

**Samuel Neaman Institute for Advanced Studies in Science and Technology
The Technion – Israel Institute of Technology**

Metzilah, Center for Zionist, Jewish, Liberal and Humanistic Thought

**Conditions for the Prosperity of the State of Israel
"Where there is no vision, the people
cast off restraint" –
A Meta-Purpose for Israel and
its Implications**

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May 2006

Translation from the Hebrew:

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August 2007

¹ I would like to thank the S. Neaman Institute and the Metzilah Center for their generous support of this work. I would also like to thank Gilad Malach, Oren Melberger, Yair Levy and Tami Harel Ben-Shachar for assistance in the research. I am grateful also to Zeev Tadmor, Zvi Tsameret, Tuvia Blumenthal and Evelyn Gordon for their insightful comments.

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Foreword to the Series

Late in 2004 the Neaman Institute at the Technion established a long-term think-tank enterprise to tackle the fundamental problems facing the State of Israel and the conditions required to ensure the country's prosperity. Heading the project was Prof. Aviezer Ravitzky of Hebrew University.

The volume before you is one in a series of essays, which present the outcome of this enterprise.

The project brought together a group of first-rate scholars and thinkers in Israeli society representing various fields of interest- philosophical, political, social, juridical and technological. Each participant took it upon himself independently to write an essay focusing on one of the constitutive areas of national life, to analyze the existing reality and formulate proposals and recommendations for the future, placing emphasis on the opportunities and dangers we face. These essays, then, aim to rise above the press of events and interests and observe reality from a reflective elevated viewpoint, and thus to propose possible ways of correcting and improving this reality. The writers have also sought insofar as is possible to avoid transient political controversies and to focus on the more enduring cultural, social and practical issues that may be expected to preoccupy the state and society in the foreseeable future.

At this stage, the series includes six essays:

- *"Where there is no vision, the people cast off restraint" – A Meta-Purpose for Israel and its Implications*, by Prof. Ruth Gavison, posits long-term objectives that will allow the country to sustain a proper balance between social cohesion and partnership in the national enterprise, on one hand, and differences and plurality of opinion on the other hand;
- *Notes on Governmental Rules in Israel*, by Prof. Shlomo Avineri, focuses on various issues disruptive of public life;
- *The Jewish People at this Time: Between Necessity and Freedom*, by Prof. Aviezer Ravitzky, is devoted to two basic questions: the rapid turnabout in the situation of the Jewish people and their state in our time, and the new challenge posed by the "clash of civilizations" (whether real or imagined);

- *Modern Jewish Identities and the State of Israel* by Prof. Moshe Halbertal focuses on the plurality of Jewish identities facing each other in Israeli reality;
- *Without Science there is no Future – without Technology there is no Existence*, by Prof. Zeev Tadmor, puts forward the contention that excellence in science and technology is a necessary condition for Israel's survival and prosperity;
- *Weaving a Future for the State of Israel*, by Prof. Yechezkel Dror, presents alternative futures for the State of Israel and strategies for implementing them.

I can only hope that these essays will arouse extensive public debate and serve as a cornerstone for constructing the future edifice of the State of Israel.

Prof. Nadav Liron

Director,

S. Neaman Institute

A Note on the Translation

Translation is always a feat. In a way, it is easier for a writer to be translated into a language she does not know at all. She then has no choice but to trust the translators. Being translated into English has not been easy on either the translators or myself. I am very grateful to Ruvik Danieli, Yair Levy and Sandra Fine for producing this translation. Joel Pollak gave the text a final touch.

Translations are of course more than rendering a text originally written in one language into another. Three decisions that we have made here merit a special mention.

1. The Hebrew text was written with the Israeli audience in mind, and naturally it contains a lot of details that are known and interesting only to it. We were not sure it would not be better to edit the text before the translation so the level of detail would suit those who may be less familiar and less interested in such details. This might indeed have made the text easier to read, but it would mean that the text would become an English version rather than a translation. We preferred keeping the nature of the English text as a translation.
2. The Hebrew text went to print in May 2006. By the time it was published in September 2006, some of it was already outdated. The war in Lebanon, for example, changed some of the perceptions of the regional situation. There have also been some changes in the legal situation through both legislation and judicial opinions. Again, we preferred the accuracy of the translation to updating the text. We have added an asterisk (*) in some of the places where important developments have occurred since the text was written.
3. Finally, exact meaning often comes from context as much as from the words used. In translation we usually opted for accuracy and not for a text that might better express meanings and contexts.

Ruth Gavison

Jerusalem,
July 2007

Foreword

This essay is part of a larger work.² It focuses on the thesis that it is vital to Israel's future robustness that it re-formulates a meta-purpose that might provide the great majority of the country's inhabitants with a sense of cohesion and partnership in the enterprise of the state. The existence of such a meta-purpose was a central factor in the country's past success, and it is no less vital today. The provision of such a meta-purpose may help to forge agreement over the rules of decision-making in the conditions of profound disagreements obtaining in Israel; it may also make possible the adoption of a determined and consistent policy, which is needed to overcome complex challenges and create in Israel a state and society conducive to the good life. Such a meta-purpose will make it possible for Israel to expand its horizon; to transcend the immediate, short- and even mid-term; and to derive policy initiatives from long-term goals as well. It will also enable a thoroughgoing analysis of the complex totality of factors affecting Israel's prosperity instead of concentrating only on a particular problem at a given time. We learn the importance of a meta-purpose for Israel from the lessons of Zionism's early successes. There are also important differences between the situation in which the Zionist movement and the State of Israel operated—largely successfully—during the country's early years, and the situation that the State of Israel is contending with today and in the foreseeable future. These differences should affect the identification of challenges, determination of goals, and formulation of ideas regarding the ways in which Israel can and should contend with its challenges.

This essay proposes a tentative formulation of such a meta-purpose and examines its elements and the relations among them. It deals with the claims that some of the proposed elements in this meta-purpose are neither legitimate nor widely shared, and

² This essay was supposed to have been written in a context of a think-tank of people who were invited to "think outside the box." The idea was that brainstorming on the part of such people could give rise to innovative works, which might be of exceptional importance to the State of Israel's ability to successfully contend with tomorrow's challenges. In keeping with such an endeavor, the ideas with which I came to the writing of this essay were rather "wild" and tentative. The group never started to work together, so I myself - together with my research assistants - jumped from one idea to another and from one direction to another. Over the course I collected a great amount of material concerning various issues, identified through my understanding of the topic at that stage. A large part of it meanwhile remains inside files and folders, awaiting an opportunity to be integrated into an idea or essay. In the course of the work I was persuaded that it may be of importance even at this rather tentative stage; I therefore intend to continue working in these directions in the future too. I also hope that others will further develop and broaden them.

justifies their adoption from both a normative and political perspective. It identifies points and processes that may hamper the fulfillment of the meta-purpose's different elements or the achievement of an adequate balance among them. Thus the essay helps us think of ways to promote the state's ability to fulfill its meta-purpose (or even reexamine its elements). These include an appropriate array of decision-making mechanisms and institutions, which will equip Israel with a good balance between accountability, governability and moral stature.

A justified meta-purpose of this kind might again confer a moral anchor upon Israeli society, as well as giving it an agreed long-term objective. These in turn may direct and justify the policies undertaken by elected governments, under the constraints of maintaining democracy and respect for human rights. The meta-purpose needs to include an assurance of dignity, freedom and welfare to all groups in society, even if some of them are alienated from some of its elements.

In a nutshell, I believe that it is justified today—as it has been since the beginning of the Zionist movement—to search for a political solution that will meet the Jews' need to securely fulfill their right to national self-determination. The state of Israel is the natural venue for the fulfillment of this right. The proposed political solution, however, must also provide an adequate response to other elements of Israel's meta-purpose: a democratic, open, developed and modern society, living in peace with its neighbors, respecting the human rights of all its citizens and inhabitants.

The proposed analysis has an additional advantage in terms of analyzing and evaluating policies in Israel. Since Israel's meta-purpose is complex, its policy decisions, in the main, cannot be derived from a single element of the meta-purpose. They must serve several of them concomitantly. In this fashion, even those who object to one element of the meta-purpose can agree to a policy that also serves other elements which they support. The commitment must be to Israel's prosperity including all of its elements, and one cannot wish to promote some of the elements without understanding that they are part of a complex whole.

In Chapter One I set forth a brief historical description of Israel's development and its situation today, seeking to identify the central features of what assured the success of the Zionist enterprise and the founding of the state in its early years. It is also meant to help us examine whether such patterns and mechanisms exist today as well, and if

not—to ascertain what is preventing the state from sustaining such successful mechanisms.

In Chapter Two I set forth my proposal for a meta-purpose for the State of Israel, explaining the importance of such a purpose as well as the complex relations between the meta-purpose and different policy trends.

In the following chapters I present a more detailed analysis of the elements of the meta-purpose and the facts and processes that may hamper their realization.

The essay concludes with an analysis of the relations among the meta-purpose's elements and the threats to their fulfillment, pointing to the types of conclusions regarding the approaches and policy trends that may arise from this analysis.

I. What is Israel: a success story? A vital enterprise facing existential threats? A shattered dream? A colonial enterprise, conceived in sin, whose continued existence is unjustified?

It is a phenomenon unique to Israel that each of the answers to the questions posed above has its proponents, both inside and outside Israel. Moreover, many believe there is a certain truth in each of these representations. Israel is the only country in the world regarding which there are still voices contending that it has no right to exist (at least not where it is currently located).³

Underlying all these answers is a self-evident fact: Israel was established not as just another state for its inhabitants, but as a "Jewish state" (alongside an "Arab state"). The answers thus express different perspectives on the achievements and chances of survival of the renewed enterprise of Jewish sovereignty in (part of) the Land of Israel. From these answers different conclusions may be drawn regarding which path Israel should take in the future.

Is it at all possible to compose a single, scientific, "objective" narrative about Israel? Or does Israel illustrate the general post-modern claim that there is no "truth" but merely "narratives"; that the fundamental choice of each "storyteller" is the perspective from which he tells it? This is a profound question that I would rather not go into.⁴ I will only say that here too it would be wrong to take an extreme position. Every narrative about Israel and the region should address the facts. Although some of the facts are in dispute, there is widespread agreement about others. In a region that still harbors a protracted and ongoing conflict, it is only natural that the adversaries' different positions do not reflect merely

³ Such views are voiced not only by the President of Iran and proponents of Hamas and Hezbollah. These are voices of defiance. Even in respectable European circles, however, the claim is often heard that the Jewish collective has no reasonable prospect of lasting in the heart of the Arab world; Israel had better, it is argued, draw the inevitable conclusion now, rather than continue fighting a lost war. This line of argument does not solely (nor mainly) stem from a concern for the fate of the Jews as a collective nor as individuals. It is based on a view of this conflict as a continuing and irresolvable threat to world peace. No direct answer is given to the question: what would be the fate of the Jews as individuals and collectively in a scenario involving the annulment of Israel as a political entity?

⁴ For an interesting discussion of such questions, see Shafir and Peled, "Being Israeli" (2005).

normative aspects of contemporary policies, but also clashing fundamental narratives. Controversy rages not only over the present and the future, but also over the past and its implications. This is especially true of controversies that have religious, national and cultural, in addition to political, aspects.

Under such conditions a researcher's approach must include two elements: she must declare her biases and axiomatic stipulations, while making a sober effort to examine the facts without being unduly swayed by wishful thinking or unfounded apprehensions.

I am a Jewish woman whose family has lived in this country for many generations. This country is my home, not only because I was born and raised here, and because the graves of many of my forbears can be found here; it is also my cultural home, with a continuity of language and history extending back thousands of years. Furthermore, this country is my home because it is the site for a state with a Jewish majority and a civic culture that is Jewish and Hebrew. In Israel I can live a rich, full life, both privately and publicly, within my own culture. My physical and cultural wellbeing does not depend upon the goodwill of the majority culture or the authorities of a state whose culture is different from my own.⁵

I see these conditions of my existence here as a central component of my wellbeing, both as a human being and as a member of a collective. I am glad that international law and human rights recognize the profundity and importance of this by recognizing the right of nations to self-determination. Thus I would like these conditions to be maintained. At the same time, I would like Israel to be a democratic state, which respects the rights—both individual and collective—of all

⁵ I am referring here to reality rather than rights. For the greater part of their history, Jews have lived as a minority within other groups. In these conditions the Jews have experienced—in all the diasporas—periods of great material, cultural and national prosperity and welfare, alongside periods of discrimination, persecution, expulsion, pogroms, and even genocide. Today we say that every human being has a right to life and security regardless of national or religious affiliation, and that every cultural group has certain rights - that its distinct culture be recognized. These rights are supposed to guarantee the wellbeing of minorities, and every state must respect them (alongside other rights). Minorities always have the right to protection of their welfare as individuals and collectively. History teaches us that this right has not always been respected. Therefore there are those who prefer to live in a society where their national group constitutes a majority, on the assumption that such a society will provide more effective protection of their rights. Such effective protection is one of the primary aims in granting rights to national self-determination. See discussion below.

its citizens and inhabitants. It is important to me that the rights I demand for myself—and for the protection of which I struggle to defend my right to live in my own nation-state—will be granted also to the minorities within it.

This is the point of view from which I assess the achievements and prospects of the State of Israel. I realize that Israel's situation is made all the more complex by the fact that many, both inside and outside the country, approach the issue from a completely different viewpoint. All the same, the legitimacy of my viewpoint is not merely a consequence of my own existential preferences. The enterprise called the State of Israel was established in keeping with a viewpoint similar to my own, and was awarded international support on exactly this basis. Though this fact doesn't undermine the validity of other viewpoints, it does have both theoretical and practical significance.

From a theoretical point of view, my approach allows Israel to be described from within the conceptual world and value systems of some of the various interest groups that have formed the social, economic and political reality of the region. It is thus superior to approaches that are content to describe Israel exclusively from the viewpoint of those upon whom this reality was imposed. From a practical point of view, my approach enables Israel to thoroughly examine ways of improving its chances of survival as a state, aiming at promoting both its connection to Judaism and the Jewish people, and its own welfare and that of all its citizens. This is because my examination of this enterprise is critical yet sympathetic. The purpose of my critique is not to undermine the existential foundations of the State of Israel; rather, it is meant to examine what needs to be done in order to improve its ability to effectively meet the challenges facing it.

With that perspective in mind, in this chapter I shall sketch several cardinal points in the history and current reality of the State of Israel. It is a story told on the fly, which does not purport to be complete. It focuses on aspects of the past and present, and what lies between them; aspects that will hopefully help us to assess what it is that made Israel successful in the past, and what brought about a situation today wherein some are satisfied with Israel's achievements, while others are concerned for its future or even think that it is already doomed. Only

one view—that Israel is a colonial enterprise conceived in sin, whose continued existence as the Jewish nation-state is unjustified—will be wholly rejected; it is **not** a point of view from which this story is told by me. The junctures of Israel's history discussed below were selected by identifying fundamental features of Zionism: some of the features that account for its success in establishing the state and its achievements in the initial period, and others that presently give rise to either a sense of achievement or of profound concern. These features are connected with social, economic and demographic trends in Israeli society, to the structural makeup of the decision-making mechanisms within it, and to its constitutional principles. Likewise, these features are also related to society's basic conceptions of itself and the relations between the groups that comprise it.

Those who view the State of Israel as a resounding success story have good reasons to think so. The state was established less than 60 years ago. At the time of its establishment the population numbered less than a million, about 600,000 of them Jews. The state immediately had to fight for survival against its enemies. At the turn of the twentieth century the land was undeveloped, like most of the surrounding region. Today it harbors a population of more than 7 million. Israel is a stable democracy with a developed economic system and a per capita GDP of a European standard. It has successfully coped with continuing threats to its existence. It is the only country in the world that has a Jewish majority and a Jewish and Hebrew public culture. It has a strong army and enjoys a high level of industrialization and development, especially in the high-tech field, where Israel is a key player. Israel has academic institutions that are respected worldwide, and comprehensive educational and health systems. Many of its citizens have won prestigious awards, including Nobel Prizes. Some had argued that the Israelis of the twenty-first century had grown spoiled and would not be able to successfully cope with protracted difficulties. These forecasts were refuted when Israel ably withstood years of murderous terrorist attacks in the heart of its civilian population.

One sign of Israel's success is the fact that hundreds of thousands, from near and far, have in recent years sought to enter the country's gates and become permanent residents in it – this, despite the sometimes difficult security

circumstances; after all, immigrants don't have to come here in particular. Another sign is the fact that, although many of them complain about discrimination and deprivation, the Arabs who reside in the State of Israel, including in Jerusalem, adamantly oppose plans that would shift the border and place their homes under the jurisdiction of the Palestinian Authority. Despite the harsh nationalist conflict, they prefer to live in the Jewish state.⁶ In many respects, the founding fathers would have been happy and proud to see Israel at the start of the twenty-first century.

Despite all this, a fair number of forecasts regarding Israel's condition express grave concern, accompanied by a sense that the country has lost direction. Remarks of this nature appeared in the introduction to the Dovrat Committee's report on the educational system,⁷ as well as in economists' surveys regarding patterns of growth, the huge rise in inequality, and the corresponding drop in the level of social solidarity (see the extensive discussion below, in the chapter dealing with threats to prosperity). Another source of concern is Israel's continuing violent conflict with its neighbors, and the fear that its prolongation will lead to a large number of harsh outcomes. Among these are the brutalization of civic life in the country, and the need to invest a large part of the country's resources in the army and security. The settlement enterprise in the territories occupied in 1967 has far-reaching political, military and economic implications.⁸ There are those who fear an imminent loss of the Jewish majority and the elimination of hallmarks of Jewish life in Israel itself, due to the rise in the relative proportion of non-Jews, the Arab minority in particular.⁹ Note has been

⁶ The findings on this point are rather consistent. See the recent article by Yuval Heiman, "You Go Live in Palestine. Kalman Gaier didn't really ask the residents of the villages and neighborhoods" (in *Kol Hazman*, 23 Dec. 2005, p. 68)—interviews with residents of Jerusalem's Arab neighborhoods, in response to remarks by an advisor to Sharon that Sharon would be willing to 'deliver' them to the jurisdiction of the Palestinian Authority. Despite neglect and discrimination, the residents prefer to live in the Israeli sector of the city rather than move to the Palestinian neighborhoods, even though they are better maintained. See also Arieli et al., *Injustice and Folly* ; 2006).

⁷ See especially pp. 43-50. The full report appears in the Ministry of Education's website under "Publications."

⁸ For an analysis of these implications, see Schueftan, *Korach ha-Hafrada* (Heb.: "The Necessity of Disengagement: Israel and the Palestinian Entity"; 1999). See also a new book that attempts to assess the economic-social significance of the protracted occupation of the territories; Svirsky, *Mechir ha-Yohara* (Heb.: "The Price of Arrogance"; 2005).

⁹ An article in an American magazine has raised serious doubts whether Israel would continue to exist in another fifty years; "Will Israel Live to 100?" in *The Atlantic Monthly*, May 2005.

taken of the widening and deepening rifts between population groups within Israeli society, so that it is no longer characterized by a high level of social solidarity and partnership, and is turning into "a society of all its tribes."¹⁰ There is also concern over the rising tide of violence in society, the diminution of values, and the rise of materialism and hedonism. Israel is rapidly dropping in international measures of scholastic achievement and clean government. Government corruption has become a strategic problem in Israel and not merely a matter of moral turpitude in the behavior of some of its leaders. In part, this corruption casts doubt on the integrity of government decision-making, which further attenuates public confidence in government. Even researchers who aren't professional doomsayers, or who do not think that Israel "deserves" to decline because of historical injustices, warn of the urgent need to take action to prevent decline or attenuation.¹¹ These are voices that see the Jewish state as a justified and vital enterprise that still faces existential threats. Such people warn against what they see as the false sense of security of the believers in the Israel as a success story, trying to reawaken an urgent sense of a need for action.

Those who see Israel as a shattered dream are driven by a sense of moral lapse or a lack of viability in Israel's dealings. While some are still trying to revamp the dream, others have suggested we had better admit that it needs to be renounced. Instead, we should find ways to preserve what is deemed worthwhile and possible to preserve in the emerging reality.

Against this background, let us turn to the narrative. We should recall that the challenges which faced the state's founding fathers were tremendous, while the resources at their disposal were extremely limited, compared to what the State of Israel now has. It is thus intriguing that it is at the present time that so many voices in Israel are expressing concern for its future. A comparison

¹⁰ For a powerful analysis in this spirit, see Kimmerling, *Ketz Shilton ha-Achusalim* (Heb.: "The End of Ashkenazi Hegemony"; 2001), and his broader scientific work, *Mehagrim, Mityashvim, Yelidim: ha-Medina ve-ha-Chevra be-Israel: bein Ribui Tarbuyot le-Milchemet Tarbut* (Heb.: "Immigrants, Settlers, Natives: the State and Society in Israel: between Multiculturalism and Cultural War"; 2004).

¹¹ A consistent writer in this vein is Professor Yechezkel Dror. See *Chidush ha-Tziyonut: likrat ha-Me'a ha-Shniya la-Tziyonut* (Heb.: "In the Renewal of Zionism: Toward Zionism's Second Century"; 1997) as well as his subsequent series of publications for the Jewish People Policy Planning Institute; see also E. Shveid, *Ha-Tziyonut she-acharei ha-Tziyonut* (Heb.: "The Zionism after Zionism"; 1996).

between the background to the fight over, and eventual establishment of, the state and the current situation, coupled with an analysis of the different attitudes towards the state and its prospects, might prove to be helpful. We can learn from it how to describe accurately and understand the reality, as well as to sketch the desired trends and ways of implementing them.

*

Israel was founded and developed out of the Zionist movement's sense of historic mission and struggle. Before the establishment of the state and during its early years, the urgency of the Zionist enterprise stemmed from a strong feeling of existential necessity. The people actively involved with Zionism were largely committed and dynamic folk who came here to combine nation-building with personal self-fulfillment. In the Zionist movement there were men and women of initiative and enterprise, who enjoyed the generous ideological, political and monetary support of world Jewry. Many of the movement's leaders came from places with a tradition of education, initiative and development; Jewish-Zionist society had the hallmarks of a revolutionary society.¹² Despite considerable internal dissensions among Jews in *Eretz Yisrael*, an absolute majority strongly identified with the Zionist enterprise and the need to defend and promote it. Additional important factors in Israel's renaissance were the great waves of immigration, robust international support by Jews and non-Jews after the Holocaust, numerous donations from Jewish communities around the world, and the reparations paid by West Germany.

The founding of the state was an important constitutive event in many respects. It is pertinent to our discussion that until then, the Jewish public had to contend with only its own goals and internal conflicts. It was structured as a distinct community (known as the "*Yishuv*"), which acted in a relatively organized fashion. However profound and bitter the internal disagreements may have been,

¹² A continuous analysis of Israeli society's revolutionary attributes has been conducted by S.N. Eisenstadt. For a sober review of the changes in Israeli society and their impact on the state's ability to contend with the challenges of tomorrow, see Eisenstadt, *Ha-Ma'avak al Simlei ha-Zehut ha-Kollektiv ve-al Gvuloteha ba-Chevre ha-Israelit ha-Betar-Mahapchanit* (Heb.: "The Struggle over the Symbols and Limits of Collective Identity in post-Revolutionary Israeli Society"; 1996).

they were overridden by common political and cultural goals. There were important subcultures within Jewish society at that time, too; nonetheless, the primary commitment of the entire Jewish community was to the growth and defense of the Jewish collective as a whole. The Arab community was supposed to see to its own affairs, and the general governmental functions were performed by the authorities of the British Mandate.

The establishment of a state, which had in it a Jewish majority as well as a large Arab minority, gave a significant twist to the situation—the implications of which may not have been fully acknowledged to this day. A state is no longer a dynamic nationalist movement fighting to achieve its aims; nor is it a voluntary organization of members of a community that distributes "taxes" (and settles "new immigrants") according to some partisan allocation index. A state is supposed to serve the entirety of its inhabitants and to treat all its citizens equally. Its purpose is to guarantee peace, security and welfare to the populace. A state is supposed to be an institutional structure that serves the entire population, not one that deals in preserving the privileged status of one sector. Furthermore, a revolutionary movement is by nature a society that is mobilized towards the achievement of a certain objective. A state, which is set up for a prolonged existence and contains various groups, must set out goals and modes of action appropriate to all of the groups within it. It must also be structured so that it permits the preservation of the *status quo*, and the creation of a framework that facilitates life that is not worn out by constant revolution.

The Zionist movement project was the creation of a national movement on an ethnic-cultural-religious basis. The state had to contend with the fact that beside the various ethnic nations living within it, there was in it a common civic nation as well.¹³

¹³ These difficulties are easily discernible during the state's early years. This was a period of continuity with the life of the Jewish *Yishuv*, alongside changes stemming from the state's establishment. See for instance the discussion in books by Horowitz and Lissak. There is no doubt that Israel today is much more aware of its civic function, although not a few voices within the country still seek to strengthen its unique national role. See discussion below. This continuing duality was dramatically manifested in the decision on the name of the state. Some had suggested that it be called "Judea." One consideration militating against adoption of this name was that the state's citizens would then have been called (in Hebrew) "Jews" even if they weren't really Jewish (making the argument over "Who is a Jew?" all the more thorny). However, the name that was chosen, Israel,

The inherent tension within a common civic nation, divided into a Jewish majority and an Arab minority, was not prominent in the initial years after Israel was founded. After the Jewish victory in the initial struggle to establish the state, the Arab minority left in Israel was small, defeated, and lacking in true leadership. It did not have the strength to protest against the consolidation of the state's control over lands within its territory, nor to resist the clear-cut identification of the state's objectives with Jewish independence.¹⁴ On the other hand, from its inception, Israel had to handle the integration of a native society of a different nationality; largely traditional and agricultural in nature; and for the most part, at a lower level of development and education than the Jewish society.¹⁵

In addition, Israel faced the immense challenge of absorbing mass Jewish immigration. The immigrants from European countries largely came from the same kind of communities as the members of the Zionist movement. By and large, they exhibited similar levels of modernity, education, commitment and initiative. The immigrants from the Islamic countries were of varied backgrounds. Some of them were educated, but most came from less developed societies and had less ability to integrate into Israel's society and economy. A policy of dispersing the population and establishing so-called "development towns" created a certain convergence between the *Mizrahi* population and inhabitants of the periphery. Other *Mizrahi* groups were absorbed into the weaker neighborhoods of

isn't neutral either. So when mention is made of "the people of Israel," it is unclear whether this refers to Israeli Jews, Jews generally, or to all the citizens of the state.

¹⁴ For a description of the legal and social aspects, see Kretzmer, *The Legal Status of the Arabs in Israel* (1990). For a general dynamic description, see Abu Bakr and Rabinowitz, *Ha-Dor ha-Zakuf* (Heb.: "The Upright Generation"; 2002). The possible tension between the characterization of the state as Jewish and the status of its non-Jewish, especially Arab, citizens hardly came up for official discussion in the early years. Knesset Member Eri Jabotinsky raised the question during the debate on a constitution, which ended with the Harari resolution in 1950; he was silenced by all the other MKs, including those of his own party.

¹⁵ Until 1966 most of the Arabs in Israel were under military government, with ensuing serious restrictions on their freedom of movement. On the other hand, until 1948 a large part of the Muslim Arab public in Israel had no formal education whatsoever. Israel enforced a Mandatory Education Act already in 1949. The Arab minority was granted provision of education in its schools, in its language, with its teachers, and in keeping with its cultural tradition. It is a complex situation in these fields too. On the state's relations with its Arab minority in the early years, see Lustick, *Arabs in the Jewish State*; (1982). See also in Segev, *1949: The First Israelis*; (1989).

the big cities. The social and regional consequences of this policy are plainly apparent to this day.

In its early stages, Israel's political structure was in large measure similar to that of the Jewish *Yishuv* in mandatory Palestine. Israel adopted the British model of parliamentary sovereignty. However, instead of a district-majority electoral method, it opted for the national-proportional electoral method that had been practiced by the Jewish *Yishuv*. This gave rise to a relatively large number of parties, some of them quite small, and necessitated constant coalition-building. Ben Gurion thought ill of this element of the governmental system, and one of his reasons for opposing the adoption of a constitution was his desire to change the electoral system. The electoral system did indeed cause a certain amount of instability in government (and the dependency of governments on religious factions). All the same, this instability did not stand in the way of forming a coherent and consistent policy: the pivotal party was always *Mapai*, which had governed the Jewish *Yishuv* during the years prior to independence, and to which a great many of the coalition partners deferred in matters of security and foreign affairs. *Mapai* had always insisted upon maintaining control of the Ministry of Education. In addition, Ben Gurion greatly emphasized the differences between the center and what he saw as the political extremes ("without *Herut* [right wing party] and without *Maki*[*Communist Party*]"). He contributed to the strengthening of the center by his promulgation of the ethos of nonpartisanship and his willingness to dismantle the independent frameworks within the labor movement, such as the workers' stream in education and the *Palmach*.¹⁶ In the highly volatile field of the relations between religion and state, there was also broad agreement on managing disputes through negotiation and compromise, especially through the institution of the so-called "*status quo*."

The Six Day War in June 1967 constituted a watershed event in the annals of the state. Israel's dramatic and overwhelming victory established its standing as the strongest military power in the region. The occupation of Arab, and especially

¹⁶ For a review of the political structure of the *Yishuv* and a survey of developments in the State of Israel itself, see the two books by Horowitz and Lissak, (1978), *Origins of the Israeli Polity :Palestine under the mandate; and* (1989), *Trouble in Utopia: The Overburdened Polity of Israel*

Palestinian, territories reopened the issue of Greater *Eretz Yisrael* [*Greater Land of Israel*], Israel's borders, and the relations between Jews and Palestinians—both within the State of Israel proper and in the entire area between the Mediterranean and the Jordan River.¹⁷ Israel annexed East Jerusalem (along with a cluster of villages around the city). The state and the territories came to form a single, contiguous territory, with free movement between them enabled. Jewish settlement began in the territories that had been occupied. Initially, these were mostly established in areas of importance from a military viewpoint and not densely populated by Arabs.

The 1967 war was a defensive war on Israel's part, and so it was perceived in the world (since the international community exhibited neither willingness to force Egypt to open the Straits of Tiran to Israeli shipping nor to allow the return of UN forces to the Sinai). Within a short while, however, the war's dramatic outcomes turned Israel's international image on its head—from a David fighting for his independence to a brutal Goliath, occupying another people's land. The war's outcomes also changed the nature of the Palestinian struggle. Before 1967 it had not enjoyed any great international support, nor for that matter was it perceived as a movement of national liberation (the Palestinians had not struggled against Jordan, which held that part of the land in which an Arab state was supposed to have been founded, according to the UN Partition Resolution). But after 1967 the struggle against Israel was accorded recognition as a national liberation movement.¹⁸ Even according to the interpretation accepted by Israel,

¹⁷ On the transformation of 1967, see in Segev, **1967: Israel, the war, and the year that transformed the Middle East**; 2007).

¹⁸ These events and developments are described here in retrospect. It is true that even before the War of Independence and establishment of the state there were those who saw Zionism as an immoral force: dispossessing the country's indigenous Arab inhabitants of their homes and lands, a tool in the hands of imperialist and colonial powers. The establishment of the state in itself was perceived as an unjustified occupation. These voices were strengthened, of course, after the 1967 war and after the occupation of the territories was prolonged, when it seemed as though at least some Israelis had resumed cultivating the dream of a Great, undivided Land of Israel. The development in the view of Israel as an occupier and of the Palestinians as a people fighting for national liberation was slow, and there were pivotal moments in it (such as Yasser Arafat's being invited to address the UN General Assembly). But today it is clear that the watershed was indeed the 1967 war. Interestingly, on one hand the 1967 war constituted a new baseline (in compromise resolutions to the conflict, the 1967 borders are grasped as a point of departure), but on the other hand it was only a step in reopening the conflict of 1947-1949 (since the element of a Palestinian right of return seeks to

UN Resolution 242 speaks of a "deal" involving secure and recognized borders alongside the return of occupied land. International support for the Jewish state was always limited to political independence in part of the Land of Israel, alongside recognition of the Arab right to independent existence in its other part. The 1967 war saw the dawn of a new era in which Israel sustained a reality that was contrary to this international accord. It is true that military occupation may be justified under international law so long as the sides fail to reach an agreement—and there is disagreement over the question of who bears responsibility for this state of affairs. But the settlement policy, and the rhetoric of an undivided Land of Israel on the part of some of the settlers, prompted a grave crisis of legitimacy for the Israeli enterprise, both within the state itself and abroad. For it proved that Israel's intention—at least in the settlers' opinion—was to rule over the entire Land of Israel indefinitely.

The late 60's also marked a turn in the relations between religion and state in Israel. As mentioned above, until that period the agreement in the political system was based on maintaining the so called "*status quo*" and on a framework of compromise arrangements, in which the religious minority was granted a sort of right of veto over changes that it deemed critical. All sectors of the religious minority concentrated mainly on guaranteeing their own educational and cultural interests, leaving foreign policy to the government.¹⁹ However, certain elements in the secular society began to rebel against the deal, including the religious monopoly over the definition of "Jewish" and over matters of personal status, as well as instances of so called "religious coercion." Consequently, Benjamin Shalit successfully petitioned the Supreme Court to have his and his non-Jewish wife's children registered as "Jews" by nationality, following which the Law of Return was amended. There was also the beginning of a struggle to allow commercial business activity on the Sabbath. At the same time, after 1967 the nationalist-religious society began shifting towards the center of the political stage,

cancel even the outcomes of the War of Independence). Even the rhetoric judging Israel to be an unjustified enterprise to begin with, dates from before the establishment of the state.

¹⁹ A large part of the arguments in the early years concerned painful issues such as the fate of the missing Yemenite children or the "distribution" of immigrants' children among the various educational streams, with gross instances of anti-religious coercion. See for example Bar-On and Tzameret (eds.), *Shnei Evrei ha-Gesher* (Heb.: "Both Sides of the Bridge"; 2002).

extending its interests beyond matters of religious education and promoting the religious sector's interests. It began influencing foreign and security policy as well, especially regarding the future of the occupied territories.

The Yom Kippur War in 1973 delivered Israel from the euphoria following its victory in the 1967 war. The state rediscovered its vulnerability. The internal controversy over the fate of the occupied territories and Jewish settlement in them began to take shape. Outside Israel too, this war was perceived as creating an opportunity to begin resolving the conflict by means of a "land for peace" deal, against a background of growing international criticism of Israel's policies in the occupied territories.

