Jewish state.²⁹²

Smootha cites 1995 survey data to strengthen his argument for ethnic democracy, concluding that it is the only viable option for Israel because Jews and Palestinians prefer this model. No majority favors liberal democracy (40.5 percent of Arabs against 4.5 percent of Jews). When Arab participants are told that this means that there will be no further separate Arab education with government funding, their numbers drop to 29.4 percent. Presented with the potential for intermarriage, it drops to 24.4 percent. "And the most important conclusions, the only point of agreement between the majority of Arabs and the majority of Jews is that in favor of a model of 'improved ethnic democracy.'"²⁹³

Sa'di counters with Smootha's own research, indicating that 30.9 percent of Israeli Jews favored denying Palestinian Israelis voting rights; 36.7 percent thought

²⁹⁰ Nur Masalha, ed. *The Palestinians in Israel* (Haifa: Galilee Center for Social Research, 1993), 4.

²⁹¹ Sa'di 25.

²⁹² Smootha is among many in the leftist intelligentsia who advocate for a liberal-leaning Jewish state, giving equal rights to its Arab minority. Others include most of the scholars in this paper (who are not postzionists), as well as Amnon Rubinstein, Amos Oz, A.B. Yehoshua, Alice Shalvi, Galia Golan, Naomi Chazan, David Grossman, Avrum Burg, Amos Elon, among many others.

²⁹³ Smootha "Ethnic Democracy: Israel as an Archetype," *Israel Studies* 2 (1997): 230. See n. 99. Cf. Smootha's 1988 survey data in "Class, Ethnic, and National Cleavages and Democracy in Israel," in *Israeli Democracy Under Stress*, 326, 330-334.

that Israel should look at avenues to "encourage" Palestinians to leave; and 45.6 percent thought to outlaw the communist party.²⁹⁴ Further, "75 percent of Palestinians surveyed objected to the idea that Israel should keep a Jewish majority, 50.1 percent said that they cannot identify themselves with Israel in its current Jewish-Zionist structure, and 50.3 percent thought that Zionism is racist."²⁹⁵ Thus, if three-quarters of Palestinians oppose a permanent Jewish majority, how can they support ethnic democracy, as Smootha argues?²⁹⁶ Further, the figures illustrating Jews' attitudes towards the rights of Palestinians is of great concern.

Sa'di contends that Zionism itself had a contradiction in it—one part progressive, universalistic and enlightened, and the other part that embraces ethnic exclusiveness. This fundamental characteristic of the state set the stage for the current status of Israel's Arab minority. He adds that the classic explanation (among Jews) for the gaps between Jews and Arabs is not the exclusive nature of Zionism, but the Arabs traditional social structure. In other words, Palestinians are kept on the margins of Israeli society because of their norms, institutions, and culture.²⁹⁷

The concern over ethnic democracy by its critics is not about majority rule, but elements of control.²⁹⁸ The control factors are asserted by the dominant ethnic nation, not (in principle) its citizens. Elements of control are present in every institution, from central administration offices to legislation to security services.

The nation-state is a homogeneous creation for the Jewish nation, and its

²⁹⁴ Smootha "Ethnic Democracy: Israel as an Archetype," 219, qtd. in Sa'di 32.

²⁹⁵ Smootha 209, Sa'di 32-33.

²⁹⁶ Sa'di contends that Smootha's survey was structured to make the Palestinian participants scared of liberal democracy because of issues concerning assimilation.

²⁹⁷ See Ahmad Sa'di, "Modernization as an Explanatory Discourse of Zionist-Palestinian Relations," *British Journal of Middle Eastern Studies* 24 (1997): 25-48.

²⁹⁸ Ian Lustick is the first to outline these elements in his *Arabs in the Jewish State: Israel's Control of a National Minority*. See also, Smootha, "The Viability of Ethnic Democracy as a Mode of Conflict Management," 284-292.

purpose is to promote acts associated with that people. But, because of the democratic elements of the polity, the minority can advance their own agendas that can yield incremental achievements.²⁹⁹ But Sa'di argues that you cannot have a democracy when the state itself is not neutral in the way it treats various groups' efforts to achieve their goals. "In this dynamic process all groups of society can organize themselves, participate in coalitions and achieve some of their goals, in this way the democratic regime is supposed to give expression to the principle of equality between all citizens. So far, Smoocha is the first to declare that democracy is not about the fulfillment of the principles of the French Revolution: *liberté, égalité, et fraternité*."³⁰⁰

Sa'di's conclusion:

At the practical level the implications of the model of ethnic democracy are disturbing. Smoocha legitimizes the dominance of the majority over the state but fails to delineate the boundaries of this rule, especially in the light of the absence of constitution in Israel. If the majority decides about the prime objectives of the state, then the claim that right wing politicians and public voice regarding the need to take decisions, on fundamental issues, by a Jewish majority sounds not only legitimate but reasonable too. Even if this is not Smoocha's position these are the implications of his model.³⁰¹

Illustrations of ethnic democracy in law

Israel's reason for being is to serve as a Jewish state, and it tries to synthesize its

Jewish character with a democratic system. Smoocha's argument that Israel is an

ethnic democracy is reflected in Israel's institutions and in its laws.

Shalit

Above, I have mentioned Israel's Declaration of Independence in terms of the *Shalit*

case.³⁰² The Declaration explicitly states that Israel is a Jewish and democratic state,

with many references to Jewish history, culture, and people.³⁰³

As for the *Shalit* case, the deliberations themselves illustrate the tension

²⁹⁹ Sadi 30. See Smoocha, "Ethnic Democracy: Israel as an Archetype," 199-200.

³⁰⁰ Sa'di 30.

³⁰¹ Sa'di 30.

³⁰² *Shalit v. Minister of the Interior* H.C. 58/68, P.D. 23 (2) (1969). See n. 166 above.

³⁰³ Several Basic Laws also explicitly state that Israel is a Jewish and democratic state. See "Basic

between belonging to the nation and being a citizen of the state. Justice Zvi Berinson wrote with the majority, saying, "there should not be injected into the concept of nationalism, which according to the recognition of most human beings is separate from religion, the strictures of the Jewish *halakhah*... [Therefore] the view of the *halakhah* on the issue of the nationality of a resident of the country cannot serve as a basis for a ruling of the civil courts in the State of Israel." Justice Moshe Silberg declared in a minority opinion: "Jewish nationalism should not be detached from its religious foundations. Jewish religious belonging is necessary for Jewish nationalism. There is still no Israeli Jewish nationalism, and if it exists, it is not necessarily secular nationalism." The Court's President, Simon Agranat, added: "In the history of the Jewish people the racial-national [*sic*] principle was joined with religious uniqueness, and between these two principles a connection was formed which cannot be broken. During the long history of the Jewish people, and at least until the modern era, it carried a national-religious character... according to the historical Jewish view the principles of nationality and religion are bound up one with the other and cannot be separated."³⁰⁴

Law of Return and Nationality Law

The most obvious law illustrating ethnic democracy is Israel's Law of Return (1950).

This law does not address the right of return of Palestinian refugees, but addresses every Jew who is not already a citizen of the State of Israel. Its intent is clear: "Every Jew has the right to come to this country as an *oleh*."³⁰⁵ The first few clauses illustrate

Law: Knesset, "Basic Law: Freedom of Occupation," (1992) and "Basic Law: Human Dignity and Liberty" (1992).

³⁰⁴ Ibid. For an intriguing discussion of the Supreme Court President's exploration with the case, see Pnina Lahav, *Judgment in Jerusalem: Chief Justice Agranat and the Zionist Century*. Chap. 12. (Berkeley: University of California Press, 1997).

³⁰⁵ *Sefer Ha-Chukkim*. No. 51. (July 5, 1950): 159. The only restriction is that the Minister of Immigration can reject an applicant if he "(1) is engaged in an activity directed against the Jewish

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clearly how the Zionist ethos made its way into Israel's code of law—signifying who the State is for.

Jews who were Palestinian citizens and *olim* became Israeli citizens from the day of the establishment of the state, according to the Nationality Law (1952). It allowed Jews to emigrate to Israel and gain citizenship, but it excludes Arabs refugees who fled their homes in 1948. According to Article 3, the Arab population had to fulfill three conditions in order to have their citizenship automatically go into effect. First, the person concerned had to be registered in the population registry by March 1, 1952. Second, the person concerned had to be resident in Israel on the first day the nationality law went into effect (July 15, 1952). Third, the person concerned must have been present in Israel after its establishment, or must have entered Israel legally during the period between the state's establishment (May 15, 1948) and the law coming into effect (July 15, 1952). Many Palestinians were unable to meet these requirements and were considered "absent" (even if they were residing within Israel). The issue is further complicated because a Palestinian child born in Israel to parents who are not citizens according to Article 3, that child is also not a citizen according to Article 4, which recognizes children born in Israel if they have one Jewish parent. Jewish children not born in Israel or whose parents are not born in Israel, however, are granted citizenship based on the Law of Return.

State of Education Law and other Minor Laws

The State of Education Law (1953) also raises concerns. Article 2 describes the law's objectives:

The aims of state education are to anchor the education in the country in the culture of Israel [Jewish culture—FG] and the scientific achievements, in the love of the homeland and loyalty to the state and the people of Israel, in the belief in agricultural and professional work, in

people; or (2) is likely to endanger the public health or the security of the State."

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pioneering training, in the yearning for a society built on freedom, equality, tolerance, mutual help, and human love.

The State Education Law also establishes separate independent educational systems—state secular and state religious schools—to satisfy the distinct demands of Orthodox Jewish citizens. Arab and Jewish students (generally) learn in separate schools through the high school level, however no autonomous educational system, run by Arab educators, exists for the Arab community to meet their needs as a distinct group with a common language, history, culture, and national identity. Arab education must still emphasize loyalty to Israel and coexistence, but learning opportunities about Palestinian identity have been suppressed until recently. Arab students have received little instruction in Palestinian history, geography, literature, culture, and traditions in their educational institutions and spend more time learning Zionism, Jewish history and the Hebrew Bible than the Koran, New Testament, and other Arabic sources.

Various other laws could be included in this section, including The Chief Rabbinate of Israel Law (1980) and The Flag and Emblem Law (1949).

Perhaps the laws with the greatest impact on Palestinian Israelis are those that relate to land and expropriation, particularly the Absentees' Property Law (1950).³⁰⁶ Because the impact is so extensive, it will be discussed separately, below.

The Yeredor Case

³⁰⁶ The following is a list of laws that have served as either the main instrument or a supporting one to seize Arab lands: The Lands Law (Acquisition for Public Purposes), 1943; Emergency Regulations regarding the cultivation of fallow lands and the use of exploited water, 1948; Emergency Regulations, 1945 (esp. Article 125); The Emergency Land Requisition Law, 1949; The Absentees' Property Law, 1950; The Development Authority (Transfer of Property) Law, 1950; The State Property Law, 1951; The Land Acquisition (Validation of Proceedings and Compensation) Law, 1953; The Jewish National Fund Law, 1953; The Land Requisition (Temporary Provisions) Law, 1956; The Lapse of Time Law, 1958; The Israel Lands Law, 1960; Basic Law: Israel Lands, 1960; The Forests' Law, 1966; The Land Ownership Settlement Law, 1969. List compiled by Usama Halabi, "The Impact of the Jewishness of the State of Israel on the Status and Rights of the Arab Citizens in Israel," in Nur Masalha, ed. *The Palestinians in Israel*.

There are two important examples of Israel's government banning political parties because of a conflict with Israel's *raison d'être* as a Jewish state. The first is the *Yeredor* case; the second is the 1985 amendment to the Basic Law—The Knesset.

In 1965, the Arab Socialist Party was banned from running in the elections as a political party, despite the fact that Palestinian citizens have been enfranchised as voters since 1948. Justice Sussman joined High Court President Simon Agranat in sustaining the ban, with Justice Haim Cohn dissenting.³⁰⁷ The case begins with the development of a group of young Palestinian Israeli intellectuals who broke off from the Communist Party to form a Palestinian nationalist party called Al-Ard (The Land). It was a response to Gamal Abdel Nasser's pan-Arab nationalist rhetoric. Between 1958³⁰⁸ and 1965, Al-Ard tried to form a corporation, publish and distribute a newspaper and other publications, and create an association. The Government and the Court consistently blocked every effort to organize and eventually banned the movement by the Defense (Emergency) Regulations (1945) in 1964.³⁰⁹ In an effort to establish its cause, the leaders of Al-Ard (who often were under house arrest) organized the Arab Socialist Party so that they could have a strong platform to promote their ideas, along with Knesset immunity. The Central Elections Commission (CEC) rejected their application arguing that the party was really Al-Ard with a different name. Lahav contends that "the message to Israeli Arabs was unambiguous: a political organization based on Palestinian nationalist aspirations would not be tolerated."³¹⁰ She further illustrates the tension dramatically:

The irony of this result from the perspective of Zionism is striking. In the aftermath of the emancipation of French Jews, the slogan was "to the Jews as a nation—nothing, to the Jews

³⁰⁷ E.A. 1/65 *Yeredor v. Central Elections Commission*, 19 (3) P.D. 365 (1965).

³⁰⁸ The same year as the Egyptian-Syrian unification.

³⁰⁹ See Lahav, *Judgment in Jerusalem*, 181ff. See also Sabri Jiryis, *The Arabs in Israel*, trans. by Inea Bushnaq (New York: Monthly Review, 1976), 187-96.

³¹⁰ *Ibid.* 183.

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as individuals—everything." In response, the Zionist movement insisted on the national rights of the Jewish people. Now the sovereign Jewish state was applying the same French slogan to the Palestinian Arabs.³¹¹

President Agranat was challenged by this case. He was sympathetic to the plight of Israel's Palestinians and eventually would become the president of the Association for Civil Rights in Israel. But as the Court's President, he felt that no party intent on Israel's destruction should receive immunity and promote its aims.³¹² Ruth Gavison has interpreted Agranat's opinion to mean that

Israel's being a Jewish state established as the fulfillment of the Jewish people's dream of self-determination justifies, as a necessary condition, the disqualification of a list which does not accept the Jewish people's right to a state of its own (as distinguished from a list which accepts this right but objects to some of its political and legal manifestations or questions the conditions under which a Jewish state should continue to be maintained in Israel).³¹³

Amendment to Basic Law—The Knesset and related cases

In preparation for the 1984 elections, the CEC barred two parties from running. Meir

Kahane's ultranationalist Kach party and the Progressive List for Peace (PLP),

headed by a former member of Al-Ard. Kach challenged Israel's democracy, insisting

that it was getting in the way of keeping it a Jewish state. PLP challenged the Jewish

nature of the state, challenging Israeli particularist practices and laws favoring Jews.

The CEC barred the PLP because it challenged Israel's right to exist, and it barred

Kach because of its racist, undemocratic nature.

Both parties appealed to the Supreme Court, both were reinstated and won seats in the 1984 elections. The Court declared that it had no power to ban Kach, and

³¹¹ Ibid. 294, n. 14. The source for the slogan is the French National Assembly's debate on the eligibility of Jews for Citizenship, December 23, 1789. See Paul R. Mendes-Flohr and Jehuda Reinharz, eds. *The Jew in the Modern World: A Documentary History*, 1st ed. (New York and Oxford: Oxford University Press, 1980) 104.

³¹² Lahav challenges the Justices interpretation of Al-Ard's goals—was it concerned with the destruction of the state or was it seeking to advance an expression of Palestinian nationalism in contrast to the Zionist narrative. See Lahav, *Judgment in Jerusalem*, 187-195. See also Peled, "Ethnic Democracy and the Legal Construction of Citizenship," 441, n. 9 regarding Cohn's dissent (*Yeredor* 381) and Gavison on the justification of limiting formal democracy in order to protect the commitment to Israel as a Jewish state.

³¹³ Ruth Gavison, "Twenty Years after *Yardor*—the Right To Stand for Election and the Lessons of History," in Aharon Barak, ed. *Essays in Honor of Shimon Agranat* (Jerusalem, 1986), 159 (Hebrew),

evidence against the PLP was insufficient.

As a result, an amendment was made to Israel's Basic Law—The Knesset (1985) that barred political parties deemed threatening to the state. The legislation declared:

A list of candidates shall not participate in elections to the Knesset if its goals, explicitly or implicitly, or its actions include one of the following: (1) Negation of the existence of the State of Israel as the state of the Jewish people; (2) Negation of the democratic character of the State; (3) Incitement of racism.³¹⁴

The Israeli Communist Party and the Progressive List for Peace (PLP), both predominately Arab parties, proposed to eliminate or mitigate the first article to be more inclusive towards Arabs. It was rejected.³¹⁵ It illustrates a clash (for some) between the particularistic Article 1, and the implicitly universalistic Article 2.

When Israel's CEC was asked to consider disqualifying PLP, Moledet, and Kach from the 1988 elections based on the above amendment to the Basic Law—Knesset, the CEC chose to let Moledet and PLP run and only disqualify Kach.³¹⁶ Later, the Supreme Court reviewed appeals of the decisions, and rejected both. The majority of the Court (3:2) ruled to reject the appeal based on lack of evidence against PLP. But it was not a clear-cut victory for liberalism. The dissenting opinion of a highly respected jurist, Deputy President Menachem Elon, illustrates the challenge:

The principle that the State of Israel is the state of the Jewish people is Israel's foundation and mission [*yessoda vi-yeuda*], and the principle of the equality of rights and obligations of all citizens of the State of Israel is of the State's essence and character [*mahuta ve-ofya*]. The latter principle comes only to add to the former, not to modify it; [there is nothing in] the principle of the equality of civil rights and obligations to modify the principle that the State of Israel is the state of the Jewish people, and only the Jewish people.³¹⁷

What provoked this response was may have been the fact that the PLP sought

qtd. in Peled, "Ethnic Democracy and the Legal Construction of Citizenship," 437.

³¹⁴ Basic Law—The Knesset (Amendment No. 9) July 1985; *Sefer Ha-Chukkim*, no. 1155, 7 August 1985, 196. The Political Parties Act (1992) similarly justified the banning of a party "which denies the existence of the state of Israel as a Jewish and democratic state."

³¹⁵ See David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder: Westview Press, 1990), 29.

³¹⁶ *Neiman v. Central Elections Committee*, E.A. 1/88, 42 (2) P.D. 177 (1988).

³¹⁷ *Ben Shalom v. Central Elections Commission for the Twelfth Knesset*, E.A. 2/88 42 (4) P.D. 749

total equality between Jews and Arabs (a Jewish-Arab state potentially negates the Jewish character of the State).³¹⁸ David Kretzmer argues:

[The decision implied that] on the decidedly fundamental level of identification and belonging there cannot be total equality between Arab and Jew in Israel. The state is the state of the Jews, both those presently resident in the country as well as those resident abroad. Even if the Arabs have equal rights on all other levels the implication is abundantly clear: Israel is not *their* state.³¹⁹

To further complicate the issue, Moledet was permitted to run because it encouraged transfer of Palestinians who were *not* citizens. Kach sought to expel citizens *and* non-citizen Palestinians. The court, argues Yoav Peled, "seemed to uphold the ethnonational principle of legitimation over the liberal-democratic one."³²⁰ Peled notes that Smoocha makes the same observation: "From the Israeli-Arabs' viewpoint, the provision that Israel is the land of the Jews all over the world, but not necessarily of its citizens, degrades them to a status of invisible outsiders, as if Israel were not their own state."³²¹

Smoocha makes a very powerful observation:

From a Jewish point of view, rejection of Zionism as an ideology and a force shaping the state is like rejecting the state itself. The refined distinction between the state and its character is neither understood nor condoned by the Jews. They are not interested in having Israel be just a state, but rather be a Jewish-Zionist state. For this reason, Arabs who doubt Israel's right to be Jewish-Zionist are regarded as potentially hostile and subversive.³²²

There is another interesting development unrelated to the cases above, but is directly related to the amended Basic Law: The Knesset. MK Mohammed Baraka (Jebha/Hadash), sought to introduce a bill to legally advance equal treatment and protections for Palestinian Israelis, but it was disqualified from consideration by the Knesset. The bill, "The Basic Law on the Equality of the Arab Population,"

(1988). Qtd. in Peled 439.

³¹⁸ Ibid. Also Kretzmer 29-30.

³¹⁹ Kretzmer 31; emphasis original.

³²⁰ Peled 439.

³²¹ Smoocha, "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," 402.

³²² Smoocha, "Class, Ethnic, and National Cleavages and Democracy In Israel," in Sprinzak and Diamond, eds. *Israeli Democracy Under Stress*, 326.

articulates the idea that the rights of the Arab citizens of Israel be "founded on the recognition of the principle of equality." However, the bill's second, and problematic, clause states that the "aim" of the bill is to "anchor in basic law the values of the state of Israel as a democratic and multi-cultural state."³²³ The problem emerges specifically because of the Basic Law: The Knesset.

Religious Freedom

As a democratic and Jewish state, there is religious freedom for all (recognized) religions. But when religion interfaces with nationality, significant challenges emerge. Israel's political system is often mischaracterized as a theocracy because of the heavy imprimatur of Orthodox political parties and the Chief Rabbinate on public policy. The position of Jewish law concerning personal status for Jews, aspects of religious coercion in the public sphere, as well as the treatment of non-Jews as second-class citizens (particularly Palestinians) contributes to a tense atmosphere among the religious and secular.

All of that said, Israel is not a theocracy. Our prevailing question is, can Israel be both Jewish and democratic? While one is tempted to invoke America's success in creating a separation between church and state, this experiment is unique among nations. One must look to where there is a strong tradition of democracy alongside an established church.

One thing to keep in mind is that every nation has the right to define its character. Even in the United States, where the experiment of separation between church and state has been fruitful, there is still a dominant religious identity of the nation. Since you cannot constitutionally address the tone of that trend, the citizens

³²³ Adalah, "Legal Advisors Tell Knesset to Disqualify 'Arab Equality' Bill—1/5/99," <<http://www.adalah.org/news1999.html#5>>.

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will need to work within its democracy to alleviate any conflict.

There seems to be a trend that says that religion should have a role in civil society and public life. What then is the relationship between the state government and particular religious entities.³²⁴ The overwhelming number of believers in the world wants religious perspectives in the public square. This is certainly true for Jewish Israelis. Charles Liebman maintains that "it is a mistake to think that commitment to a Jewish state is simply a euphemism for denying Israeli Arabs a right to national assertion."³²⁵ Major Jewish academic, political, and literary figures are on record saying that the Israel cannot tolerate the prospect of a right of return for Palestinian refugees living outside of Israel. Permission for a huge number of another national minority to enter and become naturalized citizens would destroy the State of Israel as a Jewish state.³²⁶

How minorities are incorporated into the state, then, is the question of concern.

Norway

Norway is an example of an established church within a progressive society. It has striven to establish a system of equality in how it treats religious minorities while giving a higher status and recognition to Lutheran Christianity (King Kriterion III decreed Norway to become a Protestant Lutheran country in 1537).³²⁷ The King of

³²⁴ To explore this idea further relating to the United States, see E.J. Dionne Jr. and John J. DiIulio Jr., *What's God Got to do with the American Experiment* (Washington, DC: Brookings Institute, 2000).

³²⁵ Liebman "Democracy and Israeli Religious Leaders" 137. This is precisely the position of Adel Mana, "the state merely [uses the security argument] as an excuse and a justification for discrimination against Arab citizens." Mana argues that discrimination will continue even after peace is made between Israel and its neighbors. (Adel Mana, "Identity in Crisis: The Arabs in Israel and the Israel-PLO Agreement," in Elie Rekhess, ed. *Arab Politics in Israel at a Crossroads*, Tel Aviv: The Moshe Dayan Center for Middle Eastern and African Studies of Tel Aviv University, 1996.)

³²⁶ See Mordechai Bar-On and Uri Avnery, "The Back Page: Should Israel Allow Palestinian Refugees to Return to its Pre-67 Borders?" *The Jerusalem Report*, February 26, 2001: 56. A similar discussion on Jerusalem's status is Elie Wiesel, "Jerusalem in My Heart," *The New York Times*, January 24, 2001.

³²⁷ Norway, unlike Israel, is fairly homogeneous in terms of ethnicity and religiosity. The foreign born

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Norway, as in Great Britain, is largely a ceremonial head of state and head of the Church.

Article 2 of Norway's constitution establishes Lutheranism as the official religion, but allows "all inhabitants of the state [to] have freedom to practice their religion." Norwegian law understands these two ideas in Article 2 as the foundation to prohibit discrimination based on religion, despite the absence of an explicit law.

There are still some procedural demands, however, that discriminate in favor of Lutheran Christians. For example, according to Article 12 of their constitution, a minister must confess the Evangelical Lutheran faith. A Catholic or an atheist, then, would be barred from certain positions.³²⁸

Norway's political culture emphasizes coexistence. It is committed to principles and institutions of the United Nations, and few minorities complain about the state church's privilege. The state is the supreme body in the country, however, when human rights are violated, the Church has felt compelled to intervene. The most well known illustration is Norway's king as a symbol of resistance against the Nazi regime. More recently, 700 people were seeking asylum in 1993—most of whom were Muslims. The Norwegian churches gave them sanctuary to protect them from deportation.

The Church of Norway may have higher privilege and recognition, and its members may receive some minor benefit, the state is fairly open. Its greatest challenge today is an increasing Muslim immigrant community, but this challenge may be more about ethnicity than religion.

Sweden shares a similar history, with full protections of religious freedom

population was only five percent in 1991, and there is a very small Sami indigenous population. Kevin Boyle and Juliet Sheen, eds. *Freedom of Religion and Belief: A World Report* (London: Routledge,

guaranteed since 1951. Again, there is a long history of tolerance and an established church (in 1686, Sweden became an evangelical nation and that the Swedes needed to confess the evangelical faith). However, the Church of Sweden and the State were scheduled to part company in the year 2000, when a completely new ecclesiastical order will come into being.

Britain

Great Britain is the oldest and most stable of the major democracies. It has adopted the ideals of religious freedom and human rights as it underwent a long process of civic democratization.³²⁹ The transition was piecemeal. Britain needed to undergo a long series of debates and adapt legislation that rooted out discriminatory laws against Catholics, Jews, and nonconformists. (Nonconformist refers to the major Protestant Dissenter sects, taking root in the 17th century).³³⁰

Britain's contemporary political-religious culture may be described as "tolerant discrimination"—"a step away from assimilation but still not quite that pluralism which is conducted through dialogue and mutual change on the basis of respect and acceptance."³³¹ Britain's courts and political leadership have upheld religious freedom, even though there is no written constitution, but governs based on conventions, customs, and statute. Nevertheless, its Muslim population in particular has concerns over religious discrimination.

Similar to Norway, the (Anglican) Church of England and the (Presbyterian) Church of Scotland are established churches. The sovereign is the head of the Church

1997), 352.

³²⁸ Ibid. 353.

³²⁹ See Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict*, 131-154.

³³⁰ See Timothy Larsen, *Friends of Religious Equality: Nonconformist Politics in Mid-Victorian England* (Woodbridge, England: The Boydell Press, 1999); David Nicholls, *Church and State in Britain Since 1820* (London: Routledge and Kegan Paul, 1967).

³³¹ Boyle and Sheen, *Freedom of Religion and Belief*, 314.

of England. Also similar to Norway, the sovereign and the government (or prime minister) are involved in selecting bishops and some clerics are given seats in the House of Lords. But only the Sovereign must be a Protestant in order to achieve that position.