In 1977 a landmark political event occurred: for the first time since the state's establishment, and after numerous years leading the *Yishuv* prior to its establishment, *Mapai* lost power to the right wing. In the late '70s came the peace agreement with Egypt and the withdrawal from Sinai—moves surprisingly orchestrated by the rightist government under Begin. On the other hand, the Begin government's ascension to power marked a significant step-up in Jewish settlement in the occupied territories, this time also in areas of dense Palestinian population.

There is a noteworthy connection between foreign policy and the handling of internal divisions in Israel on one hand, and the constitutional-political structure on the other. After 1977 the political sphere no longer consisted of a single axis party, which exhibited a certain measure of flexibility in forming a coalition with the center-left and center-right parties. Now there were two major parties (with or without a centrist party between them), each with its own bloc. Ever since then, Israeli governments have alternated between one of two structures: narrow governments, representing one of the blocs, whose ability to execute meaningful policy was extremely limited; and unity governments that were able to execute policy only in fields of consensus (such as, for instance, the withdrawal from Lebanon or the battle against hyperinflation in 1985). This state of affairs also created a growing dependency of governments on the ultra-Orthodox parties, which in many cases carried the pivotal votes in the Knesset. It also raised tensions between Jews and Arabs, political left and right, and

religious and secular folk. Although the groups are not fully convergent, the Labor Party and the leftist bloc usually rely on the Arab parties to form a narrow government led by them, whereas the religious and the ultra-Orthodox tend to join with the right.

Post-1967 Israeli society, in particular since the '90s, is different in every respect from the Jewish society that struggled to found and establish the state. Some of the changes are a result of Israel's economic and political success. The arrival since 1990 of hundreds of thousands of immigrants, especially from the former Soviet Union, has also had a huge impact. The sense of necessary struggle that sustained a mobilized society, which had to suppress the divisions among its parts, has given way to a society much more concerned with individual aspirations and special group interests. Thus we have witnessed the emergence of a discourse that stresses the polarization and internal divisions in Israeli society, instead of one emphasizing the considerable civic and national consensus, at least within the mainstream Jewish public. While some thought this change was a sign of success and strength, others thought that it marked the beginning of a troubling process of weakness and decline. These differences in the description and evaluation of the processes within Israeli society are linked to no small extent with perceptions of Zionism's place in Israel's self-identity. It is safe to say there is broad agreement that the Zionist enterprise and the national institutions were vital steppingstones in the processes of consolidating the Jewish *Yishuv* and establishing the state. Nonetheless, there is considerable controversy, both inside and outside Israel, as to the place of Zionism in Israel today. For some, this contemporary dispute connects with the critique of Zionism voiced by various circles as early as the start of the twentieth century. This criticism—then and now—in effect challenges the idea of Jewish nationalism and the justification for establishing a territorial base for the Jewish people in (part of) the Land of Israel.

Jews are divided in their attitudes toward Zionism, both analytically and over time. There are religious Jewish movements that opposed Zionism in principle from the very start. A good many of these today are a-Zionist or fully-fledged anti-Zionist. By contrast, not a few of those who thought it vital for Jews to be

Zionists at the end of the nineteenth century and beginning of the twentieth, think that today, with the state having been established, there is no longer any need for a Zionist movement. Zionism's very success has prompted such people to become "post-Zionists", who hold that there is no longer a need for a Jewish nationalist movement: Jews so inclined can choose between living in Israel and living in the Diaspora, while the State of Israel should function as every state should, serving the interests of all its populace; it should cultivate Israel and "Israeliness."²⁰

Others note the fact that demographic trends within Israel—and all the more so in the entire area between the Mediterranean and the Jordan River—are unstable, concluding that the achievements of Jewish self-determination are also unstable. They add the fact that an important element of the ongoing conflict with the Palestinians is the demand for a right of return for the Palestinian refugees and their offspring, which is in effect an invitation to reopen the operative arrangement consolidated after the 1948 war. In other words, there is an ongoing argument amongst Jews in Israel and abroad whether there is still any need or justification for fighting to preserve Israel's Jewish character. Even among those who answer this question in the affirmative, there is concern over the demographic reality. They are afraid it won't be possible to retain Israel's Jewish character over time because the Jews are likely to become a minority in Israel itself, and they recommend planning and preparing for such a reality. Such recommendations include providing for effective protection of important components of Jewish self-determination and effective defense of the Jews both physically and culturally.

The holders of these various opinions regarding Zionism are united in rejecting the identification of Zionism with racism in the international discourse. They rightly view this identification as an unjustified rejection of a Jewish nationalist movement as such.²¹

²⁰ For a critical discussion of such "post-Zionist" trends against the background of changes in Israeli society, see for example Shveid, "Beyond Everything – Modernism, Zionism, Judaism" (Heb.; 1996).

²¹ The identification of Zionism with racism wasn't merely a polemical stance assumed by Arab critics of Zionism. It was "awarded" international support for quite a number of years as the official position of the UN General Assembly. For Zionism's critics, it counted as a tremendous "accomplishment" to have tainted the

Within the state this argument is echoed by the dramatic changes that have occurred within the Arab minority and its attitude toward the state. An "unbowed generation" of Arab citizens of the state has emerged in Israel, giving rise to political, religious, professional and social leaders. These latter feel very confident about their status in the state and voice loud protests against manifestations of discrimination and exclusion, combined with a denial of the legitimacy of the Jewish character of the state, the justification for its establishment in the past, and its continued existence as a Jewish state.²² After 1967 the bonds between Israel's Arab citizens and the Palestinians in the occupied territories were strengthened, as was their common ideological affiliation, which had weakened during the years they were separated, viz. 1948-1967. A contributing factor to this process was the familial relations between many of Israel's Arab citizens and residents of the occupied territories. A significant portion of the Arabs who live in Israel feels deep identification with the Palestinians who live outside the country, and feels that the entire area between the Mediterranean and the Jordan River is its homeland. They do not accept the justification of the state's establishment or of continuing attempts to preserve the Jewish majority in it and to permanently entrench Jewish dominance inside the State of Israel. Their declared intention is to have Israel become a "state of all its citizens"²³ or a "state of all its peoples."²⁴

The First Lebanon War, which erupted in 1982, revealed for the first time a profound controversy within the Israeli public regarding the state's military

movement with the harshest label familiar to the modern international community. Regarding Zionism as a form of racism seemed particularly poignant because Jews themselves have been the victims of racism, and many argue that they only earned international recognition for the Jewish state because of that. It is interesting to note there are Zionists and others who think that some of the **Jewish religion's** injunctions are indeed racist, and that support for this view can be found in pronouncements by some representatives of the Jewish, primarily religious, right. Among these are the views held by Rabbi Meir Kahane, who used to boast that he said openly what others didn't dare to utter. A similar stance can be found today in remarks made by Moshe Feiglin, a prominent politician on the extreme right, that "there is no doubt that Judaism is racist in a certain sense. When the UN determined that Zionism is racist, I saw no reason to protest"; Gideon Levy, "Better Elect Feiglin", in *Ha'aretz*, 25 Dec. 2005.

²² See in Rabinowitz and Abu Bakr, *Ha-Dor ha-Zakuf* (Heb.: "The Upright Generation"; 2002).

²³ This was the initial formulation by Azmi Bishara.

²⁴ This was the correction introduced into the discourse by Ahmed Tibi, who clarified what was evident from the start—that the aim was not to establish a neutral state that privatizes the national and cultural identities of its citizens, but one that grants the different identities equal status.

operations. Besides those who thought it was a necessary step in view of the hostilities toward civilian targets in the north, such as the years of rocket attacks on *Kiryat Shemona* and the massacre in *Ma'alot*, many others did not see the war as an act of self-defense, and therefore deemed it unjustified. First instances of refusal to serve in the army cropped up. Opposition to the Lebanon War was especially strong among those who thought that Israel was largely responsible for the continuing occupation. They suspected the state's intention was not to retain the occupied territories as a bargaining chip in negotiations over a future political settlement, in which Israel would return more or less to its 1967 borders. They feared Israel might be striving to perpetuate the occupation so that Israel would permanently control the entire area between the Mediterranean and the Jordan River. Many even thought that Menachem Begin's generosity at Camp David had been intended to secure Israel's ability to continue ruling over an undivided Land of Israel.

The controversy over the occupied territories has assumed a variety of forms as the occupation lingered. Immediately after the 1967 war, there were few who proposed a unilateral withdrawal by Israel from most of the densely populated areas.²⁵ The widely shared view was that the occupied territories were a deposit to be used in leveraging a political settlement. There was talk of an "enlightened occupation" and a policy of open bridges, of the dawn of a new horizon for Israel's standing in the region and its relations with Palestinians, both inside and outside Israel. At the same time, however, there was a powerful revival of the movement for an undivided Land of Israel, whose adherents saw the war's outcomes as an opportunity to correct what they saw as the "unfinished business" left over from the War of Independence.²⁶ At first, the Jewish settlement policy largely involved areas devoid of dense Palestinian population

²⁵ Among them were Yeshayahu Leibowitz and, at first, David Ben Gurion.

²⁶ It is important to note that members of the movement for an undivided Land of Israel were not mostly Revisionist Zionists or affiliated with the religious right, but actually members of the historic Labor Movement.

that were perceived as vital to Israeli security even after a political settlement was reached.²⁷

Today, the majority of the public in Israel is familiar only with the reality of the occupation (they were either born in, or immigrated to, Israel after 1967).

The controversy over the future of the occupied territories was honed and exacerbated by the outbreak of the first *intifada* ("uprising") in 1987.²⁸ Suddenly the public and its leaders discovered that continued control of the territories and of the population residing within them, in a 'transitory' state of protracted occupation and without civilian and political rights, was an unstable proposition; that the Palestinian population refused to accept it and was unwilling to renounce its independence; and that the "Jordanian option" wasn't viable and even Jordan was no longer interested in it. In Israel itself and in the international community there was growing pressure to recognize the Palestinians' right to self-determination in the territories that had been occupied in 1967, or at least in part of them. This process gained momentum when the Palestinians themselves declared independence and began to adopt a more pragmatic attitude; after years of 'rejection' and refusal to recognize Israel, the PLO accepted UN Resolution 242 (albeit according to its own interpretation) which was adopted following the 1967 war.

The controversy also concerned the "price of the occupation" for Israel. The 'price' included not only enormous economic and human resources devoted to the establishment and maintenance of the Jewish settlement enterprise; there were also the moral consequences of Israeli domination over a population living for years under Israeli occupation. The Israeli settlements in the occupied territories were under a completely different legal and political regime than that of the population surrounding them. Over the years, especially when armed conflict broke out, complaints would surface of lenient law enforcement toward

²⁷ The limits of settlement were determined by the Alon Plan, which included the Jordan Valley, a few locations in the Gaza Strip, and certain frontier settlements. Prominent exceptions were the "return" of Jews to Jerusalem's Jewish Quarter, the Etzion Bloc and Hebron.

²⁸ On the surprise of the first *intifada* and the profound change it wrought in public opinion, see in Gal, *Ha-Milchama ha-Shvi'it: Hashpaot ha-Intifada al ha-Chevra be-Yisrael* (Heb.: "The Seventh War: The Intifada's Impact on Israeli Society"; 1990), and in Gilbar and Susser, *Be-Ein ha-Sichsuch: ha-Intifada* (Heb.: "In the Eye of the Conflict: the Intifada"; 1992).

the Jewish settlers and of the cruel and abusive treatment of Palestinian residents by soldiers. The army repeatedly insisted that incidents of this kind, if they occurred at all, were handled with severity and that by and large, the soldiers exhibited high moral standards. On the other hand, the Jewish settlers and their supporters believe that the status of the occupied territories is controversial under international law, and that it is unjustified to prevent Jews from exercising their historic right to settle in every part of the Land of Israel. They argue there is no reason for the Jews to renounce their homeland in advance, while the Palestinians on their part refuse to cease considering all of Palestine as *their* homeland.

In Israeli society, this ongoing debate has inspired a wide range of approaches regarding the occupation. On one side stand the few who believe that, regardless of other issues, Israel must unilaterally terminate the occupation.²⁹ On the other side stand those who believe that even though international law considers Israel's rule over the territories captured in 1967 to be military occupation, this isn't actually the case because the sovereignty over the territories is disputed. Among them, some think that Israel should annex all of these territories,³⁰ while others hold that Israel should continue to hold them until a satisfactory political settlement can be reached. A majority of the public appears to think that Israel should act in its own interests regarding the occupied territories; they also seem to maintain that Israel is entitled to keep the territories, or part of them, until it has received reasonable guarantees for its security.³¹

²⁹ It is sometimes argued that Israel has an obligation under international law to terminate the occupation because it is 'illegal'. This is a mistake, for international law does not obligate the occupier of a territory after a war (especially a war of self-defense) to terminate the occupation as long as no agreement has been reached, ensuring that there will be no recurrence of the aggression that prompted the occupation in the first place.

³⁰ Only few of them suggest that such annexation should mean that all of their residents should be made citizens of the state. Most think it is possible to annex the territory and find alternative solutions (such as Jordanian citizenship) for the Palestinian residents.

³¹ The results of the 2006 elections are significant but not entirely clear. Prime Minister Ehud Olmert has clarified that he is in favor of Israel's "resetting its borders" within demographic borders, through either an agreement or unilaterally. The coalition he built was committed to this idea, but there are in it elements who support withdrawal only in the framework of an agreement, or at least the exhaustion of a broader negotiation than that advocated by Olmert. [All of this may not be relevant at the stage this English version is published, in summer of 2007 and after the 2nd Lebanon war].

A different question, which is sometimes raised as a part of the same discussion, concerns Jewish settlement beyond the Green Line. First, there is controversy over its legality according to international law. While it is agreed that an occupying state is prohibited from transferring its own population into occupied territory, here again the controversy arises whether the territory is indeed occupied.³² Most of the experts in international law believe that the permanent settlement of Jews beyond the 1967 lines is in fact illegal. However, there are those who pass immediately from this conclusion to the assertion that Israel must therefore dismantle all these places of residence (called *settlements* to distinguish them from other towns and villages), including new neighborhoods in Jerusalem beyond the Green Line—regardless of the conflict or its resolution. However, such a "leap" finds no support in international law itself or in historic precedents of occupying states that settled their citizens in occupied lands. In most cases, occupation has in fact ended in agreement, wherein the citizens of the occupying state were given the right to remain in their places under the rule of the state that was to have control over the territories. Thus it was pronounced in the Oslo accords that the fate of Jewish settlements would be resolved by discussion and negotiation. This suggests a rejection of the perception that "there is nothing to talk about," since international law clearly requires the dismantling and evacuation of all the settlements.³³

Let us now return to the dimension of the constitutional structure of the regime. The controversy surrounding the future of the occupied territories created political paralysis. In 1988 a unity government was formed, with Labor and *Likud* the main partners. Shimon Peres tried to topple this government and form a narrow coalition of the left and the ultra-Orthodox, but what became known as the "dirty trick" failed. In 1990, then, a narrow right-wing government was formed, led by Yitzhak Shamir. Near the end of the 12th Knesset's term, in 1992, three new Basic Laws were enacted. Two of them were concerned with

³² It is worth noting that the Israeli government and the Supreme Court have both held that the status of the territories under international law was one of "occupation" or "belligerent occupation." See also Kretzmer (2002).

³³ The same holds true for the issue of the refugees, which was included as a subject for negotiation; this is not compatible with the contention that there is a "right" of return, and therefore all that remains is to discuss how this right is to be implemented.

human rights: Basic Law: Freedom of Occupation, and Basic Law: Human Dignity and Liberty. The third – a new Basic Law: The Government – brought about a change in the structure of the regime in Israel instituting the direct election of the prime minister beginning with the 1996 elections.

The enactment of these three laws was the climax of a persistent attempt to complete the State of Israel's constitutional process, and especially to change its system of election.³⁴ Since attempts to draw up a full constitution or even an entire bill of rights were thwarted, the supporters of these measures settled for the legislation of laws which enjoyed broad consensus. The Direct Election Law was the result of growing frustration in the political system with the lack of ability to govern and to make decisions and shape policy. These were related, among other things to what was then grasped as too great a dependency of governments on the ultra-Orthodox parties, whose critical role had been dramatically illustrated by the "dirty trick." Thus the basic laws were a landmark regarding both the structure of government and the increasing prominence of the courts generally, and of the High Court of Justice in particular, in Israel's public life.³⁵

The First Gulf War led in 1991 to the convening of the Madrid Conference, at which regional negotiations towards a settlement of the Arab-Israeli conflict began. When Yitzhak Rabin led the Labor Party to victory in the 1992 elections, he promised to reach an agreement with the Palestinians in less than a year, but insisted he would not negotiate with the PLO. The Oslo accords of September 1993 created a new reality in the region. On one hand, they generated a dynamics of progress towards the formation of a political outline for two states – Israel and Palestine. On the other hand, increasing violence toward Israeli civilians by Palestinians caused growing internal conflict among Israelis and invigorated the protest of those who had always been opposed to any partition of the land. The assassination of Prime Minister Rabin in November 1995 did not put

³⁴ For the background to this legislation and the developments in its wake, see Gavison, *Ha-Mahapecta ha-Chukatit: Teur Metziut o Nevua ha-Magshima et Atzma?* (Heb.: "The Constitutional Revolution: a Reality or a Self-Fulfilling Prophecy?" 1998).

³⁵ On this matter, see Gavison, Kremnitzer and Dotan, *Aktivizem Shiputi: Be'ad ve-Neged* (Heb.: "Judicial Activism: For and Against"; 2000).

an end to the negotiations, but Binyamin Netanyahu's victory in the 1996 elections significantly slowed the process down. Against this background, Ehud Barak won a sweeping victory in the 1999 elections, but was defeated by Sharon in the special 2001 elections due to the failure of the Camp David summit conference, at which no agreement was reached on a permanent settlement of the Israeli-Palestinian conflict. Despite these fluctuations, the dominant vision concerning the resolution of the Jewish-Palestinian conflict remained that of two states living side by side.³⁶

The Basic Laws of 1992 became a focus of public interest, among other things, because they were declared to be the instigators of a "constitutional revolution." A great deal of interest and extensive public debate was also devoted to the definition of Israel in these laws as a "Jewish and democratic state." There were those who did not see any problem with this characterization, while others argued that its two elements were inconsistent, requiring the state to choose between them. A third group held that while it was necessary to acknowledge the tension between the two elements, it was possible and important to mitigate it.

The 1992 Basic Laws also affected the relationships among the branches of government. They increased the powers of the courts and placed a new limitation on the Knesset's legislative powers. The Direct Election Law reflected a discomfort with the political reality and with the government's perceived inability

³⁶ At the same time, however, some among both Palestinians and Jews developed a vision of a single state between the Mediterranean and the Jordan River (called 'the one state solution' – OSS). However, this idea never received the support of decision makers in both communities or in the international community. Among the Jews, see for instance Gavron's book. For a favorable description of this option, see in Ganem, *Medina Du Le'umit Palestinit-Israelit* (Heb.: "A Bi-National Palestinian-Israeli State"; 1999). It is important to emphasize the big difference between a vision of simply two states and a vision, which a majority of Jews support, of "two states for two peoples." Only the latter includes recognition of the Jews' right to self-determination in Israel. There is a great controversy among Jews whether moderate Palestinians are willing to accept the vision of two states **for two peoples**, or whether they are in fact offering their (tactical) agreement to it, as part of a plan to eradicate the Jewish state in stages. See for instance Danny Reshef: "Yasser Arafat never spoke about 'two states for two peoples,' only about 'two states living peacefully side by side.' He never agreed to recognize the Jews' right to a state of their own here. He expressed this intention of his in numerous interviews and speeches even after the Oslo accords in 1993. "We in the PLO will concentrate all our efforts on deepening the division in Israeli society. Within five years there will be 5 to 7 million of our brothers in Palestine. We intend to foster conditions in which the lives of the Jews in Palestine will be intolerable," Yasser Arafat declared openly and bluntly in the presence of the media to the PLO ambassadors in Europe gathered in Stockholm on 12 February 1996 (*Dagen* ["Today"], Norwegian newspaper, 16 Feb. 1996). See discussion below.

to act. We should recall that, during the state's early years the same electoral method succeeded in generating very effective governments due to centralistic mechanisms, the effects of the period of struggle prior to the state's establishment, and the protracted reign of *Mapai* as the axis party. The Direct Election Law, however, expressed the hope that putting a "strong man" in power, with a personal and direct mandate from the public, would enhance effective government. Even though they were held under provisions of the previous law, the 1992 elections already bore the hallmark of personalized leadership. The Labor Party ran under the slogan "Labor led by Rabin." The election of Yitzhak Rabin as candidate for prime minister over his longtime rival Shimon Peres, stemmed only from the feeling that Peres, while successful within the party, had failed to win a general election, whereas Rabin had a more attractive image. The elections of 1996 and 1999 (as also the special election of 2001) were held under the Direct Election Law, which was annulled in 2001. Even after its annulment, however, the trend of stressing the personalities of the candidates for party leadership continued.³⁷ Constitutionally, it turned out the Direct Election Law created greater problems than it had sought to correct. The dependency on the ultra-Orthodox parties didn't cease, and the government's ability to govern didn't improve. Yet under the new method, changes in the relations between different parts of the Jewish public, and between Jews and Arabs, were sharpened. Netanyahu was elected with the rightist bloc as his political base and with the active support of the religious parties, which circulated the slogan "Netanyahu is good for the Jews." Never before had such blunt emphasis been placed on the differences between the civic and the ethnic-religious nation. Ehud Barak, by contrast, gave up on the religious and ultra-Orthodox vote before the race even began. When he ran into parliamentary difficulties after the Camp David summit, he began to talk about a "civil (as against a religious) revolution" and about a massive change of the *status quo* in matters of religion and state, disregarding

³⁷ This was especially apparent in the two election campaigns won by Sharon, first in the special election under the Direct Election Law in 2001, and a second time in general elections in 2003. In both instances Sharon failed to outline any policy, and his campaign rested mainly on the promise that only he could deliver peace and security. The personal element was also prominent in all three major parties before the 2006 elections, although Sharon's illness gave rise to certain confusion between Olmert's positioning as the new leader and his being a "follower of Sharon's path."

the generally accepted political compromise. The Arab public turned out in numbers to get Barak elected; but Barak, who wanted to execute a massive political move on the Palestinian front, felt he had to stress the fact he enjoyed the support of a "Jewish majority." The relations between Barak's government and Israel's Arab minority reached a crisis due to the killing of 13 Arabs (and one Jew) in the violent events of October 2000.³⁸

The second *intifada*, which erupted near the end of 2000, and the Israeli response in its wake, brought to a head the public controversy regarding the legitimacy and political wisdom of Israel's continuing occupation of (all or most of) the occupied territories and of the project of Jewish settlements outside the 1967 borders (or at least outside the settlement blocs that enjoy broad public support). Some saw the Palestinian struggle as sheer terrorism, others saw the military response as waging justified war against partly terroristic Palestinian violence, and still others saw it as the illegitimate use of force by Israel to perpetuate its control over the territories. So even though a large part of the Jewish public was determined to defend the state from its enemies, there were those who held that the war itself, or at least part of the army's *modi operandi*, was unjustified. Instances of refusal to serve in the occupied territories began to occur.³⁹

It is still too early to assess the impact of Israel's disengagement from the Gaza Strip in the summer of 2005 and its lessons both within Israeli society and concerning the constitutional structure. We shall discuss certain aspects of this plan below. Here we might note that the fact that the process went more smoothly than anticipated appears to indicate that it reflected the wishes of a large majority of the public. This majority thus demonstrated that it does not subscribe to the vision of an undivided Land of Israel and does not see Jewish settlement in all parts of the Land of Israel as a divine command. To the contrary, it appears that a majority of the public in Israel, including a majority of

³⁸ One telltale sign of the volatile and contentious atmosphere surrounding the events of October 2000, even in real-time, is that most Arabs describe what happened as "the murder of demonstrators" whereas the police speak of "the killing of rioters."

³⁹ For an analysis of the morality of war and Israel's morality in fighting since the start of the Zionist movement, see the very critical discussion in Primoratz, *Terrorism in the Israeli-Palestinian Conflict* (2006).

the Jewish public, is inclined toward a solution based on "two states for two peoples" and believes that continued Israeli rule over the entire Land of Israel might jeopardize achieving this objective.⁴⁰ Although opponents of the disengagement plan came from all sectors of society, the bulk of them belonged to the religious-national right. The plan and the very different form it took in the perceptions of its supporters and opponents accentuated the extent of the internal divisions within Israel's Jewish public, as well as the forceful vigor of the majority when it finds a way to translate its preferences into determined political action.⁴¹ It also exposed the various levels at which the debate is conducted. Alongside the political and socioeconomic levels, there is also a religious level. This level provides firm support to believers, but it also heightens possible tensions between religious injunctions as interpreted by certain *Halachic* authorities and the state's authoritative directions. The plan and responses to it also raised grave questions as to the depth of commitment on the part of members of certain sectors within the Israeli population to elements of Israel's meta-purpose, and to its Jewish foundations in particular. We'll return to these topics below.

In any event, the disengagement plan 'reshuffled the deck' and led to a drastic change in the composition of the government. After its execution in 2005, and after the election of Amir Peretz to the leadership of the Labor Party and growing internal paralysis within the *Likud* Party, the government couldn't continue to function. Sharon's departure from the *Likud* and his founding of the *Kadima* Party was an attempt to return to the pre-1977 order—a time when a

⁴⁰ See for example the "Peace Index," founded by the Tami Steinmetz Center for Peace Research and published monthly, which shows consistent public support for the formula of "land for peace." See in: <http://www.tau.ac.il/peace>.

⁴¹ Among the opponents of the disengagement plan there are those who believe that a majority of the public actually didn't support it, and that apprehension lest this preference be expressed led Sharon to oppose a referendum. In support of this they cite the fact that on the eve of the mini-referendum amongst registered *Likud* members there seemed to be a majority for Sharon's plan, while in the mini-referendum itself the opponents won a clear majority of over 60%. Indeed, it is impossible to tell what the results of a national referendum on the subject might have been. It is also hard to tell whether the results of such a referendum would have reflected the preferences of the majority. It appears, however, that if there hadn't been a majority in favor of disengagement, public reaction to the move would have been different from what was actually observed. This impression is greatly strengthened in light of the developments in the political arena prior to the 2006 elections and in light of the election results.

single powerful pivotal party was able to form a coalition with center-left or center-right parties of its choosing, without being too dependent on parties perceived as extreme left or right, or on ultra-Orthodox and Arab parties. The 2006 elections didn't bring about such a change. Although the *Kadima* Party has become the largest party and appears to be centrist, the *Knesset* is again composed of numerous small and medium-sized parties.⁴²

The various discussions of a constitution also "aired" ideas that have not always enjoyed prominent public debate. Thus there is a debate in Israel today over the general question whether the country should have a constitution at this time, as well as regarding issues of regime structure such as the electoral system, the presidential versus parliamentary system, the structure of government, relations between the government and the *Knesset*, and relations between both of them and the Supreme Court—including its composition and the method of appointing its judges. The debate concerning the constitution again raises the fundamental question whether a constitution should include a characterization of the state, and, if so, whether it should be defined as "Jewish and democratic" (or any other formulation reflecting the same duality). In other words, this is the fundamental argument between those who emphasize that Israel is the state in which the Jewish nation exercises its right to political self-determination, which is committed as well to democracy and human rights, on one hand; and those who would like Israel to define itself as a democratic, multicultural or bi-national state, or, at least, not include any characterization of its identity in its founding constitutive document, on the other.

* * *

In light of all the above, it is easy to see how Israel might be assigned all the different descriptions given in this section's title. It is also easy to see that different practical conclusions may be drawn from the different descriptions due to different perceptions of reality, processes and value systems. It is important to

⁴² In effect, the 2006 elections gave rise to a knottier situation than after the 2003 elections, when the Sharon-led *Likud* won 40 Knesset seats.

emphasize, however, that there is no simple connection between the characterization of Israel and any such practical conclusions.

Let us start with those who see Israel as a country born in sin, and indeed one whose continued insistence on stressing its distinction on the basis of self-determination for the Jewish nation is a sin. Naturally, they will aspire to weaken, blur and restrict the tendency to continue preserving the necessary conditions for distinctive Jewish self-determination and its justification. They are also likely to try to defend the rights and interests of the Arabs in Israel and in the region. It is less clear what they might do regarding steps that are supposed to strengthen the state itself. After all, the welfare of the Arab minority depends in part on the strength and prosperity of the state in which they live.

Paradoxically, the inclination to blur Israel's Jewish distinction may be part and parcel of the approach of those who see Israel as a justified success story. Israel, they might argue, has already established a firm national basis for Jewish self-determination in Israel, rendering superfluous any further Zionist activity or the adoption of a Zionist identity by the state. Similarly, whoever sees Israel as a success story may not think there is a vital need to arrive at a constitutional structure which permits and facilitates determined political action. They may think all Israel needs is a political system that can maintain its achievements, with the usual checks and balances required in every regime in order to ensure that holders of power do not abuse it. The decision-making mechanisms that dealt successfully with the challenges of yesteryear, according to this view, can certainly continue dealing successfully with those of tomorrow.

The situation is very different for those who view Israel as a vital enterprise whose survival and flourishing requires urgent reappraisal and action. They will want rules of the game enabling such action. These people, however, may disagree on the identification of threats to the enterprise's success. Some believe that it is a lapse of judgment resulting in a willingness to give up some of the land of Israel which poses a threat. Others believe that the threat lies in Israel's inability to demonstrate greater flexibility and arrive at a just and pragmatic solution for dividing the land. There are those who contend that turning away from Jewish religion poses a threat, while others, to the contrary, believe that

the greatest threat to the state emanates from religious messianism, which jeopardizes the enterprise's prospects. There are those who reckon that the primary responsibility for prolongation of the conflict rests with the stronger side—Israel; therefore the fact that it has not been resolved is our responsibility. Others blame the prolongation of the conflict on an Arab interest in weakening Israel. Still others hold that there is an unholy alliance among leaders who have a vested interest not to do the right thing for the welfare of their peoples. Each such conception of the threat can serve as the basis for different thrusts in policy. On the assumption that there are deep divisions in Israel regarding exactly these issues, just the fact that there is broad agreement that the enterprise faces existential threats does not in itself suffice to ensure that we should be able to bring ourselves to meet these challenges.

The combination of these divisions, plus the complex relations between possible approaches, are the prime obstacles making it difficult to reach agreement on identity, common goals, or shared constitutional rules of the game. This lack of agreement effectively impairs the state's ability to formulate and execute policy. The governmental and party structure has also contributed its share to this situation. Governments have been unstable and found it difficult to formulate consistent policy. This in turn has further decreased the ability to govern, because the rapid turnover of ministers in major government ministries has impaired the ability to develop consistent policies over time.

This was dramatically manifested in the discussions of the *Knesset's* Constitution, Law and Justice Committee on a constitution for Israel.⁴³ While a large majority among the Jews wishes to emphasize that Israel is a Jewish state, a majority of the Arab minority's representatives rejects this definition and will not assent to a constitution that gives the state a distinctive Jewish character (even if accompanied by declarations of a commitment to democracy and civil equality).⁴⁴ Among the Jews there is agreement on this formulation because of

⁴³ These discussions exposed the controversies more sharply than the discussions of the Public Committee for a Constitution by Consent or those of the constitutional team of the Israel Democracy Institute (IDI), where the groups were less representative and some of the positions were not voiced in the discussions themselves.

⁴⁴ Compare, for example, the constitution proposed by the IDI, which emphasizes the Jewish character of the state while declaring a commitment to democracy and civic equality, and the critical responses in the *Adalah*

its vagueness. Going into the details, however, we discover the age-old argument between those who see Jewishness as a matter of national-cultural identity and those who see it as a matter of observance of the Jewish tradition according to its *Halachic* interpretation. The differences between the various parts of the Israeli public are not limited to values and goals, but also concern the description of reality and its meaning. These controversies in matters of principle also illustrate the difficulty of agreeing on definitions of identity. Furthermore, while there is broad agreement that the regime structure in Israel is not optimal, it is very hard to agree on an alternative regime structure that will give the state a better balance between effectiveness and accountability. These difficulties have to this day prevented the adoption of a constitution, and there are those who still doubt whether a good constitution is even possible. On the assumption that achieving such a constitution is unlikely, it is not clear whether it is good for Israel to devote so much effort to the formulation of one. Others argue that while it is true that a constitution should not be one of Israel's top priorities, the absence of a complete constitution adopted by the *Knesset* opens up the way for a judge-made constitution. They recommend that a constitution be enacted by the *Knesset*, if only to block this trend.⁴⁵

A net result of these processes and controversies is the difficulty encountered in recreating, in today's Israel, the same kind of commitment and determination to promote agreed objectives, which had been enjoyed by the Zionist movement and the state in its early years. Similarly, they make it hard to recreate the growth and development that characterized the state in its early years.

notebooks. See also the protocols of the discussions on the chapter of principles in the Knesset's Constitution, Law and Justice Committee under its chairman Michael Eitan, on the committee's website.

⁴⁵ There is something peculiar about the argument that a complete constitution needs to be enacted, even if it has no independent justification, only to block steps taken by the courts. If this indeed is the case, it may be argued that the *Knesset* that dares to change the balance of powers among the legislature, government and courts by means of a constitution, could get the same result through legislation that is not part of a complete constitution. On the other hand, in the prevailing conditions it may indeed be easier to bring about such a change as part of the adoption of a constitution, rather than by means of legislation that aims at weakening the power of the courts. Clearly, achieving a new balance would depend not only on the adoption of a constitution but on its **contents** as well. The constitution proposed by the IDI, for example, in fact preserves the standing and powers of the courts and the method of appointing judges to them, and even extends their powers in some ways compared to the present state of affairs.

II. A Meta-Purpose for Israel

1. Why is a Meta-Purpose Essential in Conditions of Controversy?

The ability to effectively address problems and challenges depends upon many variables. Grave controversies over goals, the legitimacy and efficiency of means as well as over decision-making mechanisms are liable to compromise this ability significantly. We have seen that there are indeed such controversies in Israel at many profound levels.