Also like Norway, privileges given to and received by the church are mostly symbolic. While some from the Church argue for severing the last ties to the state to remove unnecessary burdens, others defend the traditional role of the church and the monarchy (which includes voices from the Jewish community).³³²

Worship and religious teaching take place without any interference from the State. There is complete freedom of thought, conscience or form of worship and no restriction on the right of any citizen to change his or her religion. Atheists and agnostics are also free to propagate their views. The areas where there is conflict include the Education Act of 1988 which advances inclusion of Christian education in school curricula, while "taking into account of the teaching and practices of the other principal religions represented in Great Britain." It also advocates moments of worship in schools.

A recent dilemma concerned the criminality of blasphemy and blasphemous libel. A person may be held guilty of blasphemous libel if he or she publishes scurrilous and offensive references to Christianity that goes beyond the limits of proper controversy. This does not apply to debate and discussion about the truth of Christian doctrines. From 1922-1977 no case was brought before the courts. In 1977, the magazine *Gay News* was prosecuted for blasphemy by Christian conservatives who objected to the magazine's publishing of a poem portraying the centurion at

³³²Jonathan Sacks, *The Persistence of Faith: Religion, Morality and Society in a Secular Age* (Weidenfeld & Nicolson, 1991), 68f. See also Graham Zellick, "Freedom of Religion and the Jewish

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Jesus' crucifixion as having gay fantasies about Jesus. The debate escalated after the 1989 controversy concerning Salman Rushdie's *Satanic Verses*. While some objected to his portrayal of Islam and favored the law, others argued that such a law had no business existing in a pluralist society.

It is clear that even a great democracy like Britain (and America) has significant issues concerning discrimination. Europe is being challenged by increased immigration of ethnic minorities, which has implications on religious pluralism.. Despite legal traditions that favor pluralism, there are areas of discrimination that exist in education and the media.³³³

The significant factor, concerning both Norway and Britain, among other Western liberal democracies, is that there is a long history of political evolution that have contributed to their current religious-political scenarios—where there is a recognition of an established religion, without major infringements on minorities' rights. While I may not think that school prayer is good policy in the public sphere for many reasons, the Jewish community (among others) accepts the tradition and tonality of the state without feeling threatened.

If Israel would be permitted to evolve without such significant external and internal conflicts, then the transition could be made to a Jewish state that will not inhibit other minority groups, yet retain its own established "church."

IV. CASE STUDY: PALESTINIAN ISRAELIS

The Zionist movement and the establishment of the State of Israel created a new, interesting dynamic in Jewish history. How do Jews deal with their power? There have been different perspectives, depending on one's position on security, Zionism,

Community in the United Kingdom, *Patterns of Prejudice* (London) 21, no. 2 (1987): 3-16; John D. Rayner, "Nonconformism in Anglo-Jewry," *Jewish Quarterly* (London) 46, no. 4 (1999-2000): 55-59.

³³³ See *Research Project on Religious Discrimination: An Interim Report for The Home Office*.

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and the religious nature of the state. We will see below how some argue that Arabs should not only be subordinate to Jewish citizens of Israel, but subservient, based on halachic understandings of the relationship between Jews, non-Jews and *Eretz Yisrael*. But the Jewish literature that provides these sources were composed when Jews were *not* in power and have not been since Bar Kochba.

I consider Israelis' conception and use of power as an important aspect of Israeli society that sits below the surface. The history of how Palestinian Israelis have been treated will clearly illustrate Israel's challenges, and will identify reasons for their behavior.³³⁴

The burgeoning Israeli state did as much as it could to minimize the Arab population within its new state. Early on the Zionist leadership of Palestine recognized that a significant minority would threaten the Jewish character of their state. To illustrate, Ben-Gurion and Weizmann supported voluntary transfer to effectively create a Jewish state. Ben-Gurion addressed the traditional Zionist position on the benefits Jews could bring to Palestine without displacing any Arabs in his memorandum, "Outlines of Zionist Policy." In it he discussed how neighboring Arab states could easily absorb all of the country's Arabs in the event of transfer, but added, "Complete transfer without compulsion—and ruthless compulsion at that—is hardly imaginable." Further, Jews should not "discourage other people, British or America, who favor transfer from advocating this course, but we should in no way make it part of our program." He recognized the potential harm to international recognition if this became public policy. Those Arabs that remain must be treated as

Religious Resource and Research Centre, University of Derby (January 2000).

³³⁴ See David Biale, *Power and Powerlessness in Jewish History* (New York: Schocken, 1986). Irving Greenberg, "The Ethics of Jewish Power" in Elliot Dorff and Louis Newman, eds. *Contemporary Jewish Ethics and Morality: A Reader* (New York: Oxford, 1995). Also see Alan Dowty, "Minority Rights, Jewish Political Traditions, and Zionism," in *Shofar* 10 (Winter 1992).

equals, even though "our country may...suffer from the presence of a considerable illiterate and backward population..."³³⁵

During Israel's War of Independence, most Arabs fled or were forced out of their homes (either by the Israelis or Palestinians).³³⁶ The new Jewish State welcomed thousands of immigrants and hebraicized sites as new *olim* were moving into them.³³⁷ Political rights were given to the Arabs who remained, but only in accordance with the reigning Zionist ethos as discussed. While the foundation for the conflict has been long-established, the War of Independence becomes a nexus point in the relationship between Jews and Palestinians in the region. Palestinians have lost the most. Before 1948, they were the majority in the area. They look at the war as a humiliating defeat that threatens their cultural and national existence. The only bonds that they share with Jewish Israelis are citizenship and that they desire to live in the same land.

Palestinians and Democracy

As'ad Ghanem and Nadim Rouhana, two Palestinian Israeli scholars and activists, seek to advance democratic attitudes among Jewish and Palestinian citizens in Israel. To do this, there must be recognition of the state and its authority. The state must also have a commitment to democratic procedures that is illustrated in the way the polity interacts with its citizens. Within Israel, there are three important factors that need to

³³⁵ Qtd. in Benny Morris, *Righteous Victims*, 168. David Ben-Gurion, "Outlines of Zionist Policy," Oct. 15, 1941, Central Zionist Archives Z4-14632. Earlier thoughts on the subject include Ben-Gurion's report to the 20th Zionist Congress in response to the Peel Commission Report (1936). The document was censored so his advocacy for voluntary transfer would not appear, but his arguments are recorded on other sources (Morris 142-143). The Jews thought that the British would implement a procedure based on the Peel Commission's report in 1936. Herzl raised the issue even earlier in his diary (Morris 21-22; Theodor Herzl, *Diaries*, June 12, 1895). Cf. Israel Shahak, "A History of the Concept of 'Transfer' in Zionism," *Journal of Palestine Studies* 18 (1983) 22-37; Nur Masalha, *Expulsion of the Palestinians: The Concept of Transfer in Zionist Political Thought, 1882-1948* (Washington, DC: Institute for Palestine Studies, 1992); Yossi Melman and Daniel Raviv, "A Final Solution of the Palestinian Problem," *The Guardian Weekly* (21 February 1988).

³³⁶ See p. 16 above.

³³⁷ See Susan Slyomovics, *The Object of Memory: Arab and Jew Narrate the Palestinian Village* (Univ. of Pennsylvania Press, 1998).

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be examined: how the polity interacts with the Palestinian minority, internal relations within the Palestinian community, and Israeli policy towards Palestinian Israelis.³³⁸

They argue that Israel's policy towards Arabs was formatively shaped by three overriding ideas: that Israel was established as the state of the Jewish people, that it is a western democracy, and that Israel has special security concerns about its Arab population that will prevail as long as the conflict with all Arabs is not resolved.³³⁹

The first notion—that of being a Jewish state—is part and parcel of the Zionist enterprise. The Jewish character of the state is evinced through its symbols, language, calendar, and much more. The primacy of its Jewish citizens is shown through legislation and case law, an emphasis on *aliyah* and relations with Diaspora Jewish communities. It transmits the message that “Israel as a homeland belongs exclusively to the Jewish people rather than to its Jewish and Arab population.”³⁴⁰

Rouhana and Ghanem explore the dichotomy between Palestinian Israelis’ marginalization and their access to formal democracy:

Indeed, as far as its Jewish population is concerned, Israel enjoys democratic standards similar to those of well-established Western democracies. As far as the Arab population is concerned, the vast majority of Arabs were granted citizenship after the establishment of the state. The Arabs enjoy complete freedom of worship and formal equality before the law, with the significant exception of the law of return and nationality. To what extent Arabs in Israel actually enjoy the fruits of Israeli democracy is debatable. But most researchers agree that Arabs, while benefiting from democracy, don't enjoy full equality.³⁴¹

The challenges are due to ethnic cleavages (concerning the status of minorities in a Jewish/Zionist state) and that Israel's Jews do not seem to differentiate Israel's

³³⁸ Nadim Rouhana and As'ad Ghanem, “The Democratization of a Traditional Minority in an Ethnic Democracy: The Palestinians in Israel,” in Edy Kaufman et al. *Democracy*, 164. Cf. N. Rouhana, “The Political Transformation of the Palestinians in Israel: From Acquiescence to Challenge,” *Journal of Palestine Studies* 18, no. 3 (1989): 38-59.

³³⁹ Ibid. 165

³⁴⁰ Ibid.

³⁴¹ Ibid. For a more comprehensive discussion, see Ian Lustick, , chap. 5; David Kretzmer, *The Legal Status of the Arab in Israel*, chap. 6; Elia Zureik, *The Palestinians in Israel* (London: Routledge & Kegan Paul, 1979). On procedural democracy and minority rights, see note 114 above.

Palestinian minority with Palestinians in the Territories. Curtailing Palestinian Israelis' rights is consistent with addressing security concerns. Thus we see how the above first and third principles contradict the second—the Jewish character of the state intertwined with its overarching security concerns depreciates its commitment to democracy.

Origins of Israel's Palestinians' Status

In the Yishuv, Arab hostility towards Jews emerged as they felt that the Arabic character of Palestine was threatened by an ever-increasing flow of Jews and their resources into the land. This Arab hostility was compounded by the Yishuv's relationship with the Jewish diaspora, which facilitated the economic and demographic growth of the Yishuv.³⁴² The peak moments of this hostility is illustrated by the riots of 1920-1921 and 1936-1939.

The United Nations General Assembly vote on partition caused a furor among Arabs. They could not fathom why 37 percent of the population (Jews) would be given 55 percent of the land (of which they previously had only 7 percent). They felt like the UN powers were making them pay for the crimes of the Holocaust. They did not understand why it was not fair for the Jews to be a minority in a unitary Arab government in Palestine, while it was fair for almost half of the Palestinian population—the indigenous majority of its ancestral soil—to be converted overnight into a minority under alien rule.³⁴³ The Arabs threatened war.

³⁴² See Yehoshua Porath, *The Emergence of the Palestinian Arab National Movement—1918-1929* (London: Frank Cass, 1974); Porath, *The Palestinian Arab National Movement—1929-1939* (London: Frank Cass, 1977); Morris, *Righteous Victims*, 3-66.

³⁴³ Morris, *Righteous Victims* 186. See Walid Khalidi, ed. *All That Remains, the Palestinian Villages Occupied and Depopulated by Israel in 1948* (Washington, DC: Institute for Palestine Studies, 1992); and Khalidi's *Before Their Diaspora: A Photographic History of the Palestinians, 1876-1948* (Washington, DC: Institute for Palestine Studies, 1991). For a discussion on Khalidi's work, see Slyomovics, *The Object of Memory: Arab and Jew Narrate the Palestinian Village*, Preface and chap. 1.

The Yishuv's Zionist orientation left Arab parties and representatives largely out of circles of power and influence. It was only the Arab elites that were able to organize, often very far away from the people they claimed to represent. Their infrastructure was destroyed and much of their leadership was in exile.

Majid Al-Haj notes that after the 1948 Arab-Israeli War, only 156,000 Arabs remained in Israel, amounting to 13 percent of Israel's population. The Arab community was split between refugees outside of Israel and what is commonly known as "internal refugees."³⁴⁴ The vast majority of those Arabs who remained in Israel lived in villages, comprising 80 percent of Israel's new minority. (Today, Palestinians are 18.6 percent of Israel's population, numbering close to 900,000.)³⁴⁵

The new Arab minority in the Jewish State was in a precarious position under military rule from 1948-1966. They have always held a marginal and inferior status. They were treated as a vanquished enemy population, rather than *bona fide* citizens of the new state. Despite being recognized as citizens, illustrated through their right to vote, the recognition of Arabic as a national language, and a separate curriculum designed for the Arabic school system (into which, many Jewish subjects were purposely introduced),³⁴⁶ there was continued suspicion of them among Jews. Their special needs and considerations were secondary to Jews' sense of security.³⁴⁷ The Ministry for Minority Affairs described Jewish hostility to the remaining Israeli Palestinians in a 1949 document: "Despite the announcement that the Arabs of the

³⁴⁴ See Majid Al-Haj, "The Arab Internal Refugees in Israel: The Emergence of a Minority within the Minority," *Immigrants and Minorities* 7, no. 2 (July 1988): 149-165.

³⁴⁵ Shalom Dichter and Assad Ghanem, eds. "Report on Equality and Integration of the Arab Citizens of Israel, 1999-2000." Introduction. Jerusalem: Sikkuy—The Association for the Advancement of Equal Opportunities. <<http://www.sikkuy.org.il>>.

³⁴⁶ Cohen 72. See Sami Khalil Mar'i, *Arab Education in Israel* (New York: Syracuse University Press, 1978).

³⁴⁷ Eisenstadt, *The Transformation of Israeli Society*, 332-334. See also Morris, *Righteous Victims*, 252-258.

state who had surrendered were recognized as citizens...the...hatred and vengeance towards them continue. The wide public, whose wounds [from the war] have not yet healed, has not yet adopted a democratic-humanistic way of thinking..."³⁴⁸

Unlike other Third World peoples living in Western societies, Israel's Palestinian citizens did not move to a new nation and adopt its ways. From their perspective, it was imposed upon them. While having democracy imposed may not seem to be problematic to Westerners, the quintessential problem is that "the new system was established to serve the goals of a national group—the Jewish people—to the exclusion of this [Palestinian] community, thereby introducing the potential for conflict."³⁴⁹

The Military Government which lasted from 1948-1966 restricted the Palestinians' civil liberties, including freedom of movement, imposed curfews, Arab lands were expropriated for Jewish settlements, and were denied opportunities to participate in serious political, economic and military roles. Erik Cohen notes that the military government was abolished in 1966, long after security concerns ceased to exist.³⁵⁰

Under military administration, Israeli Arabs lacked the mechanisms to enter into national Israeli politics. Mapai governed the military apparatus and extended power to local leadership, as long as there were no potential nationalistic threats made to the Israeli-Zionist establishment. When Arab-affiliated lists of the established parties were organized, they were very successful in receiving Arab support. "The

³⁴⁸ Qtd. in Morris, "Operation Dani and the Palestinian Exodus from Lydda and Ramle in 1948," *Middle East Journal* 40, no. 1 (1986): 108.

³⁴⁹ Rouhana and Ghanem, "The Democratization of a Traditional Minority in an Ethnic Democracy," 163. Baruch Kimmerling is the first to apply a colonialist model to Israel's development. See his *Zionism & Territory: The Socio-Territorial Dimension of Zionist Politics*.

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purpose of these lists was not the political mobilization of the Arab population, but rather catching Arab votes through traditional means of persuasion. The structure of the Arab-affiliated lists was tailored to fit the deep social territorialization of the Palestinian population and its traditional character."³⁵¹ These lists decreased in strength and new independent Arab parties were established, and the other Zionist parties competed for their votes. This overall process kept the Arabs in a segregated and marginal position.

After 1966, civil liberties and equality were formally granted, however, discrimination remained ingrained in Israel's institutions and policies. "While modernization [in Israel] has increased Arab aspirations for socio-economic mobility, the ethnic stratification in Israel has placed a mobility ceiling on them."³⁵²

Palestinianization

The Arabs in Israel largely complied with Israeli demands in the early years of the state. During the 1950s and 1960s, the Arab world saw Israel's Arab citizens as collaborators, but over the years, particularly after the 1967 and 1973 wars, their own resentment built up. Shortly after the Military Government period was over, in the early 1970s,

a strong national awakening was observed among the Arab minority in Israel, which was brought about by their renewed contact between the Arabs in Israel and their brethren in the West bank and Gaza after the Six Day War of 1967; the rise of the Palestinian National Movement and the increasing international recognition of the PLO; and the outcome of the 1973 Yom Kippur War, which boosted the feelings of dignity among the Arab minority.³⁵³

The national awakening, termed by some scholars as the "Palestinianization," has been accompanied by an increasing tendency among Arab citizens to seek integration into Israeli society. The growing perception of the Arabs in Israel of their future as firmly linked to the State of Israel has in turn increased their attempts to participate in decision making in regard to their own affairs, including the allocation of resources and the shaping of their political future.³⁵⁴

³⁵⁰ Cohen 72. See Lustick, *Arabs in the Jewish State*.

³⁵¹ Al-Haj 143.

³⁵² Ibid. 141.

³⁵³ Al-Haj 145.

³⁵⁴ Al-Haj 141.

There are three factors that have had an impact on the Palestinian Israeli community. First, their demographic growth has created self-confidence and a heightened sense of community. This factor can have a positive impact on the development of cultural life, as well as political organizations and economic development. Second, social and economic changes have led to a burgeoning middle class. The earlier unskilled proletariat has emerged as a more industrialized working class among small professionals. Due to extensive landlessness, the traditional workforce (families working the land with their fathers) dissolved and young people sought employment in more urban areas. Such jobs were often with Jews. This gave the new generation of Palestinians more social and economic independence. The third is in the realm of education. The number of Palestinians enrolled in primary school in 1948-1949 was under 10,000; in 1993-1994, there were 143,485. In the same years, post-primary enrollment jumped from 14 to 81,467. Further, the median level of education among Arabs rose almost 700 percent.³⁵⁵

While they speak out in support for their fellow Palestinians, they have never taken active participatory roles in the Intifada; nor do they plan to live in a Palestinian state.³⁵⁶ As was the case with Mizrahi Jews, the "modernization process experienced by Arabs in Israel has increased their political consciousness... The growing

³⁵⁵ *Statistical Abstract of Israel, 1993*, Table 22.10. Qtd. in As'ad Ghanem, ed. "Arabs and Jews in Israel: Multi-Annual Comparative Data," Jerusalem: Sikkuy, 1996: 5-7. Concerning this last statistic, despite the huge leap forward, the median level of education among Jews is still 1.2 times that among Arabs (p. 7).

³⁵⁶ A recent survey conducted by the Nazareth newspaper *Kal al-Arab* among 1,000 residents from all segments of the local population in Umm al Fahm concluded that 83 percent of respondents opposed the idea of transferring their city to Palestinian jurisdiction, while 11 percent supported the proposal and 6 percent did not express their position. Of those opposed to the idea, 54 percent were against becoming part of a Palestinian state because they wanted to continue living under a democratic regime and enjoying a good standard of living, which includes National Insurance allowances and pensions. Of these opponents, 18 percent stated that they were satisfied with their present situation, that they were born in Israel and that they were not interested in moving to any other state. Another 14 percent of this same group went so far as to say that they were not prepared to make sacrifices for the sake of

population of Arabs in the electorate... increased their political value. In the 1992 Knesset elections Israeli Arabs constituted some 12 percent of the total number of eligible voters."³⁵⁷ As Israeli citizens, they have been equipping themselves with the tools of democracy to begin to advance their own concerns—their status within Israel and the creation of a Palestinian state.³⁵⁸ A dramatic example is Azmi Bishara's run for the premiership in 1992. While he did not expect to win, his campaign sought to "improve the bargaining position of Israel's Arab minority in issues concerning its political empowerment."³⁵⁹

Zeev Schiff wrote that the denial of equal rights in conjunction to the occupation of Palestinians has strengthened Israel's Arab citizens' Palestinian identity. He maintained that Palestinian Israelis might no longer be the bridge to negotiate between Jewish Israelis and their Arab neighbors. In fact, an Intifada of their own may be likely.³⁶⁰

Mahmoud Mi'ari argues that due to repressive policies and political culture, Israel's Palestinian citizens are not only identifying more with their Palestinian identity, but there is a retreat in their Israeli identity. (55 percent of Arab secondary school students considered themselves Palestinian, 4 percent Israeli Palestinian, 3 percent Israeli Arab.)³⁶¹

the creation of a Palestinian state. Qtd. in Joseph Algazy, "Umm al Fahm Prefers Israel," *Ha'aretz* (August 1, 2000). See also Ghanem, "The Palestinians in Israel," 61-62.

³⁵⁷ Majid Al-Haj 145.

³⁵⁸ See Elie Rekhess, "Arabs in a Jewish State: Images vs. Realities," *Middle East Insight* 7 (Jan-Feb. 1990): 3-9.

³⁵⁹ Azmi Bishara, "Embodiment of a Dream," *The Jerusalem Post*, Op-Ed (7 February 1997).

³⁶⁰ Zeev Schiff, "No More a Bridge for Peace," *Ha'aretz* (May 25, 1989); Amos Harel, "Shin Bet: Israel Must Integrate Its Arabs," *Ha'aretz*, October 12, 2000.

³⁶¹ Mahmoud Ni'ari, "They Returned to Their People," in Nur Masalha, ed. *The Palestinians in Israel* 37. Sammy Smooha conducted a similar survey in "The Arab Minority in Israel: Radicalization or Politicization?" *Studies in Contemporary Jewry* 5 (1989): 67. Smooha agreed that the greatest increase concerning identity is for the Palestinian category, however this does not diminish an Israeli dimension.

Contemporary Challenges

In response to new trends, the government established new mechanisms to deal with

Palestinian Israeli interests:

The Ministry of Education formed the Peled Committee for the planning of Arab education towards the 1980s, the Ministry of the Interior established the Geraisy Committee to investigate local services and municipal budgets in the Arab localities; the prime minister's adviser for Arab Affairs initiated research into the situation of Arab university graduates and their possible absorption into government offices; and a policy-oriented research body examined the planning of housing aid for Arab villages.³⁶²

Sikkuy—The Association for the Advancement of Equal Opportunity goes to great lengths to monitor and report on the challenges and accomplishments that deal with the Palestinian Israeli sector. Their efforts to promote awareness of the civil status of Palestinian Israelis has been taken seriously to address major gaps that have existed between the Palestinian and Jewish sectors since the state was established.

Since the mid-1970s, Israeli Arabs have established important extra-parliamentary organizations: The National Committee for Heads of Arab Local Authorities (founded in 1974) has become the major representative for Israeli Arabs. While focusing on local matters at first, after the Land Day Strike in 1976, "they shifted their emphasis to citizenship and national questions, recognizing that these issues are inseparable."³⁶³

Questions of citizenship abound. I have already explored legislation and case laws that have discriminatory effects on Arab citizens. It is common knowledge that because of their exemption from military service, they are denied certain preferences and benefits, including enlarged housing loans, partial exemptions from fees in state-run occupational training courses, and preferences in public employment and in acceptance to university, educational loans and on-campus housing.³⁶⁴

³⁶² Majid Al-Haj 145. The Katz Committee, too, was formed to deal with Israel's Bedouin.

³⁶³ Al-Haj 154.

³⁶⁴ Sikkuy reports that the criterion of military service significantly diminishes the ability of Arab citizens to actualize their entitlement to mortgage loans. A citizen who has not served in the army is

Under the 1992-1996 Labor Government, a more promising atmosphere seemed to be reflected in the majority's perceptions regarding the Arab community—from outright antagonism to indifferent acceptance. Budget allocations for Arab institutions increased, special infrastructure projects were approved. The Arab political parties held the balance of power in the Knesset (which was fuel for Israel's right-wing, which rallied for a "Jewish majority" on Oslo-related issues).

But a major critique from within the Palestinian community is that nothing was seriously implemented. They were excluded from the peace process. Their status was never raised in the peace process as an issue or concern. All the while, they expected that Oslo would be a springboard for their own advancement. Further decline ensued with the 1996 election of Netanyahu, who returned to cutting budgets for Arab institutions.

The frustration concerning their status as citizens is exemplified in two recent developments. In March 2000, an elderly Palestinian woman died after a Land Day protest in Sakhnin. Her family reported that it was due to tear gas inhalation. This set off a wide variety of protests by Palestinian students in Israeli universities. The campus had a highly charged atmosphere, particularly Haifa University where 18 percent of the students are Palestinian. Shalom Dichter of Sikkuy says that "the students are trying to widen the boundaries of the Israeli discourse to include honest talk about their dual sense of belonging, to the (Palestinian Arab) nation and the (Jewish) state... The Jewish-Arab dialogue has suffered from the 'humus and

only entitled to 62% of the full mortgage loan. It would appear that this is the reason that in the late 1990s only 8% of the country's mortgage loan recipients were Arab citizens. (Sikkuy, "Ministry of Housing and Construction," *Integration Report 1999-2000*).

laboneh' syndrome... After 52 years of cultural silence, they take issues of citizenship and statehood seriously."³⁶⁵

Of course the second phenomenon that does not need further comment is the current "Al Aqsa Intifada." While the violence involving Palestinian Israelis has been minimal, there is strong, vocal sympathy by them for this escalation.

The following are some areas of concern to the Palestinian sector to illustrate the points made above.

Land

One of the greatest challenges to this national minority is that by 1993, over 80 percent of the lands owned by Arabs living in Israel had been confiscated by Israel for military reasons or for Jewish citizens. This has not only led to resentment, but a debilitating effect on the Palestinian sector's economic development.

There have been a number of laws and policies that relate to land ownership in Israel. Bodies like the Jewish National Fund prohibited (and still prohibits) the transfer of ownership once acquired. The lands have been reserved for Jews only.³⁶⁶ This has contributed to the institutionalization of the Arab population's economic dependence on Jewish Israelis.

After 1948, real estate—agricultural land, pasture land, quarries, etc.—was, essentially, the only type of income-producing property in the Arab sector. The expropriation of land, by denying Arabs access to a great portion of their traditional means of production, has not only forced them and their families to rely, more heavily than they otherwise would have on Jewish-owned means of production, but has also prevented them from translating that resource into other forms of economic wealth.³⁶⁷

³⁶⁵ Interview with Shalom (Shuli) Dichter and As'ad Ghanem, "It's Time for a 'Radical Overhaul' of the Israeli Arab Sector," *The Jerusalem Report*, May 8, 2000. See "Israel's Arabs Deserve Better," *Ha'aretz*, May 2, 2000; Amnon Rubinstein, "Who Benefits from Hadash's Radicalism," *Ha'aretz*, May 16, 2000.

³⁶⁶ That, however, was challenged in the *Katzir* case, permitting an Arab to move into a house in Katzir, owned by the Israel Lands Authority.

³⁶⁷ Ian Lustick, *Arabs in the Jewish State*, 170.

Yitzhak Oded recognized that Israel's land policies were the opposite of the Ottoman Empire's and British Mandate's. The latter considered lands surrounding villages as the patrimony of the local population and "constituted a reserve for future development."³⁶⁸ When Israel began its rule, its idea of "national patrimony" has

consistently been taken to imply the Jewish population only. Land settlements and development on areas adjudicated to the State in all of its capacities—vacant land, public land, State domain, Arab absentee property, etc.—have been assigned exclusively to Jewish institutions, settlements and individuals (except for the small reserve maintained for compensating expropriated Arabs), and where Government agencies have handled the task, development planning has involved Jews only.³⁶⁹

Perhaps the most significant agency that dealt with Palestinian lands was the Custodian for Enemy Property within the Ministry of Finance (1948), which appointed to administer "abandoned" Arab property. The name changed to the Custodian for Absentee Property in 1950.³⁷⁰ This agency did not deal only with property abandoned by refugees. Those Palestinians who had not left Palestine-Israel at all, but were perhaps in another area by choice or force (perhaps in order to protect other lands which they owned), lost the lands from which they had been "absent." One of the most famous examples of forced absence was seen in the large villages of what is called "the southern triangle" (the eastern Sharon area of central Israel), which was a battlefield during the war.³⁷¹

These lands acquired by the Custodian were eventually transferred to Development Authority (later, the Israel Lands Authority, 1961), which was empowered to sell them to JNF, kibbutzim, or the Israel Lands Authority. There are several incarnations of the appropriate agency to administer these lands, all of which include representative from different arms of the government without Arab

³⁶⁸ Yitzhak Oded, "Land Losses among Israel's Arab Villagers" *New Outlook* 7, no. 7 (September 1964): 14, qtd. in Lustick 171.

³⁶⁹ Lustick 171.

³⁷⁰ Absentees' Property Law (5710-1950).

³⁷¹ Atallah Mansour, "Arab Lands in Israel: A Festering Wound," *Palestine-Israel Journal* 4, no. 2

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representation. It is significant to note that in 1976, the chair of the government's Expropriations Committee was also the director of the Israel Lands Administration.³⁷²

The Absentees' Property Law (1950) set the standard in its definition of an "absentee."

1. In this law—
 - (b) "absentee" means—
 - (i) a person who, at any time during the period between the 16th Kislev 5708 (29 November 1947) and the day on which a declaration is published, under section 9(d) of the Law and Administration Ordinance, 5708-1948, that the state of emergency declared by the Provisional Council of State on the 10 Iyar 5708 (19 May 1948) has ceased to exist, was a legal owner of any property situated in the area of Israel or enjoyed or held it, whether by himself or through another, and who, at any time during the said period—
 - (i) was a national or citizen of the Lebanon, Egypt, Syria, Saudi Arabia, Transjordan, Iraq or Yemen, or
 - (ii) was in one of these countries or in any part of Palestine outside the area of Israel, or
 - (iii) was a Palestinian citizen³⁷³ and left his ordinary place of residence in Palestine—
 - (a) for a place outside Palestine before 27 Av 5708 (1 September 1948); or
 - (b) for a place in Palestine held at the time by forces which sought to prevent the establishment of the State of Israel or which fought against it after its establishment....

Thus, the law did not only deal with those who left Israel, but those still present within the State. They are considered "present absentees" (*nifkadim nochachim*). The Absentee Property Law effectively made 20 percent of Israel's Arabs present absentees, making their lands available for expropriation. Ian Lustick suggests that the law was "designed to provide, retroactively, a legal justification for seizures of Arab lands that had already taken place."³⁷⁴

Other provisions were used for similar settlement purposes. The 1945 Emergency Regulations, Article 125, (in effect since May 19, 1948) have been used to expel Arabs from their villages, considering them as "security zones." Many villages were dispossessed using this provision (Iqrit, Biram, Ghabasiyeh, among

(1997): [?]. <<http://www.pij.org/zarticle.htm?aid=4247>>

³⁷² Lustick 172.

³⁷³ According to Palestinian Citizenship Orders, 1925-1941 under the British Mandate.

³⁷⁴ Lustick 174. See n. 306 above for a more complete list of laws relating to land expropriation.

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others).³⁷⁵ Even though the Custodian was empowered to "assume control" or "take possession" of these lands, they were always still the property of the absentee owner, unless expropriated and sold under certain conditions.³⁷⁶ This aspect was rectified from Israel's point of view by the Land Acquisition (Validation of Acts and Compensation) Law (1953), which enabled the Finance Minister to make a list of confiscated lands from May 14, 1948 to April 1, 1952. If the Minister gave these lands the status of "used or assigned for purposes of essential development, settlement, or security" and were "still required for any of these purposes," then, as a result of this certification, these lands would automatically become the property of the Development Authority.³⁷⁷ "In practical terms the law meant that the status quo of April 1952 would be preserved as far as the status of requisitioned Arab lands were concerned and that, essentially, regardless of the stipulations made in the Cultivation of Waste Lands Ordinance or in the Emergency Land Requisition Law, and regardless of the violations of due process which had occurred, no land would be returned to Arabs."³⁷⁸ The Land Acquisition Law enabled the state to expropriate all the lands temporarily in its hands since 1948. The Israel Lands Authority (ILA) estimates this refers to 1,225,174 dunums, but "only 325,000 dunums were under private ownership at the time of the 1953 expropriation."³⁷⁹

³⁷⁵ See Kfar Birem <<http://www.birem.org>>; Amos Elon, "Land Acquisition: The Tragedy of Ghabasiyeh and Israeli Justice," *Ha'aretz*, October 18, 1951, translated and reprinted in *Ner* 4, no. 11 (July 1953): 40-42, (August 1953): 25-26; David Grossman, *Sleeping on a Wire: Conversations with Palestinians in Israel*, chap. 13 (New York: Farrar, Straus & Giroux, 1993); Meron Benvenisti, *Sacred Landscape*; Baruch Kimmeling, "Sovereignty, Ownership and Presence in the Jewish-Arab Territorial Conflict: The Case of Bir'am and Ikrit," *Comparative Political Studies* 10, no. 2 (1977): 155-176. *Mabda Hana Daud et al. v. Appeals Committee for the Security Districts, Office of the Military Governor of the Galilee*, H.C. 51 (239) 6 (1952).

³⁷⁶ Lustick 174. See Emergency Regulations (Cultivation of Waste Lands) Ordinance §5a and Emergency Land Requisition (Regulation) Law §4b (1949), respectively.

³⁷⁷ Lustick 174. Land Acquisition (Validation of Acts and Compensation) Law (1953) §2a.

³⁷⁸ Lustick 174-175.

³⁷⁹ Mansour, "Arab Lands in Israel: A Festering Wound," <<http://www.pij.org/zarticle.htm?aid=4247>>.

According to these laws and regulations, Arab citizens of Israel lost not less than one half of their land. Some claim that they lost some two-thirds of their patrimony. No reliable and agreed-upon data is available regarding the scope of the expropriated area and Arab sources put the figure at between 870,000 dunums and a million and even one-and-a-half million dunums.³⁸⁰

The government of Israel has not determined official and authoritative figures. Ian Lustick estimates that the 1953 expropriation enabled Israel to expropriate 1,250,000 dunams.³⁸¹

Expropriation continued after the transitional period of statehood. The Prescription Law (1958) mandated documentation of ownership challenged Arab villages to come up with appropriate paperwork from the British Mandate.³⁸² This gave the government the ability to continue the practice into the 1960s.

Israel's Bedouin was particularly hard hit, through the 1970s. It is well-known that there have been efforts to "Judaize" the Galilee, where a strong concentration of Arabs live. In the mid-1970s, the government decided on the expropriation of lands for the expansion of Upper Nazareth and Carmiel, at the expense of the Arab neighbors of these towns. This time—and for the first time in the history of Israel's Arab minority—they organized for a massive uprising: Land Day, March 30, 1976.

Today, the land issue is still relevant. Bedouin have been transferred to more urban areas, challenging their entire way of life (discussed below). Furthermore, there are still many "unrecognized" Arab villages that are denied services from the Government. Today, 200,000 displaced Arabs living in Israel because of the absentee laws. Those inhabitants who were uprooted and obliged to build new villages are prevented from returning to their original villages.

There are hundreds of residential concentrations of Arabs in Israel. Many are

³⁸⁰ Ibid. Based on a declaration from the Arab Committee for the Land Defense, published on the eve of Land Day, March 30, 1981.

³⁸¹ Lustick 175.

³⁸² Ibid. 176.

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not recognized by the government, which means they are often left without electricity, water, sewage systems, infrastructure, education systems, and more. (Many of these services were not fully extended to recognized Arab villages through the 1970s.) Part of the legal justification for denying them recognition is from the Planning and Construction Law (1965) whereby their recognition was prevented under the pretext that they exist on agricultural land.

Any house or building constructed on these lands are, according to Israel's laws, illegal. Early governmental reports (Kubarsky, 1976; Markovitch, 1979, 1985) relating to these villages called for the demolition of unlicensed homes and buildings, and the transfer of populations off of these lands. Later reports (Mena, 1994; Sharon, 1996) were more open to finding solutions; however, there have been limited substantial gains. More than ever, the government and Knesset are considering claims and plans advanced by the major advocacy group in this area, the Association of Forty.³⁸³

There is current concerns over Israeli plans for the Trans-Israel Route No. 6 project, whose implementation means fleecing the Arab citizens in the Galilee and Triangle of tens of thousands of dunams and wiping out unrecognized villages. The Trans-Israel Highway is intended to pass along the "ridge of hills," an area heavily populated by Arab citizens who were by historical events driven into the "Shomron Foothills" since 1948.

Ian Lustick's conclusion is a difficult one to accept for the progressive Zionist:

The mass expropriation of Arab land has been the heaviest single blow which government policy has dealt to the economic integrity of the Arab sector. But the expropriations, the inadequacy of compensation programs, and discrimination against Arabs in regard to the leasing of land are even more significant as aspects of a general pattern of economic

³⁸³ The Association of Forty, <<http://www.assoc40.org>>.

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discrimination against Arabs in all matters pertaining to development—a pattern that corresponds to government policy and that contributes to the continued economic underdevelopment of the Arab sector.³⁸⁴

Bedouin

The Negev Bedouin are the country's most disadvantaged population group. They represent part of the Arab-Palestinian minority in Israel and number approximately 120,000 persons. About half of them reside in seven urban (permanent) communities that were established by the State, and the rest are in traditional communities not recognized by the state.³⁸⁵

Their two fundamental problems relate to land and locality type. At the end of the 1960s, the Bedouin were relocated to the Negev dessert and forced to embrace urbanization. The plans for urbanization were, ostensibly, intended to create conditions under which basic services to the Bedouin population could be consistently supplied. The true purpose, however, according to Ismael Abu Saad, "was to centralize the Bedouins in urban communities, and prevent them from working, settling, and/or demanding rights to lands which were expropriated by the State." As a result of the Israeli government policy towards the Bedouin population, the Bedouins of the Negev were systematically transferred en masse to permanent communities, and the Bedouin lands registered as state lands. This is an antithetical way of life for their very traditional culture and society.

The question at issue in the latter case is whether the Bedouin will be settled in towns only, or whether they will be allowed to establish other types of settlements, i.e., agricultural or semi-agricultural. Progress in solving these two serious issues has been slow and marginal. Only in late 1995 did the Minister of Construction and Housing, Binyamin Ben-Eliezer, present guidelines for a multiannual plan that

³⁸⁴ Ibid. 182.

³⁸⁵ Ismael Abu Saad, "The Bedouins and The State of Israel," in Dichter and Ghanem, eds. *Sikkuy*

represents the first attempt to confront the issue.³⁸⁶ Yet, the Netanyahu and Barak Administrations, with the High Court's approval, continued to expropriate Bedouin land and relocate Bedouin tribes to other areas.³⁸⁷ The policy of destroying dwellings is, in particular, the means by which the government forces Bedouins residing in unrecognized communities to leave their lands and move to permanent communities. The State annually prosecutes hundreds of Bedouin residing in these unrecognized communities for illegal building infractions. Since building new permanent structures in these villages is illegal, some 16,000 shanties are technically subject to demolition. Between 1992 and 1998, 1,298 dwellings were demolished.³⁸⁸ Court judges repeatedly confirm the destruction orders, based on the argument that the Bedouin trespassed on "unoccupied lands" and state lands.

In these seven urban communities, planned and established by the government without Bedouin input, there is serious unemployment. The level of services in them is low and the government budgets allocated to them is minimal. *Ha'aretz* reported in August 2000 that for the previous several months some 220 Negev Bedouin of the Al-Sayad tribe, including infants, elderly people and pregnant women had been cut off from their source of water—a pipe they attached to the water system of the local school, which brought water to their tin shacks in the Negev desert.³⁸⁹

According to the 1999 Statistical Yearbook of the Negev Bedouin, a socioeconomic ranking of 204 municipalities found Bedouin towns to be the first,

Integration Report 1999-2000, <<http://www.sikkuy.org.il/Anglit/Parent.htm>>.

³⁸⁶ Alouph Hareven and As'ad Ghanem, eds. *Equality and Integration: Retrospect and Prospects 1992-1996* (Jerusalem: Sikkuy, June 1996), 11.

³⁸⁷ Rabbis for Human Rights have launched a campaign to help the Jahalin Bedouin, a tribe originally found in the area of what is today Arad and currently reside in scattered encampments throughout the Judean Hills. RHR Bedouin Project, <<http://www.rhr.israel.net/bedouin.shtml>>.

³⁸⁸ David Arnow, "The Invisible Bedouin," *New Israel Fund*, August 2000. <<http://www.nif.org/news/bedouin.html>>.

³⁸⁹ Aliza Arbeli, "Negev Bedouin are Forced to Walk Kilometers to Get Fresh Water," *Ha'aretz*, August 8, 2000.

second, third, fourth and sixth poorest towns in all Israel. Monthly income in these towns range from 35 percent and 40 percent of the national average and infant mortality is almost 60 percent higher.³⁹⁰

To aggravate the problem, Bedouin local municipalities have been appointed for the permanent communities. Four of the seven permanent communities' leaders have not been from the local Bedouin population, and were appointed by the government. In September 2000, however, democratic local council elections were held in four Bedouin villages (Ksaife, Ararah, Lakia and Segev-Shalom) in the Negev, ending a 13-year period in which Government officials controlled the towns.

During the past five decades, the Bedouin population of the Negev has undergone extreme changes of modernization and urbanization. While there are certainly benefits to this, particularly in the areas of education and healthcare, these changes exacted a heavy societal toll socially, economically, and structurally. The Bedouins of the Negev are losing their unique identity, their past, and their legacy. The economic and traditional social frameworks of the Bedouins have been seriously undermined by the rapid transition from their traditional lifestyle to the urban society of the 20th century. These changes were effected without any prior preparation in either the socio-cultural or the economic-employment terms. Ismael Abu Saad notes that the transition is accompanied by characteristic signs of hardship:

- Dramatic increase in the rate of unemployment: the Bedouin communities are at the bottom of Israel's socio-economic scale, approximately 65% - 75% of the entire Negev Bedouin population lives under the poverty line;
- Crime and drug abuse are continually on the rise;
- School drop-outs rates are among the highest in the State;
- Matriculation success rates are among the lowest in the State;
- The rate of Bedouins' integration into Israeli society is marginal. The education gap, which begins in elementary school, reaches it apex in higher education: among the Bedouin residents of the Negev, the number of university graduates is 2 per 1,000, compared to the national average of 100 per 1000. The main factors contributing to this low rate of higher education among the Bedouins are:

³⁹⁰ Qtd. in Arnow, "The Invisible Bedouin," <<http://www.nif.org/news/bedouin.html>>.

- A low level of state provided educational services;
- The poor economic situation of the Bedouin community;
- The viability of investing in higher education for minorities;
- Inaccessibility to the institutions of higher education for the Bedouin community, that is, academic requirements (the psychometric examination), the application process, educational scholarships, financial assistance, etc.³⁹¹

An interesting development to note is that the New Israel Fund produced a letter endorsed by the major Jewish organizations and religious movements calling on the state to institute recommendations from the Katz Committee concerning education in the Bedouin community. It is another example of the Diaspora Jewish community beginning to speak up for minorities in Israel and lobby for fair treatment.³⁹²

Housing

There are several concerns about housing and construction. The main problem is the extensive expropriation of land in Arab localities that occurred in Israel's early years. Since then, the population of Arab localities has grown sixfold, and the localities' land needs—for housing, industry, and public uses—has grown commensurately.

The Ministry of Construction and Housing has accorded low priority to the acute housing shortage in Arab localities for years. In 1993, for example, only 1,510 of the 68,440 dwellings under construction country-wide—2.2 percent—were in Arab localities.³⁹³ Since 1975, 337 thousand residential units have been built under public initiative, including planning, marketing and supervision by the Ministry of Housing, while only 1,000 residential units have been constructed in Arab communities since the establishment of the State. Further, out of the 10 billion NIS budget, 5.4 percent (108 million NIS) is designated for the Arab sector.³⁹⁴

³⁹¹ Ismael Abu Saad, "The Bedouins and The State of Israel."

³⁹² Yaakov Katz, chair, "The Investigatory Committee on the Bedouin Educational System in the Negev" [The Katz Committee Report] March 19, 1998. Excerpts available at <<http://www.bgu.ac.il/bedouin/mainframew.htm>>.

³⁹³ Hareven and Ghanem, eds. *Equality and Integration*, 11.

³⁹⁴ Dichter and Ghanem, eds. "The Ministry of Construction and Housing," *Sikkuy Integration Report 1999-2000*.

Due to the housing shortage in this sector, there are many residential units built illegally. The Government mandates that those homes be demolished.³⁹⁵

Ministry of Religious Affairs

The Ministry of Religious Affairs has historically devoted a minuscule percentage of its budget to the Arab sector. The 38 million NIS (2.4% of the budget) allocated to services for Arab citizens are found in two budgetary items only (religious services, which relate to those of Jews as well; and Muslim and Druze religious courts). Comparatively, the budgets intended for Jewish citizens are found in 76 budgetary items (religious councils, religious education, monthly stipends for yeshiva students, support for religious institutions, warehouse for ritual objects, activities for spiritual absorption, support for seminaries, Orthodox Torah culture, Torah study, Halachic research, etc.) Just the financial support items that are not actually religious services, and are available only to Jews, represent more than one billion NIS. Even items that are not unique to any particular religion, in effect relate only to Jews.³⁹⁶

A major achievement for the Arab sector is a Supreme Court case brought by Adalah in 1998, where the Court confirmed that the 1998 Budget of the Ministry of Religious Affairs discriminated against the Arab minority, but declined to award the requested remedy or to set a strong precedent regarding the principle of equality and the Arab community in Israel.³⁹⁷ However, in a more recent decision relating to funding for religious cemeteries, Adalah petitioned the Court arguing that the Ministry of Religious Affairs' NIS 17 million annual budget line should be

³⁹⁵ See Gideon Alon, "AG [Attorney General]: Police Not Razing Illegal Buildings" *Ha'aretz*, May 29, 2000. Attorney General Elyakim Rubinstein was highly critical of the police practice of avoiding the demolition of Israeli Arab housing built illegally in Umm al Fahm, due to fear of demonstrations. Yet the Palestinians claim that they have no other choice since they are routinely denied building permits.

³⁹⁶ Shalom Dichter and As'ad Ghanem, eds. *Sikkuy Report on Integration in Israel, 1999-2000*. Jerusalem, 2000.

³⁹⁷ *Adalah et al v. Minister of Religious Affairs and Minister of Finance*, H.C. 240/98. Case dismissed

distributed equally to Jewish and Arab religious communities. Justice Yitzhak Zamir opined: "The resources of the State, whether land or money, as well as other resources, belong to all citizens, and all citizens are entitled to benefit based on the principle of equality, without discrimination based on religion, race or any other flawed reasoning."³⁹⁸ Activists' hopes are that Justice Zamir's strongly worded opinion (along with Justices Aharon Barak and Dorit Beinisch) will be used to refer to the entire budget of the Ministry of Religious Affairs, as well as to all other ministry budgets.

Education

In July 1999, the Ministry of Education decided to implement the Ben-Peretz Commission Plan for closing the gaps in Arab and Druze citizens' education. According to the plan, the Ministry of Education will invest 50 million NIS annually, over five years. This is an affirmative action initiative, recognizing that in order to close existing gaps in the education of Jews and Arabs, Arab education must receive resources proportionally greater than their percentage in the overall population. The 2000 ministry budget is 20.9 billion NIS. The Plan includes funding for construction, pre-school opportunities and increased hours in special education.

There is debate within the Arab sector's leadership over priorities reflected in this Plan. Generally, the Plan deals at length with the problems of academic achievement and the physical conditions of learning. Some, however, think that greater resources need to be directed to the topic of "Culture and Identity" for educators and students, which currently reflects a low priority. Sikkuy maintains that this topic "has the potential of becoming the foundation for historic reform, and may

on the grounds of "generality."

³⁹⁸ *Adalah, et. al. v. Minister of Religious Affairs, et. al.*, H.C. 4/00. The Court awarded Adalah NIS 20,000 in legal fees. A subsequent motion was filed demanding that the Court instruct the Ministry of

even contribute to renewed stability in relations between Arab citizens and their Jewish counterparts, and with the State."

Sikkuy's report on education concludes:

It is important, however, to emphasize that the Five Year Plan is not enough in itself and serves only to bridge the huge gap created over five decades. The damage caused by this gap and neglect cannot easily be rectified. Therefore, the Ministry of Education must not be tempted by improvements that will be reflected mainly in statistics. It must turn to implementation of a deep and basic change, because in addition to the significant growth in the construction budget, rehabilitation is required for a community severely damaged in terms of its values, and its social and political life. The Ministry of Education has the power to assist in this and it can be achieved if the Ministry first acknowledges these circumstances.³⁹⁹

The Israeli Arab Christian weekly, *Kol El Arab*, published figures on illiteracy in many of Israel's Arab communities, especially among Beduin of the Negev and the Galilee in February 2000. The figures are based on data compiled for 1995 by the Central Bureau of Statistics, and are terribly alarming.

In the Negev community of Arara nearly half the residents - 42.9 percent - are illiterate. The illiteracy rate is 36.3 percent in Kasifa, 33.3 percent in Sakif (Segev Shalom), 29.5 percent in Rahat, 26.8 percent in Tuba Zangariya, 22.0 percent in Jasser A-Zarka, and 20.3 percent in Arab A-Shibli. However, it should also be pointed out that in other Arab communities - Mokibla, Ma'aliya, Kafr Yassif and Rama - illiteracy is lower than the national average. In Arara, where over 60 percent of its residents are under the age of 18, this is of serious concern.

Part of the problem is definitely a lack of equal opportunities due to institutional discrimination and the unequal distribution of resources between Jewish and Arab school systems.⁴⁰⁰

Another example of this institutionalized discrimination is with regard to the teaching of special education students. *Ha'aretz* published a report on a very successful school

Religious Affairs to implement the Court's decision in its 2000 budget.

³⁹⁹ Dichter and Ghanem, "Ministry of Education," *Sikkuy Integration Report, 1999-2000*.

⁴⁰⁰ Joseph Algazy, "Criticism and Self-Criticism," *Ha'aretz*, (February 15, 2000).

that serves children with special needs. Ofakim, whose Arab student population numbers 40 percent, won an Education Ministry Prize. Yet, "despite the Education Ministry's pretensions of introducing the concept of 'multi-culturalism' into schools, meaning the recognition of the culture, the language and customs of the other, at Ofakim there is hardly any expression given to the language or culture of the Arab children in the school."⁴⁰¹

Arab culture and holidays are not included, while the Arab students must observe *Yom Ha'atzmaut* and *Yom Hashoah*. The report said that there is only one Arab teacher who teaches English. The Arab children study in Arabic only one hour a week. The result is that contrary to the school's declared intentions, the Arab children have difficulty finding their place within Arab society after they complete their studies.

More drastic is a school for the deaf in Be'er Sheva, where the overwhelming majority are Arab kids (mostly Bedouin). Nevertheless, all the classes are taught in Hebrew. Even the speech therapy they receive is conducted in Hebrew by a speech therapist who does not know a word of Arabic.

According to the Special Education Law, special education schools must meet all the needs of the disabled child. In other words, they must provide a curriculum and staff adapted to the needs of the Arab child. Parents of children with special needs in the Arab community are required to make a cruel choice. They must choose between sending their children to a school that will provide them with the appropriate treatment for their disability, but that will ignore their cultural needs as members of the Arab minority, or sending them to an Arab school where the level of treatment of

⁴⁰¹ Tamar Rotem, "Special Education for Arab Children is Only Available in Hebrew," *Ha'aretz*, (July 16, 2000).

children with special needs is very inferior to what the child can get in a Jewish school.⁴⁰²

Israeli Arab women will soon take part in the National Service Program, YEDIOT AHARONOT reported. The National Service Program was originally created to allow Jewish Orthodox women to convert mandatory army service toward national service, usually in humanitarian fields such as medicine or education. This is the first time the program is offered to Israeli Arabs, who will perform these services in their own communities. The program will begin in the city of Taibeh, following an agreement last week between the Mayor of Taibeh Issam Masrawa and Office of the Prime Minister representative Uzi Gadur. Over the weekend, Masrawa issued a statement calling on young women in Taibeh to join the National Service Program. Officials in the Office of the Prime Minister said on Monday that they are considering expanding Israeli Arab women's involvement in the program.⁴⁰³

Conclusion

As difficult as the situation is, particularly during this writing, there are also significant gains. According to a new report from the Israeli Civil Service Commission, there has been a 6.5 percent increase in the number of Arab and Druze Israeli citizens employed by the State of Israel as a result of a program to improve the status of Arab citizens of Israel. Since June 1999, 428 Arab and Druze civil servants have been hired and 194 of these joined the service in the last four months. The increase in the number of minorities in the civil service is merely one half-percentage point greater than the starting point of five percent. But the long-term plan of

⁴⁰² Ibid.

⁴⁰³ Israeli Ministry of Foreign Affairs, *Israel Line* [email newsletter] (January 16, 2001).

incorporating more minorities into civil service aims to draw up to ten percent of the workers from the Arab and Druze communities.⁴⁰⁴

Alouph Hareven and As'ad Ghanem made a wish list of definitive goals towards the year 2000. They include⁴⁰⁵:

- having each government ministry define in its own area of activity, the most critical needs in narrowing the disparities and to outline programs that may meet these needs;
- the development of Arab localities, relating to infrastructure, economy and education, in cooperation with government ministries, local Arab authorities, and private entrepreneurs;
- the development of a joint initiative between central and municipal authorities that will enhance the effectiveness of municipal authorities work;
- the employment of Arab citizens by state institutions -- in the civil service, non-governmental institutions, courts, economic enterprises, and high-level government positions;
- the reconciliation of the land / housing issue for Bedouin and young families;
- the enhancement of student achievements in Arab schools and the development of early-age education programs;
- the integration of Arabic language into public documents as well as a compulsory subject in schools;
- strengthening civic identity through the emphasis on civil rights and duties incumbent on all citizens.

While these goals have yet to be met, the most exciting development is the unveiling of an unprecedented comprehensive plan by government to allocate 4 billion NIS over four years to close the socio-economic gaps between the Jewish and Arab sectors. PM Barak has included members of the Monitoring Committee for the Arab Population in forming the plan (another new precedent). The plan tackles the three main challenges to the Palestinian sector: the problem of land, infrastructure, and budgets of Arab municipalities. Within each of these areas, the plan will address sub-issues of education, economic development, and community planning.⁴⁰⁶

V. CASE STUDY: CHALLENGES OF THE ORTHODOX ESTABLISHMENT

Herzl's vision for the Jewish State was a nation built on Western style liberalism. He did not foresee a theocratic state where Jewish law would be supreme. He wrote:

⁴⁰⁴ "Israeli State Now Employs More Arabs and Druze," *Ha'aretz*, January 16, 2001.

⁴⁰⁵ The following notes were adapted from Alouph Hareven's *Equality and Integration*, 61-63.

⁴⁰⁶ [?] *Ha'aretz*, October 22, 2000. Qtd. in <<http://www.nif.org>>.