We have also seen that a powerful feeling of common destiny and of being in the right was an important component of Israel's success in the past, while internal controversies over these topics today contribute crucially to the doubts concerning the country's ability to meet the challenges facing it; they also make it difficult to carry out effective policies to deal with these challenges.⁴⁶

In any large and heterogeneous society there will be a certain degree of conflicts of interest between individuals and between groups. In many cases, central tenets of policy are more beneficial to some parts of the population than others. The cohesiveness of civil society in the state stems from a feeling that the state and its institutions provide the public, including all of its individuals and groups, with its basic needs—whether these be merely protection from life that is "nasty, brutish, and short," à la Thomas Hobbes, or in a broader meaning that includes providing adequate means to fulfill people's wishes, such as: freedom, welfare, and a meaningful life. In a democracy, the accepted method for dealing with controversies and conflicts of interest among individuals and groups is to draw a distinction between the various positions and preferences themselves and *the decision-making mechanisms of the state*. In a democracy the different opinions and interests are all legitimate, as is the desire of groups to promote their own interests; however, there needs to be agreement on the decision-making mechanisms to which the

⁴⁶ This general description is of course simplistic and misleading. Jewish society during the pre-statehood period and in the initial years of independence was characterized by severe controversies. Those between the Left and the Right, between the *Haganah* and the *Etzel* and *Lehi*, were very grave indeed. Episodes such as the "season" and *Altalena* were only crisis points in complex relationships. In the initial years of statehood Ben Gurion coined the slogan "without Herut and without Maki," which denied the legitimacy of important groups in the Jewish community. Despite all these, the common enterprise on behalf of Zionist goals and nation-building had overridden the controversies, profound as they were. It may be noted also that acute internal controversy among the Palestinian population was an important factor in its weakness, resulting in inability to contend effectively at the military level to prevent the state's establishment.

public is committed, so that action may be taken in a coordinated and authoritative fashion.

These mechanisms are perceived as binding, even when the decisions reached through them are injurious to the interests of one group or another. This is because everyone has an interest in the robustness of society and the legitimacy of its decision-making mechanisms. To protect the rights of individuals or minorities, we add to the mechanism of majority-decision various systems of checks and balances, together with value constraints such as human rights. Furthermore, democracy itself is a meta-value; it overrides the preferences of those who may wish to replace it by a form of government that is not based on the consent of the people.

Thus democracy and human rights are part of the structural guarantees that allow the state to overcome internal controversies over questions concerning the good life and its meaning. These foundations can and should be part of society's credo, part and parcel of its meta-purpose. Agreed and effective decision-making rules are indeed vital to the functioning of a well-ordered state. All the same, it is not clear whether these alone can give rise to the feeling of common destiny required in order to maintain a vibrant, active society; a society which views the state as its home and is willing to participate in its decision-making and shoulder the burdens necessary to sustain it and further its prosperity.

This issue has cropped up repeatedly in discussions of political philosophy since the dawn of human society. Nowadays it is manifest in the controversies between different forms of liberalism and communitarianism, and in the debate on the relationship between the liberal and republican attitudes toward citizenship. Most relevant to Israel is the discussion of the future of the nation-state and nationalism in general, as well as the question regarding the building of a cohesive civic society in a multi-cultural setting. These problems currently preoccupy large parts of the Western world. However it is unique to Israel that its majority group consists mainly of immigrants who arrived in the country only in the last century, but are nevertheless part of a nation whose only independent state was in this same territory thousands of years ago.

What makes groups of individuals or citizens share the same goals? Should a state be merely the framework for the actions of the individuals and voluntary groups within it? Or should it also be a cultural and civic home for its inhabitants, and be committed to

nation building? Can there be a stable existence for a society that is united by no deeper ties than mere legal citizenship? What happens to a civic society when it exists alongside powerful ethnic, cultural, nationalist and religious identity groups? What can and should be the pattern of relations among such identity groups within a single state? Should one include gender and status groups among these identity groups? Can a state sustain itself when it assumes a strongly neutral position towards all of these identities? Is such an attitude possible? Is it desirable?

Theoretically, it may be possible to create a nation that is only civic, in which there is full privatization of all non-civic components of identity. Thus the state is conceived as completely neutral towards all the non-civic affiliations of its inhabitants and citizens. However, without taking a position on the general feasibility of such an arrangement, it is clear that such an answer is not practical in the Israeli reality and in the region today, in both the short and long term. The great majority of Israel's inhabitants—Jewish and Arab, secular and observant—do not want to live in a state that privatizes all of their non-civic affiliations.⁴⁷

Moreover, the challenges facing the State of Israel do indeed include such issues as a reasonable measure of social justice, growth, and freedom, which in certain formulations can be common to a large majority of the sectors in Israeli society. However, some of its challenges require staking a non-neutral position. Such is the case with regard to determining the identity of the state, the approach towards the continuing conflict with the Palestinians, deciding between modernist approaches as opposed to religion and tradition, and the ideological controversy between proponents of personal responsibility and freedom versus those who highlight considerations of social solidarity, welfare, distributive justice and equality.

Thus the capacity to act effectively in Israel depends not only upon the ability to arrive at broad agreement within the Israeli public over the rules of decision-making, but over long-term meta-purposes as well. In a diverse and even polarized society such as Israel's, it is unreasonable and even undesirable to aspire to reach general agreement over specific arrangements. Nor is it possible or desirable to aspire to a situation in

⁴⁷ Therefore the vision of a single state between the Mediterranean and the Jordan River is a vision of either the hegemony of one of the groups, or a vision of broad group autonomy. There was such an autonomy in Israel before 1948 under British rule. It is unclear how it would function without an "external" ruler.

which all groups in society have similar conceptions of reality and the nature of the good life. At the same time, a meta-purpose agreed on by a large part of the public is essential for the social cohesion needed to effectively promote it, even if some of its components are alien or even run contrary to the preferences of a certain minority. In its absence, the political system may be afflicted with paralysis or inertness, which may prevent progress towards the state's fulfillment of its goals and objectives—including those vital to the welfare of the entire population, the minority in question included. We protect minorities not only by directly promoting their welfare, but also through a maximum protection of human rights and democratic principles.

A society which suffers from deep divisions that threaten to impair its ability to act and effectively address the challenges facing it must therefore carefully examine its situation. It would be fortunate to discover that there is sufficient agreement within the mainstream, despite the deep divisions, over the necessary public agenda and proper rules of decision-making, and that these meet the constraints of democracy and human rights. In that case, we would have to ensure that these forces are able to implement a common policy and not allow extremist forces to veto it.⁴⁸ If it turns out that the divisions are too deep to enable such steps, there may be no choice but to reexamine the viability and survivability of the political framework itself. Of course the picture becomes more complicated if the divisions 'cut through' different sectors, so that in a specific political grouping there may be a clear majority in favor of certain foreign affairs policies, but the same grouping is unable to arrive at a consensus on economic matters,

⁴⁸ Some of Israel's secular groups feel that the ultra-Orthodox use their political power to "blackmail" governments, utilizing the fact that they can often decide the fate of coalitions to undermine critical policy moves both in matters economic (such as the annulment or massive reduction of child grants) and cultural matters of identity (such as the introduction of civil marriage). On the other hand, some of the ultra-Orthodox and religious hold that the secular are domineering and insensitive, that their opposition to things Jewish or religious stems from self-loathing, and that they impose arrangements whose entire purpose is "secular coercion." However, while the secular are able to portray the ultra-Orthodox as an extremist force, the ultra-Orthodox cannot easily do the same. With its anti-religious approach, the *Shinui* Party gave them a more convenient target for vilification. The Jewish-Arab tension constitutes a more intractable element, there being those who portray all of the Arabs as an extremist group, whose opinion may be discounted. On the other hand, the continuing refusal of all the Arab *Knesset* members to agree—even tacitly—to the definition of the state as Jewish is indeed seen by many as giving rise to an unhealthy and unstable situation, in which they as the minority seek to prevent the Jewish majority from celebrating their nation-state. Both issues came to a dramatic head in the *Knesset* discussions on a constitution for Israel.

for example.⁴⁹ This means that some groups may belong to the center on certain issues but to the far-out periphery on others. Another problematic situation is the paralysis stemming from the existence of two large blocs, so that neither is able to promote its own objectives but can only effectively impede attempts made by the rival bloc. In all these scenarios, it is impossible to implement any kind of determined policy.⁵⁰

My premise in this essay is that it is possible to find in Israel a common denominator in the form of a meta-purpose, which will allow action to be taken in proper balance between societal cohesion and recognition of the plurality of positions and attitudes. This agreed meta-purpose is broad and inclusive enough to sustain the continued existence and prosperity of the state and allow it to include minority groups, even though these groups may oppose some elements of the meta-purpose. The ability to include these minority groups is based on the fact that the complex meta-purpose is indeed essential to the state's ability to provide them too with the benefits of welfare and prosperity which they value. It is justified and right that Israel should retain an element of Jewish distinctness as part of its meta-purpose. At the same time, the state must take action, at both the declarative and practical levels, to strengthen the common civic identity of all its inhabitants and to deepen their sense of membership in the common enterprise. The state will recognize the diversity of its inhabitants' non-civic identities, but a large part of this group activity will be at the private and voluntary level. This will apply to non-Jews in

⁴⁹ This situation was dramatically illustrated by the Sharon government beginning in 2003. Initially Sharon formed a rightist government that agreed to no progress on the political front and the implementation of a "right-wing" economic policy, demanding extreme neo-liberal reforms. This was accomplished by not including the ultra-Orthodox or the Labor Party in the coalition. It was possible to bring in *Shinui* and the National-Religious Party because they agreed to the economic policy and were willing to compromise on matters concerning state and religion (which led to the disbanding of the Ministry of Religion, but not yet to breaking the monopoly of religious courts over matters of personal status). When the disengagement plan became a central part of Sharon's policy, he took apart the "economic" coalition and cobbled together one that agreed on political progress. However this government was unable to continue functioning due to internal conflicts of interest regarding the economic policy, especially after the election of Amir Peretz as head of the Labor Party. The disengagement government was also unable to arrive at an agreement on matters of state and religion, since the NRP – now out of the coalition – lost interest in reaching such an agreement.

⁵⁰ This was the situation in Israel during the periods of unity government. To a certain extent it also obtained during periods of narrow governments because the large parties did not dare to totally alienate the ultra-Orthodox or Arabs (respectively), knowing they might need them to form a coalition in the future. In this matter there is no symmetry between the Arabs and ultra-Orthodox, however, for there is much greater willingness to rely on the support of the latter in political affairs.

Israel as well as to Jews, including organizations and movements whose main business concerns the welfare of Jews, Judaism and the Jewish people. The success of this effort depends not only on its logical coherence, but also—and especially—on the willingness and ability of the state's institutions and of the various civil society groups to implement reasonably this balance.

2. A Meta-Purpose for Israel

We have argued that a meta-purpose is crucial to Israel's ability to contend with the challenges it faces, and that it is required especially due to the deep disagreements within it. In these conditions of controversy, however, it is clear that any formulation of a meta-purpose will encounter opposition. The test of the proposal will be whether it actually reflects a broad enough basis of agreement within society to ensure, to all the important groups in society, a better standard of living and welfare than they would achieve under alternative meta-purposes or in the absence of one. This basis of agreement needs to turn the meta-purpose into a driving force that gives members of society a feeling of participation in the enterprise and a vested interest in its success. Ideally, a meta-purpose should help foster a willingness or inclination among members of society to participate constructively in the goings on of the society they live in. Furthermore, the basis of agreement must not only reflect the support of a large enough majority of the public; it also needs to be justifiable. This is because the strength of a society, in the long term, cannot be based solely on force but must also, more importantly, win the acceptance and agreement of the public living in the state.⁵¹ The idea of a meta-purpose may be similar, both essentially and operatively, to that of the constitutive definition of the state's character. Characteristics of identity turn into elements of the meta-purpose because the state wishes to preserve and develop them.

⁵¹ This is certainly true in a democracy, which is built on consent as the source of government's legitimacy. But it is also true, albeit in more subtle ways, in every state and in every form of judicial system. A public may be ruled by force or terror for a certain period of time, which may be prolonged. Ultimately, however, there is no stable government except on the basis of broad consent, and certainly there cannot be a thriving and prosperous society without a measure of personal freedom.

Some elements of the meta-purpose might be found in other constitutive documents, for instance in the State of Israel's Declaration of Independence.⁵²

It seems to me that a meta-purpose for Israel, which might enjoy such support, would need to include the following elements:

The State of Israel is the state in which the Jewish people exercise their right to national self-determination. Israel is a freedom-loving democracy, which protects the human rights of all its inhabitants, aspires to social justice internally and to peace with all of its neighbors. Israel recognizes the non-civil identities of its inhabitants and aspires to maintain a high level of education, science and technology.^{53 54}

⁵² A detailed meta-purpose for Israel was formulated by a group of Jewish Israelis in the *Kinneret Covenant* on 18 October 2001. Like many documents of its kind, the *Kinneret Covenant* deals with political and social ideals but does not emphasize the economic and physical infrastructure or levels of education and health, nor economic integration and prosperity. For the wording of the *Kinneret Covenant*, see in Dromi (ed.), *Shevet Achim: Yachasei Chilonim-Dati'im: Emdot, Hatzot, Amanot* (Heb.: "Fraternal Communion: Secular-Religious Relations: Positions, Proposals, Covenants"; 2005).

⁵³ I do not include being Western among the elements of this ideal. Like many of the keywords here, "Western" is a vague expression. Being Western is a cultural matter that is posited versus *Oriental*. It is also a matter of political orientation. It seems to me that Israel isn't necessarily Western in either of these senses. The West is predominantly Christian. Historically, Christianity (or Judeo-Christian culture) did indeed give rise to science, industrialization and enlightenment as we know them today. In tomorrow's world, however, we may see highly developed countries that are not Western in any of these senses. Israel is a mixed country, both geographically and demographically, and I believe this can be a source of power and strength. It certainly would not be wise to define part of Israel's common meta-purpose as being "Western". Recently, growing numbers of people have begun to add a "Mediterranean" affiliation to the definition of Israel's cultural identity. Israel is indeed part of the Mediterranean basin and has much in common with its other countries. It does not seem, however, that this belonging is of much importance to other Mediterranean countries. The Mediterranean countries of Europe prefer to emphasize their affiliation with Europe rather than the Mediterranean. It is therefore not clear whether a Mediterranean affiliation has enough political, institutional or cultural significance. There are those who hold that Israel cannot afford to relinquish the Western element, and that without the Western tradition there is no real commitment to science and truth. I am not sure of this. History marks the wonderful scientific achievements of the Golden Age of Islam, as well as in China. In any case, it seems to me that it is unacceptable to predicate Israel on being Western, because such a definition would exclude from the common civic identity large sectors of society that may wish to protect their *Mizrahi* tradition without necessarily tying it with resistance to modernity or science. (Thus, for example, significant numbers of the ultra-Orthodox are not *Mizrahi*, and there are in Israel people of *Mizrahi* origin at the forefront of science and academia.) I shall return to these topics below.

⁵⁴ I also do not include Israel's being a liberal state in the meta-purpose, as I believe there is no general agreement on this element of the ideal. I personally would like Israel to be a liberal state and am glad that many of the country's arrangements meet this requirement. Under the present conditions, however, I think that the inclusion of this element in the meta-purpose would be too alienating to too large a part of the population. On the relations between democracy and liberalism, see for example in Marmor, *Bikoret Shiputit be-Yisrael* (Heb.: "Judicial Review in Israel"; 1997). I am referring here to "comprehensive" liberalism, i.e., liberalism as a doctrine of political morality and not just to the "political liberalism" of John Rawls and others, which is and should be a part of the meta-purpose. I myself make and interpret the distinction in my introduction to the

Let me elaborate a bit on the elements here, and expand on them in the next chapter:

The State of Israel is a Jewish state,⁵⁵ i.e., a state in which the Jewish people exercise their right to national self-determination. Among the manifestations of the state's Jewishness are the fact that its affairs are conducted in the Hebrew language, that it welcomes Jews from all over the world, and that it serves as the focus of Hebrew culture and the expression of Jewish nationalism. The Jewishness of the state means that there is no tension between the cultural life of a Jew in the state and its public culture. I return to the complex relationships between the Jewishness of the nation-state and religion below.

The State of Israel is a free and democratic state: the government draws its power from the consent of the citizens, on the basis of civic equality. The state recognizes its inhabitants' rights to freedom of expression and organization. It is not a single-party "people's" democracy, and it supports a multiplicity of parties and changes of government.

The State of Israel protects human rights: this bears explicit mention, despite the fact that every state is obliged to protect the fundamental rights of its citizens and inhabitants, so this element of the ideal is not optional.

The State of Israel is a developed country, striving to become one of the world's most prominent from the scientific, technological, economic and cultural aspects.

The State of Israel aspires to social justice: it has a fundamental commitment to human solidarity, and to the maintenance of a welfare state that doesn't leave the weak behind as individuals or groups but provides them with a safety net to ensure the basics of a dignified existence.

Gavison-Medan Covenant. There is an enormous literature dealing with the relationship between liberalism as a political worldview and political liberalism.

⁵⁵This element of the meta-purpose is justified on the basis of present circumstances. It derives from the importance that I ascribe to effective self-determination for Jews in (part of) the Land of Israel. In the conditions obtaining today, it seems to me there is no chance of such self-determination in the absence of a nation-state for Jews. If these conditions change and it becomes possible to ensure self-determination for Jews in a sub-state arrangement, or if conditions do not permit the continued existence of a Jewish nation-state even in (part of) the Land of Israel, I would be willing to re-examine this element of Israel's meta-purpose. See discussion below.

The State of Israel aspires to live in peace with its neighbors: peace is a strategic goal and supreme value of the state.

Various objections may be raised against the adoption of a meta-purpose generally or against its specific content and elements. Some such objections may be directed against one or more of the meta-purpose's elements, leading to its rejection as a whole. This is notably the case regarding part of the Arab public in Israel, which does not wish to live in a state that defines itself and conducts itself as the nation-state of the Jewish people. This objection is natural and understandable, especially against the background of the unresolved conflict with the Palestinians who are not citizens of Israel. Indeed, some hold that this understanding must lead to the removal of this element from the state's meta-purpose: under this conception, it certainly should not appear in a constitution or any of the state's official documents, nor should any policy be adopted that promotes the conception of Israel as the nation-state of the Jewish people. There are also groups that are opposed to the ideal of Israel as a developed and open society; these would prefer more religious and traditional approaches. Although there are reservations regarding other elements of the meta-purpose as well (some groups, for example, are afraid of the wish to define Israel as a modern state), the fact that there is such vigorous opposition to only one element suggests that the meta-purpose may indeed be able to provide Israeli society with a unifying element of identity.

A more common contention holds that these are all in principle worthy elements, but there are internal contradictions among them. Consequently this composite ideal is misleading and impossible to implement even in principle. Israel must therefore choose between contradictory elements; at the very least it must determine clearly and in advance what happens in case of a real confrontation between them. This would apply to the contradiction between a Jewish nation-state and a state committed to the equality of all its inhabitants; between a developed and advanced state, built on a free economy, and the commitment to social solidarity and social justice; it would also apply to unbridgeable internal tensions between religion (or at least certain conceptions of religion) and democracy or an open society. There are those who contend that capitalism is also incompatible with a commitment to respect all cultures—such as those opposed to modernity and the active participation of all members of the population in economic and commercial life.

Another kind of objection is that although it may be possible to maintain such a complex ideal with its multiple elements, the significant decisions are concerned with its translation into actual policy. An inability to act consistently may stem not only from dissensions regarding the elements of the ideal and how they may be reconciled, but also from disagreements regarding the correct way to weigh them and give each its proper weight in the whole. Consequently, the impression that the meta-purpose will ostensibly improve the state's ability to operate is a false one, for the meta-purpose only serves to obscure the disagreements that will cause paralysis when they do arise. On this view, the meta-purpose doesn't really make things better.

This objection can be illustrated with respect to each of the meta-purpose's elements. Due to the centrality of the conflict between Israel and the Palestinians, it is easy to see that merely declaring that Israel aspires to peace does nothing to strengthen social cohesion or the government's ability to act. After all, Israel has been constantly declaring that it aspires to peace since its establishment. There is also no doubt that the prolongation of the conflict with the Arab world, especially with the Palestinians, is one of the important underlying reasons for concern over the future of the state and an important component of the disagreements that weaken it. There are those in Israel, however, who do not believe it is possible to reach peace with our neighbors because the latter are not interested in it at all, or at least not in peace under just conditions acceptable to Israel. Others think that the Palestinians long for peace and Israel alone is responsible for prolonging the conflict. Between these two extremes, there are various approaches regarding the feasibility of peace in the region and Israel's responsibility for its not having been achieved yet. In addition and in connection to this descriptive dispute, there are normative disagreements over what Israel should do in regard to the continuing conflict with the Palestinians.⁵⁶ Against such a background, does the statement that Israel aspires to peace carry any significance at all? Does it really promote cohesion in Israel, or does it merely reflect a desire to attach flattering epithets to the state?

⁵⁶ For an example of the possible gamut of opinion, see in Shavit, *Chalukat ha-Aretz* (Heb.: "Partition of the Land"; 2005), and in the essay by Heller and Hollis, *Yisrael ve-ha-Palestinim: Chalufot Medinoyot le-Yisrael* (Heb.: "Israel and the Palestinians: Political Alternatives for Israel"; 2005).

Similar objections could be raised against the meta-purpose's implications for the thorniest issues in the state, such as the proper treatment of Israel's Arab citizens and inhabitants, or the proper handling of the multiple approaches within the Jewish public towards the state's character and goals—especially the relation between Jewish *Halakha* (religious law) and the state. The same applies to the relationship between Jewish self-determination and Jewish tradition and the democracy of the state.

Cumulatively, these objections may suggest that this is a 'gimmick': the formulation of a meta-purpose and analysis of its elements will not help to overcome the *malaise* and sense of futility burdening those concerned about Israel's prospects. What is presented here is a false impression of cohesion and agreement, which will dissipate as soon as we turn to questions of policy.⁵⁷

Indeed, the meta-purpose cannot and is not supposed to provide, on its own, an efficient recipe for dealing with disagreements over the content of policy trends and political arrangements. These have to be resolved by means of agreed decision-making mechanisms. I do not think it follows, however, that the formulation of the meta-purpose and clarification of its elements are unimportant. This is because **the inability to act in a coordinated and agreed fashion is due in large part not to specific disagreements, but to a feeling of confusion regarding the central elements of Israel's credo and their justification.** The important multiplicity of specific disagreements on policy supports a tendency within the Israeli public to obscure the fact that there is indeed broad agreement on this credo, and that this broad agreement does have important practical implications.

The confusion pertains to all the elements, but it is especially prominent regarding both the state's Jewish character and its commitment to democracy and human rights. Sometimes it seems the Israeli public is no longer certain Israel is justified in striving to preserve effective self-determination for Jews. Sometimes people give the impression that they believe the state is allowed to trample the individual or group rights of others for the sake of security or other interests. The two phenomena are related. The fragility

⁵⁷ Indeed, this was one of the common criticisms leveled against the *Kinneret* Covenant. Indeed, the covenant did not in fact bear the desired fruits. The problem may have been that the covenant failed to deal with the structure of decision-making mechanisms that are required for such agreements to succeed. In addition, the covenant's authors may not have been willing to take additional steps to reach more detailed, concrete agreements, as was done for example regarding secular-religious relations in the Gavison-Medan Covenant.

of the commitment to human rights and democracy is usually revealed when there is a feeling of growing threat to the ability to maintain Jewish self-determination in Israel, and vice versa.

The meta-purpose emphasizes another important point: a large part of the disagreements over particular arrangements does not reflect conflicts between elements of the meta-purpose and other, more secondary, objectives; some of the conflicts are internal, obtaining between the meta-purpose's elements themselves. A tension between the Jewishness of the state and its democracy, or between democracy and human rights, is not a tension between "good" and "bad," but between different elements of the commitments of the "good"—of us all. This applies as well to the tensions between welfare benefits and prosperity.

Societies and states should not allow minorities, though they be large, to undermine their ability to act. Members of minorities have individual and group rights that must be protected. But it is vital not to let the minority obscure the broad agreement on the meta-purpose, for this might impair the entire state's ability to identify goals and take action to achieve them. A weakness of the state may in general be harmful to the minorities living in it as well, sometimes even more so than to the majority. I will say, to anticipate, that if you take away from Israel the elements of Jewish self-determination and a desire to create an open, advanced and prosperous society, you will be taking away from a large part of the Jewish population the main reasons for seeing this country as its home. This will inevitably weaken Israel. Furthermore, the welfare of all the groups, including the minorities, depends on the state's stability and efficiency and its ability to provide peace and wellbeing to all of its inhabitants. This sometimes requires maintaining cohesion and the ability to act, even at the cost of rejecting those minority aspirations that do not square with this ability—so long as minority rights are respected. The situation becomes more complicated if majority-minority relations themselves are unstable, and if minorities see themselves as capable and deserving of becoming the majority. In this situation, the majority may go beyond preventing minorities from impairing its ability to act. It is also natural and legitimate on its part to take action so as to limit the danger that any of today's ethnic, national or religious minorities might become the majority (as long as this doesn't infringe the basic rights of minority group members).

A similar danger lies in failing to distinguish between disagreements within the public over ways of implementing the composite ideal and fundamental disagreements regarding the ideal itself. A decision needs to be made regarding the ideal itself in order to prevent the collective identity of the state from falling apart. Regarding ways of implementing the ideal, there will always be legitimate argument. The progress of society is built on continuous negotiation over these issues. Decisions regarding ways of implementation should be made through negotiation among the sectors of the public, subject to agreed rules of the game such as elections and principles of decision-making.

It is also imperative to contemplate soberly the reality of the state and society. Having identified meta-purposes and determined that they are vital and justified, we must not allow political correctness to prevent us from examining openly and clearly the processes and facts that are relevant to deciding on the policies derived from these meta-purposes. The state's ability to act (like that of any individual or organization) depends on an ability to identify goals and work towards achieving them, so that local political decisions are derived from and validated by a long-term view of processes. Of course, it is also vital not to let an instrumentalist approach blind us to the fundamental values, which place normative constraints on what the state is allowed to do. Therefore these constraints are included and structured into the composite ideal; they mustn't, however, lead us to discount significant social phenomena out of hand in the name of some "neutrality" or "color-blindness," which is allegedly dictated by certain values.⁵⁸

The composite meta-purpose is helpful in reminding us that the constraints upon our actions are immanent to our identity, but also that we must sometimes act to promote elements of the meta-purpose even though part of the public does not accept them. This observation should influence the way we consider our steps and promote our objectives. It is important to find ways of minimizing the harm to the interests of one group as the result of a policy that promotes the interests of another. It is also important to understand that what we are doing is demanding of one group to pay a price in terms of one of its legitimate interests, in order to enable the state to promote certain objectives.

⁵⁸ One of my research assistants remarked here that in his opinion there was no such problem of "political correctness" in Israel. I beg to differ. Nobody dares to suggest a reexamination of the Law of Return for the purpose of restricting those entitled to immigrate to Israel or the immediate and automatic award of citizenship to them under the law. Similarly, many claim that any inquiry into the size and composition of populations in Israel, especially the Arab population, amounts to "racism." In both cases, what we have here is political correctness that hampers our ability to adopt a carefully considered and justified policy.

But if it is justified to promote this policy, we mustn't let the cost impede our ability to implement it. Taking into consideration those harmed by a policy is part of the examination whether promoting it is justified. All the same, not every harm to the interests of an individual or group justifies avoiding the policy causing it. We must also examine the consequences of avoiding the said policy.

As mentioned above, the meta-purpose cannot and is not supposed to lead, on its own, to decisions regarding specific political and social arrangements. It is only supposed to guide us and enable us to derive our steps from an explicit meta-purpose, making them that much clearer to us. In all types of disagreement, especially in internal divisions within an agreed meta-purpose, it is important to differentiate between what the right answers to the questions that arise are (the issue of substance) and who is supposed to decide in these matters and how (the issue of authority, or the identity of the decision-maker and the nature of the decision-making mechanism). The fear of losing the ability to act decisively is grounded primarily in the lack of clarity and weakness of the mechanisms that are supposed to decide in these matters. Our basic assumption is that there are deep controversies regarding the substantive answers—regarding both their relative weight within the meta-purpose, and the means and feasibility of different ways of promoting the objectives and their implications. As mentioned above, in these conditions it is vital that there be a second-order agreement on how these questions should be discussed and decided upon. Naturally, such rules of decision-making may require constant reappraisal and the adjustment of our actions accordingly. Again, in conditions of deep disagreement, it is that much more critical that the decision-making mechanisms be able to confer legitimacy to decisions, even when they appear mistaken or even detrimental to some of the public.

Alongside the lack of clarity regarding the meta-purpose, there are in Israel several unresolved disputes regarding the rules of the democratic game and decision-making mechanisms. First of all, there is a strong feeling that Israel doesn't have mechanisms that ensure the ability to govern effectively or the quality of elected officials. Both these faults are an outcome of the electoral method in Israel as it has developed in recent years. The proportional electoral method (in conjunction with a relatively low election threshold) has given rise to a multiparty regime, making it difficult to form effective coalitions. At the same time, the parties' internal election methods encourage the

corruption of power and a decline in the quality of elected representatives.⁵⁹

Additionally, there are disagreements regarding the division of powers between the government and the *Knesset*, but mainly regarding the division of powers between elected institutions and the courts on one hand, and between all the civil institutions and interpretations of religious *Halakhic* law on the other. While it seems to me there is broad agreement that religious *Halakhic* law and its interpretation should not override the authorized decisions of the state, there is a lot of ambiguity, even a great tension, surrounding the public debate over the proper balance of decision-making powers between elected institutions and the Supreme Court. The ambiguity has increased due to the unclear legal situation that obtains after the "constitutional revolution" of 1992.⁶⁰

I shall not deal with these matters directly in this essay, though there is of course a close connection between the ability to realize the meta-purpose's advantages and agreement on decision-making mechanisms. The robustness of these mechanisms also impacts the ability to defend democracy and human rights. In what follows I shall therefore both analyze the meta-purpose's elements and the relations among them, as well as consider central aspects of the decision-making mechanisms and the institutional and constitutional issues they involve.

⁵⁹ It is hard to tell what measure of importance the public ascribes to these worrying trends, or how the governmental and law enforcement systems are preparing to contend with them. On one hand, warnings have been voiced and there has been consistent protest. On the other hand, a period of sustained campaigning against governmental corruption by the law enforcement system resulted in a series of controversial acquittals. This in turn led to controversy within the law enforcement system itself over the right way to combat governmental corruption. In the 2006 election campaign every party attempted to portray itself as fighting corruption. At the same time, the senior functionaries of not a few of the parties were people who had been investigated on suspicion of corruption. Some were never brought to trial, the contention being made that only the duplicity of the law enforcement system had saved them from being tried and convicted. It is not clear how significantly this situation has affected voter preferences. Some of the suspicions concern personal corruption in using public funds for personal gain. Others concern irregular activities in the course of managing election campaigns and fundraising for them, or in political appointments—which is a different type of corruption, though not necessarily less dangerous than the personal variety. All the same, extensive revelations of pervasive corruption to ensure getting elected necessitate a systematic rethinking of how to manage parties and election campaigns, so that there is less incentive for corruption. Such thinking might also contribute to raising the quality of elected representatives, a laudable objective in its own right. For a comprehensive and thought-provoking discussion, see Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform* (1999).

⁶⁰ On the lack of legal and constitutional clarity in the wake of the constitutional revolution, see Gavison, *Ha-Mahapecha ha-Chukatit* (Heb.: "The Constitutional Revolution"; 1998).

3. The Meta-Purpose, Rules of the Game and Political Action Under Conditions of Uncertainty

As stated above, ideals do not determine policies, especially when formulated at a high level of abstraction. All the same, they do *influence* policy trends; when ideals enjoy strong and broad support, they give legitimacy and guidance to the policies that derive from them. In many cases, policies are harmful to the interests or welfare of part of the public, at least in the short term. Such harm can be justified, and broad public support for it consolidated, when it is clear what the objectives are and why the measure is required to achieve them, so long as the objectives are largely agreed upon and the policy does indeed reasonably promote them. The rules of the game complement the meta-purposes as a means of determining agreed policy.

In this section I would like to focus on possible objections to another important advantage I claim on behalf of the meta-purpose—the ability to give meaning to policy and actions by positing them in a wider context of long-term objectives. On the face of it, the derivation of action from long-term objectives is indeed important. But when there are deep divisions regarding these objectives, and especially in conditions of profound uncertainty, some might contend that the preferable approach is to obscure differences and focus on short-term policy, on which people with different fundamental conceptions and meta-purposes can agree. This will at least allow us to act, whereas arguments over strategic objectives may expose the magnitude of our disagreement and lead to exactly the paralysis we fear. Our ability to contend with reality together now is greater than our ability to determine which of our long-term assessments might be based on wishful thinking, and which might reflect unfounded apprehensions.

It is indeed sometimes impossible to agree on strategic objectives, while tactical steps may be agreed on. It is sometimes justified to act on the basis of such agreement without trying to achieve strategic agreement. All the same, in this case too it is important to point out the connection between the plan and common meta-purposes. Likewise it is important to show how the policy is connected to objectives that are claimed to be part of a common meta-purpose, so that we can add a discussion of the long-term objectives themselves as we are conducting the tactical discussion. The concern which justifies detaching policies from strategic objectives is exactly that

agreement can be reached over the former but not the latter. Alternatively, there may be a desire to commit to the policy but not to its long-term objectives. By definition, the derivation of policy from an element of a meta-purpose, which meets the conditions I have stipulated, will improve its chances of being accepted. This may be compatible with a constructive ambiguity, which does not explicitly formulate all of the move's derivative objectives.

Let's take the disengagement plan as an example. Part of the frustration of the plan's opponents, as well as the puzzlement of its supporters, stemmed from the fact that the move was not posited in the context of a strategic plan derived from long-term or even mid-range objectives. There was a feeling that the plan was a rabbit pulled from a hat, increasing concern that its outcomes hadn't been carefully considered and that it itself was not part of any long-term program to stabilize, manage or resolve the conflict.⁶¹ The reports of people close to the decision-making process substantiated this concern, which was prominent at the time of the internal *Likud* Party referendum. The plan's opponents raised systematic, orderly objections. Certain public figures tried to answer these contentions. None of the plan's supporters in the government, however, came up with any authoritative or official explanations. It was said only that the plan would improve Israel's position in many senses, but there was no detailing of the plan's advantages, nor especially was it presented as part of an overall course or even one of several possible alternative scenarios.

On one hand, this vagueness facilitated broad public support for the plan, even on the part of those who suspected that hidden motives had brought it about. For instance, those in favor of immediate negotiations towards a permanent settlement, such as supporters of the Geneva Initiative, would have found it difficult to support the disengagement plan if it had been clear this was a solitary step, only making it easier for Israel to perpetuate its occupation of the West Bank while fending off concern this would necessarily result in a slide towards a bi-national state. On the other hand, if the disengagement had been portrayed from the start as the beginning of a broader initiative, it would have been hard to garner support among moderate *Likud* supporters.

⁶¹ A serious suspicion was also raised to the effect that the entire disengagement plan was in fact a diversionary tactic to draw public attention away from the investigations of corruption in which Sharon and his sons were involved. On this matter, see Shelach and Drucker, *Bumerang* (Heb.: "Boomerang"; 2004).

For someone who believed, like I did, that the disengagement was a right step on the part of Israel, such considerations are important.

We should note that the disagreements which have been obscured concerned the approach to the conflict and how the country should conduct itself within its framework; they were **not** disagreements over the strategic objective of peace itself, or over the implications of the wish to ensure that Israel can continue to be a Jewish state. In my opinion, arguments purporting to derive the disengagement—even partially—from these objectives, would have helped to consolidate support for it.⁶²

Another test-case of this argument is the (very pressing) matter of welfare policy and the issue of social justice. Ostensibly, there is a headlong collision here: on one side, the ideal picture as drawn by Binyamin Netanyahu, ruthlessly slashing welfare benefits and taking us into a period of so-called "piggish capitalism". On the other, the dream of socialists who want "big government" and a binding social commitment to the welfare state, including a constitutional definition of social and economic rights (with all that implies regarding the transfer of some powers from the legislature and executive to the judiciary). This is not an argument over the meta-purpose, but one over the relative weight of the different elements constituting it. Public support for Netanyahu's economic policy stemmed from a widespread feeling that something needed to be done to scale

⁶² The point can be illustrated by the debate regarding the disengagement's contribution to Israel's security. There were those who thought that a unilateral disengagement could only be perceived by the Palestinians as a "prize for terror", which would only "give terror a boost." These people indeed note today that a large majority among the Palestinians (and among the Jews as well) view the disengagement as an outcome and achievement of the Palestinians' violent struggle. They point out that the *Kassam* rocket attacks from the Gaza Strip continue, and that larger parts of Israel proper, including sites of strategic importance, are now exposed to this threat (which has also turned into *Katyusha* rocket fire). On this view, the disengagement will only lead to the relocation of the conflict inside Israel's 1967 borders: whoever had not the staunchness to stay in the Katif Bloc will soon be vacating the entire western Negev. During the preparations for the disengagement, there was an attempt to "silence" any such talk by military experts (such as the then-Chief-of-Staff Moshe Ya'alon). I think this was a mistake. Possibly, some of the disengagement plan's supporters did not think that things would turn out this way. They were wrong, and their critics were right. Others thought such a scenario was possible, even probable, but that it was in Israel's interest to implement the plan nonetheless. This seemed right especially after it was ratified by the government and the *Knesset*. They saw this as a political means for emerging from a dead-lock. In their opinion, the improvement in Israel's strategic position due to the disengagement plan outweighed its costs to the country. In the military establishment itself there are even now those who think that despite the continuing *Kassam* rocket attacks, the disengagement has improved Israel's general security situation. It is too early to pass judgment on this issue. But there is no doubt it would have been best if the public debate had been conducted in a more candid and methodical fashion.

back the welfare payments and the habitude of dependency. But the support for this policy depended on the fact that it was not tied to the ideological principles underlying it.

Indeed, there was broad support for the principles of economic policy practiced by the Sharon and Netanyahu government, even in circles that criticized them for the brutal way in which it was carried out. It is also true that the support came from among both neo-conservatives and supporters of the welfare state, who thought the economy was in a state of emergency that justified taking drastic steps to repair it. Consequently, this example demonstrates well the positive power of a meta-purpose, and the understanding that specific arrangements might be inspired and justified by it, but cannot be derived from it alone.

Netanyahu's policy was derived from Israel's goal of being a developed and prosperous state. The controversial question was whether this policy, including all of its components, was actually required to achieve this objective; whether its costs in terms of human rights and a conception of solidarity and social justice were not greater than its contributions to the competitiveness and growth of the Israeli economy, which in turn are vital to reducing unemployment and raising the standard of living. We need to continue to discuss the questions of means. There will also be differences of opinion regarding interim goals. The fundamental disagreement, however, is one within the elements of the meta-purpose and not outside it.

It is important to remember that economic and social policy is not a matter of slogans. A society's ability to finance a social security net for its weaker members depends on its economic robustness. The latter is a function of many variables, including the structure and composition of society—in terms of education and integration patterns, as well as age—the extent of unemployment, patterns of participation in the workforce, and the distribution of workers among different sectors. All of these influence the economy's competitiveness and rate of growth, and its ability to sustain an appropriate measure of investment and benefit payments. There is a tremendous difference between a policy that attempts to help the weak and a sober policy with a long-term interest in breaking the cycle of poverty and fully integrating the weak into the social and economic life. There is a tremendous difference between helping the weak today and trying to ascertain the causes of their weakness in the present in order to limit them in future, at the level of both the individual and society. In this matter we are reminded again of the

problem regarding the shortsightedness of elected representatives—and the way in which deriving policy from meta-purposes may help to overcome it. The slashing of benefits is a more or less immediate step. Some of its consequences—some good, most bad—are also immediate. On the other hand, to contend seriously with the causes of inequality and poverty—the causes of phenomena such as unemployment, a deficient work ethic, or a tendency not to participate in the workforce—requires long-term deployment. A Minister of Finance or Education may prefer swift solutions, and sometimes such solutions are indeed necessary. But we are all going to be here after the elections too. We would do better to accept a long-term policy derived from an agreed objective that might actually improve the situation than settle for promises of the hour, which might perhaps immediately address some local difficulty but do not change the basic conditions of our existence here. Plans that are clearly long-term can—and should—integrate strategic moves with temporary interim measures, which limit the grave injury to victims of the change.⁶³ Again, the meta-purpose may help decision-makers to improve both the quality of the decisions and their ability to "market" them to the public.⁶⁴

The complexity of this transition from fundamental values to policies carries in both directions: people who hold the same fundamental values may arrive at completely different policy conclusions, while people with different fundamental approaches may arrive at the same practical conclusions, given a particular set of circumstances. Despite such possible convergence, it seems that a public debate, which derives policy from meta-purposes and the goals deriving from them, is a more proper instrument for

⁶³ Indeed, the gravest problem regarding the policy of slashing welfare benefits lay not in the reduction itself but in the fact that it was not accompanied by corrective mechanisms to ensure a safety net to those who needed one—another vital element of the meta-purpose.

⁶⁴ Attention to a long-term plan is important, but not in itself a sufficient condition for a change to succeed. For example, Education Minister Limor Livnat tried to institute a structural change, which would have promoted an important element of Israel's meta-purpose, by establishing the Dovrat Committee. She supported an attempt to perform a thorough overhaul of the educational system rather than maintaining the *status quo*. This vision was duly hailed at the beginning. Indeed, the report of the Dovrat Committee seemed to reflect the right attitude, and a great deal of groundbreaking work was performed by it. Yet the effort failed. It is important to study the process and draw the necessary conclusions. It is claimed that one of the reasons for its ultimate failure was that the report did not clarify how its recommendations related to important objectives (which are included in the meta-purpose.) For a discussion of the Dovrat Committee Report and its implications, see in Inbar, *Likrat Mahapecha Chinuchit?* (Heb.: "Towards an Educational Revolution?"; 2006).

making decisions in a democratic society than an assemblage of political decisions that are not placed in such an overall context.

This illustration merely reemphasizes the importance of attending here to both levels: first, that of clarifying what the meta-purpose does (and does not) imply, so that it is possible to strengthen policy decisions, by pointing clearly to the way in which they are tied to and derive from the ideal. And secondly, that of securing decision-making mechanisms that ensure the best quality of the decisions made, in full consideration of the factual basis and the fundamental values that ground the decision.

III. Challenges to Elements of the Meta-Purpose for Israel

In this chapter I shall expand on the relations between the elements of the ideal that I have outlined as the State of Israel's meta-purpose. I distinguish among five central elements of the meta-purpose, although any such simplification again gives rise to tensions and disagreements within each of the elements. These five main elements pertain to Israel's Jewish character, its democratic character, its commitment to human rights including a measure of social justice, Israel's relations with its neighbors, and its being a developed state, striving for scientific and technological achievements and a prosperous market economy.

With regard to each of these elements, I shall begin by presenting its significance and the justification for including it as part of Israel's meta-purpose. Subsequently I shall survey the factors and processes in society related to the materialization of this element in the Israeli reality. Naturally, I shall focus on the factors that threaten the ability to realize this element, for I am interested in understanding how Israel must act in order to overcome such threats. All the same, an analysis of the sources of strength of these elements might also help us to identify ways of overcoming the more worrying factors and processes. It will allow me to better examine the mutual relations among the elements of the meta-purpose and what needs to be done in order to realize all of them.

With regard to each of these elements, I shall distinguish between substantive issues and issues concerning the ability to effectively promote goals, in as much as they are pertinent. Since problems regarding the effectiveness of decision-making mechanisms pertain to every area in which the state operates, they will be accorded a more central place in the concluding chapters.

1. Challenges to Israel as the Nation-State of the Jewish People

I have included the fact that Israel is the nation-state of the Jewish people in the state's meta-purpose and put it in first place. Neither of these decisions is trivial. Some may contend that this element should not be included at all in the characterization of the state. Others may accept its inclusion, but think that a commitment to democracy and

human rights should come first. Indeed, these positions do reflect what makes Israel so unique.

I begin then by defending the inclusion of Israel's being the nation-state of the Jewish people as an element of Israel's meta-purpose. To this, I anticipate two opposite types of response. Diehard Zionists will be angry at me for dealing with the question at all. To them, the Jews' right to self-determination in (part of) the Land of Israel is an axiom; Israel was established to enable its realization. In their view, reasoning with those opposed to this being an element in the state's meta-purpose merely gives unjustified validity and weight to a contention which does not deserve to be heard. A nation need not justify its right to exist.

To the contrary, others will view my decision to include this element in the meta-purpose as pointing to the fundamental basic flaw of my entire project. A democracy cannot define itself in a way that emphasizes its connection with one of its constituent groups, thus ignoring or treating unequally other groups, especially a native minority that used to be the majority here.

Indeed, among the five elements of the meta-purpose that I shall be discussing, this is the only one that invokes such adamant and conflicting views. Regarding the other elements, too, there will be those who shall contend that they should not be included in the meta-purpose, or that Israel is not really committed to them and therefore including them constitutes hypocrisy or deception. But none of the other elements invokes such overwhelming initial opposition from one group, and such strong and fundamental support from the other. None of the other elements is a source of a controversy that both sides consider to be possibly incompatible with the definition of a state as an enterprise shared by all its residents. This holds for both supporters of the inclusion of this characterization and its opponents.

Against this backdrop, I shall divide my discussion under this heading into several sections.

a. The Meaning of Israel's Jewish Distinctness

It is customary to distinguish between three types of meaning of "Jewish state." The first is the most neutral and factual. The state is Jewish because there is in it a large

majority of Jews. Some use the term "the state of the Jews" to indicate this meaning.⁶⁵ A second meaning holds that Israel is Jewish because it is the nation-state of the Jews. Some use the term "the state of the Jewish people." In the terminology of the discourse of rights, we speak of the state in which the Jewish people exercise their right to political self-determination. This appears to be the meaning invoked in both the U.N. Partition Resolution of 29 November 1947 and Israel's Declaration of Independence. In this sense, a "Jewish state" is contrary to an "Arab state" (or a liberal-neutral state, or one that is multicultural in the strong sense). Finally, there is "Jewish state" in its religious meaning, which corresponds to talking about a "Christian state" or "Muslim state."⁶⁶

There may be several variations of each of these fundamental meanings. There are also complex relations among the three of them. The existence of a Jewish majority in a certain area is a simple matter of fact. It may be true of a given area at a given time. But the issue becomes more complicated when we bear in mind that at one time there was only a small Jewish minority living in the Land of Israel, and the creation of a Jewish majority was the result of prolonged efforts over many years by a nationalist and political movement—Zionism. Furthermore, the issue of a Jewish majority becomes even more complicated if Israel must take continuing steps to preserve it; if without such steps there is real concern that it cannot be preserved, and the minority group, which was the majority in the not so distant past, will return to that status in the foreseeable future.

When is it right to describe a state as the nation-state of a people? When is it justified to sustain it as such? These are both complicated questions. The description

⁶⁵ There is controversy over the question of whether Herzl intended to establish a state of the Jews here rather than one that would also have a Jewish cultural character. Support for this interpretation may be found in the fact that he thought (at least early on) that the Jews in Palestine would retain their languages of origin, as well as in the fact that his book was titled "The State of the Jews." *Achad Ha'am* in his critique appears to be attacking Herzl for not referring to the cultural character of the state of the Jews that he envisioned. There are those, however, who contend that to Herzl "state of the Jews" and "Jewish state" were one and the same thing, and that he was indeed aware also of the need for distinctive cultural elements in the Jewish state. See for example Hazoni, *Ha'im Herzl Ratza Medina Yehudit?* (Heb.: "Did Herzl Want a Jewish State?", 2001).

⁶⁶ The Declaration of Independence speaks of "the establishment of a Jewish state in the Land of Israel, the State of Israel." The laws in Israel have wrestled with the issue. Paragraph 7a of Basic Law: The *Knesset* was enacted in 1988, determining that no party that denied Israel "as the state of the Jewish people" could participate in elections. This term was preferred to "Jewish state" because the latter was thought to mean a Jewish theocracy. The Arabs, however, argued that this description of the state was alienating them and conveyed the impression that the state belonged to the Jewish people and not to its non-Jewish citizens and inhabitants. Therefore in 1992 Israeli law came to describe Israel as "Jewish and democratic," as did the Election Law when amended in 2002.

depends upon which theory of nationalism we adopt. On this topic there are today major controversies in the literature. One of the most intense, directly related to our discussion, is between those who view primordial cultural nationalism as what gives rise to and justifies nation-states,⁶⁷ and those who view the state, with its linguistic and economic cohesion, as giving impetus to powerful nation-building processes.⁶⁸ The picture becomes more complicated of course because there are complex relations between these two versions of nationalism. Ethnic nation-states are based on nationalist identities and in turn strengthen them. The internal relations between ethnic-historic elements of identity and elements of civic identity depend greatly on the circumstances of the state's establishment and continued existence, as well as on the composition and main characteristics of its population. On the other hand, civic nation-states are, to begin with, built on the greater centrality of the common civic identity and on an inclination towards the privatization, in full or in part, of non-civic elements of identity.

In international law it is customary to recognize the right of nations to self-determination. It isn't always clear what constitutes a "nation" entitled to demand such a right, but it seems clear that "nations" in this context have to maintain cultural and historical, not just civic connections. Our question is more specific: we are dealing with the right of nations to **political** self-determination, i.e. the right to have state institutions be more attached in a certain sense to a particular national group. Recognition of this right (as opposed to the right of peoples to self-determination on a sub-state level) depends on many factors: the percentage of people who do not belong to that ethnic group in the territory of the intended or actual state, the consequences to the welfare of the group demanding a state if it is not granted one, the consequences of a nation-state to the members of other groups living in it, and so on. As we shall see, the Jews can have no right to establish a nation-state in a territory in which they do not have a stable majority. The existence of a stable Jewish majority is therefore a prior and necessary condition for exercising the right to self-determination in a given territory. Ethnic nation-states may conduct themselves in a variety of ways. We must examine not only the character of the state but the entirety of its arrangements and the background

⁶⁷ This is the view of proponents of romantic nationalism and of scholars such as Anthony Smith; see Smith (1986), (1998).

⁶⁸ A powerful expression of this view, taking into account the connection between modern standards and cultural and historic foundations, can be found in Ernest Gellner, *Nations and Nationalism*, (1978).

conditions in which it operates. Only this kind of an examination can yield a full description of the state. It can then permit us to assess to what extent its being a nation-state can be justified.

The characterization of a state as Jewish, Christian or Muslim can have various meanings too. In the weakest sense it determines that **a majority of the state's inhabitants and therefore its general public culture are affiliated with the religious and cultural tradition of one religion**. In this sense most of Europe is Christian, as well as the United States, though there are in them minorities belonging to other religions. In this sense the Arab states are Muslim, though there are in them Christian-Arab and other religious minorities. In the modern period wide-ranging processes of secularization (as well as the revitalization of religion) have been taking place in all of these countries. Europe is Christian in tradition and culture. That does not mean that most of the continent's inhabitants go to church regularly or believe in the Christian faith. In a stronger sense, **a state's religious affiliation is expressed by official recognition of that religious establishment**. England and the Scandinavian countries, for example, have an 'established' state religion. But having a state religion today does not necessarily reflect any intense religious sentiment. The United States, for example, in which there is a strict separation between church and state, is usually conceived as more religious than the European Christian countries, in which religion is 'established'. Finally, the religiosity of a state may be reflected in **the standing and power of its religious institutions and leaders**, or in the control they wield over the population's lives. In Israel there is a religious monopoly over matters of personal status, which Israel inherited from the British Mandate and the Ottoman regime that preceded it—the "*millet*" system. At the extreme end are those countries described as "Jewish" or "Muslim" because they are in fact **theocracies**.

Various dimensions and degrees of intensity can be ascribed to a theocracy too. At its most intense, the reins of government are entirely in the hands of clerics, and the law that they apply in every context is religious law, interpreted by them. The more limited their rule is and the lower the supremacy of religious law—or in case its interpretation is provided by institutions that are not themselves religious—the lesser the intensity of identification between the religion and the state.

The right of members of a religious group to political self-determination is not recognized in the world today, if only because most familiar religions transcend political borders. Religion is a part of culture, and groups with a unique culture that would not survive without a measure of autonomy are entitled to recognition of such autonomy in the framework of the "right to culture." But the need to protect the survival or welfare of religious communities as such, does not justify the establishment of a separate political, state-based mechanism for this purpose.

Indeed, defining Israel as a "Jewish state" is problematic, if it justifies far-reaching normative or legal conclusions granting Jews in general, or a certain conception of Jewishness, special privileges. In view of the vagueness shrouding each meaning of the expression, it is best to clarify exactly what we mean and choose an expression that best reflects this sense. It is important also to clarify the implications of the state's characterization as Jewish and how they might be compatible with the other components of Israel's meta-purpose, such as its being democratic and a defender of human rights. Such an analysis may allow us to overcome the worry that Israel's Jewish distinctness might be interpreted as an isolationist and controversial element, rather than one that enjoys broad agreement. Only then will it be possible to justify the inclusion of this element in the state's meta-purpose despite the objection. If objection persists despite these clarifications, it will be easier to explain the weakness in its validity than in a situation of conceded downright, undisputed incompatibility between the Jewishness and the other elements of the state's meta-purpose.

The vagueness in the meaning of 'Jewish state' does strengthen the broad agreement in the Jewish public regarding the state's Jewishness, but in both reality and ideal it rests first and foremost upon the second meaning: Israel as the place where the Jewish people exercise their right to self determination. Since the Jewish people living in Israel exhibit numerous different approaches to the Jewish religion, and since a majority of the Jewish public in Israel does not strictly follow religious commandments, Israel is not a Jewish theocracy. It is governed by the norms enacted by the legislature, in which there is full representation both for the non-Jews living in the country and for the various

approaches to Jewish tradition itself.⁶⁹ Nonetheless, Israel's uniqueness does not lie in its "Israeliness," if this term is interpreted as merely a civic affiliation shared by all of the state's citizens, Jews and non-Jews alike. Its uniqueness lies in the **Jewish people's** ability to realize in Israel all aspects of political and cultural self-determination.

Undoubtedly there will be argument over the exact nature of the latter; however all supporters of the idea will agree that there is a national, cultural, linguistic and historical distinction to be made here. Jewish life undoubtedly includes Jewish religious life.

However, the state's Jewishness does not lie in one distinct religious tradition, and Jewish life is not only religious. This was the case historically, as the Zionist movement was composed mainly of secular people and some who even actively rebelled against religion and tradition and the way of life connected to them. It was the case ideologically too, as modern Jewish nationalism defined itself as distinct from religious tradition and observance of religious injunctions.

I will therefore focus here on the threats to that Jewishness which is the common denominator of all the proponents of Israel as a Jewish state: Israel as the nation-state in which the Jewish people exercise their right to political self-determination. As stated above, such a state must have a Jewish majority. It is reasonable to suppose that in such a state there will be large communities of religious Jews, and that their presence will influence the arrangements in the state and its public culture. More importantly, the fundamental ambiguity among the components of religion, nationalism, history and culture in Judaism will mean that there will be in the state complex manifestations of all periods and aspects of Jewish civilization. Indeed, many nation-states have distinctive religious aspects to their heritage without being theocracies. Similarly, Israel is not a Jewish theocracy. It is the state in which the Jewish people exercise their right to political self-determination; the state which was established by the Jewish national movement for this purpose, and in order to preserve this achievement.⁷⁰

⁶⁹ Although this is the reality in Israel, there are many, in Israel and abroad, who see Israel as a version of a Jewish theocracy. Generally this view serves as the basis for criticizing Israel and even denying the state's legitimacy. There are, however, those who do indeed want Israel to be a Jewish theocracy, or at least more "Jewish" in this sense than it is today.

⁷⁰ An emphasis on these elements is common to all contemporary Zionist thinkers who justify Israel's Jewish distinctness, such as Eisenstadt, Shveid, Gorny, Shapira and Dror. None of them think that Israel is a theocracy, and all agree that it **shouldn't** be.

The State of Israel would never have been founded, had not the Zionist movement established the country and laid down the physical, demographic, cultural, economic and political infrastructure that made its existence possible. Consequently, the Zionist element should not only count as central, but indeed as the *first* foundation. Everyone agrees that Zionism was central when the state was established. Some think it is no longer the case. I disagree. The reasons that justified the state's establishment still justify its preservation as the state in which the Jewish people exercise their self-determination. Let us now turn to these issues.

b. Justification of Jewish Self-Determination as First among the Elements of the State's Meta-Purpose

The basis for arguing in support of a state in which the Jewish people can enjoy political self-determination in (part of) the Land of Israel is that the existence of individuals is often insecure and not whole if they cannot live within their cultural-national group.⁷¹ This is the case regarding all-encompassing groups in general, of which peoples and nations are a special instance. This right of peoples to self-determination is recognized as basic and central by international law.⁷²

The Jews are a people that lived for many years without political self-determination. The Land of Israel is the place where the Jewish people did enjoy political independence for many years, and a longing to return to this place is a central component of their cultural heritage. The late 19th century saw the beginning of political activity by Jews in an attempt to reestablish Jewish independence in the Land of Israel. The movement was granted international recognition in the Balfour Declaration of 1917 and in the League of Nations Mandate of 1922. Similarly, the United Nations General Assembly decided on the establishment of a Jewish state (alongside an Arab state) in the territory of the British Mandate in the Partition Resolution of 29 November 1947. Partition was required because the Jewish and Arab communities could not live at peace together in the

⁷¹ I have elaborated on this topic elsewhere; see *Yisrael ke-Medina Yehudit ve-Demokratit: metaxim ve-Sikuiim* (Heb.: "Israel as a Jewish and Democratic State: Tensions and Prospects"; 1999); *Ha-Medina ha-Yehudit* (Heb.: "The Jewish State"; 2003). See also in Yacobson and Rubinstein, *Yisrael ve-Mishpachat ha-Amim* (Heb.: "Israel and the Family of Nations"; 2003).

⁷² For a general discussion, see Margalit and Raz, *National Self Determination* (1990); Gans, *Le'umiyut ve-Hagira* (Heb.: "Nationalism and Immigration"); also see Yacobsohn and Rubinstein, *ibid.*

country. Partition and political independence were supposed to enable the two communities to live side by side in peace, without the friction of living together in a single state. The reasons that justified political self-determination for the Jews in (part of) the Land of Israel have neither lapsed nor weakened. Today a large and vibrant Jewish community lives in Israel, the strongest Jewish community in the world. There is no justification for imperiling it and the individuals living in it. There is no justification for not letting it maintain its special connection to Jewish self-determination. All this is of course subject to the obligation of every state – an obligation specifically included also in the Partition Resolution – to defend and respect the human rights – individual as well as collective and cultural – of all the state's citizens and inhabitants, regardless of nationality or religious faith.

On the face of it, the right of Israel to exist as the nation-state of Jews had been resolved already in a series of international resolutions and by the fact that the United Nations has recognized Israel, and repeatedly has passed resolutions that recognize Israel's right to exist in peace and security. However, the voice that I rejected in Chapter One – which views Israel as a state conceived in sin, whose continued existence as the Jewish nation-state is unjustified – has never fallen silent, and today it is heard loudly, not only in Arab circles outside Israel but in other countries too, including Israel itself. In this essay I shall concentrate on the challenges voiced from within Israel, since I concentrate on the internal cohesion of Israeli society itself. In this section I shall concentrate mainly on those who think the problem is immanent to the enterprise as such; I set aside for now those who view Israel and Zionism as a justified and exciting dream that has failed, and which now needs to be "saved" from the influence of some contingent elements and processes that have discredited it.

Some of Israel's critics think that to the extent that the country remains true to the Zionist ethos—i.e., the desire to establish and preserve a state in which the Jewish people can maintain effective self-determination—it is illegitimate and indeed racist. As such, they say, Israel needs to be condemned and resisted in every possible way. Thus, for example, citizens of Israel of this persuasion appeal to international institutions in order to condemn laws that appear racist to them, such as the Law of Return, and request international assistance against the authorities of their state. Furthermore, on this view, the native Arab minority owes no allegiance to the state that has been

'imposed' on it. Nor is it obliged to serve in its army or other frameworks of national service. This minority has nothing to apologize for and need not be made to compromise. From its standpoint, the destruction of Palestinian society in 1947-48 is the State of Israel's responsibility, and Israel should acknowledge this by returning the properties then expropriated and allowing Palestinian refugees and their families the right of return. According to this view, Israel may not grant Jews or their culture any privileges, and it may not seek to preserve or strengthen the Jewish majority in the state.⁷³

It is natural that members of the Arab minority living in Israel would have preferred to live in a country where they would be the majority. It is natural that they would wish to make this happen. However, the position just described means much more than that. For people holding it, the definition of Israel as the state in which the Jewish people exercise their right to political self-determination is not only something they would want to change. They view it as **illegitimate** and a gross violation of the state's fundamental commitment to members of the Arab minority living in it.⁷⁴

Indeed, the meta-purpose of a state is supposed to be an inclusive framework for all parts of the public. Sometimes, however, fully catering to all parts of society may leave only "thin" values unable to sustain the kind of civic cohesion that is required to build a nation with a sense of solidarity that can act together to accomplish common goals. In Israel the situation is even more complex: The group resisting seeing Israel as a Jewish nation-state is a part of the people with whom Israel has an ongoing struggle, which often deteriorates into an armed conflict. Consequently, the debate within Israel over

⁷³ Such arguments are voiced not only by Arabs and post-Zionist scholars, but also by scholars of lesser "ideological" affiliation. See for example Tilley (2005) and Primoratz (2006).

⁷⁴ I do not wish to go into the important and thorny question of how many members of the Arab minority in Israel and how many of its leaders hold this position. Clearly, small segments of the Arab minority, especially among the Druze, have decided to join their fate with that of the Jewish state. These people serve in the IDF, and some are even members of Zionist associations. For example, (16th) *Knesset* member Ayub Kara belongs to the right-wing faction of the *Likud* Party. In the debates of the constitutional committee, he explicitly declared that he has no problem living as a citizen in a Jewish state. The attitudes of the greater part of the Arab minority are less clear. Some, like Dan Schueftan, believe that the great majority of the Arab leaders hold the position described in the text, and the fact that the Arab public elects them points to their (at least tacit) agreement with it. Others, like Sammy Smooha, believe that while there has indeed been a radicalization among political leaders and intellectuals, the great majority of the Arab public desires full integration and equality in the framework of the State of Israel, not caring much about the state's Jewish character. There is also a controversy whether and to what extent radicalization among the leaders is the outcome of prolonged deprivation and discrimination towards the Arab minority, and to what extent it exists regardless and might even intensify if the Arabs' economic situation improves.

the legitimacy of the desire to preserve Israel as the site of Jewish self-determination (even if it respects the rights of all citizens and inhabitants) raises substantial doubt whether it is possible to sustain a society with such a sense of shared fate in Israel. The problem is exacerbated because not only does the Arab minority feel alienated by this element of the meta-purpose, but the historic moment of the realization of this dream for Jews is to this public the beginning of its own *Naqba* ("calamity"). To the Arab minority, Israel's Independence Day, on which we celebrate the birth of Jewish political revival, signifies the destruction of Palestinian society. What we have here isn't just a holiday that an important part of the public, a native group at that, is not party to; it is a day of triumph and celebration for one part of the public, and a bitter reminder of ruinous defeat for another.

These facts, however, demonstrate not only the depth of Arab opposition but also the fact that "neutrality" is inappropriate to Israel. The State of Israel, born out of a desire for the revival of Jewish political independence in its historical homeland, cannot give in on this point to the Arab minority in a way that might satisfy it. For what the Arab minority has lost is exactly that political independence and cultural hegemony over all the land, which the establishment of the State of Israel took from it. It is impossible to "correct" this sense of loss without taking political independence in Israel away from the Jews. This tragic insight should guide Israel when it comes to deal with this major issue.

It seems to me this central issue is one of the sources of confusion and weakness in Israeli society today. Israel does well to allow the Arab public's leaders to voice such positions, even in the *Knesset*. It is natural that Arabs who belong to the second, "upright" generation should hold such positions. I am glad that Israel makes some representatives of the Arab minority in Israel feel secure enough in it to voice a position denying the legitimacy of the state's Jewishness; to step close to identifying with Palestinian and Arab terrorism against Israel, without fearing that this might lead to harmful consequences to them or to the public they represent. In this respect, Israel certainly is making a real effort, as well it should do, to accommodate the Arab position. The Arab minority are not guests here. This is their home, and they are fully entitled to express their opinions and feelings and take action to preserve their cultural distinction and historical narrative.

Sometimes, however, it seems there are those for whom the effort to accommodate the Arab position and even show understanding for its grounds and empathy for the underlying feelings is replaced by an agreement with that position and a sense of its inevitable justice; so much so, in fact, that they think it is indeed wrong in principle that a central part of Israel's meta-purpose should be the preservation of its being the only country in the world in which the Jewish people exercise their right to political self-determination. In their view, Israel should aspire to give up the Jewish component of its identity and self-determination. They think Israel should be a liberal-neutral state 'of all its citizens' or, even better, the state of all its peoples or a multicultural state.⁷⁵ They therefore fail to see the tension between some of the Arab *Knesset* members' desire to serve in Israel's *Knesset* and their positions regarding the (lack of) legitimacy of the state's identity. They fail to distinguish between the (natural and legitimate) objection of these leaders to the state's Jewish characterization expressed in political negotiations, and between their position that the Jewishness of the state is not legitimate despite the fact that most of the citizens see its Jewish distinctness as the state's *raison d'être*.

I am afraid this is one of the important sources of a feeling of profound rifts within Jewish society in Israel, and one of the reasons for the Jewish public's sense of having lost its way. It may also be one of the reasons for the radicalization of certain elements within Israeli Jewish society, sometimes expressed in support for such solutions as the forced transfer of the state's Arab citizens to the Palestinian state. I am afraid that the ambiguity on this point generates an unhealthy cycle of defiance and response, which may indeed disrupt the fabric of life in Israel's pluralistic society.

There is no doubt that the establishment of the Jewish state caused a tremendous shattering of the foundations of Palestinian society within the state's borders. There is also no doubt that Israel adversely affected – and is affecting – the quality of life Arabs had enjoyed prior to its establishment, including a loss of a sense of full cultural belonging to the land they live in; they used to be the majority here, local culture being their culture. Israel continues to place upon the Arabs living in it a heavy burden of relative estrangement due to the state's Jewish-Hebrew culture. Finally, the Arabs' alienation from the state is exacerbated by the fact that while they are living in a Jewish

⁷⁵ See recently in Yona, *Bi-Zhut ha-Hevdel* (Heb.: "In Favor of Difference"; 2005).

state, their people are living under Israeli occupation and harsh conditions, enjoying neither self-determination nor political freedom.

Indeed, it is difficult to justify political self-determination for the Jews so long as the Palestinian Arabs do not enjoy the same. I shall return to this topic when discussing the ideal of Israel's living at peace with its neighbors. However, the position described here – holding the Jewish state to be illegitimate, and demanding that Israel give up its cultural and national distinction in order not to alienate the Arab minority living in it – existed before the occupation, and is likely to persist, even if a Palestinian state is established beside Israel. We should recall that this claim is essentially identical to the one that justified the Arabs' going to war in order to prevent the establishment of a Jewish state in part of the Land of Israel/Palestine, even though the UN Resolution explicitly spoke of two states for two peoples. In other words, the position denying the legitimacy of a Jewish nation-state undermines the framework of shared existence in Israel itself.⁷⁶

In principle I accept Chaim Gans' contention that national and other groups preferably should realize their right to self-determination at the sub-state level.⁷⁷ This is certainly true regarding small national groups living in a territory in which there are other such groups. *Political* self-determination at a state level for one of the national groups under such circumstances is justified only when self-determination at the sub-state level does not provide the group with an effective enough opportunity to exercise its self-determination, while the cost of its political self-determination to the members of other groups living in the state is not too high.

⁷⁶ Again, I prefer not to go into the controversies regarding the extent of support for this position among the Arab public. Alongside documentation such as Dan Scheuftan's, *Voice of Palestine: The New Ideology of Israeli Arabs*; 2003), there are also less unequivocal studies such as that of Sammy Smooha. In Smooha's work too, however, we find a certain willingness on the part of the Arabs in Israel to tolerate the state's "Jewishness," but not its "Zionism." What I am dealing with here, though, is exactly certain aspects of the state's "Zionism." The relations of Israel's Arab citizens with the state are indeed a very controversial issue. Different studies and surveys have yielded conflicting results. Some point to a significant sense of attachment to the state and pride in its achievements, others to alienation and anger. Clearly, social and political processes nurture these feelings, which in turn feed the processes. Two things are fairly clear. First, it is a majority of the *educated* Arabs, who enjoy a high standard of living and belong to the political and intellectual leadership of the Arab minority in Israel, who voice more national Arab positions and are less inclined to accept the legitimacy of Zionism. Secondly, most Arabs in Israel are very reluctant to accept the idea of border changes that would relocate them into the Palestinian state. The tension between these positions makes for a very complex picture of relations between Arabs and Jews in Israel.

⁷⁷ See in Gans, *The Limits of Nationalism* (2003), as also in his new book, *Me-Richard Wagner ad Zchut ha-Shiva* (Heb.: "From Richard Wagner to the Right of Return"; 2006).