Shall we end by having a theocracy? No, indeed. Faith unites us, knowledge gives us freedom. We shall therefore prevent any theocratic tendencies from coming to the fore on the part of our priesthood. We shall keep our priests within the confines of their temples, in the same way as we shall keep our professional army within the confines of their barracks. Army and priesthood shall receive honors as high as their valuable functions deserve, but they must not interfere in the administration of the state that confers distinction upon them, lest they conjure up difficulties without and within.⁴⁰⁷

The notion of separation between religion and state was a popular notion in Herzl's day. If he was not an advocate, and if Mapai and its varieties were the dominant group, then how did the Orthodox Jewish establishment become so strong?

Although there was a quasi-governmental authority for Jews in Palestine, the legal force was the British Mandate (1922). Palestine was administered as a British colony under London's Colonial office's jurisdiction and it was governed by the High Commissioner for Palestine, Sir Herbert Samuel, a prominent Anglo-Jewish statesman.

Article 9 of the Mandate provided: "Respect for the personal status of the various peoples and communities and their religious interests shall be guaranteed."⁴⁰⁸ S. Zalman Abramov notes that "The Mandatory Power was enjoined to retain the Turkish system under which religious minority groups—the various Christian denominations and the Jews—had enjoyed a measure of religious and cultural autonomy of matters of marriage, divorce, adoption of children, inheritance, and charitable endowments."⁴⁰⁹ Further, Article 15 of the Mandate ensured protection for Jewish religious education and the use of Hebrew. What is most significant is that the Articles of the Mandate applied the term *community* not to the Arab and Jewish peoples, but to religious communities, that is, to Moslems, Christians and Jews. These operative clauses seriously altered the concept of Jewish National Home as appeared in the preamble of the Mandate in Article 2, which clearly implied a nation and a home for that

⁴⁰⁷ Theodor Herzl. *The Jewish State*. [n.p.] See section on "Theocracy."

⁴⁰⁸ S. Zalman Abramov argues that "personal status" means family laws. Abramov, *Perpetual Dilemma: Jewish Religion in the Jewish State* (New Jersey: Associated University Presses, 1976), 93.

⁴⁰⁹ Abramov 93.

nation.⁴¹⁰ The precedent of being considered *religious* instead of *national* had significant implications.

Sir Herbert Samuel convened a committee to explore the creation of a central rabbinic authority. Its recommendation was to create a Rabbinical Council, headed by two Chief Rabbis—an Ashkenazi and a Sephardi.⁴¹¹ Attorney-General Norman Bentwich convened the committee and hoped that the Rabbinical Council would “foster peace and fellowship” among Jews. He encouraged them to advance religious law “in accordance with the demands of justice and equality [referring to women] of the present era.”⁴¹² Thus, the establishment of the Chief Rabbinate and the Rabbinical Council—by the British—marked Orthodox Judaism’s entry into Palestine as a recognized religion, thus equating Orthodoxy with Judaism. The result: Israel inherited a system of religious law by implication.

The scope of its jurisdiction is articulated in Article 53 of the Palestine Order-in-Council (1922):

The Rabbinical Courts of the Jewish Community shall have:

- (a) Exclusive jurisdiction in matters of marriage and divorce, alimony and confirmation of wills of members of this community, other than foreigners as defined in Article 59.⁴¹³
- (b) Jurisdiction in any other matters of personal status of such persons, where all the parties to the action consent to their jurisdiction.
- (c) Exclusive jurisdiction over any case as to the constitution or internal administration of a Wakf or a religious endowment constituted before the Rabbinical Courts according to Jewish law.⁴¹⁴

⁴¹⁰ Abramov 93. The text of the British Mandate appears in Walter Laqueur and Barry Rubin, eds. *The Israel-Arab Reader*, 3rd ed. (New York: Penguin Books, 1984), 34-42.

⁴¹¹ The Ottoman Empire already had an institution of Chief Rabbi. See Esther Benbassa, *Haim Nahum: A Sephardic Chief Rabbi in Politics, 1892-1923*, tr. by Miriam Kochan (University of Alabama Press, 1995). Nahum served from 1909-1920.

⁴¹² Qtd. in Abramov 95.

⁴¹³ The British did not think it was fair to impose Palestinian laws regarding personal status to those who were not citizens. Article 59 deals with a definition of “foreigner.” Residents of Palestine could be married civilly before their consular officers (See “Regulations made under Article 67 of the Palestine Order-in-Council, 1922, concerning the Powers of Consuls in matters of Personal Status of Nationals of their State.” Vol. 2, pp. 66-68.). Marriage and Divorce conducted abroad were recognized by the civil courts.

⁴¹⁴ Norman Bentwich, ed. *Legislation of Palestine 1918-1925*, Vol. 1—Orders-in-Council and Ordinances (Alexandria: Whitehead Morris Limited, 1926), 14.

This development was supported with the hopes that the religious Jews in the Old Yishuv would join the Zionist movement as Mizrahi did. However, they aligned themselves with Agudat Yisrael and set up their own *batei din*. The Sepharadim participated more readily.

The situation in Israel now, with an Orthodox establishment that controls a monopoly over recognized, legal variations of Judaism, is far from the more tolerant beginnings of this enterprise, especially as that shown by Rav Avraham Yitzhak Kook, the first chief rabbi of Palestine.⁴¹⁵ It is also far from the dynamic, flexible halachic system that had flourished in Diaspora Jewish life before the advent of modernity, appropriately adjusting to changing circumstances.⁴¹⁶

There is a flaw in the system that gives such authority to the Rabbinate. For the reasons discussed above concerning a definition of the "Jewish Community," Orthodoxy is the only "recognized" Jewish group. The above-mentioned Palestine Order-in-Council (1922) is the precedent for the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law (1953) that empowers the Orthodox establishment.

This has created discriminatory practices by putting authority of personal status for all in the hands of religious institutions.⁴¹⁷ There are two fundamental problems: the first is that only Orthodox Judaism is "recognized" (despite the fact that religious freedom is mentioned in the quasi-legal Declaration of Independence and protected in *Peretz v. Kfar Shemaryahu* [1962]); the second is that if you do not belong to a

⁴¹⁵ See Arthur Hertzberg, *The Zionist Idea* (New York: Atheneum, 1973) 425ff; Martin Buber, *On Zion*, 147-154.

⁴¹⁶ See Menachem Elon's *Jewish Law: History, Sources, Principles*. 4 vols. (Philadelphia: JPS, 1994). Also, Elon, "The Sources and Nature of Jewish Law and its Application in the State of Israel," *Israel Law Review* 2 (1967): 515-565; 3 (1968): 88-126, 416-457; 4 (1969): 80-140.

⁴¹⁷ Rubinstein, *The Constitutional Law of Israel*, 2nd edition (Tel Aviv: Schocken, 1991) 307-311 (Hebrew).

"recognized" religion or any religion at all, then you may have difficulty in trying to marry someone from another religious group. Civil marriage in Israel is not an option.

As a result, the liberal Jewish communities, non-Jews who are not members of recognized religious groups (i.e. Protestant sects), and non-Jews who are not religious face institutionalized discrimination and legal inferiority. Rubinstein believes that this is an infringement against the principle of equality. As frustrating as it may be that Progressive Jewish weddings are not recognized by the state, the same is true for the small Karaite community and certain Protestant groups. People have need to seek redress in district courts, since their religious community had not official religious court.

Justice Silberg tried to advance a solution for Karaites in the 1970s by presenting a bill to institute a Karaite *beit din*, but the attempt failed. Even if it had passed, there would still be problems concerning different spheres of law for different groups, leaving others out of the system.

The result not only relates to the rights of Progressive or Masorti Jews to choose their rabbis for lifecycle events or to have a civil marriage, but has implications on divorce and the problem of *agunot*, alimony, custody, and division of property.¹

Orthodoxy and Zionism

The Jews in the Old Yishuv and *haredim* world-wide opposed Zionism, seeing it as a human attempt to intervene in God's plan. Yet, as political emancipation in Western countries emerged, some Orthodox rabbis began to respond to the Enlightenment's impact on Jewish history. Two rabbis emerge: Rabbi Zvi Hirsch Kalischer and Rabbi Yehuda Chai Alkalai.⁴¹⁸ Kalischer's and Alkalai's messianism was not of a militant

⁴¹⁸ See Jacob Katz, *Jewish Nationalism: Essays and Studies* (Jerusalem, Sifria Tsionit, 1979), 263-356

nature, but was compatible with the pragmatism of the later Mizrahi. They began their call for a Return to Zion around 1860-1880. Their ideological successors became involved in the Zionist movement.

Rabbi Isaac Joseph Reines called a conference of Orthodox Zionists in 1902 to establish Mizrahi (*Merkaz Ruchani*). Mizrahi adopted the Zionist Platform of 1897. According to Abramov, the Mizrahi were committed to the principle of *K'lal Yisrael*, "deep concern for the totality of the Jewish people." Rabbi Reines is quoted as saying: "it is precisely the holiness of the land that induces the secularists to participate in the movement...it is in this that we may see the greatness of Zionism, for it has succeeded in uniting people of diverse views, and directing them toward a noble aim—the saving of the people—and this is its glory."⁴¹⁹

Unlike Mizrahi, Agudat Yisrael, established by German Jews of the nineteenth century, saw themselves (similar to the early Reform Jews) as a religious entity and not a nation. They refused to involve themselves early on in the work of the Zionist movement because of the presence of secularists. In Germany, Hungary, and *Eretz Yisrael*, they preferred separation rather than involvement with the larger Jewish communities.

The next significant development, according to Menachem Friedman, is the real possibility of establishing a Jewish state in Palestine in response to the Peel Commission (1937).⁴²⁰ As the Jews were arguing whether to accept partition in only part of Palestine, the religious community was concerned with what kind of state this would be.

(Hebrew).

⁴¹⁹ Qtd. Abramov 71. See also Eliezer Don-Yehiya, "Ideology and Policy in Religious Zionism—Rabbi Y. Y. Reines' Conception of Zionism and the Policy of the Mizrahi Under his Leadership," *Hatzionut* 8 (Tel Aviv: Hakibbutz Hameuchad, 1983): 103-146 (Hebrew). An English source is Joseph Wanevsky, *Rabbi Isaac Jacob Reines: His Life and Thought* (New York: Philosophical Library, 1970).

Agudat Yisrael faced the more formidable challenge in the ideological sphere, whereas Mizrahi had to contend with a most serious practical dilemma: a secular Jewish state lacking all signs of affinity for Jewish tradition could represent an impossible situation for Mizrahi, while Agudat Yisrael could consider such conditions as confirmation of its essential position that Zionism is a rebellious, illegitimate movement. These paradoxical dialectics were reflected most interestingly in discussions with Rabbi Isaac Halevi Herzog, Ashkenazi Chief Rabbi of Palestine. Mizrahi insisted that the constitution of the Jewish State must reflect attachment to tradition and *halacha*.⁴²¹

Agudah's main concern was to be granted the right to live as they choose within their own separate autonomous system. However, this was not without differences in perspective. The right-wing Central Committee of Agudat Yisrael in the Land of Israel stated: "Agudat Yisrael in the Land of Israel declares Orthodox Jewry could only agree to a Jewish state in all the Land of Israel if it were possible for the basic constitution of this state to guarantee Torah rule in the overall public and national life. (*Kol Yisrael* 1937)"⁴²²

However, Agudah General Assembly President Rabbi Yehuda Leib Czerelson supported partition and the concept of establishing a Jewish state in part of Palestine, knowing that their "freethinking brethren" would control the state. He recognized that this might be a positive step in the redemption process; even if the state was run by secularists, thus Agudat Yisrael should not refrain from supporting its establishment.⁴²³ In the final analysis, Agudat Yisrael could not ignore the creation of a Jewish state, even if they could not accept it *de jure*.

Due to the pre-state challenges of immigration, conflict, and the Shoah, the Zionists were preoccupied with absorption and survival. The projected Jewish character of the state was perceived as a secondary issue that ought not to detract from the main objectives of the day. This partially explains why Mizrahi devoted little time to nation-building questions like the Jewish character of the state. Menachem Friedman also

⁴²⁰Menachem Friedman, "The State of Israel as a Theological Dilemma," 165ff.

⁴²¹Friedman 174.

⁴²²Qtd. Friedman 175.

argues that Mizrahi was a *modern* Zionist movement, embracing religious tradition and liberal values. They decided not to put into question the participation of the religious-Zionist in terms of reconciling *halachah* with the principles and policies of the state.⁴²⁴

Chief Rabbi Isaac Halevi Herzog did declare that the state should be based *in principle* on *halachah* and even formulated a religious constitution.⁴²⁵ He advocated this *in principle* because he recognized the need for the state to be built as a democracy. With regard to the laws of personal status, he argued, there could be no compromise; however, with regard to civil laws, there could be new *takanot*. Needless to say, his proposals were accorded no serious consideration in the political sphere.⁴²⁶ Nor was Rabbi Judah Leib Fishman's suggestion (later known as Maimon): he recognized that a modern state posed many challenges to rabbinical authority concerning *halachah* and governance. The matter was so great that no group of rabbis could resolve the inconsistencies. Thus, he proposed a revival of a Sanhedrin and advocated for the supremacy of Jewish law in a future state.⁴²⁷

Other suggestions were proposed, but the state of war mandated that the Provisional Government act quickly. They did not have the time or resources to develop a new, comprehensive code of law. The Provisional Government empowered itself as Israel's first legislature on May 14, 1948, and adopted the existing law of Palestine with all its traditions and concerns for religious communities.

Yaakov Rosenheim, President of World Agudat Yisrael adopted an extremely negative stand against the establishment of a Jewish state. He and his peers wanted a halachic state and discussed this (in vain) with Jewish Agency heads, including the

⁴²³Friedman 175.

⁴²⁴Friedman 181.

⁴²⁵ Herzog's article first appeared in 1948. See *Dat Yisrael uMedinat Yisrael* (New York: WZO, 1961) 13-19.

⁴²⁶ Abramov 130.

Head of the Political Department, Moshe Shertok (Sharett). Rosenheim's statements

included:

1. The establishment of a sovereign Jewish state on the basis of democratic majority denies the Jewish political concept of sovereignty of the laws of God's Torah.
2. A secular Jewish state will impose no legal or psychological restraints on the power of the secular and anti-religious rulers, who will not be likely to make concessions to the religious minority.
3. Nothing will be done in a sovereign Jewish state to prevent separation of religion and state and radical secularization of Jewish life, as in the sphere of marital laws, which would have consequences liable to affect the nation's unity [adversely].⁴²⁸

Despite their concerns, when it was time to appear before the international councils exploring a resolution for Palestine and Jewish DPs (The Anglo-American Inquiry Commission of March-April 1946 and the UNSCOP June-July 1947), the *haredim* who testified followed the leadership's guidelines to avoid openly saying that they were in favor of or opposed to a Jewish state because they feared negative reprisals against them. Before these meetings, Agudat Yisrael representatives met with Ben-Gurion to say that they were prepared to speak to the UNSCOP delegation and support a Jewish state if it would be a state run according to the Torah and if religious demands were guaranteed in its constitution. Ben-Gurion, naturally, refused and said that it is a question that must be decided by the parliament of the state, once it is established.

As a result, Agudat Yisrael developed its minimum concrete demands: 1) control over marital laws—no civil marriage; 2) Sabbath observance; 3) Dietary laws; 4) autonomy in education; 5) freedom of religious conscience (i.e. freedom to keep a separate school and social system). Ben-Gurion had concerns about the functioning of

⁴²⁷ Abramov 71.

⁴²⁸ Excerpt from Rosenheim Memorandum, November 1946; Minutes of the Agudat Yisrael Executive Committee meeting (A), November 24, 1946. Qtd. in Friedman 183. Rosenheim preferred a Jewish-Arab federation with British involvement. While the Agudah and most *haredim* did not publicly object to the establishment of the state, they also did not seriously advance the idea of creating a halachic state. A fundamental reason for this is that their rabbinical leaders did not have the halachic responses necessary for the functioning of vital services of a modern state.

Yeshayahu Leibowitz argued that *halachah* was developed within a Diaspora Situation. See his *Torah U'Mitzvot Be'Zman Ha-zeh* [Torah and Religious Precepts in Our Time], Tel Aviv: Massada, 1954 (Hebrew). Also, see Almog, Reinharz, and Shapiro, eds. *Zionism and Religion*.

certain key institutions, like the civil service, but was open to compromise. He predicted no problem with regard to marriage, and promised no compulsory secular education for the *haredim*.⁴²⁹

The famous correspondence that has enshrined this *status quo* is a letter to Agudat Yisrael from the Jewish Agency Executive, signed by Ben-Gurion, Rabbi Yehuda Leib Fishman (Maimon) and Itzhak Greenbaum.⁴³⁰ Rabbi Isaac Meir Levin then appeared before UNSCOP and insisted upon the establishment of a Jewish state.

Menachem Friedman notes that,

the letter clearly does not refer to the *status quo* in religious affairs which prevailed during the pre-State period. It contains no formal commitment; rather, it constitutes a declaration of intention aimed at placating Agudat Yisrael, which feared that the Orthodox Jew would be unable to live in the Jewish State. The letter declares that the Sabbath would be the official day of rest, yet includes no details regarding prevention of Sabbath violation in the Halachic sense, nor does it mention anything about public transportation on the Sabbath. It relates to specific Agudat Yisrael demands only regarding marital laws.⁴³¹

Once the state was established, the Agudah began to change its attitude from anti-Zionist to non-Zionist. Rabbi Meir Levin, who became Welfare Minister in the first Government, spoke to the Council of Torah Sages, saying:

Great events have taken place: a sate has arisen, we vanquished our enemies and there is Ingathering of the Exiles... There is no doubt that the hand of God is guiding it all... We face mighty contradictions. Agudat Yisrael's premise was to oppose public life which does not conform with the Torah. Now, the State of Israel constitutes a continuation of Zionism and the realization of its aspirations. On the other hand, had the Torah Sages and Orthodox Jewry become involved when the matter first arose, we might not be such a minority today and things would be different. We also cannot ignore the fact that the new Jewish community in Palestine was built up primarily by secular Jews and also the keys to jobs, arrangements for new immigrants and all aspects of daily life. Orthodox Jewry has done very little; hence its influence has declined.⁴³²

Orthodox Jews began to speak of the "advent of redemption," which gained theological acceptance accept by the extreme minority, such as *Neturei Karta*.⁴³³

⁴²⁹ Friedman 186; Abramov 127.

⁴³⁰ Ben-Gurion, Rabbi Yehuda Leib Fishman (Maimon) and Itzhak Greenbaum to Agudat Yisrael Executive. June 19, 1947. In M. Prager, "Ve'Ele Toldot Ha'Status Quo" [And this is the History of the Status Quo] *Beith Yaakov* 5 (n.d.): 62-63. (Hebrew)

⁴³¹ Friedman 186.

⁴³² Friedman 188. Agudat Yisrael Council of Torah Sages, February 16, 1949.

⁴³³ For more on this term and discussion, see Friedman 188f; The Chief Rabbinate's "Prayer for the

The Rise of Religious Extremism

Erik Cohen recognizes a trend towards a new traditionalist Jewish nationalism that, while reinforcing ties among Jews, "de-emphasizes the modern, civil character of the state."⁴³⁴ Cohen says that this development can be seen in four stages:

(1) The gradual "post-revolutionary" disenchantment of members of central strata in Israeli society, including much of the second generation, with the pioneering-socialist ideology of the founders.⁴³⁵ (2) The re-assertion by [*Mizrahi*] immigrants and their progeny of their traditional Jewish world-view, after the partial failure of the Israeli establishment to "modernize" and "secularize" them.⁴³⁶ (3) The Six Day War of 1967, which on the one hand, reinforced traditional and messianic conceptions of Israel following the occupation of the whole of the biblical Land of Israel, and, on the other, brought under Israeli domination about a million Arabs, who are not citizens of the state; and, (4) The October War of 1973, which damaged the prestige of the old-timer leadership and shook the confidence of the wider public in the ideological and political premises which it represented.⁴³⁷

S.N. Eisenstadt expresses concern that the Orthodox Jews have contributed to "a legitimization for xenophobic behavior, based on biblical injunctions against Amalek, going against the recognition of the tensions between the particularistic and universalistic orientations which was characteristic of the older religious Zionist movement."⁴³⁸

The earlier Mizrahi leadership made an effort to keep Zionism and messianism separate. "Zionism was to be an arrangement for securing a Jewish future within the historical, unredeemed world, and for this arrangement, one had to work side by side with non-religious brethren."⁴³⁹ According to Stewart Reiser,

Well-Being of the State"—S.Y. Agnon wrote the text of the prayer at the request of Rav Isaac Herzog, Israel's first Chief Rabbi of Israel. See Walter Wurzbarger, "Theological Implications of the State of Israel: The Jewish View—Messianic Perspectives," *Encyclopedia Judaica, 1974 Year Book* (Jerusalem: Keter, 1974): 148-151; Jacob Katz, "Israel and the Messiah," *Commentary* 73 (January 1982) Reprinted in Marc Saperstein, ed. *Essential Papers on Messianic Movements and Personalities in Jewish History* (New York: NYU Press, 1992), 475-491.

⁴³⁴ Cohen, "Citizenship, Nationality and Religion in Israel and Thailand," 71. See also, Cohen, "Ethnicity and Legitimation in Contemporary Israel."

⁴³⁵ See S. N. Eisenstadt, *The Transformation of Israeli Society*, 409ff.

⁴³⁶ See Moshe Shokeid, "Cultural Ethnicity in Israel: The Case of Middle Eastern Jews' Religiosity," *Association for Jewish Studies Review* 9, no. 2 (1984): 247-271.

⁴³⁷ Erik Cohen, "Citizenship, Nationality and Religion in Israel and Thailand," 71.

⁴³⁸ S.N. Eisenstadt, *The Transformation of the Israeli Society* (Boulder: Westview Press, 1985), 533.

⁴³⁹ Yehoshua Amir, "Messianism and Zionism," in Henning Graf Reventlow, ed. *Eschatology in the Bible and in Jewish and Christian Tradition* (Sheffield: Sheffield Academic Press, 1997), 21.

This initial pragmatic approach of the Mizrahi movement, was one based on its leaders' assessments of the practical needs to world Jewry rather than an attempt to link Zionism to the messianic component of prophetic Judaism.⁴⁴⁰ (The proof is Mizrahi's support of the British proposal for Jewish settlement in Uganda.) Mizrahi's purpose was to rescue Jews from oppression in the diaspora by establishing a secure haven for them in Israel.⁴⁴¹

Mizrahi has generally maintained a pragmatic outlook over the years, until the 1967

Six Day War. Reiser argues that the territorial results of the 1967 war "contributed to the reawakening of the messianic forces that were once a vital part of the earlier Mizrahi movement."⁴⁴²

Political messianism took root when Rabbi Zvi Yehuda Kook rose as a major rabbinical figure after the Six Day War. The war was a nexus point for many religious Zionists, designating the establishment of the State and the 1967 victory as illustrations that the Jewish People were *now* in the midst of the redemption process. Unlike earlier Agudah claims that considered the ingathering of exiles to illustrate this turning point, now Kook and his follows in Gush Emunim saw the return of land as the next stage. The return from exile and the observance of *halachah* are the final aspects.

As a democratic country ruled by a secular majority, Israel is now encumbered by a vocal, active minority who believes that Redemption is more important than democracy and human rights. Uriel Tal focuses on the change of attitudes towards time, and place (Land). Tal says that the Land is important not simply because it is the locale where Jews can fulfill *mitzvot hateluyot ba'aretz*,⁴⁴³ but the land itself has become holy. Our symbols have been transformed into substance—the land actually becomes sacred, more so than a person. For those who think that this

⁴⁴⁰ Stewart Reiser, *The Politics of Leverage: The National Religious Party of Israel and its Influence on Foreign Policy* (Cambridge, MA: Center for Middle Eastern Studies, Harvard University, 1984), 11.

⁴⁴¹ Don-Yehiya, Eliezer, "Jewish Messianism, Religious Zionism, and Israeli Politics: The Impact and Origins of Gush Emunim," *Middle Eastern Studies* 23, no. 2 (1987): 223.

⁴⁴² Reiser 16.

⁴⁴³ M. *Kelim* 1:6.

marks the beginning of the Messiah's arrival, political and military decisions in safeguarding the Land are critical. As Joshua did after the Exodus, Israelis need to inaugurate redemption through the natural process of settlement and defending the Land.⁴⁴⁴

Gush Emunim develops this ideology and remains controversial because of it. It functioned in defiance of government policy as it strove to establish Jewish settlements in the Administered Territories. The foundation for their doing so was that they believed they acted appropriately according to Jewish law and messianic understandings, as shown in the following statement by Zvi Yehuda Kook:⁴⁴⁵

With regard to the commandment to conquer the Land of Israel, the obligation is imposed on us and we are enjoined to enter a state of war, in order to fulfill it, even if we be killed. This is a special precept and as such is on par with all the rest of the Torah...namely, that the entire land, its borders and straits, be in our hands and not those of some other nation. This commandment is a national affair. Blessed be He who has made us live...[in a time] when we rule our land and we are the landlords here, not the gentiles.⁴⁴⁶

This radical position of messianism dictates that Jews must acquire *Eretz Yisrael* in its entirety. If not, you act against Judaism and impede the coming of the Messiah; thus, ceding land is a transgression. If so, then *the state has no right to do so* in its peace negotiations. The fact that Israel has a democratically elected government makes no difference: "democracy, the radical messianists assert, is not nor ever was a Jewish value."⁴⁴⁷ Thus, someone from this camp could argue that it is not incumbent

⁴⁴⁴ Uriel Tal, "Contemporary Hermeneutics and Self-Views on the Relationship between State and Land," in Lawrence Hoffman, ed. *The Land of Israel: Jewish Perspectives* (Notre Dame: University of Notre Dame Press, 1986), 316-338. For a Reform Jewish response to the land as inherently sacred, cf. n. 62 above; Lawrence Hoffman, "Reform Religious Zionism: Celebrating the Sacred in Time and Space," *The Journal of Reform Zionism* 2 (1995); John D. Rayner, "The Land, the Law and the Liberal Conscience," in Walter Jacob and Moshe Zemer, eds. *Israel and the Diaspora in Jewish Law: Essays and Responsa* (Pittsburgh: The Solomon B. Freehof Institute of Progressive Halakhah, 1997).

⁴⁴⁵ See Ehud Sprinzak, *Gush Emunim: The Politics of Zionist Fundamentalism in Israel* (New York: American Jewish Committee Institute of Human Relations, 1986); Gideon Aran, "From Religious Zionism to Zionist Religion: The Roots of Gush Emunim," in Peter Medding, ed., *Studies in Contemporary Jewry*, vol. 2 (Bloomington: Indiana University Press, 1986); Charles Liebman and Eliezer Don-Yehiya, *Civil Religion in Israel*.

⁴⁴⁶ Zvi Yehuda Kook, *From the Redeeming Torah*, [n.d.] 123, qtd. in Moshe Zemer, *Evolving Halakhah* (Woodstock, VT: Jewish Lights, 1999), 216.

⁴⁴⁷ Chaim I. Waxman, "Messianism, Zionism, and Israel," *Modern Judaism* (May 1987): 185.

on the religious Zionist to obey those laws that contravene Jewish messianism.

Messianism as a political program means that not only the goals, but also the means for their attainment, are governed by messianic ideas and attitudes. Hence, in this approach radical parties are an integral part of the messianic theology which legitimizes and prescribes this style of politics.⁴⁴⁸

Jacob Talmon calls this perspective "political messianism."⁴⁴⁹ The danger is evidenced in several instances: settlers' resistance in Yamit, the Jewish Underground efforts to carry out acts of terror and assassination in response to the Camp David Accords (1978), the takeover of Palestinian homes in East Jerusalem, the Hebron Mosque massacre, and PM Yitzhak Rabin's assassination. Israel's democracy began to undergo what Ehud Sprinzak called a period of "violentization," where retaliatory acts against Arabs gel into more concentrated assaults.⁴⁵⁰ But perhaps of equal concern to this growing trend of radicalization and violence that led to Rabin's assassination, is the lack of clear condemnation by prominent figures of the Orthodox rabbinical establishment.⁴⁵¹ Of course there are exceptions, when a few prominent Orthodox Zionist leaders did reevaluate their positions to teach that Jewish sovereignty over the land is *not* a prerequisite for the Messiah's arrival, but a consequence, and that peace is more valuable to God than Jewish presence in the Land.⁴⁵²

Tal describes these two opposing camps within Orthodox religious Zionism;

⁴⁴⁸ Don-Yehiya, "Jewish Messianism, Religious Zionism, and Israeli Politics," 224.

⁴⁴⁹ Jacob Talmon, *Origins of Totalitarian Democracy* (New York, 1970) and *Political Messianism: The Romantic Phase* (New York, 1960). Simon Dubnow uses the same term in his *Nationalism and History* (Philadelphia: JPS, 1958), 157.

⁴⁵⁰ See Ehud Sprinzak, "The Emergence of the Israeli Radical Right," *Comparative Politics* (January 1989): 171-192; Sprinzak, *Brother Against Brother: Violence and Extremism in Israeli Politics from Altalena to the Rabin Assassination* (New York: Free Press, 1999).

⁴⁵¹ See Amnon Rubinstein, *From Herzl to Rabin: The Changing Image of Zionism* (New York: Holmes & Meier Publishers, 2000), chap. 7. See also Yoram Peri, ed. *The Assassination of Yitzhak Rabin* (Stanford: Stanford University Press, 2000).

⁴⁵² The most recent Peres Government and the current Barak government includes two such rabbis, Yoel Ben-Nun and Yehudah Amital, respectively. Oz Veshalom/Netivot Shalom has emerged as a moderate Orthodox Zionist voice to counter this fundamentalism. See <<http://www.ariga.com/ozveshalom/index.asp>>.

the first encourages the "politics of restraint," the second embraces political messianism. Regarding the latter, Tal states:

That the Six Day War brought about radical changes in both our physical and metaphysical status; that the military victory was an astonishing and divine miracle; that the end of days—the eschatological era of redemption—has already begun and is being realized here and now. Using mystical terminology it is said that through the conquest of the Land, *Eretz Yisrael* has been redeemed from oppression of the *Sitra Achra* (literally, the "other side," or the "side of evil") and has entered the realm of all-embracing sanctity. Through the war, the *Shechina*... has been elevated from the dust, for it too has been in exile.⁴⁵³

Thus, any part of the Land that would be returned would be to give control back to the *Sitra Achra*.

Those encouraging moderation include Oz Veshalom/Netivot Shalom and the more centrist Meimad party. Their position:

The religious law [is] liberating the Jew from excess of piety, zeal, and ecstasy. They argue that, ultimately, the mystification of social and political reality, as propounded by the Gush Emunim, is likely to retard the rational character of religious, social and intellectual life, as well as the growth of an open society and of a democratic state.⁴⁵⁴

Tal and other moderate (Orthodox) thinkers are concerned that Gush Emunim and their successors (Yesha) are developing a totalitarian outlook. They prefer Jewish sources on compromise and peace;⁴⁵⁵ "ethical rather than militant criteria are emphasized, due to the belief that prolonged imposed rule over ethnic or religious minorities such as the Arab population of the Land of Israel cannot but distort the democratic and ethical foundations of Jewish society."⁴⁵⁶ Oz Veshalom's leaders, according to Tal, are more consistent with *halakhah* since they apply rational and socio-ethical self-restraint.⁴⁵⁷

⁴⁵³ Tal, "Contemporary Hermeneutics and Self-Views on the Relationship between State and Land," 317.

⁴⁵⁴ Tal, "Contemporary Hermeneutics" 317.

⁴⁵⁵ See BT *Sanhedrin* 6b on Zechariah: "Execute the judgment of truth and peace in your gates; *Mishneh Torah*, *Hilchot Sanhedrin* 2:7 and *Shulchan Arukh*, *Chosehen Mishpat* 12:2; Abraham and Lot make peace with shepherds.

⁴⁵⁶ Tal, "Contemporary Hermeneutics" 323.

⁴⁵⁷ Tal cites Ephraim Urbach, who argued that "*Halakhah* is a factor which throughout history has freed Judaism from an excess of ecstasy or asceticism, from political romanticism, from the totality of time and space structured as myths." Ibid. 323. See Ephraim Urbach, "Mashma'utah Hadatit shel Hahalakhah," *Al Yahadut Bechinukh* (School of Education of The Hebrew University, Jerusalem 1967): 127ff.

The fundamentalist camp can lead to the rejection of civil rights "because the conception of the totality of the dimensions of time and space leaves no room for tolerance."⁴⁵⁸ This potential totalitarianism can have three different degrees of discrimination: the restriction of rights (as if the person is a *ger toshav*⁴⁵⁹), the denial of human rights (which would promote deportation), and genocide—to eradicate Amalek (Arabs). Other implications include opposition to territorial compromise as a principle in peace negotiations, expansion of settlements and territories (even into Lebanon), and the prohibition to give or sell land to non-Jews (Arabs). This fundamentalist perspective functions as "a system of social and moral truths expressing God's thinking...and when embodied in institutions, constitutes the Kingdom of God."⁴⁶⁰ Thus, the state and all of its aspects are holy, including its use of power. Tal sums up our concern succinctly:

We are presented with a political messianism in which the individual, the people and the land arrive at an organic union, bestowed with absolute holiness. It is based on a metaphysical comprehension of political reality, which is expressed by a conception of the totality of time and place. The danger of this totalistic outlook lies in its leading to a totalitarian conception of political reality—because it leaves neither time nor place for the human and civil rights of the non-Jew.⁴⁶¹

The theological perspective is clearly tied to their political perspective. But what is the actual impact on Israeli society?

The transformation of Judaism in Israel can only be understood as the result of two processes that are probably interrelated. The first is the growing deference of the nonreligious

⁴⁵⁸ Uriel Tal, "Foundations of a Political Messianic Trend in Israel," *The Jerusalem Quarterly* 35 (Spring 1985): 42.

⁴⁵⁹ This necessitates that the *ger* accepts an inferior status as *ben Noach*. See p. 39, n.121, above; Charles Liebman, "Jewish Ultra-Nationalism in Israel: Converging Strands," in W. Frankel, ed. *Survey of Jewish Affairs—1985* (London: Associated University Press, 1985), 44. Also see Elisha Aviner, "The Status of Ishmaelites in the State of Israel According to *Halakha*," *T'khumim* 8 (1987): 337-359 (Hebrew), cited in Liebman, "Attitudes Toward Democracy Among Israeli Religious Leaders," 144. Aviner argued that according to Jewish law, non-Jews residing in *Eretz Yisrael* are permitted to do so...but in servitude to Jews. Further, a Jew is permitted, but not required, to save a non-Jew's life if he is in danger. Liebman cautions that Aviner's point is that "the halakhic imperative to subjugate non-Jews living under Jewish rule may be relaxed because of political constraints, but we ought never lose sight of the ideal society to which Israel should aspire. (The editor of the journal dissented in a brief note at the end of the entry.)

⁴⁶⁰ Jacob Talmon, *Political Messianism*, 233.

⁴⁶¹ Tal, "Foundations," 45.

population to the religious elite's definition of Judaism, the Jewish tradition, and the Jewish religion. The second is the changes that have taken place in the religious elite's own definition of Judaism. Both processes are easy enough to demonstrate, but is rather difficult to account for them.⁴⁶²

The problem is further confounded through the primary role of Zionism.

"Zionism, the ideology of Jewish nationalism, has been transformed and integrated into the Jewish tradition. The tradition, in turn, has been nationalized.... The rise of particularism has implications for the interpretation of ethics and morality as well.

Emphasis on law (and ritual) means a deemphasis on the centrality of ethics."⁴⁶³

Where, then, is the balance to be found between democracy and religion, and can it be reconciled?

If by a Jewish state we mean a theocratic state, one ruled by a religious elite or even one in which the laws are subject to the approval of a religious elite, or a state in which the Torah is the ultimate authority, then democracy and a Jewish state are also incompatible.

If by democracy we mean majority rule, individual liberties, and minority rights guaranteed by law, within a set of parameters that are derived from a reasonable understanding of Judaism and the Jewish tradition, then democracy and a Jewish state are not incompatible.... Separation of religion and state is no solution because a Jewish state is, by definition, one in which religion plays a public role and is accorded public status.⁴⁶⁴

The challenge increases with the 1977 elections, which showed that the small Orthodox parties could have more of their religious and financial demands met if they would support the larger coalition partners. During the 1980s and 90s, we see how the smaller, more extremist parties could extort concessions in return for their voting blocs.

The 1988 elections reflected a dramatic rise in power for the *haredi* parties, securing 11 percent of the vote (up from 5 percent). They gained a prime position since Likud and Labor would solicit them to be coalition partners. This gave the *haredi* parties increased influence over the areas of interest to them: 1) funding for their institutions and 2) strengthening the influence of Orthodox Judaism in the Jewish state.

⁴⁶² Charles Liebman, "Religion and Democracy in Israel," 278.

⁴⁶³ Ibid. 280.

⁴⁶⁴ Liebman, "Attitudes Toward Democracy Among Israeli Religious Leaders," in Kaufman, 156.

The religious parties were never as militant as they have been since 1988 (the same time the Lubavitcher Rebbe, Menachem Mendl Schneerson, decided to enter Israeli politics from Brooklyn). The shift is so severe that it is not uncommon to hear a Jew decry the "Khoemeinization" of Israel—where religious parties exploit the system for their sectarian economic and religious interests, furthering religious coercion against a less observant majority, and aggressively discriminating against non-Jewish citizens and residents.

This as a strange development since Mizrahi and the religious Zionist mainstream were once more moderate as they tried to integrate Zionism and modernity into their religious framework.⁴⁶⁵ The radicalism that has emerged in their camp has transformed the non-Zionist *haredi* camp to advance an ultranationalist tone, couched in religious (rather than Zionist) language. NRP today mirrors segments of the extreme nationalist right, as well as the *haredim*. Liebman maintains that "the counterpart to the nationalization of the *haredim* is the *haredization* of the religious-Zionists."⁴⁶⁶

Shmuel Sandler adds another dimension to this discussion. One of the most interesting observations that he advances is that the consociational arrangement between the Labor camp and the national religious camp broke down in 1977. "With the defeat of Labor, the new coalition was no longer an alliance between two ideologically opposing elites. It was a coalition between parties close to one another, a nationalist party (Likud) and a national religious one (NRP)."⁴⁶⁷ As Begin

⁴⁶⁵ See Aryei Fishman, "'Torah and Labor': The Radicalization of Religion within a National Framework," *Studies in Zionism* 6 (August 1982): 255-271; Eliezer Don-Yehiya, "Jewish Messianism, Religious Zionism and Israeli Politics: The Impact and Origins of Gush Emunim," *Middle Eastern Studies* 23, no. 2 (1987): 215-234.

⁴⁶⁶ Charles Liebman, "Democracy & Israeli Religious Leaders," 140.

⁴⁶⁷ Shmuel Sandler, Robert O. Freedman, Shibley Telhami, "The Religious-Secular Divide in Israeli Politics," *Middle East Policy* 6, no. 4 (June 1999), <http://www.mepc.org/journal/9906_sandler.html>.

successfully brought the *haredim* into his government, the "historical alliance" between Labor and NRP was severed. An impact of this new alliance was that NRP moved to the right on foreign affairs. "Religious Zionism, which served as a bond between the two camps, by changing its attitudes on foreign policy and adopting some of the maxims of ultraorthodoxy, abandoned its traditional role of a bridge between traditionalism and modernity."⁴⁶⁸

Sandler also notes that other traditionalist factions could not have filled this bridge. The *haredim* historically have distrusted Labor and their representation of secularism. Ethnic Mizrahim look at Labor as an Ashkenazi institution and still blame them for the Mizrahim's weak socio-economic status in Israel. NRP's important position has been left empty—although the more moderate Meimad has been trying to assert its influence.

Advocacy

We need to change the perceptions of Judaism in Israel by taking it out of the exclusive hands of the Orthodox establishment so that these perceptions are more compatible with a democratic society. Boundaries between politics and religion need to be created to strengthen democracy, protect minorities, and stop religious coercion, without devaluing the "Jewishness" of Israel.⁴⁶⁹

[Edited text, Sadat Forum, cosponsored by the Brookings Foreign Policy Program and the Anwar Sadat Chair for Peace and Development at the University of Maryland. The Brookings Institution, February 23, 1999.]

⁴⁶⁸ Ibid.

⁴⁶⁹ In recent years, Israeli educators have been concerned that the state's secular education system was falling into the hands of the national religious elite, in the past headed by NRP Ministers. Liberals wanted the recommendation of the Shenhar commission implemented, which recommended more Jewish studies in secular schools, taught by "non-Orthodox" perspectives. For a discussion about teaching Democracy, see Dan Izenberg, "Values Clash," *The Jerusalem Post* (18 April 1997): 13; Nuret Altuvia, "The Shenhar Commission's Report on Jewish Education in Israeli Schools," *Avar ve-Atid*, 2, no. 1 (September 1995): 63-75. Also see, Adam Institute for Democracy and Peace, <<http://www.adaminsitute.org.il>>.

The delineation of such boundaries between politics and religion has been a problem at least since the 1950s when the Hebrew Union College first met opposition for building a synagogue on its Jerusalem campus.⁴⁷⁰ During that period, Israelis founded the League Against Religious Coercion "whose goal was to counter religious pressures and curb their influence."⁴⁷¹ It failed because, according to Yishai, it could not compete with the fantastic internal structure of the religious community in Israel and its large numbers of committed adherents. In addition, the Orthodox community was supported from "funds from partisan and rabbinical sources."⁴⁷² Yishai maintains that "it could not have offered a viable solution to the ever-present dilemma of Israel as a Jewish state"—at least as how Israelis conceived of religion at that time. Yishai adds that the League's successor, HEMDAT: The Council for Freedom of Science, Religion and Culture in Israel, has not emerged as the "voice of secular Judaism" and is not well known or supported (from within Israel).⁴⁷³ Perhaps such groups like HEMDAT and the Israel Religious Action Center have not been widely supported by Israelis, not because of their pluralistic message, but rather because of their challenge to collectivism and their support for a new conception of Judaism within a still traditional, conservative society.⁴⁷⁴ By supporting individualism, one challenges the very essence of the Zionist movement—commitment to People/Israel. This may, in part, accounts for Israelis' deference on religion to Orthodoxy. Rabbi Levi Weiman-Kelman further emphasizes this point, stating:

⁴⁷⁰ Michael Meyer, *Hebrew Union College: A Centennial History 1875-1975*, rev. ed. (Cincinnati: HUC Press, 1992), 209-210.

⁴⁷¹ Yishai 95.

⁴⁷² Ibid.

⁴⁷³ Ibid.

⁴⁷⁴ For a comprehensive discussion on the differences between the American and Israeli Jewish communities, relating to social, religious and political values and practices, see Charles Liebman & Stephen Cohen, *Two Worlds of Judaism: The Israeli and American Experiences* (New Haven: Yale University Press: 1990).

That Israel has become essentially a tribal society is demonstrated by the willingness of its citizens to sacrifice individual freedom to satisfy the demands of communal solidarity.... [Furthermore] Secular Israelis [sic.] tend to be hostile to a Jewish ideology that celebrates individual autonomy, viewing it as a threat to collective authority.⁴⁷⁵

Weiman-Kelman colludes that an "ideological divide" challenges the flourishing of Progressive Judaism in Israel—not a theological one. Since Israelis do not have a strong—or even moderate—understanding of Progressive Judaism, they do not see the denied status of Progressive Judaism as a major issue, although research shows that Israelis are sensitive to the matter. Indeed, a 1993 survey by the Guttman Institute of Applied Social Research (Jerusalem) found that 79 percent of Jewish Israelis polled supported full equality for Reform and Conservative Judaism with Orthodoxy.⁴⁷⁶ Indeed, interest and participation in Progressive synagogues has been soaring in recent years, particularly after a combined campaign by the Progressive and Masorti movements during the fall of 1999.⁴⁷⁷

The increase in weddings officiated by Progressive rabbis is also linked to the increased dissatisfaction with the Chief Rabbinate. The Central Bureau of Statistics 1997 Annual Report (Table 3.02) indicates that between 1975 and 1996 the Jewish population grew 57 percent (primarily due to mass immigration). However, there was a decline of 2% in the number of Jewish couples who married under the auspices of the Chief Rabbinate in 1996 in comparison to the number in 1975. The only reasonable answer is that people marry abroad or through alternative means within the country to avoid the Chief Rabbinate's domain. Although subtle, this is a

⁴⁷⁵ Weiman-Kelman 47

⁴⁷⁶ Sh. Levy, H. Levinson and E. Katz, *Beliefs, Observances and Social Interaction Among Israeli Jews* (Jerusalem: Guttman Institute of Applied Social Research, 1993). However, on civil marriage, the margin of support is 56% to 41%, according to a *Jerusalem Post* and Smith Institute Poll. See David Franklin, "Majority Supports Secular Reform," *The Jerusalem Post*, September 15, 2000. See also Charles S. Liebman and Elihu Katz, eds. *The Jewishness of Israelis: Responses to Guttman Report* (Albany: SUNY Press, 1997).

⁴⁷⁷ See Tom Sawicki, "Answered Prayers," *The Jerusalem Report*, February 8, 1996.

significant form of protest.

Conversion

While there has not been an overwhelming protest among Israelis concerning the Knesset's preliminary readings of the proposed Rabbinical Court Conversion Bill (April 2, 1997), many are opposed to the principle. This can be seen in the tremendous amount of coverage in prominent Israeli media, including *Ha'Aretz*, *Ma'ariv*, and *Yediot Achronot*. However, Israelis are more apt to respond to other aspects of religious coercion such as interference in marriage, the draft deferrals of yeshiva students, the exploitation of the Orthodox parties' political power, and the impact of their power on the status of women.

Political elites are weary to get involved without substantial vocal support of Israeli citizens. This can be illustrated in the 1997 Conversion Law vote, where three of the four top Labor candidates for the premiership absented themselves in an attempt to avoid alienating Diaspora Jewish supporters as well as the Orthodox parties with whom they may have to enter a government coalition.

Relating to the current Conversion Law, the government and religious parties are basing their arguments on *halacha* and their understanding of the so-called religious *status quo*. Reform and Conservative conversions performed in Israel were not recognized by Israel's political and religious establishments based on British Mandatory regulation. Currently, the Interior Ministry only recognizes Israeli conversions performed by the Orthodox rabbinate, despite court rulings to the contrary. Even though they are not recognized by the Israeli Orthodox rabbinate, non-Orthodox conversions performed outside Israel are recognized for purposes of the Law of Return and registration in the Population Registry by the Interior Ministry when the convert remains a participant in the community for some "substantial time"

after conversion. This "substantial time" requirement is also contrary to court precedent. *Shas v. Director of Population Administration* (1989) determined that an Interior Ministry clerk must register those who converted abroad once they show a conversion certificate. No where is it mentioned in the ruling that the convert has to be a member of the community?⁴⁷⁸

The situation was maintained until the 1995 High Court *Goldstein* decision, ruling:

that the Mandatory regulation... [was] invalid, and that a Reform conversion could not be rendered without foundation in law simply because the rabbinate would not approve it. However, the court did not go further and order the Ministry of the Interior to register such a convert as Jewish in the Population Registry. Rather, it seemed the court decided to allow time for Israel's Knesset to consider and pass legislation to replace the British Mandatory regulation.⁴⁷⁹

The "rabbinical Court conversion bill," if passed, will affirm the Orthodox monopoly over conversions performed in Israel, thereby deligitimizing the Reform and Conservative movements in Israel and abroad. The government, in a feeble effort to address Diaspora Jewry's concerns, proposed its own version, consistent with its coalition agreement with the Orthodox parties, to deny state recognition of Reform and Conservative conversion within Israel.

MK Gafni's (UTJ) 1999 bill (submitted again in July 2000) would change the situation relating to conversions performed outside Israel to bring it into line with the Interior Ministry's policy for Israeli conversions, which itself violates court established precedent. His bill would require all conversions, whether done in Israel or anywhere else in the Jewish world, to be performed by an Orthodox Rabbinic court recognized by the Israeli Chief Rabbinate.

⁴⁷⁸ *Shas (Sephardi Torah Guardians Movement) v. Director of Population Administration*, H.C. 264/87 (1989). Non-Orthodox conversions abroad recognized for purposes of making aliyah under the Law of Return and registration in the Population Registry.

⁴⁷⁹ *Clayman 7. Goldstein (Pesarro) v. Minister of the Interior*, H.C. 1031/93 (1995). For purposes of the Law of Return, the Interior Ministry has no authority to refuse to recognize non-Orthodox

The Knesset has not dealt further with these regulations concerning conversion due to the Neeman Commission's experiment (1997) that functions as a compromise. But the Chief Rabbinate rejected the Commission's proposals, returning the Israel Religious Action Center to court. The result: in late December 1998, the Jerusalem District Court held that individuals undergoing Reform and Conservative conversions must be recognized as Jews for purposes of registration in the Population Registry (and noted as Jewish on their identity cards). The Court's opinion applies whether the individuals studied and converted in Israel, studied in Israel and converted abroad or did the entire process abroad. The State appealed this ruling to the Supreme Court.⁴⁸⁰

On April 11, 2000, a specially expanded panel of 11 judges heard arguments on the question of recognition of non-Orthodox conversions performed both in Israel and abroad. The panel met to discuss the 1998 decision by Jerusalem District Court President Vardi Ziler referred to above, to recognize dozens of Reform conversions carried out both in Israel and abroad so that the petitioners could be registered as Jews on their identification cards.⁴⁸¹ The petitioners from the State Prosecutors Office argued that there must be a national standard set for conversions carried out in Israel, and that the government must be closely involved in setting that standard. Their primary argument was that Article 15 of the British Mandate determined the policy to be based on "religious communities." The State's attorneys argued there was only one *edah* and it was represented by the Chief Rabbinate.

conversions performed inside Israel.

⁴⁸⁰ There are several petitions filed on this matter that have been consolidated so that court can hear the arguments together. The primary case is the "Hanaton Case," but specific citations were not available.

⁴⁸¹ Moshe Reinfeld, "Judge Quiz Interior Officials on Conversion," *Ha'aretz* April 12, 2000. The panel also conferred over four petitions submitted to the High Court of Justice by the Reform and Conservative movements and the Na'amat women's organization asking the court to recognize the non-Orthodox conversions carried out for adopted babies.

The justices challenged the arguments with many questions. Orthodox Justice Professor England, among others, indicated that this was an anachronistic approach that has lost its meaning with the establishment of the State. Judge England suggested that we should refer to the "Jewish Nation" (*le'om*) rather than the "Jewish Community" (*edah*).

Justice Dalia Dorner stressed that the notion of a "religious community" was relevant in the Mandate period with regard to minority religious communities, but not to modern Israel where Jews constitute the majority. Justice Cheshin pressed with rhetorical questions: "has the term the 'Jewish community' ever appeared in Israeli law after 1948; has any Israeli law referred to the Chief Rabbinate as the head of the 'Jewish community'; am I not merely a Jew but rather a member of the 'Jewish community'; has not the Chief Rabbinate Law (1980) established the Chief Rabbinate as an administrative organ of the State making previous Mandate period references to the institution of the Chief Rabbinate irrelevant?"

Justice Dorit Beinisch challenged the artificial nature of making distinctions between conversions done in Israel and those done abroad. They pointed to the inconsistency that would result with some people being recognized as Jews and others refused even though they have gone through the same conversion process. They wondered whether the State should not be satisfied with the internal criteria for conversion established by the legitimate movements and congregations in world Jewry.⁴⁸²

In July 2000, the Court heard additional arguments on the issue, but in the current political climate and with government imploring the Court to refrain from

⁴⁸² Israel Religious Action Center, "Supreme Court Hears Argument on Conversion Case," April 11, 2000. <http://www.irac.org/article_e.asp?artid=259>.

ruling on matters that are a part of "the delicate fabric of Israeli society," the Court is not prepared to rule on the issue. It clearly prefers the Knesset to legislate a resolution. Yet, the Court made it clear that the government's argument that there is only one Jewish "community" in Israel headed by the Chief Rabbinate, is inaccurate. The case is pending.

Religious Pluralism

David Clayman explains the Israeli position:

What [American Jews] do not perceive is that religious pluralism is in strong evidence in Israel, albeit a pluralism that does not include Reform and Conservative Judaism, which are generally regarded as Diaspora imports and therefore inappropriate to the Israeli situation. For most Israelis, religious pluralism means the right to pick and choose what they will observe and of the tradition, but the tradition itself must remain Orthodox.⁴⁸³

This common Israeli perception, that pluralism already exists in a framework conducive to Israeli society, is a rationalization for discrimination and illustrates the suspicion among Israelis of a Jewish perspective which embraces individual autonomy and social justice. Israel is, indeed, a very diverse society, but that does not mean that it is pluralistic—"Pluralism is not about difference, but how we understand and respond to difference."⁴⁸⁴

David Clayman cites David Landau of *Ha'Aretz*, who wrote an article entitled "Orthodox Democracy," arguing that Israel can develop similarly to Great Britain with its established church, unlike the unique American situation of a separation between religion and state. Landau suggests that Israel, "as a Jewish state, can be linked to an institutionalized Orthodox establishment and still remain democratic in its political character."⁴⁸⁵

⁴⁸³ David Clayman, "The Politics of Religious Pluralism," *Congress Monthly* (March/April 1997): 8. For more on Israeli perceptions, see Daniel Elazar, "Why Conservative and Reform Judaism Don't Work in Israel," *Moment* (October 1996). See responses by leading Reform and Conservative rabbis in *Moment's* "Forum," (February 1997).

⁴⁸⁴ *New Israel Fund* (1991): 80.

⁴⁸⁵ Clayman 8.

Steven Bayme makes similar arguments. He notes that everyone acknowledges that diversity is a fact in Israeli society, but this must be distinguished from pluralism. "True pluralism implies that diversity of views is not only a reality that must be tolerated but a virtue that strengthens Jews as a people. Pluralism suggests that each mode of Jewish expression has its place in the Jewish mosaic."⁴⁸⁶ There is often a lack of tolerance on both sides of the spectrum.

Reading Bayme, I believe that Clayman's suggestion is highly naïve. The Orthodox establishment, as mentioned earlier, is interested in funding its institutions and promoting their conception of a Jewish state. There is no evidence that they would entertain a more flexible position, particularly in light of all that has been discussed above.