These conditions justified state-level Jewish self-determination in the Land of Israel starting with the Peel Commission Report in 1937, and were underscored by the UN Partition Resolution of 1947. These conditions have not weakened since; indeed they may have grown more compelling. Only a small minority of Jews and Arabs in Israel believes in any possibility of Jewish-Arab coexistence except under the sway of a Jewish majority that maintains public order. The fact of the matter is that nobody today is willing to entertain the possibility of an Israeli withdrawal that would leave Jewish settlements in the Palestinian state. After the 1948 war, not a single Jewish settlement was left in the territories not under Israel's control. Both the Peel and the UN Commissions based their recommendations of partition on the conclusion that Jews and Arabs would rapidly descend into civil war if each community was not given control over its own territory. (A positive symmetry was assumed, however, with each of the state's harboring settlements of a minority of the other's people. The Peel Commission assumed that it wouldn't be possible to arrive at stability without the agreed transfer of some of the Arab inhabitants to other Arab countries in the region. The UN Partition Plan envisioned economic cooperation between the two states as well.)

So long as this is how things stand, a position denying the legitimacy of an arrangement based on separate nation-states amounts to a recipe for instability.

This is not an *a priori* position. It is based on a certain view of the conditions as they have been in the region over the past hundred years, and as they are likely to be in the foreseeable future. I am hoping that the horizon of our existence in the region might change. There are those who expect that already in the next generation a stable solution will be found to the violent conflict between Jews and Arabs. Some argue that if this happens, there will no longer be any justification for a two-state solution, and that it shall then be possible to sustain a Jewish-Arab confederative or federative structure in the western Land of Israel/Palestine.⁷⁸

I do not touch on this possibility in this essay. If conditions in the region are sufficiently stabilized so that Jews (and Palestinians) may enjoy communal self-

⁷⁸ Some go even further, arguing that since any two-state solution is unstable and means—under the existing conditions—denial of the Palestinians' right to self-determination and an unhealthy situation, we must immediately seek a solution based on one state for two peoples between the Mediterranean and the Jordan River. This is the position taken by Tony Judt in his controversial article and by Virginia Tilley in her book. I myself do not believe such a solution is possible today, and therefore I do not think that it is the ideal that leaders of the two peoples should aspire to.

determination on a sub-state level, such an arrangement may indeed be preferable to a state-level political self-determination. I therefore accept also that our moves and conduct at this time should not exclude such a development. For the foreseeable future, however, we must assume that any realistic vision for the region involves the partition of the land and creation of two separate cores of political self-determination, for Jews and Palestinians respectively, in the territory of the western Land of Israel/Palestine.⁷⁹

Indeed, when a stable non-violent solution will be reached and will be sustained for a prolonged period of time, it will perhaps become possible to live here in the framework of a confederation, possibly followed by a full-fledged federation. But this long-term horizon may be practical only after a long process of stabilization and reconciliation. Meanwhile this is not the situation, and it is difficult to see when it will materialize. At this stage, stable arrangements and public peace and order require maintaining an effective balance of deterrence.

The Jews have no guarantee of peace and quiet which might support the demand that they relinquish their sovereignty in the State of Israel. It is therefore unreasonable to demand that they should accept the fact that Arab citizens of the state see its Jewishness as illegitimate, and seek to weaken it by means of international pressure or cooperation with the state's external enemies and the like. Leaders who act in this way in the state they live in cannot expect to be integrated into its sensitive functions: It is uncertain whether such minority members might not in fact harbor structured conflicts of interest that might make it difficult for them to really want what's best for the state.

A state should not allow members of the majority to harm, exclude or discriminate against members of the minority, or to undermine their sense of full belonging to the land and the state. It mustn't be tolerant towards such expressions or turn a blind eye to such actions. Any complacency regarding incitement against the minority and demonization of its members as enemies or potential threats is itself dangerous. On the other hand, if leaders of the minority teach their youth that the state deprived them of

⁷⁹ All the same, any prospect of stabilization and a long-term arrangement of peaceful self-determination at the sub-state level will be encouraged by the fact that the immediate two states solution (TSS) will also be one of two states living side by side in peace. In such conditions, it is unclear why so many of the "peace plans" presuppose that there will not be any Jewish settlements in the Palestinian state. Effective self-determination does not necessarily require that there be absolutely no presence in the state of people who are not members of the majority nationality. Certainly this is how we see things regarding the Arabs living inside the State of Israel as citizens and as residents.

their homes and therefore they are under no obligation of civic allegiance toward it, they should not be surprised when the state is concerned lest they become the majority in it, or that some see members of the minority as potential enemies. If the national movement of the majority is portrayed by the minority as racist, this is a form of incitement against the legitimacy of the majority. While it is true that incitement by the minority generally does not lead to immediate harsh outcomes or harm, since the majority is in control of the state's internal security, this doesn't change the nature of such declarations as incitement or the danger they pose to the fabric of social life. There is no reason the state should remain complacent towards such declarations.

Israel should give members of the Arab minority living in the state a sense of civic belonging, equality, respect, and recognition of their right as a minority to preserve their distinct culture. Members of the Arab minority should stand tall and proud. But they should also be citizens of the state and partners to its goals. Surely, it would be easier for the Arab inhabitants of the country if the state they live in were not Zionist-Jewish. But the conclusion to be drawn from this insight is not that they have the right to demand that Israel stop being the place in which the Jewish people exercise their self-determination. They have only the right to demand that Israel respect and defend all of their own rights.

Therefore there is no real alternative between Israel as a "Jewish state" and Israel as a "state of all its citizens," in the sense of Israel privatizing all of its inhabitants' non-civic identities. Israel is the way it is, for better or worse, because it is the "Jewish state." I therefore presuppose in what follows that the state's Jewishness is indeed one of the central facets of its distinct identity. Israel must of course diligently defend the rights of individuals and groups in the country, and a commitment to these values is no less a central and weighty element of the state's meta-purpose than its Jewishness. When tensions arise between elements of the meta-purpose, we must examine how we might best preserve the most of both elements. However, maintaining a balance among the elements of the meta-purpose does not mean that the element of Jewish distinctness has to be renounced whenever it comes into conflict with another element. This would be to strip the Jewishness of the state of all meaning and power exactly in those contexts where it is most likely to be of decisive practical importance.

In this essay, the time frame I have set myself is the short and medium term. All the same, conceptions of the long term also bear strategic implications for the meta-purpose. **For me, effective self-determination for Jews in the Land of Israel is a more central goal than the continued existence of a Jewish state.** The Jewish state is a means, presently necessary and justified, of achieving effective self-determination for Jews. Anticipated changes in the relative numbers of Jews and Arabs between the Mediterranean and the Jordan river, may in future weaken the ability and justification for maintaining a Jewish nation-state even in a smaller part of the Land of Israel. The Jews' preparations for such a situation should include the separation of the state's institutions from institutions and movements concerned with preserving and promoting the Jewish people's long-term interests. Preparations should also include creative thinking concerning the spatial and demographic matrix that might facilitate Jewish self-determination even under conditions where it may no longer possible to maintain a Jewish state. For the Jews to enjoy effective self-defense in a space that would then have a large Arab and Muslim majority, a necessary condition is the maintenance of defined areas in which the Jews would continue to form a stable majority. It is also essential that there be constitutional guarantees for the Jewish collective's existence on the basis of such a spatial arrangement, even in a sub-state or regional framework. This time frame is not a central part in my discussion here, but it does influence strands of development that should be part of how state institutions—and (related but separate) national institutions of the Jewish people—conduct themselves at this time.⁸⁰

c. Threats to the Conditions Required for Continued Jewish Self-Determination in Israel

The inclusion of Jewish self-determination as the primary element of Israel's meta-purpose has of course great symbolic importance. But it is not *merely* a matter of symbols. The desire to preserve this capacity has quite a number of practical implications. While some of the Arab minority's opposition to this element is indeed

⁸⁰ This is one of the central ideas with which I initially came to the present project. I merely mention it here in passing. I believe these lines of thought are crucial to any long-term thinking on the conditions required to ensure Jewish self-determination in the Land of Israel. While this concerns preparations for **future** developments, it is worthwhile to give thought **now** to constitutional and institutional structures that might help ensure the conditions for Jewish self-determination farther down the road.

symbolic, it also reflects opposition to these practical implications, (some of which have symbolic significance as well), of this characterization.

This opposition can and should influence decision-makers and policymakers. Rights must be respected. Moreover, even opposition which stems from aspirations not amounting to claims of rights ought to be taken into consideration. But it is also vital to set out openly the conditions required to sustain this element, for if they should erode or lapse altogether it will no longer be possible to maintain, or at least justify, continued Jewish self-determination in (part of) the Land of Israel.

These conditions include: a stable Jewish majority in the territory of the state; related, but distinct - support of a stable majority in the public for preserving the characteristics that guarantee effective self-determination for the Jews in the state; the desire of Jewish individuals and groups to maintain a society that ascribes importance to the Jewish aspect of most of its members' identity; a stable peace agreement or balance of power that allows Jews a stable existence as individuals and as a community; a suitable economic and social infrastructure; and a public culture that facilitates a full Jewish life without a need to maintain seclusion or insularity.

I shall deal with the issue of guaranteeing physical security below. In this chapter I shall deal with the issue of ensuring a Jewish majority in the territory of the state, which is supposed to be the nation-state of the Jewish people; I will also address the issue of public culture and the desire of the public to give weight to the Jewish element of the collective identity. All of these exist today in Israel, but there are signs of erosion. The ability to sustain Israel in the long term as the state of the Jewish people depends on the persistence of these characteristics. The fear lest they be eroded beyond a necessary minimum poses real challenges to the continued realization of this element of Israel's meta-purpose.

c1. Erosion of the Jewish majority in Israel

As stated above, political self-determination for the Jews in Israel depends on the existence of a large and stable Jewish majority in the state (or at least on there being in Israel a stable majority supportive of the state's continued Jewishness, even if not composed entirely of Jews). This holds regarding both the justification of political self-

determination for the Jews, and the effectiveness of the state in realizing the goals for which such self-determination is given to the Jews. These of course are related matters.

Apprehensions concerning the Jewish majority stem from two sources and are based on two claims. The first examines the relative numbers of Jews and Arabs in the population. It ties the need for a stable Jewish majority to the continuing struggle over a political settlement in the country, which began early in the 20th century. As mentioned, it is more difficult to justify political self-determination for the Jews in a territory in which they do not enjoy a stable majority. The second contention concerns a different apprehension. It concerns the prospects, in the long term, of maintaining a Jewish public life in Israel due to the possible increase in mixed marriages and erosion of Jewish-Hebrew characteristics of the public sphere. This apprehension is often voiced by those who view the state's Jewishness as a religious matter. To them, the fact that many non-Jews with no affiliation to the religion or other aspects of the Jewish tradition will be living in Israel, among the Jews, might lead to an increase in mixed marriages; in turn, erosion of the Jewish way of life might turn Israel into just an ordinary (Western) state, without any public manifestations of Jewish culture. Furthermore, such a state of affairs would force those who do not want to expose their children to these dangers to segregate themselves from the general Israeli public and live in Jewish frameworks where these dangers are less likely to occur. In other words, even in the State of Israel, Jews would have to live in segregated communities, not fully integrated in the general public. To some religious Zionists any such separatism seems to be the abrogation of one of the primary reasons for a Jewish state. Nonreligious Jews have mixed views regarding the issue. Some share the wish to preserve Jewish cultural characteristics in Israel, while at the same time defending individual liberties. Others believe that there is no need for any special attention to this matter, since the very existence of a Jewish majority is a guarantee of the public culture. Still others tend to view any manifestation of Jewish public culture as a matter of religious coercion. People belonging to this group do not think Israel should encourage the immigration of Jews or their relatives. Rather, the criterion for naturalization should be an interest to share the country's fate. They also oppose any limitations on freedom based on a religious conception of Judaism.

Both debates are important to the robustness of the State of Israel. In this section, however, I shall deal primarily with the numerical relations between Jews and Arabs.

The reason for this is that the state's shared meta-purpose does not include the state's granting any priority—certainly not any monopoly—to religious or Orthodox conceptions of Judaism. On the contrary, the inclusion of the Jewish element in the state's meta-purpose is based on the fact that a large majority of the Jewish public supports it. This majority certainly does not fear – as do some Orthodox Jews – the arrival in Israel of anyone who feels Jewish and lives a nonreligious Jewish life, even if they are not recognized as Jews by Jewish law. At present, the group of people living in Israel who are neither Jews nor Arabs is not large enough to pose a significant threat to the state's Jewishness. The brunt of the cultural threat to the state stems from the fact that part of the Jewish majority itself does not feel a need or desire to maintain a Jewish distinction in their cultural life (except for important matters of language and the Jewish calendar,⁸¹ which constitute part of public culture in Israel). I shall return to this topic in the next section.

As already mentioned, there are those who think that any attention paid to the question of a Jewish majority must, by definition, be suspect. I have rejected this approach at the outset. However, some think that even if a stable Jewish majority is indeed vital to Jewish self-determination, it is nevertheless illegitimate to examine the question. The need for an unceasing effort in order to preserve the Jewish majority in itself highlights the inherent problematic nature of the Zionist project. Even a large and stable majority of one ethnic or national group may not easily justify that it be a nation-state that – by definition – does not treat all of its citizens equally. But a state, in which the majority status of group is unstable, especially when it is a short-lived majority based mainly on immigrants, may be seen to lack any justification in seeking to maintain this majority by way of a continuing interference with natural patterns of population growth and immigration.

I do not accept this view. (The internal Jewish debate concerning who is eligible for immigration under the Law of Return does not directly relate to the Jewish-Arab conflict, and I shall discuss it briefly below.)

⁸¹ By "calendar" I mean the fact that Saturday is the official weekly day of rest in Israel, and the Jewish holidays are also rest days. Although the struggle over the language was successful, contrary to Herzl's forecast, and Hebrew was revived and became the official language, the use of the Hebrew calendar in correspondence and public life remains extremely limited.

The Data:

The United Nations Partition Plan was based on the demographic facts. The Jewish state had a small Jewish majority (less than 60%). The assumption was however, that as soon as the Jews would constitute a majority and control immigration to their state, they would open the gates to all Jews and soon form a stable majority. The territory was divided, 55% going to the Jews and only 45% to the Arab state, even though the Jews constituted only a third of the population. The intention was to permit extensive absorption of Jewish immigration in the territory of the Jewish state. At the end of the 1948 war, the Arab share of the population within Israel was around 16%, while Israel held 78% of the territory between the Mediterranean and the Jordan River. Due to the great waves of Jewish immigration, the Arab share of Israel's population declined, standing at 11-12% from the early '50s to the mid-'60s. Today it has reached 20%, and according to projections of the Central Bureau of Statistics will reach 25% in 2025.⁸² This rise in the Arab share of the population is occurring despite waves of Jewish immigration to Israel. These data point clearly to a trend toward the erosion of the Jewish majority in Israel, which may increase as Jewish immigration to Israel declines.

Whereas in the state's early years there were only few people who did not belong to one of the national communities, today over 5% of the population are classified as "others." If the Arab share should reach 25%, it is reasonable to assume that the Jewish share will drop to around 70%.

In certain areas of the state the Arab share of the population is much higher, and in some areas the Arabs constitute a majority.

The erosion of the Jewish majority despite the waves of immigration stems from a combination of several factors:

⁸² The official statistical analyses issued by the state do not facilitate an exact analysis, one which addresses the two claims made above. This is because the data does not explicitly identify either Arabs or those who are not recognized as Jews by *Halachic* law. At this stage the data include classifications of the state's residents by religion and nationality. These categories are included in the population register, and therefore on these points the official statistics rely on the registration. However, except for the data regarding non-Arab Christians, whose numbers are relatively low, the figures are fairly accurate and permit reasonable approximations. It should be noted that the data include the Arab inhabitants of East Jerusalem.

1. The high reproductive rate of the Arab population⁸³

During the '60s, the reproductive rate for Muslims was 9 children per woman, as opposed to slightly more than 3 children per Jewish woman. Due to processes of modernization, in the '80s the reproductive rate went down to 4.7 children per Muslim woman, as opposed to 2.7 among Jewesses. There was no change in this rate up to the year 2001.⁸⁴

It need be noted that this high reproductive rate of Muslim women is accompanied by a trend of giving birth at an early age, resulting in a rapid turnover of generations, which in turn leads to a high proportion of the population at the reproductive age. On average, a Jewish woman will give birth to her first child at the age of 27.3, whereas a Muslim woman will do so at the age of 23.1. Due to all these factors, the median age for Jews in Israel is 30.4, for Muslims 18.6 (in 1981 the figures were 26.9 for Jewish women, 15.2 for Muslim women). In the past four years the reproductive rate of the Muslim population has resumed its decline, and at a fairly rapid rate.⁸⁵ This decline is due apparently to the changes that Arab society is undergoing in fields such as education and the status of women, combined with the dramatic slash of children's benefits as part of the Israeli government's economic policy. Despite this decline, the reproductive rate of Muslim women is still significantly higher than that of Jewish, Christian or Druze

⁸³ The reproductive rate in the various communities

	1960	1975	1990	2004
Jews	3.39	3.00	2.62	2.7
Muslims	9.23	7.25	4.67	4.4
Christians	4.68	3.12	2.18	2.2
Druze	7.49	6.93	3.77	2.7

Births per thousand population

	1960	1975	1987	1998	2003	2005
Jews	22.5	25	20.5	18.7	19.3	19.2
Muslims	51.7	46.3	34.4	38.3	34.5	30.0

⁸⁴ It is noteworthy that among the Druze population there has been a tremendous change: The reproductive rate dropped from 7.49 per woman in 1960 to slightly lower than the Jewish rate in 2004 (2.66 versus 2.71). Among the Christian population, which is among the best educated in the country, there has also been a steep decline and the reproductive rate is now significantly lower than the Jewish rate. See tables in previous footnote.

⁸⁵ The reproductive rate, which stood at 4.74 in 2001, had dropped to 4.36 in 2004. In the number of births per thousand people, a more dramatic drop can be discerned, from 36.8 in 2001 to 30.0 in 2005. It is important to note that this trend of decline was not yet manifest in Hleihel's analysis, which stops in the late '90s.

women. Since most of the Arab population in Israel is Muslim, the discrepancies in reproductive rates translate into a higher growth rate of the Muslim population relative to the others.⁸⁶

2. Annexation of East Jerusalem in 1967

Until 1967 there were less than 2,500 Arabs in western Jerusalem. In the wake of the war and the annexation of dozens of Arab villages around Jerusalem,⁸⁷ approximately 70 thousand Arabs were included in the territory of the State of Israel and were granted residency. Today they number 240 thousand, constituting 17% of Israel's Arab population.⁸⁸ Without the Arab residents of East Jerusalem (only few of whom were granted Israeli citizenship) the Arab share of Israel's population would be less than 18%. Most of the inhabitants of East Jerusalem and the annexed villages live in their original homes and villages, although holding Israeli ID cards entitles them to settle anywhere in the country.

It need be noted that the residents of East Jerusalem do not participate in elections to the *Knesset* (a right limited to Israeli citizens), although they do have the right to

⁸⁶ Due to these factors, the Muslim population's share in Arab society has also grown, from 70% in 1969 to more than 78% in 1995. The Christian Arabs declined from 20% to 12%, while the Druze maintained their strength at around 10% (Hleihel, Table 2, p. 154). It is reasonable to suppose that greater changes have since been observed due to the continuing decline in the reproductive rates of the Christian and Druze populations. It need be noted that there are also great differences in reproduction according to areas. The reproductive rate of Muslim women in the Galilee is the lowest. That of Muslim women in the Triangle is slightly higher, while that of Muslim women in the Negev is the highest at close to 9 children per woman!

⁸⁷ In annexing East Jerusalem Israel also attached to the city 28 villages that had never been perceived as belonging to Jerusalem. This meant that in the 1967 census, in which 68,600 Arabs were counted in Jerusalem (after large numbers fled during and after the war), only 46,170 were Jerusalemites by the Jordanian definition.

⁸⁸ Jerusalem's population – select years

	1961	1972	1983	1995	2003
Jews and those eligible under the Law of Return	165,200 (98.7%)	230,300 (73.4%)	306,312 (71.5%)	420,175 (68.1%)	466,600 (66%)
Muslims	(0.5%) 800	70,961 (22.7%)	108,956 (25.4%)	182,721 (29.6%)	224,800 (31.9%)
Christians	(0.8%) 1,400	(4.0%) 12,600	(3.1%) 13,400	(2.3%) 14,146	14,700 (2.1%)
total	167,400	313,861	428,668	617,042	706,300

participate in elections to the Jerusalem municipality. Initially some of them did vote, but they stopped doing so after the first *intifada* in 1987. According to the Oslo Accords, the residents of East Jerusalem may participate in the elections of the Palestinian Authority. So it was in the 1996 elections, and so too now in the 2006 elections, despite the *Hamas* movement's participation in them. Counting the Arab residents of East Jerusalem twice (both in Israel and in the Palestinian Authority) may account for the fact that some studies give a higher figure for the Palestinians in the West Bank than their actual number.

3. "Family reunification," especially in the '90s after the Oslo Accords

All through the years Israel has permitted "family reunification" at a restricted rate. After the signing of the Oslo Accords, the numbers rose by hundreds of percentage points. According to various estimates, by 2005 some 54,000 naturalized citizens had joined, who together with their children now number between 130,000 and 190,000. This factor, then, accounts for 10%-14% of the increase in the Arab population. These data do not include the unions between Israelis and illegal immigrants, the great majority of whom are Arabs. Various estimates put their numbers at around 100,000⁸⁹ who have been living in Israel for years. Some of them marry Israeli residents, bear children, and ask for family reunification. It should be noted that two years after the start of the second *intifada*, the numbers of those from the Palestinian Authority granted family reunification in Israel dropped drastically. This happened in the wake of emergency legislation, renewed each time its term expired, whereby the *Knesset* placed a comprehensive freeze on the granting of entry permits or status in Israel to residents of the Palestinian Territories. The law was challenged in the High Court of Justice by a number of petitioners. In a dramatic decision delivered in May 2006, by a one-vote majority (six to five), the Court rejected the petitions. The law remains in the form of a temporary order, and has meanwhile been extended until the end of 2006.⁹⁰ Clearly, these legal measures, and the policies based upon them, also limit family reunification of illegal 'residents'.

⁸⁹ According to the Association for Civil Rights in Israel (ACRI), there are 80,000-150,000 illegal 'residents'. <http://www.acri.org.il/hebrew-acri/engine/story.asp?id+188>

⁹⁰ See the discussion of this law and its implications below. A mitigated version of the law is valid as this translated essay goes to press, August 2007.

In these discussions it is important to distinguish between the different kinds of status those present in Israel enjoy. The state has certain obligations towards everyone in its territory (for instance, the obligation to provide education to every child living in it, regardless of their legal status), even if they are staying in it illegally. An illegal 'resident,' however, is in principle subject to the danger of being deported from the state. When analyzing demographic trends, we are interested mainly in those who enjoy full residency status, and who bear most of the rights (and obligations) under the law, and in those who are citizens. **Permanent residents** participate in the life of the state and determine its character and culture. They participate also in municipal elections (and are also required by law to serve in the army). Only **citizens** over 18 are entitled to vote or be elected for the *Knesset*. The official statistics deals with residents. Updated figures regarding the state's citizens who are of age can be obtained from the register of voters to the *Knesset*.

The fact that the percentage of Arabs in Israel's population hasn't risen faster than it actually has (in light of the significant differences in reproductive rates) is explained by the immigration to Israel of Jews and their families (under the Law of Return) and of others who have been assimilated in the Jewish public. A sober assessment of the erosion of the Jewish majority must take into account not only forecasts of the increase of the Arab population in Israel, but also patterns of immigration to Israel by Jews and others.

Erosion of the Jewish majority may cause instability at several levels:

First, there is the worry that a significant rise in the share of Arab representatives in the legislature will make it more and more difficult to guarantee the majority needed to enact measures seeking to preserve aspects of the state's Jewish character, even if they are consistent with all norms of human rights. At present, the Arab parties' representation in the Knesset does not exceed 10% (although there are Arabs in the Jewish and Zionist parties, including those of the right).

One of the reasons why the Arabs' representation in the *Knesset* is lower than their share of the population is the large proportion of young people in Arab society. Another is that some of them don't participate in elections for ideological reasons. The voting

patterns of the Arab public in Israel are interesting:⁹¹ until the '70s, the Arabs tended to vote for parties associated with *Mapai* and the Labor Party, but in the '80s and '90s they shifted towards the Arab parties. Studies and surveys spoke of a renewed inclination to vote for parties such as the Labor Party and *Kadima*. Nonetheless, in the 2006 elections some 80% of the Arab votes (not including the Druze) went to the Arab parties (including *Hadash*, a Jewish-Arab communist party), around 9% to the Labor Party, and around 4.5% to *Kadima*. The rest were distributed among *Meretz*, *Shas*, and others.⁹² In any event, we can expect a significant rise in the number of Arabs eligible to participate in elections to the *Knesset*.

In this context, it is important to be more discerning and not treat all of the Arab population as a unitary bloc. It is important to determine the relative size of the group that does not participate in elections, as well as that of the Druze and Bedouin components (and subgroups within them) of Arab society in Israel. All of these groups belong to the Arab minority, but they form minorities within it. Thus, significant numbers among the Druze, and some of the Bedouin, serve in the IDF. Some willingly belong to Zionist and even to rightwing parties. The Bedouin public, especially in the south, has its own unique way of life even within the Arab sector, with unique family structure featuring polygamy and a large number of children.

The concern stemming from the erosion of the Jewish majority is already evident concerning the decision of crucial issues, where is often said that a "Jewish majority" is required for the decision to enjoy legitimacy. As the Arabs' share of the population and in the *Knesset* rises, obtaining a Jewish majority is liable to become more problematic. A large Arab bloc in the *Knesset* may also mean that the political Left may depend on the Arab bloc to be able to form a narrow government. This may arouse apprehension, especially so long as the active conflict between Israel and the Palestinians has not been stabilized or resolved. Thus one cause for the challenge against the legitimacy of the Oslo Accords, especially Oslo B, was the fact that they enjoyed only a small majority in the *Knesset*, which included the Arab parties. To some of the public, the fact that the

⁹¹ On this, see in Ra'anan Cohen, *Zarim be-Veitam* (Heb.: "Strangers in their own Home"; 2006).

⁹² These voting patterns are thus similar to those observed in the 2003 elections, with 80% of the Arab vote going to the Arab parties. In the Triangle and the Galilee the rate was higher, whereas in Bedouin areas and in areas distant from Arab population centers it was lower.

disengagement plan was ratified in the *Knesset* and its committees only because of the support of the Arab vote weakened the public legitimacy of the move.

Second, at a more fundamental level, it is very difficult to sustain—politically or morally—a nation-state of one people when it has a national minority of one quarter to one third of the population. This should be clear, considering that if the Arabs' share of the population in Israel reached 51%, we would concede that Israel could hardly continue to be the Jewish nation-state (especially if it also wants to remain democratic). This would be so even if the principle of the state's Jewishness were to be anchored in a constitution requiring a special majority to be changed. True, there are states in which one group, sometimes even a minority, has greater influence on the state's character and is better represented in the state's institutions due to its superiority in terms of education, organization or wealth. But such a situation is unstable. When the numerical relations between the groups are not clearly majority-minority relations, it becomes very difficult to justify or maintain the hegemony or cultural dominance of one of them.

The instability of the Jewish majority bears upon the relations between the two groups. The Jews are a majority that is still guided by its fears and to some extent behaves like a minority. The Arabs are a minority that still remembers the time when it was the majority. Even when the Jews constitute a majority in the state, some of the Arabs do not accept the legitimacy of seeing Israel as the place where the Jews exercise their right to self-determination. It is unlikely they will be willing to accept it if they should nearly or actually constitute the majority. On the other hand, the Jews are so fearful of the loss of the Jewish majority, that it is unclear whether they will look equably upon the processes that are slowly but surely bringing it about.⁹³

As we shall see, attending to demographic fears may lead to the examination of Israel's immigration policy and ways by which to influence the natural rate of growth of various population groups. Some also propose narrowing down Israel's borders in order to exclude concentrations of Arab population. Let us re-emphasize: Only those policies that meet the constraints of human rights or general requirements of decency and humaneness should be considered. Nonetheless, the issues are real. Awareness of demographic dynamics may also lead to the design of creative political solutions, such

⁹³ See for example the analysis in Kimmerling, *Ve-she-ha-Aravim Ya'ufu Lanu min ha-Einayim...* (Heb.: "And Let the Arabs Get out of our Sight..."; 2006).

as introducing a mixture of regional and national-proportional elements in elections to the *Knesset*, whether in the framework of one or two chambers of the legislature (or even various interim solutions regarding the structure of the legislature).⁹⁴ Such thoughts could generate an interesting interplay between elements at the state, sub-state and supra-state levels in managing the affairs of the state and of its various communities. We shall return to this matter in our conclusion.

Furthermore, demographic considerations may influence the demarcation of Israel's borders. Ultimately, such considerations could turn Israel to thinking about regional solutions and ways of ensuring the Jews' ability to retain an unbroken stretch of territory with a stable Jewish majority in it, whether as part of decreasing the state's territory or in order to ensure self-determination for the Jews at the sub-state level in (part of) the Land of Israel.

At any rate, this discussion indicates that thinking about the conditions for the continued realization of Jewish self-determination in part of the Land of Israel cannot rest content with examining the numbers of Jews and Arabs between the Mediterranean and the Jordan River, or within the 1967 borders. The spatial aspect of Jewish and Arab settlement in the Land of Israel is critical to any thinking about the future relations between the groups in the region. This holds regarding the patterns of settlement both within the 1967 borders and outside them. In this respect, the current situation is a return to the problems that faced the Jewish collective in the period prior to the establishment of the state. The State of Israel's situation, however, is better than was that of the Jewish *Yishuv*; what lay at issue then was the establishment of a Jewish state. Now, the question is whether - after having been established and yielding the considerable achievements of the Zionist enterprise to date - the Jewish state should be dismantled.

A significant rise in the Arab share of Israel's general population (together with the spatial manifestations of this increase) may also weaken Israel's ability to sustain a

⁹⁴ For various governmental arrangements, see Ackerman's comprehensive discussion in his essay "The New Separation of Powers" (2006). Ackerman himself thinks that the most stable system consists of one and a half legislative bodies (i.e., legislative bodies with different electoral methods and degrees of legitimacy, only one being fully representative).

Jewish-Hebrew public sphere, which is also a condition for the realization of Jewish self-determination in Israel.⁹⁵ Let us now turn to this topic.

c2. Erosion of Cultural Characteristics

As mentioned above, there are those who worry that the state's Jewishness is being eroded because its distinctive Jewish cultural characteristics are weakening. In the public sphere, we have seen the arrival of shopping malls and full commercial activity on the Sabbath; the weakening of the distinctive Jewish element in the public school system; a significant portion of the secular Jewish population in Israel largely ignorant of Jewish tradition, including Jewish history and the reasons that justify Jewish statehood; and so on. There is no public expression of the Hebrew calendar except in the fact that Sabbaths and Jewish holidays are days of rest. Although a great many of the state's founders were indeed secular Jews, some of them even hostile to religion and the religious establishment, Judaism was very central to their identity, and they were at least familiar with the tradition and appreciated its cultural characteristics. This is arguably not at all true of their children and grandchildren, who have grown up far removed from the tradition and are unfamiliar with it. It has even been said that Israel is raising "Hebrew-speaking Gentiles."⁹⁶

The erosion in the Jewish characteristics of public life in Israel stems mainly from the attitude and lifestyle of Jews and of non-Jews living among them. Here too, however, the presence of the native Arab minority is very relevant. Naturally, a minority group will be attentive to the need to preserve its distinctive identity, for the pressures upon its members to assimilate into the surrounding society are great. This is certainly a problem among the Arabs in Israel too. But against the background of continuing conflict, the

⁹⁵ It needs to be noted that the housing density of Arabs in Israel is much lower than that of Jews, due to the fact that a large part of the Jews live in cities with a higher housing density, and this despite the Jews' enjoying a higher standard of housing. For a survey of some spatial aspects of Jewish-Arab relations in Israel, see Osnat Grady Schwartz, *Karka'ot ve-Hityashvut* (Heb.: "Lands and Settlement"; material submitted to the *Knesset's* constitutional committee during discussions on the Basic Principles chapter within the 'Constitution With a Broad Consensus', 2006;

⁹⁶ The statement has been attributed to Major General Yaacov Amidror in a newspaper interview. Of course, the intention was not to say that those who are Jews according to Jewish law (either born to a Jewish mother, or properly converted by a Jewish rabbi) turn into non-Jews only because they fail to demonstrate Jewish cultural foundations. Rather, it expresses the view that from the standpoint of public behavior and lifestyle, such Jews are no different from Hebrew-speaking Gentiles.

Arab minority in large part has no desire to assimilate and is fighting for its cultural rights.⁹⁷ What we have, then, is one group whose cultural characteristics constitute a part of the struggle for its own identity, vis-à-vis a majority group that appears to take the strength of its own culture for granted—but in consequence does not invest in nurturing it, deepening it, or in contemplating its roots and significance. Against such a background, strange situations may arise. Thus it was reported in 2005 that students at the Hebrew University High School in Jerusalem celebrated at a Hanukah party with traditional Jewish pastries and a Christmas tree. When asked to explain, the students only said that they saw no good reason to refuse their Christian-Arab friends' request to bring a Christmas tree to the party. It was a party; it had no specific cultural content. Hanukah was not discussed. So why not bring a Christmas tree? It is pretty, isn't it? And it is also an accommodating gesture towards the Arab friends! It is unclear whether the significance of this event lay in its very occurrence, or in the fact that the school's Jewish students failed to understand what the uproar was all about.⁹⁸

As opposed to the demographic trends, which are projected on the basis of facts and unequivocal numerical data, the erosion of the cultural characteristics is more difficult to pinpoint. Nor is it entirely clear what conclusions are to be drawn from the findings. In this section I shall deal concomitantly with two related types of threats to the ability to sustain Israel as the nation-state of the Jewish people: the weakening of the wish and interest of parts of the Jewish population to cultivate and strengthen the Jewish element in their own identity and lifestyle, and the erosion of the Jewish characteristics of Israel's public sphere. These two processes are mutually supportive of each other.

Millions of Jews today live in Israel, the one country in the world whose public culture, despite all the misgivings, is nonetheless Jewish and Hebrew. The Hebrew language is going strong. Hebrew has maintained its place, indeed has even assimilated

⁹⁷ It has been suggested that the reproductive rate among Arab women in Israel, which is high even relative to Arab women in other Muslim countries, is also associated with the conflict with the Jews. See for example Halihel (2006), p. 169.

⁹⁸ A small number of Arab students attend the Hebrew University High School and have been integrated into its social life. This incident merely demonstrates how much more aware a minority is of the vital need for cultural symbols than the majority, which takes its culture for granted.

all the waves of immigration.⁹⁹ Whoever lives in Israel and becomes integrated in its culture picks up the Hebrew language within a generation or two (there is a problem regarding secluded groups, most prominently Israel's Arab citizens, only some of whom acquire full command of the language). It is reasonable to suppose this will continue in the foreseeable future, even if there is increased recognition of the importance of studying Arabic in Israel.¹⁰⁰ Language by itself does not make an entire culture, but it is certainly an important element of any distinctive culture. It is thus noteworthy that there has been a certain erosion of the language too, while not yet amounting to a threat to Hebrew's status as the state's effective language. Thus, for example, more and more people are giving their children names that, while perfectly proper in Hebrew, also sound good in English, e.g. Tom, Ariel, Adam, or Shirley. Businesses and shops are given English names, and in many cases the shop-signs also are in English. In some of Israel's Arab settlements, Hebrew is missing altogether from public signs.

A more complicated issue is the attitude toward tradition and its manifestation in the public sphere. The earlier generations of secular Jews, were admittedly in greater need of the tradition: it either served as their source of inspiration or as a readymade common denominator, required in order to revive a nation in its ancient homeland. The emergence of a "new generation," which was brought up upon a secular-Hebrew-Israeli culture, and did not have to revolt against the religious Jewish tradition of their homes further weakened the connection to Jewishness. There is an important element of knowledge in play here. Even though they rebelled against religion, the earlier generations of secular Jews were familiar with it, its customs and its canonical sources. In some we can discern great anger towards it, in others a more complex ambivalence. But these feelings all stemmed from a common foundation. Those who have no such

⁹⁹ Hebrew's assimilative capacity extends also to all those who have ongoing dealings with Israel, such as the Palestinian residents of the Occupied Territories. Thus, for example, Palestinians who have spent long periods in Israeli prisons have picked up the Hebrew language.

¹⁰⁰ One of the points at issue between Jews and Arabs in Israel concerns the status of Arabic. Arab organizations have been conducting a campaign for full recognition of Arabic's special status as an official language of equal legal weight to Hebrew, at least in places with a significant Arab population, such as the mixed cities. Whatever one's position on this issue, the reality of the situation—at least at this stage—is that there is an asymmetry between the languages, which ensures that more Arabs know Hebrew than Jews or others know Arabic. The state's language will continue to be Hebrew even if Arabic is awarded equal standing by law. Whether Arabic should be awarded such standing is a separate question. In Canada, for instance, English and French enjoy equal standing, but English is dominant in most of Canada whereas French is dominant only in the province of Quebec.

foundation are in a different situation altogether. In part, this lack of a foundation stems from deficient education. In part it stems from the anger that prevented young people from absorbing and liking the tradition due to the fear of "religious coercion." Perhaps the most troubling aspect of the matter, however, is the fact that some of the younger generation has no sense at all of a cultural lack. This perhaps is a sign that Zionism's triumph in establishing a state with this kind of mind-set may contain the seeds of its own cultural destruction. Being able to live surrounded by superficial Jewish and Hebrew cultural elements is exactly what allows a large part of the nonreligious Jewish public not to invest and engage in cultivating characteristics of its cultural Jewish identity.

For the secular Jew, culturally speaking, the Israeli component is at least as central as the Jewish element, as opposed to the situation for a member of the ultra-Orthodox and some of the religious sectors. Since the Israeli element is only technical in nature to the ultra-Orthodox, this difference in attitude may lead to a weakening of the unifying fabric among Jews. Again, this is manifested in lifestyles as well as in ideological positions. Sometimes, it is those who are well acquainted with the traditional sources that tend to develop an ideal of "Israeliness," as it permits an orderly distancing from the complexity of the approach to "Jewishness" as a religion. This is most prominent in the so-called "Canaanite" movement, but also in softer versions such as those of A.B. Yehoshua or Menahem Brinker.¹⁰¹

This is a very fundamental aspect of the big question of the meaning of the "Jewishness" of Israel both as a description of the reality within it and as an assessment of how things actually can and should take shape. The religious conception of this meaning, in particular that of religious Zionism, is the simplest and most coherent. It ascribes a religious meaning to the state and to the identification between religiosity and nationality in Judaism. It is this very coherence that gives rise to the variety of positions to the meaning of the 'Jewishness' of the state among the nonreligious. Secular people who accept Zionism and the need for a Jewish nation-state may nonetheless oppose the state's "Jewishness," which is interpreted by them as making Israel a religious state.

¹⁰¹ See Yehoshua's collection of articles *Be-Zhut ha-Normaliyut* (Heb.: "On Behalf of Normality"; 1980) and the book *Shoreish ha-Dvarim* (Heb.: "The Root of Things"; 2005), recently published in honor of Yair Tsaban. A theoretical application of this conception appears in Elon's *Ba el ha-Kodesh* (Heb.: "Coming to the Sacred"; 2005). This phenomenon also has political and legal manifestations. Currently before the High Court of Justice is a petition by a group of Jewish intellectuals who want to change their nationality in the population register from "Jewish" to "Israeli."

They think Israel's Jewishness in this sense has undesirable implication to the lives of Jews, religious as well as non-religious, and they resent the implications of this to the answers given by the state to questions such as 'Who is a Jew'. Some among them insist that the religious Orthodox monopoly over "Jewishness" needs to be broken and new, richer meanings of the concept developed, which might emphasize the cultural affinity among Jews, despite their fundamentally different interpretations of Judaism and Jewish tradition. Others think it is impossible to set religion apart from nationality and culture within "Jewishness." They therefore argue that we should create a new semantic space emphasizing the distinction among these elements within one rich concept of 'Jewishness'. In general, some of these prefer to speak of Israel as being "Israeli." But this choice too is problematic. Israeliness can express the secular, non-religious, element in modern **Jewishness** that is anchored in Israel itself, something like "Canaanism". This is what the latter epithet means for most of those who have proposed it in the internal Jewish debate. However, Israeliness also encompasses the **common citizenship** of all the state's citizens, Jews and non-Jews alike. For the sake of clarity of the discussion, I prefer to reserve the expression "Israeliness" for the citizenship and culture common to all of Israel's inhabitants; whereas "Jewishness" should refer to the important distinctive element, which stresses the profound connection between the Jews living in Israel, with all their various approaches to religion, as well as their connection to Jewish communities around the world.

This complexity can be seen from different angles. Thus one might conjecture that the rise of "Israeliness" would make it easier for the Arab population to become integrated in new cultural endeavors. But in the culture of "Israeliness"—as expressed in the Hebrew language and on television, through military service, and in film and theater—Arabs are generally still only guests or passive onlookers. There are indeed signs of rapprochement at the margins. But this usually occurs when on both sides—Jews and Arabs—there is a weakening of the national elements of identity. Evident again here is the power of language, the strongest integrating factor of Israeliness. Hebrew does indeed provide the mutual platform on which Israelis meet. For those who wish to put greater stress on the state's "Jewishness," this very fact demonstrates the need for it to have additional Jewish cultural characteristics besides the Hebrew language.

It is important to bear in mind that many different Jewish religious communities live in Israel, conducting a religious way of life which it may be difficult to sustain in other countries. This too is a very important characteristic of Jewish life that Israel facilitates and even encourages. Besides the great flourishing of sacred studies and writing in the religious and ultra-Orthodox communities, religiously observant people, both Zionists and ultra-Orthodox, are increasingly entering cultural fields such as literary writing, poetry, theater, and even cinema.¹⁰²

Some of the works of art and culture created in Israel by the not religiously observant includes coming to grips with Jewish and not only Hebrew cultural elements. The questions of identity of Jews who do not see Jewishness as being exhausted by religion are playing a growing role in Israel's cultural discourse. A striking phenomenon in this field in recent years has been the establishment of secular academies and pre-military prep schools, which focus on Jewish studies and the Jewish identity of their students. The important books edited by Waltzer and others on Jewish political philosophy, as well as the popular series "Judaism Here and Now" and other such publications¹⁰³ also bear testimony to the vitality of cultural endeavors dealing with Jewishness.

Gutman's studies of 1990 and 2000 repeatedly indicated that there are in Israel a variety of approaches toward the Jewish tradition and that most of the public observe certain traditional practices.¹⁰⁴ Although the largest group defines itself as secular, most of its members respect some of the traditions, especially regarding the Jewish calendar. 85% of this group wants Israel to have a Jewish flavor. Most interviewees preferred to see greater liberalization in public aspects of the state's Jewishness (the Sabbath,

¹⁰² The clash over the disengagement plan led to an upsurge in tensions between the religious and secular camps, as opposed to tensions between the "peace" and "security" camps. As a result, a significant portion of the religious public feel that they have no part in the State of Israel, while others, though aspiring to enter the academic, political and cultural establishments, seek hegemony rather than integration.

¹⁰³ See M. Walzer et al., *The Jewish Political Tradition* (2000). Other prominent series have been issued by the Kibbutz Hameuchad Press (the Hillel Ben-Chaim Library, and a series of books on Israeli Judaism), in the framework of the Ben Zvi Foundation, and by Alma Hebrew College.

¹⁰⁴ See *Yehudim Israelim: Dyokan* (Heb.: "Israeli Jews: A Portrait"; 2001). As far as the data are concerned, 43% see themselves as nonreligious, 35% as traditionalist, 12% as religious, 5% as ultra-Orthodox, and 5% as anti-religious. As regards the holiday traditions: 85% of Jews attend the Passover *seder*, 71% regularly light *Hanukah* candles, 68% eat only *Matza* during Passover, and 67% fast on *Yom Kippur*. As regards public aspects of Jewishness: 70% are in favor of public transportation and open shopping centers outside the cities on the Sabbath, 50% are in favor of civil marriage, and 60% support the incorporation of more Jewish content in the educational system and in the media.

marriage, treatment of non-Orthodox streams in Judaism), but by the same token they also wanted more Jewish studies in the educational system and more discussion of Jewish topics in the media. At the same time, the survey also revealed that over the years fewer Israelis are inclined to define themselves as traditionalists—which points to the growing polarization in Israeli society.

A complex picture arises from all these indications. The unifying elements in Israeli society are weakening while the differentiating elements, or at least those facilitating the coexistence of a large number of cultural subgroups and communities, are growing stronger. For example, the Sabbath—which stands out as one of the distinctive characteristics of the Jewish state—has over the years assumed a completely different character in the secular and religious sectors. This problem is relevant within the civic nation, in which the distinctions of language and religion are central in addition to those regarding the attitudes towards religion, as well as within the large national and religious groups themselves. In this matter, however, minority groups enjoy an advantage over majority groups, in that they have an existential interest in staying unified to improve their chances of survival. This interest unified the Jews in the Diaspora and prior to the establishment of the state. It is less of a factor among nonobservant Jews today, when they form the ruling majority in Israel. In addition to their being the majority, their secular culture lacks the emphasis religious communities give to rituals and customs that put family and community at the center. Paradoxically, then, it seems that the depth of the Jewish cultural identity of the majority group in Israel is under the greatest threat.

Some of the phenomena described here are not unique to Israel or to Judaism. Around the world there has been renewed preoccupation with the tension between the pressures of cultural globalization and recognition of the multiculturalism of different communities. In many countries, the result has been a combination of two processes: On the one hand, the weakening and impoverishing of elements of the public culture that are common to all of the state's inhabitants, thus weakening their cultural cohesion; On the other hand, a rise in the cultural strength of subgroups within the body politic. In many countries, these processes are grasped as threatening both to the cultural strength of the majority groups in the state and to the state's ability to act with a sense

of cohesion stemming from a partnership that is not merely civic.¹⁰⁵ In Israel, such phenomena are evident not only in the Jewish public but in the Arab public as well, in which there are conflicting trends of secularization, modernization and of religious revival. Most of the Jews living outside Israel live in Western countries, and within the Jewish communities there is a broad spectrum of approaches towards Judaism and its inculcation. But in Israel such phenomena within the Jewish public take on special meaning due to the fact that Israel is the only "Jewish" state in the world. For other Jewish communities, these issues remain just cultural issues, reflecting the variety of their different attitudes. None of the groups can harness the power of the state in favor of its own approach, and in no state are the positions of the Jewish communities important to the state's identity or to the effectiveness of its regime. Therefore only in Israel is there a struggle against Jewish religious coercion by the state and its laws. Only in Israel can Jewish messianism appear to be a real threat to the state and to Zionism. These two distinctive characteristics of Israel mean that in it the divide between the Jewishness of religious tradition and religious observance and another kind of Jewishness, the content and depth of which are not entirely clear, is wider and deeper.¹⁰⁶

Today it seems rather clear that the forecast, voiced by Ben-Gurion and Rabbi *Hazon Ish*, that the internal Jewish debate would be temporary, for with the passage of time only one type of Jew would remain—either religious, or secular with a national- cultural bent—has been refuted. This is true not only of Judaism but of all the major religions. The rumors of the demise of religion were premature, and today all of the religions are enjoying a reawakening, and even developing special forms of religious fundamentalism. Judaism, and the Israeli Jewish public in particular, will have to continue to contend with this complexity. The key question is whether these streams in Judaism, especially the nonreligious ones, will all be able to remain Jewish; or whether the religiously observant are right when they reason that over time there is no viable Jewish identity that is not anchored in religious observance.

¹⁰⁵ In France for instance, the much publicized protest against the McDonald's restaurant chain, the law against the wearing of veils in public, and the riots of summer 2005 and responses to them are all manifestations of these trends.

¹⁰⁶ However, it is important to note that in Israel there is hardly any of the total assimilation, to the point of losing any connection to any aspect of Jewishness, which is extremely prominent among Jews in the West.

Israel is unique in this respect, or at least has been until recently. In the Western world religion generally is privatized, and there is suspicion towards any public, legal emphasis on non-civic national elements of identity. Jewish communities have usually been organized around the element of religion. Only lately has there been resurgence in the Western world of forms of Jewish activity that are not defined by religion. Israel is the only place in the world where such forms are not only possible and available, but also to a certain extent the prevalent form of existence.

A significant weakening of the Jewish elements in Israel's public culture is liable to be associated with the first threat dealt with above—the demographic threat. Israel will become less attractive to some of the Jews if its cultural Jewishness weakens. Israel is interested in attracting Jews who immigrate to Israel in order to live a fuller Jewish life, not due to existential or economic distress. The more Israel's Jewish character erodes, the more such people are likely to decide they can live no less full a Jewish life in their current countries of residence. On the other hand, the pace of life, language, holidays, and special character of the Sabbath all still constitute a rather prominent feature of public life in Israel. Therefore the conspicuous erosion of some of these characteristics should be examined closely by those who would like to formulate policies to preserve the plurality of Jewish ways of life in it. Such deliberate policies would lessen the risk of weakening the general Jewish cultural characteristics to such an extent that it would be difficult to see Israel as a place which facilitates cultural self-determination for the Jews.

c3. Internal Jewish Debate regarding the Legitimacy of the National Enterprise

A third problem endangering Israel's prospects of surviving as the Jewish nation-state is the **intensity** of the disagreements among Jews over political issues, which threaten to overcome the shared foundations and emphasize the differences. Both sides to the deep debate between Jews over the occupied territories have a tendency to appreciate the strength of their own convictions and deny those of the other side. In the past, high levels of controversy between Jews may have led to drastic measures (such as the "season," or the *Altalena* affair), but there was always the awareness that Jews needed to work together to overcome common external enemies. With some justification, this attitude weakened considerably after the establishment of the state.

Nonetheless, the struggle between Jews and Arabs over the political arrangements in the Land of Israel/Palestine still hasn't been settled. The *Hamas* movement's charter, which defines Zionism as an enemy, puts things in sharp focus. Yet in the internal Jewish argument over the future of the national enterprise, this awareness has lessened. There is a great desire to be "normal" and to see 'others' as people and groups that are different from us, not as a threatening "enemy." Things have gone so far that some Jews affiliated with the "peace camp" view those within the Zionist movement who hold opinions contrary to their own as actual 'enemies'—more so than the Arabs in Israel or the Palestinians. This is no longer merely a profound political difference between partners to the state and to the movement, which should be decided according to agreed rules. Sometimes one gets a sense of hatred and deep-seated anger, even of rejoicing at the misfortune of those Jews whom we have forced to give up their homes, homes which we had sent them to build. Some parts of the Jewish public in Israel want to see Jewish settlements in the territories dismantled so badly that to them it is no longer a wrenching action towards partners to the Zionist movement, which nevertheless cannot be avoided due to Israel's profound interest to remain a Jewish state; it is rather an act of historic justice that should have been done long ago.

Some of this anger and rejoicing at another's misfortune is perhaps understandable: it is arguably a consequence of the bitter and prolonged ideological debate, and the frustration of those opposed to settlement in the occupied territories at not having been able to prevent it when it started. But the intensity of these feelings is liable to be dangerous, for it might be based upon—and in turn strengthen the inclination toward—a loss of faith in the essential tenets and beliefs that justified the Zionist enterprise to begin with. This may lead to a denial of the history of the conflict and of the critical need for the state not only to "end the occupation," but also to ensure the conditions that shall make possible the continued self-determination for the Jews in (part of) the Land of Israel.

In a certain sense, this internal Jewish argument reduces the chances that Jews in Israel will be able to continue to be united around an actual Zionist ideal. Tragically, both sides to the debate are contributing to this result, which may cut off the branch on which most of the Jewish public in Israel is still sitting. The claim of the Right that Zionism and Jewishness are only constituted by settlement in the entire Land of Israel

only prompts the Left to think that it is indeed not possible to support Zionism and withdrawal at the same time; this despite the fact that one of the reasons for withdrawal is exactly the desire to preserve one of the most fundamental conditions of Zionist existence: the Jewish majority. The Left on the other hand appears to have forgotten the history of the conflict and the justifications for continued Jewish self-determination in part of the Land of Israel. By starting from the conclusion of partition, it does not stress the historical and cultural ties of Jews with their homeland, thus contributing to the feeling that the real argument is to be conducted over Israel within the 1967 borders because the "territories" 'belong' to the Palestinians. On the other hand, the settlers think that forsaking the ideal of an undivided Land of Israel is a betrayal of Zionism. They are so preoccupied with opposing a new partition, that they do not negotiate the demand that an important element of a package of a political withdrawal from parts of the Land of Israel should be the agreement of the entire Jewish public to a re-vitalization of the Zionist and Jewish cultural meaning of the 'smaller' Israel. Thus, their apprehension that supporters of the various disengagements are in fact indifferent to the 'Jewishness' of the state may turn into a self-fulfilling prophecy.

As stated above, a condition for Israel's continued existence as the nation-state of the Jewish people is the desire of a large majority of the Jewish population that it should continue to exist as such. There is such a desire among the large majority of Israel's Jewish population, but it is not focused and conscious. It is unwittingly being eroded because of the impoverishment of the Jewish cultural characteristics; because of secular opposition to religious coercion, resulting in hostility towards all things Jewish; and because of the positioning of Jews affiliated with the "peace camp" in opposition to proponents of a Greater Israel, in such a way as to weaken their own justification of the Jews' right to self-determination in part of their historic homeland. As mentioned, in a certain sense this threat is a result of Zionism's success and the establishment of the state, whose existence a considerable portion of the public takes for granted. This could not have been possible before Israel was established, or when everyone understood that its existence was still at risk. This situation creates a structural weakness, especially since our external conflict is against a people who still do not enjoy self-determination even in part of their historic homeland. What we have here is a case of "it is all mine" said by all the Palestinians, whereas in Israel the controversy is between "it is all mine"

by the religious-national minority, "some of it is mine" by the Jewish majority, and "it is all theirs" by a small minority of Jews and the great majority of Israel's Arab citizens.¹⁰⁷

2. Challenges to the State's Democracy

Unlike the case of the first element of the meta-purpose—Israel as the state in which the Jewish people exercise their right to self determination—there are no significant voices in Israeli society suggesting that Israel should not be a democracy. Regarding this element of the social and political structure there is overwhelming consensus. This consensus is less impressive, however, when we proceed to examine what meaning people attribute to democracy, what they take to be its basic terms, and especially what its implications are. Profound disagreements also arise when people attempt to reconcile between democracy and other elements of the state's meta-purpose. In this chapter we shall deal only with controversies of the first type. Nevertheless, here too we must reject out of hand the preliminary assertion that Israel is not a democracy at all today, and *eo ipso* there is no need to talk about threats to its being democratic.¹⁰⁸ I join the majority of scholars and researchers, in assuming that Israel today can certainly be seen as a stable democracy, and examine the threats to its continued democracy. Let me explain. I do not see democracy as an "all or nothing" concept. Rather, I see democracy as an 'ideal type', with states and regimes being more and less democratic. All formal benchmarks of democracy in Israel are very stable and even rising, and this is the case with a large number of democracy's substantive benchmarks as well. Yet a conception

¹⁰⁷ This analysis raises a fundamental question regarding the handling of disagreements and conflicts of interest. One approach advocates debate, compromise, and arrival at agreement, which is preferable to a situation in which each side gets everything it wants or can get. A second approach contemplates a unilateral resolution in accordance with the limits of power. At times, the limits of power lead to an outcome that is also considerate of others' wishes. But the resolution is based on the balance of power and not on talk and compromise. Under this approach, compromises exhibit weakness or submission. I cannot expand on this matter here, but it is central and meaningful to many of the contexts discussed here. The Gavison-Medan Covenant, for example, explicitly supports the first approach.

¹⁰⁸ Such claims come mainly from scholars, mostly Arab, who claim that Israel is an ethnocracy to Arabs and a democracy to Jews. See: Ghanem, Rouhana & Yiftachel, "Questioning Ethnic Democracy – A Response to Sammy Smooha," in *Israel Studies* (1998). But there are such claims from other directions as well. Thus, some opponents of the disengagement plan argued that the government behaved in an undemocratic manner, and similar claims were made against the conduct of the Rabin government in the lead-up to the signing of the second Oslo accords. Others claim that Israel is in fact governed by elites. Still others contend that the courts in Israel have become too powerful, and that this weakens democracy. Similar claims have been made elsewhere as well, for instance in the United States.

seeing the index of democracy as possibly fluctuating should be careful to note signs of internal tensions, weakness or erosion so as to attend to these tendencies at once.

An important preliminary remark is in order. I am dealing here with Israel within the Green Line/1967 borders (without the territories to which Israeli law has been applied—East Jerusalem and the Golan Heights— most of whose populations are not Israeli citizens). Occupation is supposed to be a temporary situation, only until the sides arrive at an agreement to return to a "normal" situation in which the states operate only in their own territories. Regardless of how it has come about that the occupation of territories captured in 1967, in which there is a large Palestinian population, has extended so long, any state that keeps millions of people under its effective control for long without basic civil and political rights cannot be a strong democracy, nor can its political regime be stable.¹⁰⁹

a. Democracy and Conditions for its Robustness

It is the broad consensus that democracy is an ideal that explains the many theoretical disputes regarding its nature. History provides numerous instances of processes in which a democratic regime has collapsed and given way to autocratic rule, as well as of reverse processes of democratization. On this basis very many attempts have been made to generalize and identify factors and processes that are helpful to the establishment and stability of democracy; and conditions that may lead to its weakening or utter collapse. However, these attempts have not resulted in agreed upon findings, and some of the approaches are even contradictory.¹¹⁰ Any position on these issues is therefore bound to be "stipulative" to a large degree.

It is customary to distinguish between two meanings of democracy: *formal* democracy, defined by "rules of the game" which structure the basic principle that government is based on the consent of the governed. In this sense, the features of

¹⁰⁹ True, there have been prolonged situations of this kind; e.g. in the United States during the country's early years with regard to slaves and indigenous natives, and in apartheid South Africa until the constitutional changes of the early '1990s. That this was possible in the United States is a historic matter. It would have been impossible today (and well that is so). And while the white regime in South Africa did see itself as a democracy, in effect it was a "*herrenvolk* democracy." The fact that Israel is regarded a democracy is based solely on the conviction that the occupation, despite its long duration, is a temporary situation.

¹¹⁰ For instance, in a matter very relevant to Israel, there is controversy over the question whether a large number of relatively small political parties portends stability or weakness in democratic regimes. See: Diskin et al., *Why Democracies Collapse* (2005).

democracy include regular elections to a representative parliament at fixed time intervals, a certain division of powers, an ability to replace the government, and an independent judiciary. Then there is also *substantive* democracy, which includes the protection of fundamental rights and in which there is an emphasis on liberal values. In actual fact, formal democracy must also include the effective protection of political rights and many of the civil rights as well. There can be no formal democracy without rights to elect and be elected, freedom of speech and freedom of association, and equality in the most basic sense of "one person, one vote." However, such rights as freedom of religion and freedom from religion, or rights of due process, or a general right not to be discriminated against, are all attributes of substantive rather than formal democracy.

Accordingly, there is disagreement on the question which kind of definition should be adopted when examining the state of democracy in a given society. In the Israeli context, some have argued that although Israel may have from the outset adopted the principles of *formal* democracy, its democratic tradition has been weak due to the fact that it did not adopt principles of substantive democracy as well.¹¹¹ Others argue that Israel is not democratic because it does not provide adequate protection of freedom from religion.

For the sake of clarity of thought, I prefer to adopt the "thinner" conception of democracy. Of course, I fully endorse the normative and political significance of defending human rights. Such defense is an equally weighty element of Israel's meta-purpose. However, there are complex and thorny internal tensions within both the "thin" ideal of democracy and the ideal of human rights. There is no need to further complicate the picture by seeing tensions between human rights and democracy as internal tensions within democracy itself. Furthermore, proponents of substantive democracy tend to under-value the normative and not just the practical significance of formal democracy, democracy as rules of the game. Adopting a thin definition of democracy reinforces the insight that rules of the game are a vital part of a society's—especially a polarized one—ability to act in a coordinated manner despite differences of opinion. These rules of the game are supposed to permit reaching a decision even when the controversy concerns the very scope of suitable protection for human rights. Finally, a rich definition of

¹¹¹ See the writings of Yonatan Shapiro.

democracy would exclude from the family of democracies not a few regimes, which exhibit a large measure of formal democracy but lack some of the characteristics associated with democracy in liberal Western society. Whether this would be a positive result from either a theoretical or practical perspective is unclear.¹¹² Indeed, there are complex relations between formal and substantive democracy. A strong substantive democracy is likely to be more stable than a formal democracy that fails to protect human rights, including those not directly related to democracy as such. All the same, features liable to lead to the collapse of a democratic regime are not related only or even principally to the measure of protection of human rights in that society. They should therefore be paid special attention.

A basic condition for the establishment and stable existence of a democracy is that it be grasped as the best, or least evil, form of regime by a large part of the elites and centers of power in a state. This kind of situation tends to occur when the general public and power centers of the opposition have sufficient clout to demand that government be accountable to them. In such cases, any regime that does not exhibit genuine responsiveness to the public's preferences is bound to be unstable. It therefore comes as no surprise that democracy has been found to be associated with societies that enjoy socioeconomic stability and have a relatively large and independent middle class, with relatively high levels of education. Democracy is also the regime of choice in societies that consist of numerous groups, where the possibility of replacing the government gives each a more powerful sense of equality and true participation. Another condition for the stability of democracy is that the regime should adequately, or at least reasonably, address the problems which the country faces. When a country lacks effective government, and when its challenges are such that this lack of effective government leads to the collapse of vital systems, the desire grows to see a stronger government, unrestricted by the constraints and checks of a democratic regime.

¹¹² India, the most populous democracy in the world, is a prominent example of such a state. Despite not a few difficulties, democracy in India is stable, and it seems important to include India in the family of democracies and learn from the country's experience. Indeed, for similar reasons, some thinkers who undoubtedly are profoundly committed to human rights and social justice also support a "thin" characterization of democracy. See for instance: N. Bobbio, *The Future of Democracy*, (1987).

Any one of a large variety of constitutional structures can come to form the basis of a stable democracy.¹¹³ The structure appropriate to a given society depends upon that society's composition and its special problems, and generally also on its institutions' historic development. The robustness and stability of a democracy are tightly linked to a few central attributes:

1. Degree to which legislative institutions are representative;
2. Effectiveness and stability of the executive branch, and its ability effectively to address the problems which the country faces;
3. Degree to which the judiciary is independent;
4. Legitimacy of all governmental institutions in society;
5. Robustness of the social and economic middle class;
6. Support of the elites for the democratic system;
7. In divided societies, democracies are also tested by their ability effectively to contain divisions and maintain order and governability.

Part of the complexity regarding the robustness and stability of a democracy stems from the fact that there may be complex mutual relations among these conditions themselves. Thus for example, for a society that is not homogeneous, a large measure of representativeness may undermine effective government and cohesion. A weakness in effective government may in turn result in despair of democracy and a wish for a "strongman" who supposedly can more effectively address problems. The more divided a society, the more likely the elites are to exhibit qualified and instrumental support for governmental institutions and the democratic system. If rifts are related to tensions and threats to public order, we are likely to see a reduction in the willingness to support democratic freedoms to those perceived as threats to it. When the country's problems include economic instability and unrest, it may lead to erosion of the socioeconomic middle class, which is the strongest bulwark of the regime's stability. Efficient accommodation of deep divisions depends on adopting effective mechanisms of negotiation and compromise. A divided society that transfers the power to decide ideological issues into the hands of the courts risks damaging the courts' legitimacy and

¹¹³ For a description of the basic variations, see in Dahl, *On Democracy*.

independence, as well as risking weakening support for democracy itself on the part of those who feel that the courts consistently acts against their interests.

Against this intricate background, Israel exhibits a surprisingly robust democracy, albeit one which suffers major weaknesses as well. To begin with, conditions in Israel did not favor the establishment of democracy. Most of the state's leaders did not come from countries with an inherent democratic tradition. The country was born out of warfare and had to deal with complex challenges. Nonetheless, Israel has maintained a functioning democracy ever since it was established. Most scholars are also of the opinion that the degree of democracy in Israel has risen and the country today has stronger democratic attributes than it had fifty years ago. Thus for example, until 1977 there was no change of government in Israel; there was much less freedom of speech than there is today; until 1966 most of the Arabs in Israel lived under military government. Not a few Arabs who had until then lived in the country only as residents, were granted Israeli citizenship only in 1980.¹¹⁴ In 1965 an independent Arab nationalist party was disqualified from participating in the elections, whereas today there are several such parties in the *Knesset*, and their strength is constantly growing.¹¹⁵

Nevertheless, many consider Israeli democracy to be fragile and beset by various threats. In this chapter I shall deal with a few principal claims:

1. **Problems relating to regime structure:** there are those who contend there is an excessive degree of representativeness in Israel, resulting in diminished ability to govern. Some contend that this situation is exacerbated by the lack of a complete constitution entrenching the governmental system and protection of the human rights of minorities. Difficulties in effective government make it impossible to address adequately Israel's serious problems. The absence of

¹¹⁴ This change was effective only with regard to Arabs residing in Israel within the Green Line/1967 borders. As we have seen, Arabs residing in the territories annexed to Israel after the 1967 war generally have not been granted Israeli citizenship.

¹¹⁵ Cf. E.App. 1/65 *Yardor v. Chairman, Central Election Committee to the Knesset* 84 19(3) PD 365; see also: Gavison, "Twenty Years after the *Yardor* Ruling – the Right to be Elected and Lessons of History," in *Gvurot le-Shimon Agranat* (Heb.: "Shimon Agranat at Eighty"; 1986), and Shamir, "Threat Perceptions and the Disqualification of Parties and Candidates to the Knesset – from *Yardor* to the 2003 Elections," in *Mishpat ve-Mimshal* 8 (1). In the 2006 elections, 10 representatives from Arab parties were elected to the Seventeenth Knesset (I include *Chadash* in this list, although it is sometimes described as an Arab-Jewish party and one of its serving *Knesset* members is Jewish), 2 more than in the previous Knesset, and this despite the low voter turnout among the Arabs (corresponding to a low turnout among Jews as well). Another 3 Arabs currently serving as *Knesset* members belong to Jewish parties.

effective responses to problems in turn weakens public support for the democratic system.

2. **Problems of religion and state:** the contention has been made that there are those, mainly from among the religious parties, whose acceptance of Israeli democracy is merely conditional; they thus serve to weaken it. This line of argument points both to the de-legitimization of government resolutions concerning withdrawal from parts of the Land of Israel, and to the refusal by ultra-Orthodox sectors to accept the burden of civic participation and civic education in their schools. The same kind of religious approach is shared by some strands of the Islamic movement. This is certainly the case with regard to those who do not participate in elections, but also with regard to those who do. (Here there is a similarity between the Islamic movement and the Jewish ultra-Orthodox, except the relative size of the non-participating faction is smaller among the ultra-Orthodox than in the Islamic movement. This is due to a complex combination of religious and nationalist factors in the latter.)
3. **Problems in containing disagreements:** It is claimed that Israel is unsuccessful in handling either the internal Jewish controversies or Jewish-Arab relations within the country. The claims are varied and come from all parts of the political spectrum. Some argue there has been a regression in intra-Jewish relations from a democracy based on compromise, which succeeded in accommodating the divisions, to a democracy based on imposed decision, mainly by the courts, which deepens the rifts within the Jewish public. Concerning Jewish-Arab conflict, there are many different readings of the situation. Some see a growing measure of coming to terms and accommodation, while others only see growing radicalization and deepening of the controversy. Some think that Israeli democracy is successful in containing the disagreements despite the problems, whereas others think that the way matters are being conducted only emphasizes the fragility of Israeli democracy, which threatens to collapse. Some think that Israeli democracy does not sufficiently defend the rights of minorities; others believe that it is the interests of the majority that are not suitably protected, thus contributing to the instability which may threaten democracy itself.

4. **Legitimacy of democratic rule among the elites and the public:** At the level of lip service, there is a great deal of support for democracy in Israel from all sectors. Often, those who feel that political decisions harm their interests claim that these decisions are contrary not merely to their own interests, or even to their own rights, but to democracy itself. But when commitment to democracy is broken down into more specific questions, the picture becomes more complicated, suggesting a feeble commitment to democracy among not a few sectors of the Israeli public.