Charles Liebman provides a list of attitudes that are important preconditions for the functioning of a democratic system and are probably influenced by religious commitment:

1. Basic respect for law and authority. Democracy places more limited means of coercive control in the hands of its political elite than does an authoritative system of government. Respect for law or the willingness of the citizenry to voluntarily acquiesce to laws they do not personally favor is probably more important to the survival of a democracy than it is to other systems of government.
2. A large measure of tolerance for the opinions of others, regardless of how sharply one disagrees with these opinions and regardless of the type of person expressing them.
3. Relatively greater concern about the process of the political system and relatively less concern about the outcome or output of the system.
4. As an extension of the previous point, high commitment to what Robert Bellah calls a liberal constitutional regime rather than to a republic.⁴⁸⁷ In other words, low commitment

⁴⁸⁶ Steven Bayme, "Response [to Steven M. Cohen and Charles S. Liebman's 'Israel and American Jewry in the Twenty-First Century: A Search for New Relationships']," in Allon Gal and Alfred Gottschalk, eds. *Beyond Survival and Philanthropy: American Jewry and Israel* (Cincinnati: HUC Press, 2000), 28 [25-35]

⁴⁸⁷ The following is quoted in Liebman, "Democracy" 159, n. 17: Bellah distinguishes between liberal constitutionalism, built on the notion that "a good society can result from the actions of citizens motivated by self-interest alone when those actions are organized through proper mechanisms," and a republic, which "has an ethical, educational, even spiritual role." Robert Bellah, "Religion and the Legitimation of the American Republic," in Robert Bellah and Philip Hammond, *Varieties of Civil Religion* (New York: Harper and Row, 1980), 9. The point and its application to Israeli society are discussed more fully in Liebman and Don-Yehiya, "The Dilemma of Reconciling Traditional Culture and Political Needs: Civil Religion in Israel," *Comparative Politics* (October 1983): 53-66; and *Civil Religion in Israel*.

- to the notion that the state has a role to play in shaping the moral character of its citizens or in achieving some other preordained goal; a belief, instead, that government exists to serve the needs of its citizens as the citizens define their needs.
5. Given the presence in Israel of national and religious minorities who are self-conscious about their collective identities, a special tolerance toward non-Jews and some recognition of their group as well as the individual rights.⁴⁸⁸

The first attitude is one that is consistent with a Jewish outlook. The others, however, bring up challenges. For many Orthodox Jews in Israel, there is an inherent contradiction between the tolerance that these principles suggest, and the ability of a Jewish Orthodox believer who accepts *halachah* as God's laws and absolute truth. Thus, to entertain ideas that are clearly "wrong" is to conduct profanity. They, then, want the state to advance a religious worldview that advances a "proper" Jewish state. "A religious worldview socializes the Jew to the notion that the ideal state, the proper Jewish state, is not simply an instrument to serve a variety of interests or needs of the population but a framework that assists the Jew in his moral and spiritual elevation. This attitude is shared by all religious Jews, non-Zionists as well as Zionists."⁴⁸⁹

Thus, one can say that the religious Jewish Zionist favors a republic, rather than a constitutional democracy. But this is not reserved for the *dati'im*; it is a feeling by the overwhelming majority of Jewish citizens. One could say it is a Zionist perspective. "Both Israel as a Zionist state and Israel as a Jewish state imply limitations on democracy." The notion that Israel has a moral purpose that Knesset law cannot overrule is not confined to the religious population. Again, we can point to the Knesset's legislation outlawing political parties with goals to abolish the character of a Jewish state.

Liebman further argues that Israelis' ultimate concern is not specific inconveniences that the *dati* parties try to advance. Rather,

⁴⁸⁸ Liebman "Democracy," 141-2.

⁴⁸⁹ Liebman "Democracy," 143.

the real issue in the eyes of most Israelis is over the extent to which Israeli public life ought to reflect the Jewish nature of the state and to what extent the state may infringe upon the private rights of individuals....The debate between the *dati* and the non-*dati* parties over issues of religious legislation as religious coercion, therefore, is framed not in terms of a debate over the principle of democracy but over the interpretation of what the Jewish nature of public life means and what the private rights of individuals mean.⁴⁹⁰

He claims that the overwhelming majority of Jews believe in the principles of democracy as much as they are overwhelmingly committed to keeping a Jewish character of the state. Whereas American Jews would understand this to reflect ethical considerations, or perhaps a more spiritual, inspiring notion of some kind, Jewish Israelis will see this in cultural, particularistic, national terms.⁴⁹¹

Draft Exemptions

When Israel was established, David Ben-Gurion and his colleagues did not anticipate that the *haredi* community would persevere—surely not to become so strong within the state. As a compromise in 1948, *haredi* yeshiva students have been exempted from military service based on the idea that there needed to be some Jews who were expert Torah scholars. This arrangement applied to only just 400 *haredi* Jews when first commissioned. Today, experts estimate that approximately 30,000 yeshiva students are routinely exempted.

There are strong feelings of contempt by the majority of the Jewish sector against the *haredim* specifically due to this issue. They feel it is unfair that these students are routinely exempted while secular Jews who are conscientious objectors or those who want to engage in their own advanced study find it very difficult to defer service. Needless to say, it is not the inconvenience that angers the majority the most, but that it is they who serve and sacrifice while *haredim* claim that their service is studying Torah.⁴⁹²

⁴⁹⁰ Charles Liebman, "Attitudes Toward Democracy Among Israeli Religious Leaders," 137-138.

⁴⁹¹ See Liebman and Cohen, *Two Worlds of Judaism*.

⁴⁹² See Nehemia Strasser, "Our Blood is Just as Red," *Ha'aretz*, Editorial, March 16, 2000.

The problem extends beyond military service. By being exempt from service, the yeshivah student must be enrolled full-time in study. This means that he cannot work until he is 41 years-old. By that time, he has no practical skills and it is likely that he will have a large family. Part of the reason why Israel's socio-economic gaps have been widening is that much of the *haredi* sector lives on public assistance due to this scenario of forced unemployment. This has imposed a significant burden on Israel's economy. It is estimated that this concession to the *haredim* costs Israel \$3 billion per year.⁴⁹³

The *haredim* do not want their children exposed to the secular, Zionist orientations that the military will offer. They find it threatening to their ways of life.

PM Ehud Barak introduced a bill in July 1998 to address the disparity between the *haredim* and the rest of the Jewish public concerning military service. The bill did not pass. But the bill brought renewed debate. In December 1998, the Supreme Court held that the Minister of Defense has no legal authority to grant military exemptions to yeshiva students and gave the Knesset one year to find a workable solution.

In August 1999, PM Barak appointed a ten-person committee headed by retired Justice Zvi Tal to prepare legislation to address the issue. One year later, it issued its report to an angry public. Essentially, Tal Committee's report suggested that *haredi* men could study in *yeshivot* until age 23, at which point they would need to decide to continue their studies or be drafted. After age 23, they would have one year to make a decision. At that point, the Committee recommends a few different options, yet never mandating enlistment into the military.

⁴⁹³ Israel Religious Action Center, "Yeshiva Student Exemptions: Hinder Israel's Economic Growth and are Used by Religious Establishment," May 26, 1998.

To further placate the *haredi* parties, Barak introduced a bill to the Knesset in July 2000 what would put the Tal Committee's recommendations into law. There were significant public protests, including opposition by groups like Meimad, reservists, and other political factions.

The government has been successful thus far to receive postponements on deciding on the issue despite the Supreme Court's imposed deadline of December 2000. The question is still before the Knesset, and currently, the *haredi* parties are lobbying Ariel Sharon to agree to pass the draft deferral law for yeshiva students prior to the government's formation.⁴⁹⁴

Current Events

As Israel's Government makes the transition from the Barak administration to Ariel Sharon's, the negotiating process has begun again. The Orthodox parties, now strong and entrenched, are making demands in order for them to consider joining a coalition. Their demands include: pass legislation to empower of the Defense Minister to grant draft deferments to yeshiva students, ban Reform and Conservative representatives from religious councils, specify in legislation that all conversions must be recognized by the Chief Rabbinate, as well as empower the Chief Rabbinate to determine personal status issues despite rulings of the Supreme Court. Of course, their demands also include increased funding for yeshivot and Orthodox and *haredi* institutions.

Two political camps are also trying to pass new Basic Laws. NRP recently advocated a Basic Law to define Israel as a Jewish state—thus challenging any efforts, including those by the Supreme Court, to diminish the power of the Orthodox establishment or to advance the separation between religion and state.⁴⁹⁵

<http://www.irac.org/article_e.asp?artic=60>.

⁴⁹⁴ Shahar Ilan, "Shas Pressures Likud to Pass Draft Deferral," *Ha'aretz*, February 19, 2001.

⁴⁹⁵ Nadav Shragai, "NRP Plans To Seek Basic Law Defining Israel as a Jewish State," *Ha'aretz*.

On the other side, MK Naomi Chazan (Meretz) introduced a bill to advance a Basic Law to protect freedom of religion and conscience by anchoring Israel as a Jewish and democratic state.

AFTERWORD

Examining the state of the State of Israel's democracy is no easy task. The nature of Israel's collectivist society suggests that it is difficult to advance liberalism. There are those who believe that in order to successfully do so, one must deconstruct the myths of the state and remove the specifically Jewish elements.

There are others, however, who recognize that the challenges within Israel can be addressed—indeed, must be addressed—as a Jewish, democratic state. Charles Liebman is rightly concerned about the fact that “Judaism in Israel has become increasingly particularistic and ethnocentric. It promotes little tolerance for the individual rights of non-Jewish citizens, and even less for group rights of minorities.”⁴⁹⁶ While it is true that very nature of Zionism demands a commitment to the Jewish nation, it does not necessarily mean that Zionism itself or the Jewish character of the state, are obstacles to democracy and equality.

Those who challenge the collectivist orientation implicitly or explicitly challenge the prominence of the Zionist enterprise. This may account for Yishai's conclusion that Israeli organized interests involved with lobbying for social change (civil rights associations, women's groups, ecological protection groups) are often perceived by political elites as nuisances. As previously mentioned, such concerns are considered “luxuries,” secondary in importance to security concerns.

February 9, 2001.

⁴⁹⁶ Charles Liebman, “Religion and Democracy in Israel,” in Sprinzak and Diamond, eds. *Israeli Democracy Under Stress*, 276.

I am not convinced that an emphasis on individualism, equality, or even a recognition of national minority groups can threaten Zionism or the State of Israel. Even the most liberal nation states, including France, the United States, Norway and Denmark advance their own cultural survival. They do not claim to be neutral with reference to language, history, calendar, and symbols. The key component that separates them from Israel is that "they accord public recognition and support, with no visible anxiety. At the same time, they vindicate their liberalism by tolerating and respecting ethnic and religious differences and allowing all minorities an equal freedom to organize their members, express their cultural values, and reproduce their way of life in civil society and in the family."⁴⁹⁷

The demand for respect is not only about privileges and benefits, or the lack of coercion or equal opportunities—it is as much as "protecting the integrity of the traditions and forms of life in which members of groups that have been discriminated against can recognize themselves."⁴⁹⁸

I have illustrated that there have been violations of human rights and human dignities because of the ethnic/national nature of the conflict within Israel. It is significant to note, however, that there are at least two dozen ethnic democracies in the world and they have varying degrees of citizenship for minority groups in their states. "No nation-state, indeed, is entirely neutral in matters of particular ethnicity or culture, but this does not mean that a Jewish state by definition must be inhospitable to other ethnic groups."⁴⁹⁹

Alan Dowty is concerned about reconciling Israel as a Jewish and democratic

⁴⁹⁷ Michael Walzer, "Comment [on Charles Taylor's 'The Politics of Recognition']," in Gutmann, *Multiculturalism* 100.

⁴⁹⁸ Jürgen Habermas, "Struggles for Recognition in the Democratic Constitutional State," in Gutmann, *Multiculturalism*.

⁴⁹⁹ Alan Dowty, *The Jewish State: A Century Later* (Berkeley: University of California Press, 1998).

state. He maintains that it is feasible, but no stable ethnic democracy can exist with a 40 percent minority population. Thus, he argues that Israel must resolve the conflict with the Palestinians in the Territories and separate the issues of Palestinian Israelis with the broader Palestinian-Israeli and Arab-Israeli conflicts.²⁵³

Israel is in the midst of struggling for its identity. The 1996 elections show a split Israel. Netanyahu represented a "traditional" orientation—particularist, conservative, primordial, communitarian, hawkish; Rabin and Peres emerged as the civic representatives—modernist, universalist, liberal, dovish, seeking a "New Israel."²⁵⁴ Israel and the Zionist movement have always struggled with the tribal and universalistic elements within Judaism. They both will continue that struggle as the Jewish people exercise their right to national self-determination.

The fact that a national minority in a country is more vulnerable than the majority exists in every country. Jewish history is replete with examples of Jews' vulnerability in foreign lands. The difficulty in contemporary Israel is that the Palestinians are forced to live with the burden of being a minority where once they were the majority. For this reason among many others, Israel needs to modify how it advances the Jewish character of the state, so that minority groups can enjoy the advancement of their own cultural and national values and practices.

Israel cannot hide from the international community, nor from its own development. As much as it must adopt internationally recognized standards concerning human rights and dignity, it must also keep its Jewish character. That character, though, must represent more than a majority Jewish population. It should reflect the People of Israel's own development and its success due to access to the

253.

²⁵⁴ *Ibid.* 254.

civic ideal in other countries.

Leonard Fein wrote:

We are the tribe that proclaimed the universality of God, but insisted on remaining a tribe. Others, not understanding why we have felt such urgency about remaining apart, have asked—and sometimes demanded—that we follow our universal insight to its logical conclusion and ourselves become universal. We have steadfastly refused.⁵⁰²

I have grown to greatly admire men like Ahad Ha'am and Martin Buber, both of whom expressed such love for the people of Israel and their efforts to return to Zion, yet also had an uncompromising self-criticism of Israel and the Yishuv out of a sense of obligation.

I feel compelled to follow their example.

As much as Israel represents hope and the potential of a Jewish existence, then Jews in Israel and the Diaspora need to strengthen democracy and promote pluralism in partnership with one another. The building of the state is not yet complete—and it is clear now that there is much more building to do.

While some may feel it is unfair to say, but I do believe that Israel is not like all other nations. Our history, traditions, culture, texts, and dare I say God, calls for a Zionism that seeks to build more than a country, but a Jewish state characterized by compassion, justice and the rule of law.

Shlomo Avineri challenges us all by asking:

Will Israel be capable of developing a Jewish identity and Hebrew culture in touch with both the historical roots of an ever-changing Jewish tradition and the new trends of world culture? Can a middle way be found between an abstract, theoretical secularism, sometimes devoid of context and specificity, and a militant nationalism? Or will Israeli society be hijacked by a retrograde, ethnocentric, exclusivist, even racist construction of Jewishness that is, in a most fundamental way, exilic, based on a self-righteous perception of Jews in the Galuth, immersed in their perceptions of their own victimization and thus oblivious to the claims of the Other and to universalistic values?⁵⁰³

⁵⁰¹ Ibid. 250.

⁵⁰² Leonard Fein, *Where Are We? The Inner Life of America's Jews* (New York: Harper and Row, 1988), 168.

⁵⁰³ Shlomo Avineri, "The Zionist Legacy and the Future of Israel," in Steven J. Zipperstein and Ernest

I believe that Israel can develop into a Jewish state that is inclusive and pluralistic, accepting its citizens and their own particularistic ideas and practices. Clearly, there is a quandary. We have gone through history keeping our identity by adapting as best as we could to new circumstances. A Jewish sovereign state with power and authority encounters an even bolder challenge. In time, I believe that Israel can achieve the utopian, civic aspects of Zionism, and then recognize the needs of its other citizens.

Israel is no longer "a nation that dwells alone." It is a diverse, multi-ethnic, multi-religious country that is shared by people throughout the world. It is my prayer that Israel will continue to grow, strengthen its commitment to its citizens, shape a Jewish culture that is thoughtful and compassionate, and strive for peace.

WORKS CONSULTED

[?] *Ha'aretz*. 22 October 2000. Qtd. in <<http://www.nif.org>>

Abramov, S. Zalman. *Perpetual Dilemma: Jewish Religion in the Jewish State*. New Jersey: Associated University Presses, 1976.

Abu Saad, Ismael. "The Bedouins and The State of Israel." In Shalom Dichter and As'ad Ghanem, eds. *Sikkuy Integration Report 1999-2000*. Jerusalem: Sikkuy, 2000. <<http://www.sikkuy.org.il/Anglit/Parent.htm>>

Adalah—The Legal Center for Arab Minority Rights in Israel. "Legal Advisors Tell Knesset to Disqualify 'Arab Equality' Bill—11/5/99." <<http://www.adalah.org/news1999.html#5>>

Adam Institute for Democracy and Peace web site.
<<http://www.adaminsitute.org.il>>

Algazy, Joseph. "Criticism and Self-Criticism." *Ha'aretz*. 15 February 2000.

———. "Umm al Fahm Prefers Israel." *Ha'aretz*. 1 August 2000.

Al-Haj, Majid. "The Arab Internal Refugees in Israel: The Emergence of a Minority within the Minority." *Immigrants and Minorities* 7, no. 2 (July 1988): 149-165.

Allon, Yigal. *A Curtain of Sand*. Israel: Hakibbutz Hameuchad, 1959 (Hebrew). Qtd. in Ian Lustick. *Arabs in the Jewish State Israel's Control of a National Minority*. Austin: University of Texas Press, 1980.

Almog, Shmuel, Jehuda Reinharz, and Anita Shapiro, eds. *Zionism and Religion*. Hanover, N.H.: Brandeis University Press and University Press of New England, 1998.

Alon, Gideon. "AG [Attorney General]: Police Not Razing Illegal Buildings." *Ha'aretz*. 29 May 2000.

———. "State of Emergency Extended at Last Minute." *Ha'aretz*. 25 July 2000.

Altuvia, Nuret. "The Shenhar Commission's Report on Jewish Education in Israeli Schools." *Avar ve-Atid* 2, no. 1 (September 1995): 63-75.

Americans for Peace Now. "Peace Now Dialogue Group Demands Halt of Assassinations of Palestinians." *Middle East Peace Report* [e-mail newsletter]. 2 January 2001. <<http://www.peacenow.org/>>

Amir, Yehoshua. "Messianism and Zionism." In Henning Graf Reventlow, ed. *Eschatology in the Bible and in Jewish and Christian Tradition*. Sheffield: Sheffield Academic Press, 1997.

Aran, Gideon. "From Religious Zionism to Zionist Religion: The Roots of Gush Emunim." In Peter Medding, ed. *Studies in Contemporary Jewry*. Vol. 2. Bloomington: Indiana University Press, 1986.

Arbeli, Aliza. "Negev Bedouin are Forced to Walk Kilometers to Get Fresh Water." *Ha'aretz*. 8 August 2000.

Arian, Asher & Michal Shamir. *The Elections in Israel: 1992*. New York: SUNY Press, 1995.

Arnou, David. "The Invisible Bedouin." New Israel Fund. August 2000.

<<http://www.nif.org/news/bedouin.html>>

Aronoff, Myron J. "The Origins of Israeli Political Culture," in Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.

———. *Israeli Visions and Revisions*. New Brunswick, N.J.: Transaction Publishers, 1989.

Association for Civil Rights in Israel. "Litigation Docket: A selection of cases from the Israeli Courts." Jerusalem, January 1997.

Association of Forty, The. <<http://www.assoc40.org>>

Aviner, Elisha. "The Status of Ishmaelites in the State of Israel According to *Halakha*." *T'khumim* 8 (1987): 337-359 (Hebrew). Qtd. in Charles S. Liebman. "Attitudes Toward Democracy Among Israeli Religious Leaders." in Edy Kaufman, Shukri Abed, and Robert Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder: Lynne Rienner Publishers, 1993.

Avineri, Zeev Shlomo. "Response [to 'Who Is a Postzionist?']" *Ha'aretz*. 22 September 1995.

———. "The Zionist Legacy and the Future of Israel." In Steven J. Zipperstein and Ernest S. Frerichs, eds. *Zionism, Liberalism, and the Future of the Jewish State: Centennial Reflections on Zionist Scholarship and Controversy*. Providence, RI: The Dorot Foundation, 2000.

Avishai, Bernard. *The Tragedy of Zionism*. New York: Farrar Straus Giroux, 1985.

Azmon, Yael and Dafna N. Izraeli, eds. *Women in Israel: Studies of Israeli Society*. Vol. 6. New Brunswick, N.J.: Transaction Publishers, 1993.

B'tselem. *Loss of Control: The Temple Mount Event—Preliminary Investigation*. Jerusalem: B'tselem, 14 October 1990.

Barak, Aharon. "Tools for Justice." *The Jerusalem Post*. International Edition. 6 June 1992.

———. "The Role of the Supreme Court in a Democracy." *Israel Law Review* 33, no. 1 (1999).

Bar-On, Mordechai. *In Pursuit of Peace: A History of the Israeli Peace Movement*. Washington, DC: United States Institute of Peace Press, 1996.

———. "Post Revolutionary Zionism." *New Outlook* 6 (Oct-Dec 1983): 1-7.

———. "Zionism into Its Second Century: A Stock-Taking," in Keith Kyle and Joel Peters, eds. *Whither Israel? The Domestic Challenges*. London: The Royal Institute of International Affairs and I.B. Tauris & Co. Ltd., 1993.

Bar-On, Mordechai and Uri Avnery. The Back Page. "Should Israel Allow Palestinian Refugees to Return to its Pre-67 Borders?" *The Jerusalem Report*. 26 February 2001: 56.

Barzilai, Gad. "Democratic Regimes During the War and Post-War Periods: Israel from a Comparative Outlook." *International Problems* 29, no. 1-2 (1990): 20-36.

———. *A Democracy in Wartime: Conflict and Consensus in Israel*. Tel Aviv: Sifriyat Poalim, 1992. (Hebrew)

- Bayme, Steven. "Response [to Steven M. Cohen and Charles S. Liebman's 'Israel and American Jewry in the Twenty-First Century: A Search for New Relationships']," in Allon Gal and Alfred Gottschalk, eds. *Beyond Survival and Philanthropy: American Jewry and Israel*. Cincinnati: HUC Press, 2000.
- Bellah, Robert. "Religion and the Legitimation of the American Republic." In Robert Bellah and Philip Hammond, eds. *Varieties of Civil Religion*. New York: Harper and Row, 1980. Qtd. in Charles Liebman. "Religion and Democracy in Israel." In Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- Ben-Eliezer, Uri. "Testing for Democracy in Israel." Ian S. Lustick & Barry Rubin, eds. *Critical Essays on Israeli Society, Politics, and Culture: Books on Israel Vol. II*. New York: SUNY Press, 1991.
- Ben-Gurion, David. "Outlines of Zionist Policy." 15 Oct. 1941. Central Zionist Archives Z4-14632. Qtd. in Benny Morris. *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999*. New York: Knopf, 1999: 168.
- . Report to the 20th Zionist Congress. Zurich. Central Zionist Archives S5-1543. August 7, 1937. Qtd. in Benny Morris. *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999*. New York: Knopf, 1999: 142-143.
- . *Divrey HaKnesset* 4: 819 (1950).
- Ben-Gurion, Rabbi Yehuda Leib Fishman (Maimon) and Itzhak Greenbaum to Agudat Yisrael Executive. June 19, 1947. [The Status Quo Letter]. In M. Prager. "Ve'Ele Toldot Ha'Status Quo" [And this is the History of the Status Quo] *Beith Yaakov* 5 (n.d.): 62-63. (Hebrew)
- Benbassa, Esther. *Haim Nahum: A Sephardic Chief Rabbi in Politics, 1892-1923*. Trans. by Miriam Kochan. University of Alabama Press, 1995.
- Benvenisti, Eyal. *The International Law of Occupation*. Princeton: Princeton University Press, 1993.
- . "Judicial Review of Administrative Action in the Territories Occupied in 1967." In Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.
- Benvenisti, Meron. *Conflicts and Contradictions*. New York: Villard Books, 1986.
- . *Intimate Enemies: Jews & Arabs in A Shared Land*. Berkeley: University of California Press, 1995.
- . *Sacred Landscape: The Buried History of the Holy Land Since 1948*. Berkeley: University of California Press, 2000.
- . "All They Wanted was a Dip in the Sea," *Ha'aretz*. 11 May 2000.
- Bernstein, Deborah S., ed. *Pioneers and Homemakers: Jewish Women in Pre-State Israel*. Albany: SUNY Press, 1992.
- Biale, David. *Power and Powerlessness in Jewish History*. New York: Schocken, 1986.
- Bishara, Azmi. "Embodiment of a Dream," *The Jerusalem Post*. Op-Ed. 7 February 1997.

- Bogdanor, Vernon. "The Electoral System, Government, and Democracy" in Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- Borowitz, Eugene B. "What is Reform Religious Zionism?" *Journal of Reform Zionism*. Association of Reform Zionists of America. 2 (1995).
- . "For Dissent on Israeli Policy," *Sh'ma* 6, no. 116 (3 September 1976).
- Boyle, Kevin and Juliet Sheen, eds. *Freedom of Religion and Belief: A World Report*. London: Routledge, 1997.
- British Mandate. 1922. In Walter Laqueur and Barry Rubin, eds. *The Israel-Arab Reader*, 3rd ed. New York: Penguin Books, 1984.
- Buber, Martin. "And if Not Now, When?" *Israel and the World: Essays in a Time of Crisis*. Syracuse University Press, 1997. Address Delivered at a Convention of Jewish Youth Representatives in Antwerp, 1932.
- . *On Zion: The History of an Idea*. With a foreword by Nahum Glatzer. Syracuse: Syracuse University Press, 1997. Orig. *Israel and Palestine—The History of an Idea*. 1952. 1st Hebrew ed. Ben Am L'Artso. 1944.
- . *Israel and the World: Essays in a Time of Crisis*. Syracuse University Press, 1997.
- . *A Land of Two Peoples: Martin Buber on Jews and Arabs*. Ed. with commentary by Paul R. Mendes-Flohr. New York: Oxford University Press, 1983.
- . "Let Us Make an End to Falsities!" 1948. In *A Land of Two Peoples: Martin Buber on Jews and Arabs*. Ed. with commentary by Paul R. Mendes-Flohr. New York: Oxford University Press, 1983.
- Byman, Daniel and Stephen Van Evera. "Hypotheses on Causes of Contemporary Conflict." *Security Studies* 7, no. 3 (Spring 1988).
- Central Conference of American Rabbis. *CCAR Yearbook* 1: 25-26; 11: 31, 81-82; 17: 31; 58: 93ff; 59: 181.
- . *The Guiding Principles of Reform Judaism [The Columbus Platform]*. Columbus, OH. 1937.
- . *Reform Judaism & Zionism: A Centenary Platform—'The Miami Platform.'* Miami, Fla. 24 June 1997.
- . *A Statement of Principles for Reform Judaism*. 1999 Pittsburgh Convention. May 1999.
- Clayman, David. "The Politics of Religious Pluralism," *Congress Monthly*. March/April 1997: 7-9.
- Cohen, Erik. "Ethnicity and Legitimation in Contemporary Israel." *Jerusalem Quarterly*, 28 (1983): 111-124.
- . *Human Rights in the Israeli-Occupied Territories 1967-1982*. Manchester: Manchester University Press, 1985.
- . "Citizenship, Nationality and Religion in Israel and Thailand." In Baruch

- Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- Cohn, Haim. "The Spirit of Israel Law" *Israel Law Review* 9 (1974): 456-462.
- Commission on Security and Cooperation in Europe. *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*. June 5-29, 1990.
- . *Report of the CSCE Meeting of Experts on National Minorities*. Geneva. July 1991.
- Council of Europe, The. *European Convention for the Protection of Minorities*. 1991.
- . *European Charter for Regional and Minority Languages*. 1992.
- Declaration of Principles*. 1885 Pittsburgh Rabbinical Conference.
- Deshen, Shlomo, Charles S. Liebman & Moshe Shakeid, eds. *Israeli Judaism: Studies of Israeli Society*. New Jersey: Transaction Publishers, 1995. See "Americans in the Israeli Reform and Conservative Denominations" & "Religion and Democracy in Israel."
- Deshen, Shlomo. "Israel Judaism: Introduction to the Major Patterns." *International Journal of Middle East Studies* 9, 1978: 141-169.
- Dichter, Shalom and Assad Ghanem, eds. *Report on Equality and Integration of the Arab Citizens of Israel, 1999-2000*. Jerusalem: Sikkuy—The Association for the Advancement of Equal Opportunities, 2000. <<http://www.sikkuy.org.il>>
- . "It's Time for a 'Radical Overhaul' of the Israeli Arab Sector." Interview. *The Jerusalem Report*. 8 May 2000.
- Diner, Hasia R. "Zion and America: The Formative Visions of Abba Hillel Silver." In Mark Raider, Jonathan Sarna, & Ronald Zweig, eds. *Abba Hillel Silver and American Zionism*. Portland, OR: Frank Cass, 1997.
- Dionne, E.J., Jr. and John J. DiIulio Jr., eds. *What's God Got to do with the American Experiment*. Washington, DC: Brookings Institute, 2000.
- Don-Yehiya, Eliezer. "Ideology and Policy in Religious Zionism—Rabbi Y. Y. Reines' Conception of Zionism and the Policy of the Mizrahi Under his Leadership." *Hatzionut* 8 (Tel Aviv: Hakibbutz Hameuchad, 1983): 103-146 (Hebrew).
- . "Jewish Messianism, Religious Zionism and Israeli Politics: The Impact and Origins of Gush Emunim." *Middle Eastern Studies* 23, no.2 (1987): 215-234.
- Dowty, Alan. "The Use of Emergency Powers in Israel." *Middle East Review* 21, no. 1 (1988): 34-46.
- . "Minority Rights, Jewish Political Traditions, and Zionism," *Shofar* 10, no. 1 (Fall 1991): 23-48.
- . "Jewish Political Traditions and Contemporary Israeli Politics." *Jewish Political Science Review*. 2, nos. 3-4 (Fall 1990): 55-84.
- . *The Jewish State: A Century Later*. Berkeley: University of California Press, 1998.
- Dubnow, Simon. *Nationalism and History*. Philadelphia: JPS, 1958.