I shall argue that the picture in Israel is complex on all these issues: there are signs of strength as well as of fragility. Indeed, this duality might be inherent to democracy as a regime.¹¹⁶ It needs to be kept in mind that democracy, certainly at the formal level of rules of the game, deals mainly with decision-making processes and not with the content of decisions. Nonetheless, we shall find that commitment to democracy tends to weaken when the decisions made by the majority do not comply with the political and ideological interests of many people and sectors. Similarly, people's commitment to democracy is weakened when the regime is undermining the legislation of arrangements deemed vital to their welfare or their effective implementation. Systemically, Israeli democracy has met quite a few difficult challenges (assassination of one prime minister, the sudden incapacitating illness of another, a painful disengagement project, ongoing terrorism against the civilian population) in an impressive manner. On the other hand, tensions between the principles of majority rule and essential conceptions of the necessary conditions for a stable democracy do exist and are on the rise.

b. Constitutional Structural Aspects

One of the greatest threats to democracy in Israel is the fact that many do not feel it effectively addresses the country's existential problems, at all levels. Part of this frustration stems from fundamental problems regarding political conflicts, as well as standards of living and welfare. But another part of it concerns the way in which the state generally conducts itself. Some link these problems to the absence of an **entrenched constitution** in Israel. I shall return to this issue below, in the chapter

¹¹⁶ See, for instance, in Eisenstadt, **Paradoxes of Democracy: Fragility, Continuity and Change, 1999**.

discussing challenges to the defense of human rights in Israel. Here I shall say only that the majority of regime structure problems concern not so much the *status* of the political arrangements as their specific *content*. In this sense, an entrenched constitution might prove to be undesirable, for it would make changes and adjustments even more difficult than they are today. Indeed, Ben Gurion opposed the adoption of an entrenched constitution in 1950 primarily because he felt the system of elections to the Knesset did not permit efficient and stable government; he wished to change it, bringing it closer in line with the district-majority system prevalent in Britain and the United States.

Attesting to the frustration of part of the public—and the failure to address it properly—was the short-lived episode of the change in the system of elections to the prime-ministership. Legislated in 1992, the change went into effect for the 1996 elections. Elected into office under the new system were Netanyahu, Barak, and Sharon for his first term. Some think this change to a quasi-presidential system may portend danger to democracy in Israel, since it reflects a public desire to replace democracy with rule by a "strongman." Of course this isn't necessarily so, for there are presidential systems which constitute stable democracies. Everything depends on the checks and balances of the system and its political culture. However, the desire to replace the system did stem from a widespread feeling that there was an improper balance between representativeness and effective government in Israel. It was felt that the large number of parties and the structural division of political power made it especially difficult to articulate and implement long-term policy.

This episode also showed that constitutional changes that are made hastily and without regard for the wider context of the totality of constitutional arrangements were likely to fail: in 2001 the *Knesset* did indeed ratify a change back to the old parliamentary electoral system. However, the episode did yield a certain improvement in government stability in the form of the demand for a constructive vote of no-confidence. Interestingly enough, none of the prime ministers who reached office through direct elections completed their terms, and none of their governments enjoyed any great stability. To the contrary, some contend that these governments had a twofold disadvantage: they were not sufficiently accountable towards the *Knesset*, but neither did they have the ability to govern because of their dependency on it.

The weak effectiveness of government is related also to its limited ability to accommodate the basic controversies in Israeli society. Ostensibly, the high degree of representation in Israel should have yielded an excellent *Knesset* platform for discussion and compromise. But although all voices are heard in the *Knesset*, they are not equally influential. The Arab parties have never been full partners in government while the ultra-Orthodox, by serving as the tip of the scales, have accumulated political power far greater than their electoral strength. This fact has only exacerbated internal tensions and increased parts of the public's distrust of political authorities and of their ability to effectively address the public's needs.

This distrust has grown in light of the spread of governmental corruption of various kinds. Politicians were starting to be grasped not as public servants of different opinions but as serving narrow party or personal interests at the expense of all possible conceptions of the public interest.

The governmental paralysis that began with the national unity governments also led to the transfer of decision-making powers from the political branches to the courts. This greatly enhanced the strength and importance of the latter, especially the Supreme Court sitting as the High Court of Justice. Its strength grew even more with the legislation of the Basic Laws in 1992 and the determination that the courts now had the power to review *Knesset* laws that were held to be incompatible with those laws.¹¹⁷

This process itself gave rise to a backlash. The Court has ceased to be grasped as a professional judicial institution enforcing the laws. Large sections of the public have begun to see it as a political player in every respect. These developments are reflected also in the changes that have occurred in the last decade in the measure of public support for the *Knesset*, government and courts. As mentioned, the general feeling is that the rules of the game in Israel are not optimal. This on the one hand has inspired initiatives to change the governmental system, some of which were accompanied by proposals to complete a constitution for Israel. Among parts of the public, on the other

¹¹⁷ On the legal and political controversy surrounding the Basic Laws and their significance, and on the "constitutional revolution" and its justification, see Gavison (1998). This controversy is still reflected in the debate surrounding the proposal to complete the constitutional process, thus granting the Supreme Court as currently composed the power to nullify *Knesset* laws. Objection to this power was one of the main reasons for the massive vote against the proposal to complete the enactment of the constitution in the *Knesset* on 13 February, 2006. The proposal gained only a small majority, and its future is unclear.

hand, it merely generates a troubling loss of trust in the most basic democratic institutions.

In many Western democracies there is an alarming measure of public apathy towards democratic processes. This lack of interest is manifested by an absence of public involvement, low voter turnouts at elections, and hence also the dearth of legitimacy of representative institutions. In Israel there is still a relatively high level of participation in elections by all sectors. However, persistent decline in the patterns of participation may constitute an important measure of the robustness of Israeli democracy.

From all of these aspects, the processes leading up to the 2006 elections and the election results are significant, indeed troubling. The elections came following the thorny democratic challenge posed by the disengagement plan. Sharon and the other architects of the political "Big Bang" wanted to achieve effective government by means of a strong centrist party which would serve as the primary axis of government. At first it seemed that such a party indeed had been successfully established, but the elections again yielded a relatively large number of small and medium-sized parties. The raising of the election threshold means that the smallest party now has three *Knesset* members, instead of two as previously. Nonetheless, this did not prevent many votes from going to waste to marginal parties that stood no chance of attaining the required threshold. Nor did it make it any easier to immediately form a stable coalition. Additionally, an important element of the vote this time was protest in the form of especially low turnout rates in all sectors, and in the form of "protest" voting. The latter phenomenon was partly responsible for the large representation awarded to the pensioners' party, which ran for election on only one issue that had no bearing on the central issues on the political agenda.

The initiatives to complete the constitutional process in Israel vary in their attitude to changes in regime structure. Some of those emanating from within the political system have sought to change the electoral system so as to achieve more effective government. It is unclear whether the *Knesset* that was elected will be able to enact any such changes in the governmental system.¹¹⁸

¹¹⁸ For a systematic discussion of this topic, see: Gavison, Guidelines to the future constitutional process, Introduction to the Report of the Constitutional Committee chaired by Miki Eitan, February 2006 (Heb.).

c. Democracy and Problems of Religion and State

Possible tensions between religion and democracy are not unique to Israel. All the same, in many countries there are powerful religious groups in the population, yet democracy remains a pivotal and vigorous feature. This is so in countries that do not allow religious parties, as well as in countries where such parties are represented in parliament. The question therefore appears to be not the relation between religion *per se* and democracy but the relation between democracy and religious conceptions that deny the legitimacy of democratic decision-making mechanisms. In this sense the tension between religion and democracy in Israel is noticeable, although much less central than one might think.

There have been a few discussions in Israel over claims that parties, movements or certain governmental practices are indeed inconsistent with democracy. Meir Kahane's party, *Kach*, was disqualified from participating in elections, among other things, because it denied the democratic character of the state; its party platform included a proposal to strip Israel's Arab citizens of their political rights.¹¹⁹ Aharon Barak J. addressed the eligibility of other religious parties, leaving open the general question whether a radical Jewish national-religious party is unfit to participate in elections. Following the Registrar of Parties, Barak J. approved the party list, determining that its platform did not actually commit it to theocracy: and that a legitimate interpretation could be given to the declaration in the platform regarding the party's conception of the state's Jewish character.¹²⁰ In the same matter Barak J. approvingly noted the German doctrine of "defensive democracy."¹²¹ The question remained theoretical, because the party in question never reached the required election threshold. Indeed, ever since and to this day no party with a strong religious and antidemocratic element in its platform has reached the election threshold. (This is also true of parties with a strong element of hatred towards 'others' which is not based on religion). In effect, religious parties that do get elected to the *Knesset* are careful to observe the rules of the democratic game even when they are critical of its outcomes. This is true regarding both *Knesset* laws and the decisions of the courts.

¹¹⁹ 72 1/88 *Neiman v. Chairman, Central Election Committee*, PDI 42(4) 177.

¹²⁰ 271 7504/95 *Yasin v. Registrar of Parties*, PDI 50(2); 45, 72.

¹²¹ *Ibid*, p. 62.

In a different context Barak J. declared, albeit in a dissenting opinion, that a paragraph in the coalition agreement between the Labor Party and *Shas*, according to which any change in the *status quo* approved by the Court would be amended through legislation, was in effect an "agreement sidestepping democracy." Within democracy itself, Barak explained, there is a constructive dialogue among the legislature, government and courts concerning the content of various arrangements. A sweeping agreement, in advance, that any judicial decision which might change the *status quo* is to be annulled by legislation, is not consistent – he ruled – with the principles of democracy. In Barak's view, this generates an inherent tension between democracy and the desire to defend religious arrangements from interpretation by the courts. Indeed, this stance appears to be based on the wider meaning of democracy, which I have proposed to reject.¹²²

So-called "threats to democracy" from Jewish religious groups have reached the courts in other ways as well. For instance, the Supreme Court also dealt with Rabbi Ovadia Yosef's bitter critique of the Court itself and its members.¹²³ It has also ruled on Rabbi Ido Elba's pamphlet arguing that the prohibition "Thou shalt not kill" does not apply to "Gentiles," who was indicted (and convicted) of incitement to racial violence against Arabs.¹²⁴ Here, too, the argument was concerned with whether these utterances had passed a certain threshold of freedom of speech. It is unclear why uttering them—even if it is against the law—should constitute a threat to democracy itself.

But the brunt of the tension between a religious interpretation of the state's Jewishness and democracy, or in the fact that part of the Jewish public in Israel grants precedence to *Halachic* law over the laws of the state, does not primarily manifest itself

¹²² HCJ 5364/94 **Welner v. Labor Party Chairman**, PDI 49(1); 758, 788-789. It is noteworthy that Judge Barak was in the minority on this matter and a majority of the court found that although the paragraph was improper, it was not actually illegal and therefore not to be overruled. Judge Cheshin also refers to the democratic elements in the coalition agreement and finds that the political dynamic will in any event overcome the coalition agreement, wherefore there is no place for judicial overruling of the latter (Ibid, pp. 823-825). In my opinion, even if such an agreement is indeed problematic, it does not "sidestep democracy" in the ordinary sense of the word, because democracy allows the legislature to decide that it rejects the courts' interpretation of existing law and move on to change it—subject to constitutional constraints. Thus, agreeing to "protect" the existing arrangement from creative interpretation by the courts is in itself not undemocratic.

¹²³ HCJ 3087/99 **Movement for the Quality of Government in Israel v. Attorney General**, PDI 54(1) 414. (The AG declined to indict R. Yosseff, and the petitioners asked the court to require him to indict. The court declined to do so.)

¹²⁴ 2831/95 **Elba v. State of Israel**, (5) 221.

in proceedings before the courts. It is more prominent at the public and political levels, and is also reflected by legal rules themselves.

There are those who think that "religious legislation"—legislation that imposes conduct required by *Halachic* law upon the entire public regardless of religion, or regardless at least of people's own willingness to accept religious injunctions—is itself a mortal blow to democracy. Others contend that since this legislation is being passed by the *Knesset*, which has a significant nonreligious Jewish majority as well as non-Jewish representation, there is no tension at all between such legislation and democracy. We shall return to this matter in the chapter dealing with human rights. Even among those who hold the latter view, there are those who contend that the religious monopoly over legal personal status and marital affairs not only denies the human rights of those who do not observe any particular religion, or those who would like to behave in a way recognized by the state but not permitted by their religion; it turns Israel in large measure into a theocracy. And a theocracy, by definition, is not a democracy.¹²⁵ I shall return to this topic, too, in my discussion of human rights. However, as long as enacting the laws (or not enacting them) in these matters is being done by the *Knesset*, which has a secular Jewish majority, it is difficult to see why this situation should be inconsistent with democracy. In effect, this case illustrates the practical importance of choosing between thin and rich conceptions of democracy. In my opinion, it also illustrates the advantages of the thinner conception of democracy, which is not challenged by legislation of this kind that is passed within the regular political process. It is permissible for the legislature to separate religion and state and institute civil marriage. I believe that giving people in Israel the option of civil marriage is indeed desirable and is required by a commitment to human rights.¹²⁶ However, for the

¹²⁵ Baruch Kimmerling comes close to making this argument. It need be emphasized that even if this is true, it does not stem from the Jewishness of the state: as it happens, Israel has retained the "*millet*" system as a relic of the Ottoman period that was not eliminated by the British Mandate, *by request of Arab leaders*. There is an element here of respect for religion that has been imposed upon the secular in all religions on sensitive matters of personal status.

¹²⁶ See the proposals regarding marriage and divorce in the Gavison-Medan Covenant. I accept that the arrangements for civil marriage must be responsive to the wish not to segregate between parts of the Jewish public due to the fear of the religiously observant of marrying people not considered Jewish by them, and the resulting need to keep separate pedigree lists. All the same, there are arrangements that would prevent such a possibility while granting the option of civil marriage as well. Such arrangements may include giving interested people access to registration records and making a person already married under religious law ineligible to marry again.

legislature to have a different preference is not, in itself, a breach of democracy. Having such a preference may in fact be an expression of democracy, in that it reflects the usual games of power among political forces.

The real conflict between democracy and (not only Jewish) religious leadership concerns the source of authority. Usually states and religion manage to sustain a stable co-existence. The state defends freedom of religion and is reluctant to interfere in intra-religious matters. True, this may not always "work." Thus, defining "who is a Jew?" in the context of the Law of Return means that the state has to determine issues of religion. Incidentally, the fact that the definition invokes Jewish religious law also raises the claim that Israel is not democratic because – so the claim goes – it defines eligibility for its citizenship through religious affiliation. The conflict over the source of authority is usually theoretical only. Most religious establishments usually understand the need to accept the state's superiority. The state, after all, controls the purse (and the sword).¹²⁷ There are places in the world where fundamentalist religious parties have won a majority in parliament and attempted to adopt a constitution or laws that reflect the supremacy of religion and the religious establishment over the state. This is not a threat in Israel, at least not for now. A more serious problem is manifest in contentions sometimes heard in Israel that there are topics outside the mandate of the authorized democratic institutions. Thus there are those who argue that no government has permission to deliver parts of the Land of Israel to foreign rule. Although this is a position that is heard in public, I have not found any reasoned and systematic position suggesting that all state decisions in Israel should be governed by *Halachic* law, as interpreted by religious experts. Religious people of all streams in fact exhibit impressive creativity regarding the need to reconcile the supremacy of religion – which is axiomatic for all believers – with an acceptance of the rules of the democratic game.

A different question in state-religion relations concerns infractions of the law, by individuals or groups, due to the argument that the law (or the authorized political authority) demands or allows behavior that runs contrary to religion. The most dramatic example of the profound threat of this kind that certain religious conceptions pose to

¹²⁷ This is why Yeshayahu Leibowitz said that the lack of separation between religion and state in Israel is detrimental to both sides; *Hafradat ha-Dat ve-ha-Medina* (Heb.: "The Separation of Religion and State"; 1959).

democracy is the assassination of Prime Minister Yitzhak Rabin in November 1995. The assassination was explicitly justified, by its perpetrator as well as by a minority of religious Jews, on the basis of religious *Halachic* laws. Despite the widespread condemnation of the assassination by the Jewish leadership in Israel, both secular and religious, the question concerning the applicability of these laws to the political leadership of the State of Israel has not yet been resolved in a persuasive intra-religious fashion. These tensions surfaced prominently again *apropos* of the disengagement plan, prompting a severe crisis within all sectors of religious Zionism. Although this time the religious leadership's positions clearly condemned violence or assassination, some of the religious leadership's de-legitimization of the disengagement or of any delivery of parts of the Land of Israel into foreign hands did give rise to considerable apprehension. In actual fact nothing came of this apprehension, and in their moment of trial all the religious leaders exhibited due restraint. However, some of them today believe that the ease with which the disengagement was executed was - from their standpoint - a mistake, liable, to encourage similar steps in the West Bank. Such feelings may in turn exacerbate the profound tensions between state authority and religious authority.¹²⁸

In principle, the conflict between religion and state can always pose a threat to the state, certainly to the source of democracy's authority. This is because religion always demands that its believers see it as morally supreme. In many cases, traditional religions express a profound alienation towards some of the typical forms of expression of liberal values that stand at the core of liberal democracies. In actual fact, however, the degree of threat cannot derive merely from the theoretical potential clash between religion and state. It is important to examine the content of the specific religion and the customary interpretations within it of relations with the state. From these aspects there is a big difference between the type and severity of the threat to the state posed by religious Zionism as opposed to the ultra-Orthodox. Actually, it is impossible even to generalize in regard to these two groups, for there are significant differences within them on precisely this point.

¹²⁸ The situation worsened after the violent evacuation and destruction of homes in the West Bank outpost of Amona in late 2005. Things have gone so far that within the religious public cries are heard de-legitimizing the government and army and calling for a "secession" from the state, although this public's leaders have spoken up impressively against these calls and in favor of accepting democratic decisions. A prominent example is the long letter by Rabbi Sadan to graduates of the Eli preparatory academy.

With the ultra-Orthodox, the tension between their conception of religion and democracy generally arises from their wish to segregate themselves. The ultra-Orthodox do not want to be part of a system that provides civic education, and any regard they have for the state and the principles of its governmental system is largely instrumentalist. They do not have strong preferences regarding foreign and security policy. They express decided opposition to any erosion of the Jewish character of the public sphere: some of them in fact left the government because a large electric company installation was transported on the Sabbath. But their true red lines are drawn around the autonomy of their community lives and their educational systems. In the ultra-Orthodox conception, the state itself has no religious meaning. The main tension between them and the state arises when the state seeks to impose rules of behavior on them, which they think are forbidden or threaten their ability to preserve their communities and way of life. When the standard way of life is *Torah* study as a principal or sole occupation of all, there will of course be great tension between such communities and a state which enforces obligatory military service and expects its citizens to work for a living. Concern for democracy stems also from the fact that within ultra-Orthodox educational autonomy, the focus is on sacred studies and there is little place for secular studies, including civics. This educational system also suffers from an immanent difficulty in educating toward values of human equality.

The picture is more complicated regarding religious Zionists, for whom the state itself has religious meaning. Ostensibly, this should have strengthened their inclination to preserve it and understand the need to observe the rules of the democratic game. This indeed did happen to some of the leaders of religious Zionism. Others grasp the supremacy of religion as restricting the state's power to conduct itself contrary to the requirements of religion. Here there is potential for a head-on collision. In the past the leaders of religious Zionism were wise enough to insist that religious leaders will not also be political representatives of the community in the *Knesset*. This distinction has recently become blurred, and the tensions between religion and authorized decisions of the state have become open and more problematic. It appears that some sections of religious Zionism may adopt a model more like that of the ultra-Orthodox, one of community segregation. There are early indications that this is already an ongoing trend, e.g. a drop in the willingness of religious Zionist youth to serve in the IDF and

assume positions of command. Other sections of religious Zionism are likely to continue to fight on behalf of the importance of their worldview within the state. This struggle may give rise to harsh internal conflicts, but it contains also the promise that the difficult attempt to accommodate the divisions will continue.

Against the background of the rise in the Islamic movement's strength in *Knesset* elections and the assumption of power in the Palestinian Authority by *Hamas*, as well as the strengthening of Islamic elements in the Muslim world generally and in our region in particular, it is important to emphasize that tensions between religion and state are not unique to Judaism. Moreover, it seems that radical Islam poses a far greater potential threat to political authorities than religious Judaism, for it also employs violence and terror against Arab governments in Muslim countries.¹²⁹ In Israel this does not appear to be an immediate concern. All the same, in the absence of any factual basis for the contention that Israel is endangering the *El-Aqsa* Mosque, the repeated inflammatory declarations that "*El-Aqsa* is in danger" express a considerable potential for confrontation.¹³⁰

d. Accommodating Divisions

We have dealt to some extent with the accommodation of divisions in the discussion above. Democracy facilitates the duality of shared civic commitment to democracy, its rules of the game and the rule of law, together with the freedom to fight within this framework for particular interests of individuals and groups. Thus it is considered a regime especially suited to heterogeneous societies.

For the Jewish public, democracy did indeed function in this fashion until recent years. Examples are the *status quo* arrangement concerning religious matters, and political arrangements concerning settlement in the occupied territories. In this type of consociational democracy, the majority willingly relinquishes its ability to force decisions

¹²⁹ In Judaism, too, a prime minister has been assassinated in the name of religion, as Anwar Saadat in Egypt was assassinated in the name of religion. But it hasn't yet happened that religious forces should violently rebel against an elected government or conduct violent life threatening systematic actions against its representatives, as has happened and is happening in several Muslim countries.

¹³⁰ Indeed, those passages in the *Hamas* covenant that justify harming Jews (regardless of whether they are fighters or enemies) on the basis of the *Koran* are an especially problematic part of the document. The response by leaders of the Arab-Muslim minority in Israel after the attempted attack by eccentrics in the Church of the Annunciation (2006) shows the volatility inherent in trading nationalist tensions for religious rhetoric.

on some issues by giving the minority an effective right of veto in matters that are critical from its standpoint. The minority in exchange refrains from de-legitimizing the majority's policies in other matters. This is how the political arrangement worked between the secular or traditionalist majority and the religious minority—both the ultra-Orthodox and the religious Zionists. The majority accepted the religious monopoly over matters of personal status and agreed to a significant measure of autonomy for the religious educational systems. It agreed to Jewish (though not religious) elements in the public sphere. On their part, the religious largely left matters of state and foreign policy to the secular parties. After 1967 erosion commenced in matters of religion and state, but a new equilibrium was established on the issue of the territories. Religious settlement initiatives were at least tacitly supported by many in Israel's governments. The activists of *Gush Emunim* ("Bloc of the Faithful") thus accomplished missions on behalf of the government, in places of military importance, which the government might not have been able to accomplish without them. In return a blind eye was turned as settlements were built, and assistance and protection provided later, to Jewish settlements in areas where there was no such importance, and where Jewish settlement was very controversial.¹³¹

In recent years this mutual readiness to facilitate arrangements has been eroded on both ends, both in the field of relations between religion and state and in the approach towards the occupied territories. Both sides have developed a feeling of mistrust of the other, seeing it as relying on force rather than on discussion and persuasion. Both sides are also frustrated at their inability to promote policies for which, so they contend, there is a majority. The secular liberal left protested against the protracted reluctance to take steps such as instituting civil marriage and scaling back the settlement enterprise or at least bringing it to a halt in places where it enjoys no broad consensus. Rightist groups have protested against the weakness in defending the state's Jewish features and the Zionist vision, especially when it came to the uprooting of the Gaza settlements.

In the relations between Jews and Arabs, there was never a consociational model. At the start, improvements in the welfare of the Arabs in Israel came about as a result of

¹³¹ For a critical discussion of the settlement movement outside the 1967 borders, see Eldar and Zartal (2004). For a discussion of the judicial dynamic of the settlement enterprise, see in Hofnung, "Democracy, Law, and National Security in Israel" (Aldershot: Dartmouth, 1996).

changes in the perceptions and policies within the Jewish powers themselves regarding the state's interests and commitments (together with international pressure). Since the 1980s, this situation has slowly been changing. The political blocs have become dependent on 'their' extremes, and the leftist bloc is unable to form a narrow government coalition without the support of the Arab parties. This, however, has only weakened the Left's ability to conduct any determined policy regarding the occupied territories and the conflict, for two reasons: first, the notion that decisions must rest upon a "Jewish majority" has gained currency within the public. Secondly, the Left would find it hard to adopt and execute policies that are harmful to important interests of the Arab public, even if they are deemed necessary for the public good, for fear of losing the elections (this was especially noticeable in the period of direct elections to the prime-minister, when the candidate of the Left was directly dependent on the Arab vote.)

Indeed, consociational models require the balance of political forces to be reflected at the constitutional level, so that important minority interests are recognized, while on the other hand the need to adopt and conduct policy that requires broad consensus is accepted. Again, it does not appear that this thorny problem can be resolved by means of constitutional design alone, although intense attention to constitutional design may inspire important ideas at the level of ordinary legislative arrangements. Indeed, it is not desirable to grant minorities a sweeping right of veto over the adoption of policies required for the welfare of society in general. This may be ineffective and arouse resentment against the benefiting minorities themselves. The possibility of resolving issues by majority decision is vital. The restrictions needed to defend individuals and minorities should be introduced into the democratic decision-making mechanisms in a variety of possible ways.¹³²

In this section I examine mainly the regime structure and procedural elements of democracy. I shall deal with the defense of minority rights in the next section. It should be emphasized, however, that – unlike the rights of **individuals** – aspects of relations between **groups** may have implications for regime structure and not only implications

¹³² The usual method these days is by means of a constitution that includes a bill of rights and judicial review. This isn't the only way, however. Madison thought it was possible to defend the rights of individuals and groups by means of checks and balances among the authorities, without any bill of rights. Dicey recommended the recognition of judicial and political constraints and the harnessing of public opinion as efficient ways of protecting minorities. Other systems include a bill of rights but restrict the authority of any body outside the legislature to nullify its laws.

for the content of arrangements and constraints upon them. In other words, there are many aspects of relations between groups that cannot be adequately dealt with only by means of the discourse of rights or judicial actions.

e. Legitimacy of Democracy and its Institutions among the Elites and the Public

A more trenchant threat to democracy itself arises from utterances that go so far as to de-legitimize the state and its institutions, and to incite to rebellion against authorized decisions of the state grasped as unacceptable by the protesters. In the context of military service, the threat emanates from calls to refuse to serve in the army. Refusal to serve may be directed towards engaging in specific activities such as bombing a city, targeted killings or disengagement; or towards any service in occupied territory; or even towards any military service whatsoever, since the army is perceived as representing either the occupation or eviction and deportation. There have also been more acute manifestations of opposition to the institutions of authority—governments or courts—which are perceived by the protesters as being unjustly injurious to them.¹³³

Here the age-old argument arises regarding the limits of obedience to the law and the tension between law and morality. There are those who are willing to accept any authorized decision as legal and binding, and therefore conclude that any call to refuse to serve or rebel against such an authorized decision is a threat to democracy. Others think that democracy itself includes restrictions on what decisions the state can make. In cases where these restrictions are not met, an individual may —and sometimes must— disobey the law.¹³⁴ Even if it is clearly agreed that refusal to serve or a call for such are

¹³³ Whereas the security forces usually enjoy a very high level of support in public opinion polls, this has significantly changed due to their part in carrying out the disengagement plan. Evident in this change is a big difference in the attitude toward IDF forces as opposed to police or Border Police troops. This became manifest during the demolition of illegal construction at Amona. It is important to note that on both sides there is a tendency to accuse the law enforcement agencies of double standards, though these contentions are stronger from the religious Right. Such accusations of double standards give rise to harsh feelings of discrimination and deprivation, and are therefore highly volatile. Law enforcement agencies need to devote special attention to this issue and ensure that justice is not only done but is also seen. On the other hand, these kinds of situations sometimes create an inappropriate symmetry.

¹³⁴ See for example par. 34 13(2) Postscript to Penal Law, 5737-1977; par. 125 of Military Jurisdiction Law, 5715-1955.

illegal, the question remains whether it is appropriate to invoke legal tools against those who act in this manner.¹³⁵

In Israel conscientious objection is not a widespread phenomenon. It is interesting to observe the depth of the political polarization on the issue of conscientious objection and democracy. A minority within the Left tends to justify conscientious objection from leftist motivations and to condemn the same from rightist motivations as contrary to democracy. A minority within the Right tends to do the same, but of course *vice-versa*. Most political leaders condemn all forms of conscientious objection. Only a few analyze the phenomenon in an 'objective' manner, applying the same standards toward conscientious objection from both ends of the political spectrum. Indeed, some argue that the approach towards conscientious objection should look into the actual moral arguments and the morality of the practices involved. To them, this is not a symmetrical matter to be viewed in abstraction from its content, taking into account only the sincere feelings of those who resist obedience or service. Rather, it is a matter of "realistic" moral analysis. One side holds that one can and must oppose occupation because it is bad, whereas refusing to serve because of the disengagement is forbidden because disengagement is the right policy. To the contrary, the other side views the eviction of people from their homes as an atrocity demanding disobedience, and grasps the refusal to defend Israeli civilians in the occupied territories or fight terrorism as a betrayal of the state's existential right to defend itself. Israeli democracy is supposed to accommodate both groups and all the voices heard within them.

We have surveyed above other ways in which de-legitimization of authorized democratic institutions has been manifested. It has happened to governments and *Knesset* when they have ratified policies which appeared unacceptable to those who opposed them. It has happened to the courts when they have been perceived to exceed their authority. Here it is necessary to distinguish between **criticism**, trenchant as it may be, of governmental institutions—which does not threaten democracy but is in fact part of its lifeblood—and their **de-legitimization**. In certain cases it may be a very fine distinction, but it is critical to the point we are making here. The threat to democracy

¹³⁵ See: Chaim Gans, "Right & Left: Ideological Disobedience in Israel", 36 *Israel L. Rev.*(2002); see also in Enoch on the verdict of the military tribunal in the case of the five draft resisters, " Following **Military Prosecutor v. Matar et al**", in *Mishpat ve-Mimshal* 8(2) 2005, 701.(heb.)

lies in the de-legitimization of governmental authorities, which in turn may lead to such phenomena as political assassination, revolt, or the overthrow of the government. While mere criticism, too, is often silenced in the name of democracy, such silencing erodes democracy and weakens it. In Israel we see both a measure of slippage towards de-legitimization and a measure of silencing criticism through alleging that it constitutes illegal incitement. Law enforcement authorities have in general taken an extremely cautious approach towards using legal tools against those voicing criticism of governmental authorities. For this they have endured criticism from those who think that greater use should have been made of the legal apparatus, especially after Rabin's assassination. Others on the other hand have argued that there is a tendency to make too great a use of investigations or indictments against speech or against acts of protest, such as the obstruction of roads or unlicensed demonstrations. Such claims are usually also accompanied by allegations of discrimination, each side convinced that excessive lenience is being granted to the other side while *it* is stringently held to account. This is true both of the various sections of the Jewish public, and between Jews and Arabs.

It seems that the Supreme Court and the law enforcement system have been especially quick to portray any criticism of institutional practices or developments trends of adjudication as "attacks" or "de-legitimization." Fortunately, there is no inclination in Israel to use force against judges or blatantly defy judicial decisions. In view of this, it is unclear why there should be such great and sweeping suspicion toward any criticism of the Court and its conduct. After all, the courts are a non-representative institution that makes extensive use of its power—without any explicit constitutional authorization—to abrogate decisions by the government and even those by the legislature itself. In all countries there is an open debate regarding the anti-majoritarian difficulty such activity raises. There are numerous and rather convincing answers to this difficulty. Supporters of judicial review of *Knesset* laws should encourage public debate of this issue and deal on the merits with the counter-arguments.

Among the Arabs in Israel, the general inclination is to support democracy while pointing to the contradiction between democracy and an ethnic nation-state as justifying dropping the Jewish element from the state's characterization. The Arabs usually point to problems in the sphere of civic equality as proof that democracy in Israel is poor or

even nonexistent—the implication being that they are the victims of Israeli democracy's weakness. All the same, there are those who point at trends that express weaknesses in the commitment to democracy of the Arab minority themselves, alongside a weakening in the Jewish majority's commitment to protect their status and their rights.

Indeed, a series of studies has revealed that the intensification of the armed conflict between Israel and the Palestinians has reinforced the willingness of some of the Israeli public to deny all or some of the Arabs their civil and political human rights. In debates over a referendum as a means for deciding on withdrawal or on the state's borders, many contend that it is not possible to grant the Arabs an equal vote because of the inherent conflict of interest they have in such matters. There is a significant rise in the willingness of some of the Israeli public to encourage the emigration of Arabs from Israel and in support for the idea of moving the border between Israel and the future Palestinian state in such a way that some of Israel's Arab citizens would become Palestinian citizens. Indeed, many cite these trends as indicative of a rise in the Jewish public's racism and the erosion of its commitment to democracy and civic equality.¹³⁶

On the other hand, leaders of the Arab minority deem any legislation that is contrary to their interests, any decision to restrict their freedom to act in a manner that the Jewish majority judges to be irreconcilable with their citizenship, as a sign of racism. Many voices in the leadership of the Arab public are resolutely opposed to any participation by Arabs in military service or even national or civic service in their own communities. Furthermore, some of the Arab public's leaders in the *Knesset* not only take a critical stance toward Israel's actions in the country's conflict with the Palestinians, but also encourage the "resistance" to the Occupation and label IDF commanders "Nazis" or "war criminals."¹³⁷ When a decision is made to demolish houses built without a permit, the opposition to it is political and the demolition is depicted as a manifestation of discrimination against Arabs as a group. In other words, Arab leaders are unwilling to accept majority decisions that are made in Israel, even when made by

¹³⁶ See for example the essay by Arieli et al., *Injustice and Folly*; 2006).

¹³⁷ Such utterances are very similar to those directed against Yitzhak Rabin at the time, which many thought were seditious and should have been combated by legal means. I do not think prosecution is the proper way to handle such utterances. On the other hand, it is unclear whether they should be allowed to pass as legitimate. The "right to oppose the Occupation" is the well-known code name for terrorism against civilians. This is the explanation given when Palestinian leaders refuse to condemn attacks on civilians, which are recognized as war crimes even by human rights organizations that are not 'suspected' of great sympathy for Israel.

elected governments. They have assumed a confrontational stance towards the state's institutions. It is unclear whether they consider their citizenship to place upon them any obligation towards the state beyond the duty to obey its laws. Towards the Court, too, their position is ambiguous. Arab leaders praise the Court when judicial decisions lean their way; when the Court takes a position they don't like, however, they point to its "Zionist" character. An interesting reminder in this context is that in his decision in the **Yardor** case, Judge Zussman based his agreement to the disqualification of the *El-Ard* party on an analogy to the lessons from the collapse of democracy in the Weimar Republic.¹³⁸ Indeed, there are those who argue that the Arab position, which denies the legitimacy of the state's Jewish culture and the Law of Return—deeming these arrangements a manifestation of racism, despite the large majority that supports them—is itself a threat to the democracy of the state. It contests the legitimacy of the state's fundamental positions and the justification for Israel's fight against suicide bombings. It thus poses a potential threat to democracy no less than conscientious objection from leftwing motivations.