- Duverger, Maurice. *Political Parties: Their Organization and Activity in the Modern State*. New York: John Wiley & Sons, 1955. Qtd. in Yonathan Shapiro. "The Historical Origins of Israeli Democracy." In Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- Eisenstadt, S.N. *Israeli Society*. New York: Basic Books, 1967.
- . "The Social Conditions of the Development of Voluntary Organizations: A Case Study of Israel." *Journal of Voluntary Action Research* 3 (1972): 1-14.
- . *The Transformation of Israeli Society*. London: Weidenfeld and Nicolson, 1985.
- Elazar, Daniel. *Israel. Building a New Society*. Bloomington: Indiana University Press, 1986.
- . "Why Conservative and Reform Judaism Don't Work in Israel." *Moment*. (October 1996); *Forum*. (February 1997).
- Ellenson, David. "Reform Zionism Today: A Consideration of First Principles." *Journal of Reform Zionism*. In *Journal of Reform Zionism*. Association of Reform Zionists of America. 2 (1995): 13-19.
- Elon, Amos. "Land Acquisition: The Tragedy of Ghabasiyeh and Israeli Justice." *Ha'aretz*. 18 October 1951. Trans. and reprinted in *Ner* 4, no. 11 (July 1953): 40-42; (August 1953): 25-26.
- Elon, Menachem. "The Sources and Nature of Jewish Law and its Application in the State of Israel." *Israel Law Review* 2 (1967): 515-565; 3 (1968): 88-126, 416-457; 4 (1969): 80-140.
- . *Jewish Law: History, Sources, Principles*. 4 vols. Philadelphia: JPS, 1994.
- Etzioni-Halevi, Eva. "Protest Politics in Israeli Democracy." *Political Science Quarterly* 90: 497-520, 1975.
- . *Political Culture in Israel: Cleavage and Integration among Israeli Jews*. New York: Praeger, 1977.
- Evron, Boas. *Jewish State or Israeli Nation?* Bloomington & Indianapolis: Indiana University Press, 1995.
- Ezrahi, Yaron. *Rubber Bullets: Power and Conscience in Modern Israel*. New York: Farrar Straus & Giroux, 1997.
- Fein, Leonard. *Where Are We? The Inner Life of America's Jews*. New York: Harper and Row, 1988.
- Fishman, Aryei. "'Torah and Labor': The Radicalization of Religion within a National Framework." *Studies in Zionism* 6 (August 1982): 255-271.
- Franklin, David. "Majority Supports Secular Reform." *The Jerusalem Post*. 15 September 2000.
- French National Assembly. [Eligibility of Jews for Citizenship]. December 23, 1789. Qtd. in Paul R. Mendes-Flohr and Jehuda Reinharz, eds. *The Jew in the Modern World: A Documentary History*. 1st ed. New York and Oxford: Oxford University Press, 1980.

- Friedman, Menachem. "Religious-Secular Relations at the Establishment of the State of Israel." In Anita Shapiro, ed. *Issues in History of Zionism and the Jewish Community in Palestine*, vol. 2. (Tel Aviv: Am Oved Publishers, [?]), 69-86.
- . "The State of Israel as a Theological Dilemma." In Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- Friedman, Thomas. *From Beirut to Jerusalem*, rev. ed. New York: Anchor Books, 1990.
- Friedmann, D. "The Effect of Foreign Law in the Law of Israel: Remnants of the Ottoman Period." *Israel Law Review* 10 (1975): 192ff.
- . "The Infusion of Common Law into the State of Israel." *Israel Law Review* 10 (1975): 324-377.
- Gal, Allon. "Why Zionism," *Sh'ma: A Journal of Social Responsibility* 26, no. 513: 3-5.
- Gal, Allon and Alfred Gottschalk, eds. *Beyond Survival and Philanthropy: American Jewry and Israel*. Cincinnati: HUC Press, 2000.
- Galnoor, Itzhak. "Israeli Democracy in Transition." In Peter Medding, ed. *Israel, State and Society, 1948-1988*. Oxford: Oxford University Press, 1989.
- Gavison, Ruth. "The Controversy over Israel's Bill of Rights." *Israel Year Book on Human Rights* 15, no. 113 (1985): 115-122.
- . "Twenty Years after *Yardor*—the Right To Stand for Election and the Lessons of History." In Aharon Barak, ed. *Essays in Honor of Shimon Agranat*. Jerusalem, 1986 (Hebrew). Qtd. in Yoav Peled. "Ethnic Democracy and the Legal Construction of Citizenship." *American Political Science Review* 86, no. 2 (June 1992): 437.
- . *The Constitutional Revolution: A Description of Reality or a Self-fulfilling Prophecy?* Jerusalem: Israel Democracy Institute, 1998. (Hebrew)
- . "The Role of Courts in Rifted Democracies." *Israel Law Review* 33, no. 2 (1999).
- . "Can Israel Be Both Jewish and Democratic?" *Moment*. (December 2000).
- Ghanem, As'ad. "The Palestinians in Israel—Part of the Problem and not the Solution: Their Status if Peace Comes." In Tamar Hermann and Ephraim Yuchtman-Yaar, eds. *Israeli Society and the Challenge of Transition to Co-existence*. Proceeding of Symposium. 21-22 November 1996. Tel Aviv: The Tami Steinmetz Center for Peace Research, Tel Aviv University, 1997.
- Golan, Galia. "Women in Israeli Society: An Overview," *Palestine-Israel Journal of Politics, Economics and Culture*. 2, no. 3 (1995).
- Greenbaum, Charles W., Leon Mann, and Shoshana Harpaz. "Children's Perceptions of Minority Rights: Israel in a Cross-National Perspective." In Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- Greenberg, Irving. "The Ethics of Jewish Power." In Elliot Dorff and Louis Newman, eds. *Contemporary Jewish Ethics and Morality: A Reader*. New York: Oxford,

1995.

Greenfeld, Liah. *Nationalism*. Cambridge: Harvard University Press, 1992.

Gross, Netty C. "Forsaking Our Children." *The Jerusalem Report*. (March 29, 1999): 14-18.

Grossman, David. *Sleeping on a Wire: Conversations with Palestinians in Israel*. New York: Farrar, Straus & Giroux, 1993.

Gruenwald, Ithamar. "Can Messianism Survive Its Own 'Apocalyptic Visions?'" *Journal of Religion* 78:1 (1998): 89-98.

Gurr, Ted Robert. *Minorities at Risk*. Washington, DC: US Institute of Peace, 1993.

Gutmann, Amy, ed. *Multiculturalism: Examining the Politics of Recognition*. Princeton: Princeton University Press, 1994.

Ha'aretz Services. [Shas school system to get NIS 8.5 m.] *Ha'aretz*. Online ed. 1 November 2000. (Hebrew)

Habermas, Jürgen. "Struggles for Recognition in the Democratic Constitutional State." In Amy Gutmann, ed. *Multiculturalism: Examining the Politics of Recognition*. Princeton: Princeton University Press, 1994.

Halper, Jeff. "The Intifada and Israeli Society." *Association for Israel Studies Newsletter* 4 (Fall 1988).

Harel, Amos. "Shin Bet: Israel Must Integrate Its Arabs." *Ha'aretz*. October 12, 2000.

Hareven, Alouph & As'ad Ghanem, eds. *Equality and Integration: Retrospect and Prospects 1992-1996*. Jerusalem: Sikkuy, June 1996.

Hareven, Shulamith. "Israel: The First Forty Years." *Yediot Aharonot*, serialized in February 1, 12, and 26, 1988. (Hebrew) Reprinted in *The Vocabulary of Peace: Life, Culture, and Politics in the Middle East* (San Francisco: Mercury House, 1995), 95-124.

Hartman, David. "Living with Conflicting Values." In Elliot Dorff and Louis Newman, eds. *Contemporary Jewish Ethics and Morality: A Reader*. New York: Oxford, 1995.

Hasson, Shlomo. *Urban Social Movements in Jerusalem: The Protest of the Second Generation*. New York: SUNY Press, 1993. Originally published in Hebrew, Jerusalem Institute for Israel Studies. Research Series no. 26. 1987.

Hazelton, Leslie. *Israeli Women: The Reality Behind the Myths*. New York: Simon and Schuster, 1977.

Hazon, Yoram. *The Jewish State: The Struggle for Israel's Soul*. New York: The New Republic and Basic Books, 2000.

Hecht, Esther. "Freedom Fighters." *The Jerusalem Post Magazine*. 18 April 1997: 11-15.

Hertzberg, Arthur. *The Zionist Idea*. New York: Atheneum, 1973.

Herzl, Theodor. *Diaries*. 12 June 1895. Qtd. in Benny Morris. *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999*. New York: Knopf, 1999: 21-22.

———. *The Jewish State*. 1896. "Theocracy."

- Herzog, Isaac Halevi. 1948. In *Dat Yisrael uMedinat Yisrael*. New York: WZO, 1961.
- Hoffman, Lawrence. "Reform Religious Zionism: Celebrating the Sacred in Time and Space," *Journal of Reform Zionism*. Association of Reform Zionists of America. 2 (1995).
- Hofnung, Menachem. *Democracy, Law and National Security in Israel*. Brookfield, VT: Dartmouth Publishing Company, 1996.
- . "States of Emergency and Ethnic Conflict in Liberal Democracies." *Terrorism and Political Violence* 6 (Autumn 1996): 340-65.
- Horowitz, Dan. "Israel and Occupation," *Jerusalem Quarterly* 47 (Summer 1987).
- . "Before the State: Communal Politics in Palestine Under the Mandate." In Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- Horowitz, Dan and Moshe Lissak. *Origins of the Israeli Polity*. Chicago: University of Chicago Press, 1977.
- . "Democracy and National Security in a Protracted Conflict." *Jerusalem Quarterly* 51, no. 3 (Summer 1989).
- Horowitz, Donald L. *Ethnic Groups in Conflict*. Berkeley: University of California Press, 1985.
- . "Making Moderation Pay." In Joseph Montville, *Conflict and Peacemaking in Multiethnic Societies*. New York: Lexington, 1991.
- Ilan, Shazar. "Shas Pressures Likud to Pass Draft Deferral." *Ha'aretz*. 19 February 2001.
- Israel Religious Action Center. "Yeshiva Student Exemptions: Hinder Israel's Economic Growth and are Used by Religious Establishment." May 26, 1998. <http://www.irac.org/article_e.asp?artid=60>
- . "Supreme Court Hears Argument on Conversion Case." 11 April 2000. <http://www.irac.org/article_e.asp?artid=259>
- "Israel's Arabs Deserve Better." *Ha'aretz*. May 2, 2000.
- "Israeli State Now Employs More Arabs and Druze." *Ha'aretz*. 16 January 2001. Qtd. in Israeli Ministry of Foreign Affairs. *Israel Line* [email newsletter]. 16 January 2001.
- Izenberg, Dan. "Values Clash." *The Jerusalem Post*. 18 April 1997: 13.
- . "Israeli Arabs describe alleged police abuse." *The Jerusalem Post*. 29 January 2001.
- Jacobson, Gary Jeffrey. *Apple of Gold: Constitutionalism in Israel and the United States*. Princeton: Princeton University Press, 1993.
- Jacobson, Kenneth. "Now is Not the Time to Speak Out." *Tikkun* (May/June 1988).
- Jiryis, Sabri. *The Arabs in Israel*. Trans. by Inea Bushnaq. New York: Monthly Review, 1976.
- Joseph, Bernard. *British Rule in Palestine*. Washington, DC: Public Affairs Press, 1948. Qtd. in Pnina Lahav. 130.

- Kaufman, Chaim. "Possible and Impossible Solutions to Ethnic Civil Wars." *International Security* 20, no. 4 (Spring 1996): 136-75. Qtd. in Jack Snyder. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: W.W. Norton, 2000.
- Kaufman, Edy. "War, Occupation, and the Effects on Israeli Society." In Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Kaufman, Edy, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Katz, Jacob. *Jewish Nationalism: Essays and Studies*. Jerusalem, Sifria Tsionit, 1979 (Hebrew).
- . "Israel and the Messiah." *Commentary* 73 (January 1982). Reprinted in Marc Saperstein, ed. *Essential Papers on Messianic Movements and Personalities in Jewish History*. New York: NYU Press, 1992.
- Katz, Yaakov, chair. "The Investigatory Committee on the Bedouin Educational System in the Negev" [The Katz Committee Report]. March 19, 1998. <<http://www.bgu.ac.il/bedouin/mainframeweb.htm>>
- Karsh, Efraim. *Fabricating Israeli History: The New Historians*. London: F. Cass, 1997.
- Kedourie, Elie. *Nationalism*. 3rd ed. London: [n.p.] 1966.
- "Kfar Birem is Waiting for Justice." <<http://www.birem.org>>
- Khalidi, Walid. *Before Their Diaspora: A Photographic History of the Palestinians, 1876-1948*. Washington, DC: Institute for Palestine Studies, 1991.
- , ed. *All That Remains, the Palestinian Villages Occupied and Depopulated by Israel in 1948*. Washington, DC: Institute for Palestine Studies, 1992.
- Kimmerling, Baruch. "Sovereignty, Ownership and Presence in the Jewish-Arab Territorial Conflict: The Case of Bir'am and Ikrit." *Comparative Political Studies* 10, no. 2 (1977): 155-176.
- . *Zionism & Territory: The Socio-Territorial Dimension of Zionist Politics*. Berkeley: University of California Press, 1983.
- , ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- . "Between the Primordial and the Civil Definitions of the Collective Identity: Eretz Yisrael or the State of Israel?" In Erik Cohen, Moshe Lissak and Uri Almagor, eds. *Comparative Social Dynamics: Essays in Honor of S.N. Eisenstadt*. Boulder: Westview Press, 1985.
- . "Academic History Caught in the Cross-Fire: The Case of Israeli-Jewish Historiography." *History and Memory* 7, 1 (Spring/Summer 1995) 41-65.
- . "Response [to 'Who Is a Postzionist?']" *Ha'aretz*. 29 September 1995.
- . "Religion, Nationalism and Democracy in Israel." *Constellations* 6, no. 3 (1999): <<http://pluto.huji.ac.il/~mskimmer/relnat.HTM>>

Knesset Committee for the Advancement of the Status of Women, *Report Presented to the Special Session of the United Nations General Assembly on Women 2000—Beijing +5*. 2000.

"Knesset Debates." February 1, 1950. Reprinted in Itamar Rabinovich and Jehuda Reinharz, eds. *Israel in the Middle East: Documents and Readings on Society, Politics, and Foreign Relations 1948-Present*. Oxford University Press, 1984.

Kook, Zvi Yehuda. *From the Redeeming Torah*, [n.d.] 123. Qtd. in Moshe Zemer, *Evolving Halakhah*. Woodstock, VT: Jewish Lights, 1999.

Kretzmer, David. *The Legal Status of Arabs in Israel*. Boulder, Colo.: Westview Press, 1990.

———. "The New Basic Laws on Human Rights: A Mini-revolution in Israeli Constitutional Law?" *Israel Law Review* 26, no. 2 (1992). Rev. in Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.

———. "The Supreme Court and Parliamentary Supremacy." In Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.

———. "The New Basic Laws on Human Rights." In Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.

Kyle, Keith & Joel Peters, eds. *Whither Israel? Domestic Challenges*. London: The Royal Institute of International Affairs, 1993.

Lahav, Pnina. *Judgment in Jerusalem: Chief Justice Simon Agranat and the Zionist Century*. Berkeley: University of California Press, 1997.

———. "Rights and Democracy: The Court's Performance." In Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993: 125-152.

Lake, David A. "Policy Brief 3: Ethnic Conflict and International Intervention." University of California Institute on Global Conflict and Cooperation. March 1995. <<http://www-igcc.ucsd.edu/>>

Larsen, Timothy. *Friends of Religious Equality: Nonconformist Politics in Mid-Victorian England*. Woodbridge, England: The Boydell Press, 1999.

Lasswell, Harold D. "The Garrison State." *American Journal of Sociology* 46 (1941): 455-467. Noted in Gad Barzilai. "Democratic Regimes During the War and Post-War Periods: Israel from a Comparative Outlook." *International Problems* 29, no. 1-2 (1990).

Lavsky, Hagit. "German Zionists and the Emergence of Brit Shalom." In Jehuda Reinharz and Anita Shapiro, eds. *Essential Papers on Zionism*. New York: NYU Press, 1996.

Lazar, Lucian. "Judaism and Democracy: Incompatible or Complementary." Jerusalem: Oz Veshalom-Netivot Shalom, n.d.
<<http://www.ariga.com/ozveshalom/judaism/juddem.html>>

Levinsohn, Hanna, Elihu Katz and Majid al-Haj. *Jews and Arabs in Israel: Common Values and Reciprocal Images*. Jerusalem: Sikkuy & The Guttman Institute of Applied Social Research at The Hebrew University, 1995.

Levy, Gideon. "A Year Without Torture." *Ha'aretz*. 3 September 2000.

<<http://www.haaretz.co.il>>

Levy, Sh., H. Levinson and E. Katz. *Beliefs, Observances and Social Interaction Among Israeli Jews*. Jerusalem: Guttman Institute of Applied Social Research, 1993.

Liebman, Charles S., "Attitudes Toward Democracy Among Israeli Religious Leaders," in Edy Kaufman, Shukri Abed, and Robert Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder: Lynne Rienner Publishers, 1993.

———. "Conceptions of 'State of Israel' in Israeli Society," 47 *The Jewish Quarterly* 1988: 95-107.

———. "Religion and Democracy in Israel," in Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.

———. "Jewish Ultra-Nationalism in Israel: Converging Strands," in W. Frankel, ed. *Survey of Jewish Affairs—1985*. London: Associated University press, 1985: 28-50.

Liebman, Charles S. and Eliezer Don-Yehiya. *Civil Religion in Israel: Traditional Judaism and Political Culture in the Jewish State*. Berkeley: University of California Press, 1983.

———. "The Dilemma of Reconciling Traditional Culture and Political Needs: Civil Religion in Israel," *Comparative Politics* (October 1983): 53-66.

———. "The 'Status Quo' Agreement as a Solution to Problems of Religion and State in Israel," *Religion and Politics in Israel*. Bloomington: Indiana University Press, 1984.

———. "The Dilemma of Reconciling Traditional Culture and Political Needs: Civil Religion in Israel," *Religion and Politics in Israel*. Bloomington: Indiana University Press, 1984.

Charles S. Liebman and Elihu Katz, eds. *The Jewishness of Israelis: Responses to Guttman Report*. Albany: SUNY Press, 1997.

Charles S. Liebman and Stephen Cohen. *Two Worlds of Judaism: The Israeli and American Experiences*. New Haven: Yale University Press: 1990.

Leibowitz, Yeshayahu. *Torah U'Mitzvot Be'Zman Ha-zeh*. Tel Aviv: Massada, 1954 (Hebrew).

Lijphart, Arend. *Democracy in Plural Societies*. New Haven: Yale University Press, 1977.

———. "The Power-Sharing Approach." In Joseph Montville, *Conflict and Peacemaking in Multiethnic Societies*. New York: Lexington, 1991.

Lustick, Ian. "Stability in Deeply Divided Societies: Consociationalism Versus Control." *World Politics* 31, no. 3 (April 1979): 325-44.

———. *Arabs in the Jewish State Israel's Control of a National Minority*. Austin: University of Texas Press, 1980.

———. "Creeping Bi-nationalism Within the Green Line." *New Outlook* 31 (1988):

14-19.

- . "The Political Road to Binationalism: Arabs in Jewish Politics." In Ilan Poley and Ofira Seliktar, eds. *The Emergence of a Binational Israel*. Boulder, Colo.: Westview, 1989.
- Magonet, Jonathan. "Covenant and Holiness: Help or Hindrance in Seeking a Reform Theology of the State of Israel?" In *Journal of Reform Zionism*. Association of Reform Zionists of America. 1 (1993): 6-12.
- Mana, Adel. "Identity in Crisis: The Arabs in Israel and the Israel-PLO Agreement." In Elie Rekhess, ed. *Arab Politics in Israel at a Crossroads*. Tel Aviv: The Moshe Dayan Center for Middle Eastern and African Studies of Tel Aviv University, 1996.
- Mandel, Michael. "Democracy and the New Constitutionalism in Israel." *Israel Law Review* 33, no. 2 (1999): 259-321.
- Mansour, Atallah. "Arab Lands in Israel: A Festering Wound." *Palestine-Israel Journal* 4, no. 2 (1997): <<http://www.pij.org/zarticle.htm?aid=4247>>
- Maoz, Asher. "Defending Civil Liberties Without a Constitution—The Israeli Experience." 16 *Melbourne University Law Review* 815 (1988).
- . "The System of Government in Israel." *Tel Aviv Studies in Law* 8, no. 9 (1988): 10f.
- Mar'I, Sami Khalil. *Arab Education in Israel*. New York: Syracuse University Press, 1978.
- Masalha, Nur. *Expulsion of the Palestinians: The Concept of Transfer in Zionist Political Thought, 1882-1948*. Washington, DC: Institute for Palestine Studies, 1992.
- , ed. *The Palestinians in Israel*. Haifa: Galilee Center for Social Research, 1993.
- McRae, Kenneth. "Theories of Power-Sharing and Conflict Management." In Joseph Montvielle, ed. *Conflict and Peacemaking in Multiethnic Societies*. New York: Lexington, 1991.
- Medding, Peter. *The Founding of Israeli Democracy, 1948-1967*. Oxford University Press, 1990.
- Mendes-Flohr, Paul, ed. *A Land of Two Peoples: Martin Buber on Jews and Arabs*. NY: Oxford University Press, 1983.
- Melman Yossi and Daniel Raviv. "A Final Solution of the Palestinian Problem." *The Guardian Weekly*. 21 February 1988.
- Meyer, Michael A. "Liberal Judaism and Zionism in Germany." In Shmuel Almog, Jehuda Reinharz, and Anita Shapiro, eds. *Zionism and Religion*. Hanover, N.H.: Brandeis University Press and University Press of New England, 1998.
- . *Response to Modernity*. Detroit: Wayne State University Press, 1988.
- . *Hebrew Union College: A Centennial History 1875-1975*. Rev. ed. Cincinnati: HUC Press, 1992.
- Meyer, Yael. "Renewed Campaign Against the Supreme Court." *The Pluralist* [E-

- mail newsletter]. Jerusalem: Israel Religious Action Center. 13 July 2000.
- Morris, Benny, "Operation Dani and the Palestinian Exodus from Lydda and Ramle in 1948," *Middle East Journal* 40, no. 1 (1986): 82-109.
- . *The Birth of the Palestinian Refugee Problem, 1947-1949*. Cambridge: Cambridge University Press, 1988.
- . *Righteous Victims: A History of the Zionist-Arab Conflict, 1881-1999*. New York: Knopf, 1999.
- . "The New Historiography: Israel Confronts Its Past." *Tikkun* 4 (November/December 1990): 19-23, 99-102.
- . "The Eel and History: A Reply to Shabtai Teveth," *Tikkun* 5, no. 1 (March/April 1990): 19-22, 79-86.
- . "The Origins of the Palestinian Refugee Problem," in Laurence Silberstein, ed. *New Perspectives on Israeli History*. New York: NYU Press, 1991.
- Naor, Aryeh. "The Bad Seed." *Yediot Achronot*. April 21, 1987 (Hebrew). In Edy Kaufman. "War, Occupation, and the Effects on Israeli Society." In Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Negbi, Moshe. "Surprise! We Have a Bill of Rights." *The Jerusalem Report*. 23 February 1995: 55.
- New Israel Fund. *Strengthening Democracy*. Washington, DC: New Israel Fund, 1991.
- Ni'ari, Mahmoud. "They Returned to Their People," in Nur Masalha, ed. *The Palestinians in Israel*. Haifa: Galilee Center for Social Research, 1993.
- Nicholls, David. *Church and State in Britain Since 1820*. London: Routledge and Kegan Paul, 1967.
- O'Brien, David M. *Storm Center: The Supreme Court in American Politics*. 5th ed. New York: W.W. Norton, 1999.
- Oded, Yitzhak. "Land Losses among Israel's Arab Villagers." *New Outlook* 7, no. 7 (September 1964). Qtd. in Ian Lustick. *Arabs in the Jewish State Israel's Control of a National Minority*. Austin: University of Texas Press, 1980: 171.
- Ottaway, Marina. *Democratization and Ethnic Nationalism: African and Eastern European Experiences*. Washington, DC: Overseas Development Council, 1994.
- Oz Veshalom/Netivot Shalom web site.
<<http://www.ariga.com/ozveshalom/index.asp>>
- Pappe, Ilan. "The New History and Sociology of Israel: A Challenge to the Old Version," *Palestine-Israel Journal* 2, no. 3 (1995): 70-76.
- . *Britain and the Arab-Israeli Conflict, 1948-51*. New York: Macmillan/St. Anthony's, 1988.
- Peres, Yochanan. "Ethnic Relations in Israel." *American Journal of Sociology* 76 (1971): 1021-47.
- Plaut, W. Gunther, ed. *The Growth of Reform Judaism*. New York: World Union for Progressive Judaism, 1965.

- Peled, Yoav. "Ethnic Democracy and the Legal Construction of Citizenship: Arab Citizens of the Jewish State," *American Political Science Review* 86, no. 2 (June 1992): 432-443.
- Peri, Yoram. "The Arab-Israeli Conflict and Israeli Democracy." In Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- . Yoram Peri, ed. *The Assassination of Yitzhak Rabin*. Stanford: Stanford University Press, 2000.
- Perlmutter, Amos. *The Life and Times of Menachem Begin*. Doubleday & Co., 1987.
- Peters, Joel. "The Nature of Israeli Politics and Society." In Keith Kyle & Joel Peters, eds. *Whither Israel? Domestic Challenges*. London: The Royal Institute of International Affairs, 1993.
- Petrovich, Michael. *A History of Modern Serbia, 1804-1918*. New York: Harcourt Brace Javanovich, 1976. Qtd. in Jack Snyder. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: W.W. Norton, 2000.
- Pinkas, Alon. "Garrison Democracy: The Impact of the 1967 Occupation of Territories on Institutional Democracy in Israel." In Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Plaskow, Judith. "Israel: Toward a New Concept of Community." In Elliot Dorff and Louis Newman, eds. *Contemporary Jewish Ethics and Morality: A Reader*. New York: Oxford, 1995.
- Poleg, Ilan and Ofira Seliktar, eds. *The Emergence of a Binational Israel*. Boulder, Colo.: Westview, 1989.
- Porath, Yehoshua. *The Emergence of the Palestinian Arab National Movement—1918-1929*. London: Frank Cass, 1974.
- . *The Palestinian Arab National Movement—1929-1939*. London: Frank Cass, 1977.
- Rabbis for Human Rights Bedouin Project. <<http://www.rhr.israel.net/bedouin.shtml>>
- Ramon, Einat. "The Ethics of Ruling a Jewish State with a Large Non-Jewish Minority." In Elliot Dorff and Louis Newman, eds. *Contemporary Jewish Ethics and Morality: A Reader*. New York: Oxford, 1995.
- Ravitzky, Aviezer. "Religious Radicalism and Political Messianism in Israel." In Emmanuel Sivan and Menachem Friedman, eds. *Religious Radicalism and Politics in the Middle East*. Albany: SUNY Press, 1990.
- . *Messianism, Zionism, and Jewish Religious Radicalism*. Trans. By Michael Swirsky and Jonathan Chipman. Chicago: University of Chicago Press, 1996.
- Rayner, John D. "The Land, the Law and the Liberal Conscience." In Walter Jacob and Moshe Zemer, eds. *Israel and the Diaspora in Jewish Law: Essays and Responsa*. Pittsburgh: The Solomon B. Freehof Institute of Progressive Halakhah, 1997.
- . "Nonconformism in Anglo-Jewry." *Jewish Quarterly* (London) 46, no. 4 (1999-2000): 55-59.

- Rein, Natalie. *Daughters of Rachel: Women in Israel*. New York: Penguin Books, 1979.
- Reinfeld, Moshe. "Judge Quiz Interior Officials on Conversion." *Ha'aretz*. 12 April 2000.
- Reiser, Stewart. *The Politics of Leverage: The National Religious Party of Israel and its Influence on Foreign Policy*. Cambridge, MA: Center for Middle Eastern Studies, Harvard University, 1984.
- Rekhess, Elie. "Arabs in a Jewish State: Images vs. Realities." *Middle East Insight* 7 (Jan-Feb. 1990): 3-9.
- Research Project on Religious Discrimination: An Interim Report for The Home Office*. Religious Resource and Research Centre, University of Derby. January 2000.
- Rosenheim Memorandum. November 1946. Minutes of the Agudat Yisrael Executive Committee meeting (A). 24 November 1946. Qtd. in Menachem Friedman. "The State of Israel as a Theological Dilemma." In Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- Rotem, Tamar. "Special Education for Arab Children is Only Available in Hebrew." *Ha'aretz*. 16 July 2000.
- Rothstein, Robert L. "Democracy and Conflict." In Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Rouhana, Nadim. "The Political Transformation of the Palestinians in Israel: From Acquiescence to Challenge." *Journal of Palestine Studies* 18, no. 3 (1989): 38-59.
- Rouhana, Nadim and As'ad Ghanem. "The Democratization of a Traditional Minority in an Ethnic Democracy: The Palestinians in Israel." In Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Rubinstein, Amnon. "The Struggle Over a Bill of Rights in Israel." In Daniel J. Elazar, ed. *Constitutionalism: The Israeli and American Experiences*. University Press of America, 1990.
- . *Constitutional Law of the State of Israel*. Rev. ed. Tel Aviv: Schocken, 1991. (Hebrew)
- . *From Herzl to Rabin: The Changing Image of Zionism*. New York: Holmes & Meier Publishing, 2000.
- . "Response [to 'Who Is a Postzionist?']" *Ha'aretz*. 12 September 1995. (Hebrew)
- . "Who Benefits from Hadash's Radicalism." *Ha'aretz*. 16 May 2000.
- Ruskay, John. Lecture on Federation System to Senior Seminar. HUC-JIR. 25 January 2001.
- Sa'di, Ahmad H. "Modernization as an Explanatory Discourse of Zionist-Palestinian Relations." *British Journal of Middle Eastern Studies* 24 (1997): 25-48.
- . "Israel as Ethnic Democracy: What are the Implications for the Palestinian Minority," *Arab Studies Quarterly* 22, no. 1 (Winter 2000): 25-37.

- Sacks, Jonathan. *The Persistence of Faith: Religion, Morality and Society in a Secular Age*. England: Weidenfeld & Nicolson, 1991.
- Said, Edward. [?] *al-Majalla*. 28 October 1988.
- Sandler, Shmuel, Robert O. Freedman, and Shibley Telhami. "The Religious-Secular Divide in Israeli Politics." *Middle East Policy* 6, no. 4 (June 1999). <http://www.mepc.org/journal/9906_sandler.html> Sadat Forum—Brookings Foreign Policy Program and the Anwar Sadat Chair for Peace and Development at the University of Maryland. The Brookings Institution. February 23, 1999.
- Sarna, Jonathan. "Converts to Zionism in the American Reform Movement." In Shmuel Almog, Jehuda Reinharz, and Anita Shapiro, eds. *Zionism and Religion*. Hanover, N.H.: Brandeis University Press and University Press of New England, 1998.
- Sawicki, Tom. "Answered Prayers." *The Jerusalem Report*. 8 February 1996.
- Schiff, Zeev. "No More a Bridge for Peace." *Ha'aretz*. 25 May 1989.
- Schweid, Eliezer. "Jewish Messianism: Metamorphoses of an Idea," *The Jerusalem Quarterly* 36 (Summer 1985).
- . *The Idea of Judaism as a Culture*. Tel Aviv: Am Oved, 1986. (Hebrew)
- Segev, Tom. 1949, *The First Israelis*. Rev. ed. NY: Henry Holt, 1998.
- Sela, Avraham. "Arab Historiography if the 1948 War: The Quest for Legitimacy." In Laurence Silberstein, ed. *New Perspectives on Israeli History*. New York: NYU Press, 1991.
- Sela, Michal and Yael Meyer. "The Knesset Attacks the Supreme Court." *The Pluralist* [E-mail newsletter]. Jerusalem: Israel Religious Action Center. 2 December 1999.
- Seliktar, Ofira. "The Cost of Vigilance in Israel: Linking the Economic and Social Costs of Defense," *Journal of Peace Research* 17, no. 4 (1980): 339-352.
- Shahak, Israel. "A History of the Concept of 'Transfer' in Zionism." *Journal of Palestine Studies* 18 (1983): 22-37.
- Shalev, Michael. "Jewish Organized Labor and the Palestinians: A Study of State/Society Relations in Israel." In Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.
- Shafir, Gershon. *Land, Labour and the Origins of the Israeli-Palestinian Conflict 1882-1914*. Cambridge: Cambridge University Press, 1989.
- Shamgar, Meir, ed. *Military Government in the Territories Administered by Israel 1967-1980—The Legal Aspects*. Jerusalem: The Hebrew University, Faculty of Law, Harry Sacher Institute for Legislative Research and Comparative Law, 1982.
- Shamir, Ronen. "Legal Discourse, Media Discourse, and Speech Rights: The Shift from Content to Identity - the Case of Israel." 19 *International Journal of the Sociology of Law* 45 (1991).
- Shamir, Yitzhak. *Knesset Record* 117: 3863-3886 (1990).
- Shapira, Anita. "Socialist Means and Nationalist Aims." *Jerusalem Quarterly* 38

(1986): 14-27.

Shapiro, Yonathan. *Israeli Democracy*. Tel Aviv: Massada, 1977.

———. "The Historical Origins of Israeli Democracy." in Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.

Sharfman, Daphna. *Living Without a Constitution: Civil Rights in Israel*. Armonk, NY: M.E. Sharpe, 1993.

Sharkansky, Ira. *Wither the State? Politics and Public Enterprise in Three Countries*. Chatham, NJ: Chatham House, 1979.

Shetreet, Shimon. "Standing and Justiciability." In Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.

Shlaim, Avi. *Collusion Across the Jordan*. New York: Columbia University Press, 1988.

Shohat, Uri. "Who Is a Postzionist?" *Ha'aretz* (September 1, 1995). (Hebrew)

Shokeid, Moshe. "Cultural Ethnicity in Israel: The Case of Middle Eastern Jews' Religiosity." *Association for Jewish Studies Review* 9, no. 2: 247-271.

Shragai, Nadav. "NRP Plans To Seek Basic Law Defining Israel as a Jewish State." *Ha'aretz*. 9 February 2001.

Shual, Judith T. "The Structure and Dilemmas of Israeli Pluralism" in Baruch Kimmerling, ed. *The Israeli State and Society: Boundaries and Frontiers*. Albany: SUNY Press, 1989.

Sikkuy, "Equality and Integration: Appendix to the Annual Progress Report—Comparison of Basic Governmental Guidelines Pertaining to Arab Citizens of Israel—Governments of Shimon Peres and Benjamin Netanyahu"; "Basic Guidelines of the Peres Government," November 19, 1995, § 10, "Arabs and Druze"; "Basic Guidelines of the Netanyahu Government," June 17, 1996, § 41, "Minorities."

Silberstein, Laurence. *The Postzionism Debates: Knowledge and Power in Israeli Culture*. New York: Routledge, 1999.

Simon, Uriel. "The Land of Israel and the State of Israel." Jerusalem: Oz Veshalom/Netivot Shalom. [n.d].
<http://www.ariga.com/ozveshalom/judaism/land-sta.html>.

Slonim, Shlomo, ed. *The Constitutional Bases of Political and Social Change in the United States*. NY: Praeger, 1990.

Slyomovics, Susan. *The Object of Memory: Arab and Jew Narrate the Palestinian Village*. University of Pennsylvania Press, 1998.

Smoocha, Sammy. *Israel: Pluralism and Conflict*. London: Routledge and Kegan Paul, 1978.

———. "Existing and Alternative Policy Towards Arabs in Israel." *Ethnic and Racial Studies* 5, no. 1 (1982): 71-98.

———. *Arabs and Jews in Israel: Volume 1—Conflicting and Shared Attitudes in a Divided Society*. Boulder: Westview Press, 1989.

- . "The Arab Minority in Israel: Radicalization or Politicization?" *Studies in Contemporary Jewry* 5 (1989).
- . "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," *Ethnic and Racial Studies* 13, no. 3 (July 1990): 389-413.
- . "Class, Ethnic, and National Cleavages and Democracy in Israel," in Sprinzak, Ehud & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- . "Ethnic Democracy: Israel as an Archetype," *Israel Studies* 2 (1997): 98-241.
- . "The Viability of Ethnic Democracy as a Mode of Conflict Management: Comparing Israel and Northern Ireland," in Todd Endelman, ed. *Comparing Jewish Societies*. Ann Arbor: University of Michigan Press, 1997: 267-312.
- Smootha, Sammy and Theodor Hanf. "The Diverse Modes of Conflict Resolution in Deeply Divided Societies." *International Journal of Comparative Sociology* 33 (1992): 26-47.
- Snyder, Jack. *From Voting to Violence: Democratization and Nationalist Conflict*. New York: W.W. Norton, 2000.
- Solomon, Norman. "Zionism and Religion: The Transformation of an Idea." In Alan J. Avery-Peck, William Scott Green, Jacob Neusner, eds. *The Annual of Rabbinic Judaism: Ancient, Medieval, and Modern*. Vol. 3. Leiden, Boston, Köln: Brill, 2000: 145-173.
- Spann, G. *Race Against the Court*. New York: NYU Press, 1993.
- Sprinzak, Ehud. *Gush Emunim: The Politics of Zionist Fundamentalism in Israel*. New York: American Jewish Committee Institute of Human Relations, 1986.
- . "The Emergence of the Israeli Radical Right." *Comparative Politics* (January 1989): 171-192.
- . "Elite Illegality in Israel and the Question of Democracy." In Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- . *Brother Against Brother: Violence and Extremism in Israeli Politics from Altalena to the Rabin Assassination*. New York: Free Press, 1999.
- Sprinzak, Ehud & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. With Foreword by Arye Carmon. Boulder & London: Lynne Rienner Publishers, 1993.
- Statistical Abstract of Israel, 1993*. Table 22.10. Qtd. in As'ad Ghanem, ed. "Arabs and Jews in Israel: Multi-Annual Comparative Data." Jerusalem: Sikkuy, 1996: 5-7.
- Sternhell, Zeev. *The Founding Myths of Israel*. Princeton: Princeton University Press, 1997.
- . "Response [to 'Who Is a Postzionist?']" *Ha'aretz*. 15 September 1995.
- . "The Battle for Intellectual Control." *Politika* [Ratz] (December 1987). (Hebrew)

- Strasler, Nehemia. "Our Blood is Just as Red." *Ha'aretz*. Editorial. March 16, 2000.
- Sullivan, John, Michal Shamir, Patrick Walsh, and Nigel Roberts. *Political Tolerance in Context: Support for Unpopular Minorities in Israel, New Zealand and the United States*. Boulder: Westview, 1985.
- Survey of Youth Opinions*. Dahaf. March 1986 (Hebrew). Qtd. in Edy Kaufman, "War, Occupation, and the Effects on Israeli Society." In Edy Kaufman, Shukri B. Abed, and Robert L. Rothstein, eds. *Democracy, Peace, and the Israeli-Palestinian Conflict*. Boulder, CO: Lynne Rienner Publishers, 1993.
- Swirsky, Barbara & Marilyn Safir, eds. *Calling the Equality Bluff*. New York: Pergamon Press, 1991.
- "Symposium on the Report of the Commission of Inquiry into the Methods of Investigation of the General Security Service Regarding Hostile Terrorist Activity (The Landau Commission Report)." *Israel Law Review* 23, nos. 2-3 (Spring-Summer 1989).
- Tal, Uriel. "Contemporary Hermeneutics and Self-Views on the Relationship between State and Land." In Lawrence Hoffman, ed. *The Land of Israel: Jewish Perspectives*. Notre Dame: University of Notre Dame Press, 1986.
- Tal, Uriel. "Foundations of a Political Messianic Trend in Israel," *The Jerusalem Quarterly* 35 (Spring 1985): 36-45.
- Talmon, Jacob. *Political Messianism: The Romantic Phase*. New York: [?], 1960.
- . *Origins of Totalitarian Democracy*. New York: [?], 1970.
- Taubes, Jacob. *Journal of Jewish Studies* 33 (1982). Reprinted in Marc Saperstein, ed. *Essential Papers on Messianic Movements and Personalities in Jewish History*. New York: NYU Press, 1992, 551-557.
- Taylor, Charles. "The Politics of Recognition." In Amy Gutmann, ed. *Multiculturalism: Examining the Politics of Recognition*. Princeton: Princeton University Press, 1994.
- Teveth, Shabtai. "The Palestine Arab Refugee Problem and Its Origins," *Middle Eastern Studies* (April 1990): 214-249.
- . "Charging Israel With Original Sin." *Commentary* (September 1989): 24-33.
- . "The New Historians," *Ha'aretz*. 7 April 1989: 56; 14 April 1989: 76; 21 April 1989: 56. (Hebrew)
- "The Jewish Colonies in the Land of Israel Are Built Upon the Misfortunes of the Arabs," [New York] *Jewish Daily Forward* [n.d.], 1915. Qtd. in Shabtai Teveth, "Charging Israel With Original Sin." *Commentary* (September 1989).
- Totalitarian Democracy and After: International Colloquium in Memory of Jacob L. Talmon*. Jerusalem: Israel Academy of Sciences and Humanities and Magnes Press, The Hebrew University, 1984.
- UN General Assembly. *Universal Declaration of Human Rights*. In pursuance of UN General Assembly Resolution 217A (III), 10 December 1948.
<<http://www.un.org/Overview/rights.html>>
- . Meeting no. 93. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment A/RES/39/46*. 10 December 1984. <

<http://www.un.org/documents/ga/res/39/a39r046.htm> >

- . 92nd Plenary Meeting. *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*. A/RES/47/135. 18 December 1992. <<http://www.un.org/documents/ga/res/47/a47r135.htm>>
- Urbach, Ephraim. "Mashma'utah Hadatit shel Hahalakhah." *Al Yahadut Bechinukh* (School of Education of The Hebrew University, Jerusalem 1967): 127ff. Qtd. in Uriel Tal. "Contemporary Hermeneutics and Self-Views on the Relationship between State and Land." In Lawrence Hoffman, ed. *The Land of Israel: Jewish Perspectives*. Notre Dame: University of Notre Dame Press, 1986.
- Van Leer Institute. "Political and Social Positions of Youth—1987." Reported in *New Outlook* (February 1988).
- Verba, Sidney, Norman Nie and J. Kim. *Participation and Political Equality*. London: Cambridge University Press, 1978.
- Walzer, Michael. "Comment [on Charles Taylor's 'The Politics of Recognition']." In Amy Gutmann, ed. *Multiculturalism: Examining the Politics of Recognition*. Princeton: Princeton University Press, 1994.
- Wanefsky, Joseph. *Rabbi Isaac Jacob Reines: His Life and Thought*. New York: Philosophical Library, 1970.
- Waxman, Chaim I. "Messianism, Zionism, and Israel." *Modern Judaism* (May 1987): 175-192.
- Werber, Max. *Politics as a Vocation*. Qtd. in Vernon Bogdanor. "The Electoral System, Government, and Democracy" in Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- Weiman-Kelman, Levi. "Surmounting the Ideological Divide." *Reform Judaism* (Spring 1997).
- Wiesel, Elie. "Jerusalem in My Heart." Op-Ed. *The New York Times*. January 24, 2001.
- Wigoder, Geoffrey. "Israel—Public Debate is Irresponsible." *Sh'ma* 6, no. 118 (1 October 1976).
- Wolfsfeld, Gadi. "The Politics of Provocation Revisited: Participation and Protest in Israel," in Ehud Sprinzak & Larry Diamond, eds. *Israeli Democracy Under Stress: An Israel Democracy Institute Policy Study*. Boulder & London: Lynne Rienner Publishers, 1993.
- . *The Politics of Provocation: Participation and Protest in Israel*. Albany: SUNY Press, 1988.
- Wurzburger, Walter S. "Theological Implications of the State of Israel: The Jewish View—Messianic Perspectives," *Encyclopedia Judaica, 1974 Year Book*. Jerusalem: Keter, 1974: 148-151.
- Yehoshua, A.B. "Israeli Identity in a Time of Peace: Prospects and Perils." *Tikkun* 10, no. 6 (November/December 1995): 34ff.
- Yiftachel, Oren. "The Concept of 'Ethnic Democracy' and Its Applicability to the Case of Israel." *Ethnic and Racial Studies* 15 (1992): 125-35.

- . "Israeli Society and Jewish-Palestinian Reconciliation: 'Ethnocracy' and Its Territorial Contradictions." *Middle East Journal* 51, no. 4 (1997): 505-519.
- Yishai, Yael. *Land of Paradoxes: Interest Politics in Israel*. New York: SUNY Press, 1991.
- Zamir, Itzhak. "The Rule of Law in the State of Israel." *Ha'Praklit*. Special issue (Spring 1987): 61-74. (Hebrew)
- . "Administrative Law." In Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.
- . "Rule of Law and Civil Liberties in Israel." *Civil Justice Quarterly* 64 (1987): 65f.
- Zamir, Itzhak and Allen Zysblat, eds. *Public Law in Israel*. With a Foreword by Aharon Barak. Oxford: Clarendon Press, 1996.
- Zellick, Graham. "Freedom of Religion and the Jewish Community in the United Kingdom." *Patterns of Prejudice*. (London) 21, no. 2 (1987): 3-16.
- Zidan, Mohamed. "The Arab Citizens of the State of Israel vs. the State of Israel." An indictment presented to Israel's Commission of Inquiry. January 2001. <http://www.adalah.org/indictment.htm>
- Zipperstein, Steven J. and Ernest S. Frerichs, eds. *Zionism, Liberalism, and the Future of the Jewish State: Centennial Reflections on Zionist Scholarship and Controversy*. Providence, RI: The Dorot Foundation, 2000.
- Zureik, Elia T. *The Palestinians in Israel*. London: Routledge & Kegan Paul, 1979.
- Zureik, Elia T. and Aziz Haider. "The Impact of the Intifada on the Palestinians in Israel." *International Journal of Sociology of Law* 19 (1991).
- Zysblat, Allen. "The System of Government." In Itzhak Zamir and Allen Zysblat, eds. *Public Law in Israel*. Oxford: Clarendon Press, 1996.
- Knesset, State of Israel (chronological order)**
- Lands Law (Acquisition for Public Purposes), 1943.
- Emergency (Defense) Regulations, 1945.
- Emergency Regulations (Cultivation of Waste Lands) Ordinance, 1948. *Sefer Ha-Chukkim*. No.
- Emergency Land Requisition (Regulation) Law, 1949. *Sefer Ha-Chukkim*. No. 27. November 23, 1949: 1.
- Harari Resolution, 1950. *Divrei Haknesset* 5. June 6, 1950: 1743.
- Law of Return, 1950. *Sefer Ha-Chukkim*. No. 51. July 5, 1950: 159.
- Absentees' Property Law, 1950. *Sefer Ha-Chukkim*. No. 37. March 20, 1950: 86.
- Development Authority (Transfer of Property) Law, 1950. *Sefer Ha-Chukkim*. No. 57. August 9, 1950: 278.
- Women's Equal Rights Law, 1951. *Sefer Ha-Chukkim*. No. 82. July 26, 1951: 248.
- State Property Law, 1951. *Sefer Ha-Chukkim*. No. 68. February 15, 1951: 52.
- Knesset Members (Immunity, Privileges and Duties) Law, 1951. *Sefer Ha-Chukkim*.

- No. 80. July 3, 1951: 228.
- Nationality Law, 1952. *Sefer Ha-Chukkim*. No. 95. April 8, 1952: 146.
- Land Acquisition (Validation of Proceedings and Compensation) Law, 1953. *Sefer Ha-Chukkim*. No. 7. 1953: 43.
- Jewish National Fund Law, 1953.
- Israel Archives Law, 1955 amended in 1964 and 1981.
- Land Requisition (Temporary Provisions) Law, 1956.
- Basic Law: Knesset, 1958. *Sefer Ha-Chukkim*. No. 244. February 20, 1958: 69.
- Lapse of Time Law, 1958.
- Israel Lands Law, 1960.
- Basic Law: Israel Lands, 1960. *Sefer Ha-Chukkim*. No. 312. July 29, 1960: 56.
- Israel Lands Administration Law, 1960.
- Forests' Law, 1966.
- Commissions of Inquiry Law, 1968.
- Land Ownership Settlement Law, 1969.
- Law of Return (Amendment No. 2), 1970.
- Basic Law—The Knesset (Amendment No. 9), 1985. *Sefer Ha-Chukkim*. 1985: 196.
- Basic Law: Freedom of Occupation, 1994. *Sefer Ha-Chukkim*. No. 1454. March 10, 1994: 90.
- Basic Law: Human Dignity and Liberty, 1992. *Sefer Ha-Chukkim*. No. 1391. March 25, 1992: 150.
- The Political Parties Law, 1992. *Sefer Ha-Chukkim*. 1992: 190.
- Women's Equal Rights Law (Amendment No. 2), 2000.

State of Israel, Supreme Court Cases (chronological order)

- Brun v. Prime Minister and Minister of Defense*. H.C. 16 (48) I P.D. 109, 112 (1948).
- Zeev v. Gubernick*. H.C. 10 (48) I P.D. 85, 88-89 (1948).
- Ahmed Al-Karbutly v. Minister of Defense et al.* H.C. 48 (8), P.D. 2 (1949).
- Mabda Hana Daud et al. v. Appeals Committee for the Security Districts, Office of the Military Governor of the Galilee*, H.C. 51 (239) 6 (1952)
- Kol Ha'am Company, Ltd. V. Minister of Internal Affairs*. H.C. 73(53) P.D. 7 (1953).
- Kol Ha'am Company, Ltd. V. Minister of Internal Affairs*. H.C. 53(87) P.D. 7 (1953).
- Abu-Gosh v. The Military Commander of the Corridor to Jerusalem* (1953) 7 PD 941, 943
- Israel Peretz v. Kfar Shmaryahu* H.C. 262/62, P.D. 16 (1962).
- E.A. 1/65 Yeredor v. Central Elections Commission*, 19 (3) P.D. 365 (1965).
- Shalit v. Minister of the Interior* H.C. 58/68, P.D. 23 (2) (1969).

- Bergman v. Minister of Finance* (1969) 27(2) PD 785 HC 98/89
H.C. 40/70 Becker v. Minister of Defense (1970) 24(1) PD 238
Izat Muhamed Mustafa Dwaikat et al v. State of Israel H.C. 390/79, 34 (1) PD 1 (1980)—The "Elon Moreh Case."
H.C. 448/81 Ressler v. Minister of Defense (1982) 36(1) PD 81.
Barzilai v. The Government of Israel (1986) H.C. 428/86, 40(3) P.D. 505, 606.
Dahaar v. Minister of the Interior (1986) 40(2) PD 701
Kahane v. Broadcasting Authority (1987) 41(3) PD 255
Poraz v. Mayor of Tel Aviv (1988) 42(2) PD 309
Ressler v. Minister of Defense (1988) 42(2) PD 441.
Ben Shalom v. Central Elections Commission for the Twelfth Knesset. E.A. 2/88 42 (4) P.D. 749 (1988)
Neiman v. Central Elections Committee, E.A. 1/88, 42 (2) P.D. 177 (1988)
Shas (Sephardi Torah Guardians Movement) v. Director of Population Administration, H.C. 264/87 (1989)
Ganor v. Attorney General (1990) 44 (2) PD 485
Meatrael v. Minister of Commerce and Industry, 47(1) P.D. 521 (1993).
Goldstein (Pesarro) v. Minister of the Interior, H.C. 1031/93 (1995) (1995) 49(4) PD 221.
Roe v. Minister of Defense Not published. Hearing, February 1996.
<<http://humrts.huji.ac.il>>
Adalah et al v. Minister of Religious Affairs and Minister of Finance, H.C. 240/98.
ACRI et al v. The State of Israel, The General Security Service et al. (1999) H.C. 5100/94, H.C. 4054/95, H.C. 6536/95, H.C. 5188/96, H.C. 7563/97, H.C. 7628/97, H.C. 1043/99
Adalah, et. al. v. Minister of Religious Affairs, et. al., H.C. 4/00.
- United States of America, Supreme Court Cases*
United States v. Klein 80 U.S. 128 (1871)
Whitney v. The People of the State of California 47 U.S. 641, 649 (1926)
Biddle v. Perovich 274 U.S. 480 (1927)
Korematsu v. United States, 323 U.S. 214 (1944)
Hirabayashi v. United States, 320 U.S. 81 (1944)

¹ For more on Israeli women and the impact religion has on women's rights, see Israel Women's Network, <<http://www.iwn.org/icar/>>.