This complexity was interestingly reflected by the response in the Arab street to the recommendations of the Or Committee after the events of October 2000. The initial response was one of anger at the Committee's decision to note the contribution by leaders of the Arab public to provoking the outburst and fanning the flames while they raged. There was also anger at the Committee for not having accepted the position of the leaders of the Arab struggle, which viewed the casualties as having been murdered in cold blood. Meanwhile there has been a change of tone, and the call now is to put into practice the more essential and general part of the Committee's report, recommending a systematic action to promote civic equality. However, the Arab leadership is still reluctant to address candidly the tension between on the one hand, their (justified) expectation of government action to increase civic equality and, on the other hand, their unwillingness to recognize the implications of the fact that there is an unresolved conflict between their state and their people; a conflict which exacts its price in blood from Israel and affects the personal security of Israel's inhabitants, but in which they nevertheless unconditionally support the Palestinian side.

¹³⁸ **Yardor** case, *supra* footnote 115, p. 389.

f. Summary

The disengagement can serve as a test case for contentions regarding democracy and its implications in the reality of Israel. Supporters of the disengagement plan saw its successful implementation as being required by democracy, whereas opponents of the plan viewed the prime minister's entire conduct as being contrary to democracy and illustrated how Israel acted in this matter in a non-democratic way. It seems to me that there is a solid foundation to both sides' contentions. After the government had made its decisions, which were confirmed by *Knesset* laws and declared legal by the Supreme Court,¹³⁹ it was indeed wrong to attempt to undermine the disengagement by force, and the army and police were justified in taking action to carry out the disengagement swiftly and efficiently.¹⁴⁰ All the same, it is hard to say that the way in which then Prime minister Sharon acted did not suffer from a severe problem of "democracy deficit": he pulled all the stops to push through a plan even more far-reaching than that of the opponent he had defeated in the elections, Amram Mitzna of the Labor Party, without confirming that he had a mandate from the people to do so. It is no wonder that those who had voted for him but were opposed to any such unilateral disengagement, and had reasons to think he too opposed them, felt betrayed.¹⁴¹

At the formal level, Israel appears to be standing the test of democracy well. As mentioned, there is a greater measure of democracy in Israel today than there was immediately after the state's establishment. A large majority of the adults living in the

¹³⁹ HCJ 1661/05 **Gaza Coast Regional Council et al. v. Knesset of Israel et al.**, PD 59(2) 481.

¹⁴⁰ Throughout the process there were public debates over some of the steps taken by the authorities, such as restriction of the right to demonstrate and the prolonged detention of youngsters who participated in demonstrations against the disengagement. These matters were brought before and decided by the courts (regarding the right to demonstrate, for example: HCJ 3132/05 **The Committee for Eretz Israel v. Tel Aviv District Commander** [unpublished]; HCJ 2979/05 **Yesha Council v. Minister of Internal Security** [unpublished]; regarding arrests: HCJ 9448/05 **Levinstein v. State of Israel** [forthcoming]; HCJ 5934/05 **Malka v. State of Israel** [unpublished]). The judicial resolution did not put an end to the public debate, however. Indeed it intensified both the debate and part of the public's feeling of alienation, and fueled criticism of the courts and of the law enforcement agencies. All this demonstrates that there can be a situation in which, as far as the rules of the game are concerned, all actions have received judicial sanction, which is the final sanction from the standpoint of the legal system—and yet the public debate continues. An accumulation of too many cases in which the public feels that it is being unfairly silenced by the law enforcement system might give rise to instability, posing an internal threat to democracy.

¹⁴¹ An echo of this "democracy deficit" was heard in Justice Edmond Levi's decision in the matter of the **Gaza Coast Regional Council** mentioned above.

country are citizens of the state. All citizens have equal rights to participate in elections and to run for election. Although the state does restrict the right to be elected, and there is controversy over the justification for some of these restrictions, the only parties that have in fact been disqualified are Jewish parties whose platforms and activities threatened the civil and political rights of non-Jews. Regular elections are held in Israel (sometimes at too short intervals) and the country has an impressive degree of freedom of speech and organization. Furthermore, power changes hands regularly enough due to voters' choices, the changes being accomplished in orderly fashion without threats or challenges. Though Israel has a strong army, it has never been in danger of a military *coup*, and there is widespread acceptance of the principle of the military's subservience to decisions by the political echelon. Israel has a judicial system of professional courts that enjoy a high level of independence and effectively (some say too effectively) perform their role as critics of government. Israeli democracy has also survived some difficult and turbulent periods, including the assassination of a prime minister and a prolonged struggle against terrorism targeting civilians.

Still, democracy in Israel certainly has areas of vulnerability. Israel can be proud of its accomplishments in the democratic sphere but cannot rest on its laurels. Democracy is supposed to be one of the central elements in the common, shared framework of Israeli society. When there is a prominent inclination towards double standards, each side contending that the steps taken against it are undemocratic (or contravene human rights), but fails to protest when similar steps are taken against its political adversaries—the neutrality of the common framework becomes secondary to the political controversies whose very intensity it is supposed to accommodate. This can happen also to such ideals as the rule of law, which are weakened when they are applied unfairly, or in a manner perceived to be unfair, to various individuals and groups. Similarly, there is the danger that institutions that are supposed to be part of the common, shared framework may become political adversaries. A consistent and determined struggle by **all** political players against these kinds of double standards may be vital to defending the robustness of Israel's democracy.

3. Challenges to Human Rights in Israel

As mentioned, some view the protection of human rights as part of the commitment to democracy. I have chosen to distinguish between these two elements not only in order to highlight the 'thin' meaning of democracy along the lines of 'rules of the game', but also to emphasize that the obligation to defend human rights is binding not only upon democratic countries. Human rights are supposed to be binding upon every person and every human society, for these are the constraints on the actions of states and other individuals, which stem from the very humanity of people. Human rights derive from a basic humanism—acceptance of the fundamental value of human dignity. An essential commitment to human rights is not dependent on the type of political regime a country may have. Similarly, the institutions of the international community do not make the duty to apply human rights norms dependent on the kind of regime a state has.

Widespread recognition of the importance of the concept of human rights, and the formulation of these rights in binding international documents in particular, is a phenomenon that emerged in the second half of the 20th century, after World War II. The origin of the concept itself can be traced to a much earlier time, and it appears prominently in the political doctrines of Locke and Thomas Paine, and in the constitutional documents of the United States.¹⁴²

As mentioned, human rights are intended to restrict the freedom of states and individuals to harm the vital interests of other individuals and groups. When recognized by international law, these rights are binding on states, even if the latter do not undertake such commitments within their own legal systems. All the same, constitutional or legal rights that are recognized by the legal system carry more weight, of course, than such rights recognized only by international law, whose effective powers of enforcement are extremely limited.

Human rights also have an institutional aspect: the legislature usually reflects the will of the majority. Indeed, in many countries—including Israel—many human rights are anchored in a constitution and laws created by the legislature. Nonetheless, primacy in

¹⁴² For a discussion of the history and status of human rights, see in Arieli, *Torat "Zchuyot ha-Adam": Motsa'u u-Mekoma be-Itsuva shel ha-Chevra ha-Modernit* (Heb.: "The Doctrine of 'Human Rights': its origin and place in the shaping of modern society"; 1999).

defending these rights must go to an institution that is not itself constructed in a majoritarian fashion—the courts. Defending the rights of individuals is an important part of the courts' unique task. This is true for those rights granted by the laws of the state, and, even more so, for human rights themselves.

Defending human rights from the **legislature** is only possible in a regime that has an entrenched constitution and (judicial) review. Most of the job, however, is performed through the strict supervision of other organs, especially those that belong to the executive branch, in order to ensure that they do not misuse or abuse their power.

We have dealt with some human rights issues in the chapter on the challenges to democracy, for some human rights are an inseparable part of any functioning democracy, such as the rights to vote and to be elected and the freedoms of speech, association, protest and assembly. Here we shall deal with rights in a more general way, expanding only on some rights that do not pertain to the functioning of democracy in its narrow meaning.

a. Constitutional Structure

Some think that human rights in Israel are poorly defended because the country does not yet have a complete and entrenched bill of rights (as part of a complete constitution), which takes precedence over ordinary legislation. Indeed, most democracies have such a constitution, including a bill of rights. The latter generally grants a nonpolitical body the power to review parliamentary legislation and annul any law that the reviewing authority (usually a regular or a constitutional court) deems unconstitutional.

The relation between the existence of such an entrenched constitution with judicial review and the actual state of the defense of human rights is a complicated issue. Holland and Switzerland, for example, enjoy adequate protection of human rights without any such constitutional arrangements. England too has only recently joined the ranks of countries with a bill of rights,¹⁴³ and the courts there have no authority to annul a law they deem incompatible with it. They can only declare it to be incompatible, while

¹⁴³ Human Rights Act 1998.

any conclusion to be drawn from this fact remains solely in the province of the legislature.

Throughout most of its existence, until 1992, Israel operated almost without benefit of the authority of judicial review of *Knesset* laws. In 1992 two Basic Laws dealing with human rights were enacted,¹⁴⁴ and shortly thereafter the courts ruled that these laws did indeed grant the courts the authority to annul *Knesset* laws that did not accord with them.¹⁴⁵ Meanwhile not a few laws have been subjected to such constitutional scrutiny, and in six cases at least it has been determined that the law in question did not meet the requirements of the Basic Laws.¹⁴⁶

Undoubtedly the completion of a constitution and the inclusion of a comprehensive bill of rights within it could be a step of immense political, social, educational and judicial significance in extending Israeli society's commitment to the defense of human rights. Efforts to complete the task have recently been made by the *Knesset* and government and by several extra-parliamentary bodies as well.¹⁴⁷ Nonetheless, I shall concentrate on examining the threats to human rights stemming from the content of laws. Until now, the laws and sections that have been annulled by the courts did not generate any unusual political sensitivity. This may be due to the disqualified paragraphs being subsidiary or because the alleged violation of rights was merely potential. This is unlikely to remain the case.* Indeed, there was a great political sensitivity to the court's decision to overturn several paragraphs of the Compensation Law for the Gaza disengagement plan, but the political thrust of this action—which indeed drew a certain amount of criticism—was muted due to the fact that the court upheld the constitutionality of the plan itself by a large majority. The debate has been pushed center-stage due to two of

¹⁴⁴ Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation.

¹⁴⁵ See 6821/93 **United Mizrahi Bank Ltd. v. Migdal Communal Village** PDI 49(4) 221.

¹⁴⁶ HCJ 1715/97 **Bureau of Investment Managers in Israel v. Finance Minister**, PDI 51(4) 367; HCJ 6055/95 **Tsemack v. Defense Minister**, PDI 53(5) 241; HCJ 1030/99 **Oron v. Knesset Chairman**, PDI 56(3) 640.

¹⁴⁷ The Knesset's constitutional, legal and judicial committee is working on the preparation of a "broadly consensual constitution," for which see http://www.knesset.gov.il/huka/FollowUpLaw_1.asp?initiation_type_id_t=1; Constitution by Consent – proposal of the Israeli Institute for Democracy (IDI), headed by Just. (ret.) Meir Shamgar; Public Committee for Legislation of Basic Laws headed by Prof. Yacov Ne'eman. A proposed constitution by the Institute for Zionist Strategy (IZS).

* After the original publication, the court did annul a law of great political sensitivity – one limiting the rights of Palestinians to sue for non-war related injuries by the IDF during the uprising. The matter is now (June 2007) the subject of political and constitutional struggle.

the court's recent decisions: one in which an extended panel temporarily affirmed the constitutionality of the Tal Law, which allows *yeshiva* students not to serve in the army and to enter the employment market after a "year of decision". The other was a dramatic 6:5 decision to uphold the constitutionality of the temporary order restricting the eligibility of Palestinian residents of the Territories to acquire legal status in Israel even in the context of family reunification. The latter decision drew a harsh criticism of the court and its support for "racist" legislation on the one hand, and inspired initiatives to explicitly remove immigration laws from the sphere of judicial review on the other. It is likely that if the court had overturned the laws in all or in one of these cases—there would have been a much greater political backlash.¹⁴⁸

b. The Occupied Territories¹⁴⁹

Here too, the primary challenges to the robustness of Israeli society spring specifically from Israel's continued occupation of territories: Legally, they do not form a part of the state, and their population does not enjoy the level of human rights recognized in Israel itself. The state of human rights in the occupied territories is problematic even during peacetime, since the Palestinian population in general does not enjoy basic political rights or have any significant measure of self-rule. The situation worsens at times when the conflict deteriorates into armed confrontation, as has been the case since September 2000.¹⁵⁰

¹⁴⁸ It should be noted that the cases differ in many respects, including the sources of hostile reaction. Criticism of the Court's decision (by a large majority) to uphold the *Tal* Law came from broad constituencies among the public, regardless of leftwing/rightwing affiliation, or of positions on the secular - religious divide. Only the ultra-Orthodox sector, which benefits from the law, was vehemently opposed to its overturning. There may have been opposition also from governmental circles, because it would have made it difficult to form a coalition with the religious parties and threaten to open a new front in internal Jewish conflicts. Controversy surrounding the Citizenship Law was much more intense and was reflected also by the narrow Court majority which upheld it.

¹⁴⁹ In the matters we are discussing there is a great deal of sensitivity to terminology. Some might say that the fact I call the territories that Israel captured in the 1967 war "occupied" points to a political bias, for they are "disputed" territories if not in fact "liberated." Today, however, even the Israeli government itself speaks of occupation, not to mention the Supreme Court or the International Court of Justice in The Hague. This assertion is a rather straightforward application of basic doctrines of international law. Refraining from admitting that Israel carries the status of "occupier" in the territories merely ensnarls the debate, for it opens the door to the widespread misconception that the prolongation of the occupation is illegal under international law, which is not the case.

¹⁵⁰ One outcome of the Oslo Accords was the establishment of the Palestinian Authority, which took upon itself a certain amount of responsibility for the welfare of the Palestinian population. Another was the elections that were held in the Palestinian territories. All the same, both under the law and as a matter of fact, Israel still

There is not quite a debate among jurists and scholars regarding which laws are applicable to Israel's actions in the occupied territories and which standards should be applied to them. The scope of Israel's obligations changes according to whether the country's actions are deemed to constitute law enforcement, exerting the authority of an occupying military government, or acts of war. Each such system of laws places a different set of obligations on Israel, which stem from the rights granted to the Palestinian population.¹⁵¹

I shall not go into these issues at any length here. Suffice it to note that from the very beginning, since 1967, Israel has allowed Palestinians recourse to its courts for the purpose of lodging complaints against armed forces' actions in the occupied territories¹⁵² (though recently there has been a tendency to restrict the power of damages claims by residents of the occupied territories¹⁵³). The High Court of Justice has been dealing with the matter of human rights in the occupied territories for years.¹⁵⁴ In addition to legal debates in Israel itself, international legal bodies and non-government organizations have conducted debates and staked positions. Just recently the International Court of Justice in The Hague referred to the human rights issue in the occupied territories in its consultative opinion on the barrier wall that Israel is building.¹⁵⁵

wields a great deal of control over what happens in the territories. Since the disengagement from the Gaza Strip Israel has had only a limited amount of control there. If the Palestinians should gain effective control of the crossings into the Gaza Strip it may be possible to say that Israel is no longer in effective control of it.

¹⁵¹ See, for example, Rubinstein and Medina, *Ha-Mishpat ha-Chukati shel Medinat Israel* (Heb.: "The Constitutional Law of the State of Israel"; 2005).

¹⁵² See Kimmerling, "Legislation and judgment in a society of migrant-settlers," in *Mechkarei Mishpat* 17 (2001); David Kretzmer, *The Occupation of Justice* (2002).

¹⁵³ Paragraphs 5b and 5c of the Civil Damages Law (state responsibility), 5712-1952, which were amended in 2005, determine that the state shall not be responsible for damages incurred by a subject of an enemy state, an activist or member in a terrorist organization, or anyone acting on behalf of either. Likewise the state shall not be responsible for damages occurring in a "conflict zone" due to any action committed by the security forces. There are limited exceptions to these rules. [These sections were declared unconstitutional by the Supreme Court in 2006.]

¹⁵⁴ For example, in 2005 the Court declared illegal an army procedure known as the "neighbor procedure" due to its violation of the rights of the Palestinian population. For a comprehensive discussion of the Court's rulings in the territories, see Kretzmer, *The Occupation of Justice* (2002).

¹⁵⁵ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory – Advisory Opinion, 9 July 2004, available at: <http://www.icj-cij.org/www/ldocket/imwp/imwpframe.htm>. For a discussion of rulings by the International Court of Justice and the High Court of Justice in the matter of the wall and the human rights regime in the territories, see Cohen, "Administering the Territories: An Inquiry into the Application of International Humanitarian Law by the IDF in the Occupied Territories," in *Israel Law Review* (2005).

There is no denying that such steps as massive restrictions on freedom of movement, the imposition of curfew, and denial of entry to Israel are injurious to the Palestinians and *prima facie* violate their rights. Frequent killings of civilians are a serious violation of people's right to live. On its part, Israel contends that these steps are justified according to international law and therefore do not constitute an *unjustified* violation of rights. A solution that will considerably reduce Israeli rule over territories populated by people who are neither residents nor citizens of the state would also considerably reduce violations of human rights in the occupied territories. All the same, the needs of fighting armed operations that emanate from the occupied territories, as well as restrictions on travel inside Israel and the need to gather intelligence, are liable to require some infringement of rights of Palestinians even after the Israeli settlers and the army are gone.

At the same time, it is important to emphasize that to say "the Occupation is illegal" and that Israel has an immediate unilateral obligation under international law to withdraw from the occupied territories is simply wrong. International law recognizes a state of "occupation" or "belligerent capture" as an outcome of war. The expectation is that the occupation will come to an end when the sides reach an agreement, which will include assurances that the war that led to the occupation should not break out again. As we all know, such an agreement has not yet been reached.

c. Unique Challenges to Human Rights in Israel

Israel has the same "ordinary" human rights problems as other developed societies. These mainly concern members of weaker groups such as people with various disabilities or children, who may be harmed by the authorities or by other individuals. There is a tendency to violate people's rights of privacy. The law enforcement system sometimes tends to unjustly violate the rights of suspects and accused. Despite feminist rhetoric, developed societies are plagued by problems regarding the status and equality of women. Homosexuals and lesbians in Israel are also waging a struggle for recognition of themselves and of the legitimacy of the interpersonal bonds between them. In Israel too there is a widespread phenomenon of labor migrants and refugees. Some labor migrants reside in the country illegally. Some marry and raise families. In Israel too there is an

ongoing argument over the conduct of immigration policy in general and in particular over the appropriate treatment to be accorded illegal migrants staying in the country for a long period of time.

In all these matters there is room for improvement, but the threats they pose to human rights in Israel are not unique. In addition to these issues, certain contexts in Israel give rise to unique threats to human rights, and it is these latter we shall primarily discuss. The unique threats to human rights are related to certain aspects of the country's meta-purpose.

Israel was established as a Jewish state in a region that rejected both the country and the legitimacy of its existence, and it is this fact that creates security problems for Israel. The continuing conflict between Israel and its neighbors has given rise to the country's exceptional security situation. (In neighboring countries too there is no small measure of oppression and use of security apparatus in contending with violent civil protest, despite their having no problem of internal conflict on a national or religious basis. However, the violence unique to Israel stems mainly from this conflict.) Contending with security problems frequently poses a primary threat to human rights in Israel.¹⁵⁶ The problem of minority rights, insofar as it concerns the native Arab minority, also stems from the state's establishment and the conflict that has accompanied it, as well as from the state's Jewishness. There are those who argue that the threats to human rights that stem from the relations between religion and state in Israel are also connected with the state's Jewish character. Whether this is indeed the case is not at all clear, however, for in this matter Israel is no worse than other countries in the region. Neither is it certain that the position of the non-Jewish minorities in the country regarding this matter, especially the Arab minority, is any more liberal than that of the state. The argument on this issue is therefore more of an internal Jewish debate and its baseline are the practices which are customary in the democratic Western world.

In this short survey I shall refer briefly to problems that stem from the weighing of human rights against security needs, to minority rights, and to rights that are connected

¹⁵⁶ It should be noted that in recent years there has been a considerable rise in the level of internal violence in Israel not connected to the national conflict. This violence of course violates the rights to life and welfare of the inhabitants exposed to it. It is not clear, however, whether this threat is unique to Israel. There are those who argue that the level of violence inside Israel stems from a slow seepage of norms that are part of the occupation; others see a connection between the level of violence and the general trend of brutalization to which Israeli society has been exposed in recent years.

with relations between religions and the state. I shall then refer to a field that touches upon both the discourse of rights and that element of the meta-purpose dealing with economic prosperity and social justice.

c1. Security problems:

Since its foundation the State of Israel has been contending with rather complex security problems. Israel was established in war, and since then has fought several full-scale wars and withstood several waves of violent confrontation below the level of full all-out war. The security problems have worsened in recent years since the commencement of terror attacks on the civilian population in Israel, which have claimed hundreds of victims. Since 9/11 other Western countries have also been contending with the need to balance security needs with the protection of human rights, but Israel appears to have the most prolonged and extensive experience in this area.

The security situation described above does sometimes warrant steps that would otherwise be considered an unjustified violation of human rights, due to their infringement of people's freedom or wellbeing. This is the case, for example, with regard to especially thorough security checks in public places, security clearances as a condition for employment in sensitive jobs, administrative detentions, and so on. All the same, history teaches us that the security situation in Israel sometimes serves as cover for human rights violations, even when they are not actually required by security needs, or when the same security objective could have been achieved with lesser violation of rights. The fact that the security threat is so real merely exacerbates the problem. If there were no such threat, it would be easy to expose the deception of the security argument.

The security situation is also cited as justification for the continuous declaration of a state of emergency in Israel since its establishment. This contributes significantly to Israel's not scoring high in international rankings of performance in defending human rights, due to the long period of obligatory military service required of all residents. But in these matters, too, development is evident over time. The willingness to accept serious restrictions of freedom for security reasons has begun to erode. Already in 1966 it was no longer deemed necessary to keep the Arab minority under military government. At present, a recurring demand is heard to avoid automatically renewing

the declaration of a state of emergency in Israel. Also heard is a demand to cancel the remaining emergency legislation in Israel, some of it from the period of the British Mandate. After a long time during which restrictions were imposed on freedom of speech for security reasons, including widespread advance censorship, the trend today has reversed: very strict tests for applying censorship are demanded. This has had the effect of significantly—some say exceedingly—expanding the scope of public debate on security matters.

Although military service is obligatory for all residents, in fact only around half of the yearly pool of 18-year-olds actually does serve. Two large groups, most of whose members do not serve, are the Arabs (excepting the Druses and some of the Bedouins) and the ultra-Orthodox. Young women of the religious Zionist movement are divided between those who perform full military service and those who only perform national service. Those who do not serve include also people with disabilities, new immigrants, people with exemptions of various kinds, and those the army itself disqualifies for its own reasons. The great discrepancy between the general applicability by law of the obligation to serve and the actual numbers of those who in fact serve does not create a deficit of trained manpower for the army. It does however raise thorny questions in regard to civil cohesion.¹⁵⁷ The Ivri Committee, which recently tackled the problem, recommended establishing tracks for civic national service that would apply to all. The leaders of the Arab public have already voiced their opposition. It should be noted that such a mechanism of general civic-national service might strengthen civic cohesion in many respects, and its operation is not designed to redress security problems specifically.

Most of the supervision of the security forces is political. Security forces are subservient to the political echelon and the structured oversight of *Knesset* committees. Effective public critique is also exercised by means of the press and non-government organizations. A drastic diminution in the requirement of standing as a condition of filing petitions in the court, restriction of the doctrine of "state action" or non-justiciable matters, the fact that military service is required of people of different political

¹⁵⁷ The army did not at first unequivocally support the conscription of ultra-Orthodox youngsters, out of concern that most of them would be unfit for military service. Recently the army has been ascribing greater weight to the question of civic cohesion, and the Chief of Staff was critical of the Court's decision not to overturn the *Tal* Law at this stage.

persuasions, and the close adjacency of press and civilians to where military actions are performed—all these, together with vigorous action by NGO's, have prompted the High Court of Justice to intervene in clashes between human rights and security problems to a very great extent; in fact, this is done more extensively than is customary in most of the world's courts, especially when the country is engaged in armed conflict. In not a few cases the court intervenes and issues injunctions prohibiting activities that the army contends are necessary for security reasons.¹⁵⁸ Nevertheless, some think that at the end of the day the defense of human rights in security contexts in Israel is lacking, at the level of both legislation¹⁵⁹ and judicial ruling.¹⁶⁰ Others argue that there is excessive intervention by the courts, which have amplified human rights in a manner that unduly hampers the state and the army's ability to contend with the challenges of defending Israel's population from harm.

This context thus illustrates that while a commitment in principle to defending human rights may be very broad, when it comes to specific decisions there is often a controversy over how human rights should be balanced against other rights or interests. As usual, when such controversies arise the key issue is: who decides? There are those who think that in conditions of armed conflict the decision should be solely in the hands of the army. This position holds that only the army has expertise in such matters and only it knows which measures are effective and which are not in fighting to defend the country and its inhabitants. Others think that even when the guns are roaring rights ought also to speak, and that security needs mustn't be allowed to overwhelm human rights. It seems this latter view should have the upper hand, especially since the state of emergency in Israel has continued uninterrupted since the country's foundation. In this

¹⁵⁸ See, for example, the controversial decision concerning the illegality of the so-called *Neighbor Procedure*, whereby the IDF uses Palestinian civilians to ask armed Palestinians located within houses to leave them to avoid the need by the IDF to storm the houses or demolish them.

¹⁵⁹ See, for example, the law severely limiting the right of Palestinians injured during the recent conflict to prove their entitlement to civil damages. Petitions challenging the law's constitutionality are pending before the Court.* [by the time the translation is published, the court has annulled this law.]

¹⁶⁰ See, for example, the High Court of Justice's first ruling that it cannot intervene in commanders' decisions to perform a "targeted killing" due to its being a non-justiciable matter; note also that the Supreme Court in extended panel has been debating this issue for quite a long time.* [In late 2006, the court has published a long opinion holding targeted killings legal under some circumstances. Not surprisingly, the judgment was both hailed and criticized]. Note also the disappointment of those who had sought to block the promotion of Dan Halutz to Deputy Chief of Staff and then Chief of Staff due to his part in the targeted killing of Salah Shehade, in which another 14 Palestinians were killed, and his statements in the media after the fact.

situation it would not do well to give the army the sole authority to decide in these matters. All the same, the context indeed should dictate a more restricted measure of judicial intervention.

The argument, however, becomes far thornier when it concerns the judicial review of military actions in real-time. Even if it be accepted that responsibility and norms always have to be examined after the fact, with the aim of guiding future behavior, it is much less clear whether there is any justification for the courts to hear and discuss petitions while military activity is still in progress.

The issue came up explicitly *apropos* of the debate in the High Court over the temporary order restricting the eligibility of Palestinian residents of the occupied territories to gain status in Israel, which was based on security considerations, and the public debate surrounding the Court's "close" decision in this matter in May 2006. It was exemplified most dramatically by Justice Cheshin's remarks (later retracted to some degree) that the dispute between himself and Chief Justice Barak lay in the weighing of human rights against security needs. This case did not at all concern military activities in real-time or even military policy in general, but an immigration law of the *Knesset*. Though only a temporary order, it reflects a coherent and explicit policy which has been specifically anchored in legislation in order to limit or even scuttle effective judicial review.

In my view, the ruling is **not** a decision in favor of the approach that human rights should not be examined against security considerations. The judges of the majority, who decided to uphold the law, did examine its effect on human rights. Their opinions are long and varied, but ultimately the majority position seems to be that the law *does not* violate *rights* in an unjustified way.

c2. Minority rights:¹⁶¹

In the sphere of defending human rights in Israel, no doubt a conspicuous problem is that of minority rights in general and the rights of the native Arab minority in particular. I have stated above that some think Israel's very characterization as the state where the

¹⁶¹ This topic has been discussed extensively by a wide-ranging literature in Israel and abroad. For a survey of the topic, see the background material to a discussion of minority rights that was submitted to the *Knesset's* constitutional committee for its discussion of the chapter of principles, April 2006.

Jewish people exercise their right to self-determination points to the country's unequal treatment of non-Jews; the membership of the latter in Israeli society will always be inferior to that of those who belong to the Jewish nation. Others examine contexts in which significant differences are evident between the groups and discuss whether they stem from unjust discrimination (or even racism).

Officially, Israel is still committed to the pledge in its Declaration of Independence to give all its citizens social and political equality. Indeed, there are no laws in Israel granting advantages to Jews over others except for the Law of Return.¹⁶² Some contend that this law is indeed a discriminatory, perhaps even racist, law in severe violation of human rights. Others argue that it can be justified by the customary norms of international law.¹⁶³ In actual fact, however, there are many contexts in which there are significant differences between groups in the level of socioeconomic welfare (see discussion in other parts of this essay). These significant differences are the outcome of history, culture and systemic patterns of discrimination and exclusion, the latter occurring both at the governmental level and at the level of civil society. Regarding the Arab minority in Israel, a wealth of studies has documented the history of relations and large gaps between the sectors. The Or Committee Report contains a rather detailed description. See also the yearbook of Arab society in Israel, recently issued by the Van Leer Institute in Jerusalem.

In order to rectify the situation, one important trend is to seek appropriate representation of the Arab minority.¹⁶⁴ There is also a lively debate over the recognition of additional **group rights** for certain distinct cultural groups. The Arabs and the ultra-Orthodox again figure prominently in this matter, for instance due to their having separate educational systems for their children. However, demands for the recognition

¹⁶² Israel's laws do contain other arrangements that grant preferential status to Jewish national institutions (such as the Jewish Agency and the JNF), by granting them official status and state powers. I shall return below to these arrangements, which are indeed related to the way in which the state's Jewishness was interpreted. Let me anticipate here and say that these arrangements should be reexamined and cancelled. However, the official status of national institutions of the Jewish people as such is not any violation of the human rights—individual or group—of others.

¹⁶³ Jacobson and Rubinstein, *Israel ve-Mishpachat ha-Amim* (Heb.: "Israel and the Family of Nations"; 2003).

¹⁶⁴ Paragraph 15a of the Civil Service Law (appointments), 5719-1959; paragraph 18a1 of the Government Corporations Law, 5735-1975; HCJ 6924-98 **Association for Citizen's Rights v. Israeli government**, PDI 55(5), 15.

of the right to culture are heard (and being recognized to some degree) with regard to other sub-groups as well.¹⁶⁵

It is worth noting that group rights are indeed of great importance to cultures for preserving themselves and defending against assimilation, and in modern times they are recognized as important elements in individual and group wellbeing. All the same, in many cases recognizing these collective rights may perpetuate the violation of human rights of individual members that these cultures discriminate against or exclude. This is a prominent issue mainly regarding children (though in their case the situation is merely temporary) and women.¹⁶⁶ Similarly, groups that emphasize the preservation of traditional customs may hamper their members' integration into modern society and the modern economy in which they live, in terms of limiting their getting an education and possibilities of mobility. There are those who think that for these reasons Israel should limit its recognition of the collective rights of groups when these are injurious to their individual members. Others think that political recognition of the Arab minority as a national minority, against the background of national and ethnic tensions in Israel, is liable to create new problems of identity and merely to exacerbate the difficulty of integrating the Arab minority in Israeli society.¹⁶⁷

c3. Religions and state:

I have discussed the relations between religions and state above in the context of Israeli democracy's stability. This topic also has a major human rights aspect—the rights of freedom *of* religion and freedom *from* religion. By international and Western

¹⁶⁵ There are considerable differences also within the mainstream educational systems. In public education there is a tendency to develop non-regional schools, partly in order to avoid the requirement for integration. In the public religious educational system, there is also classification by the intensity of sacred studies, which is also affected by considerations of avoiding integration. In the Arab educational system there is a division between private and state schools, as well as by religious affiliation. In the Jewish system there was also a separation between general education and education in the settlements. The Dovrat Committee recommended that these differences should be reduced; they do seem to exacerbate considerably the problem of civic cohesion in Israel.

¹⁶⁶ See, for example, the article by Susan Okin, "Reflections on Feminism and Multiculturalism" (1998). Regarding the situation in Israel, see also the sensitive and sophisticated article by Danny Rabinowitz, "The Twisting Journey to Save Brown Women" (1995).

¹⁶⁷ Indeed, there is no consensus on this matter in Israeli society. Even Amir Peretz, who has an egalitarian and most favorable attitude toward the Arab minority, thinks that recognition of it as a national minority is likely to prejudice its chances of integration. A similar stance was taken by some representatives of the Arab minority in the discussions by the 16th *Knesset*'s constitutional committee on the formulation of group rights, in the chapter of General Principles of the emerging constitution.

standards, the state of these rights in Israel is poor, for there is a recognized (and even Orthodox) religious monopoly over not a few matters such as personal status and burial. With regard to Jews, this matter bears also on such questions as self-definition as a Jew.¹⁶⁸ As a result, people of different religions or who are forbidden to marry by their religion cannot get married in Israel. Moreover, those who do not wish to wed in an Orthodox ceremony cannot be recognized as married on the basis of a ceremony performed in the country. People who do not belong to a recognized religious group backed by a large community may have a hard time finding convenient funerary arrangements. These are harsh and significant restrictions upon recognized human rights. Indeed, when Israel joined the International Convention on Civil and Political Rights it posted a reservation to the paragraph in the Convention which states that everyone has the right to marry another regardless of religion, nationality, race or origin.

Admittedly, ways have been found in Israel to circumvent these restrictions, so that the difficulty in practice is much less serious than the legal situation might suggest. Nevertheless, there are also some thorny practical difficulties (for example, in regard to women deserted by their husbands). Additionally, even if there are suitable practical solutions, the protection of human rights demands at least token recognition of people's basic rights to establish a family according to their worldview and way of life.

There are those who contend that the religious monopoly over personal status affairs is required due to the state's Jewish character and fear that the introduction of civil marriage might further weaken the Jewish features of life in Israel. In effect, the situation obtaining in the sphere of personal status affairs applies not only to Jews and relegates Israel to the religious pole not only with regard to Judaism. Historically, it so happens that the Ottoman "*millet*" system was retained by the British Mandate authorities by request of the *Arab* communities. Today there appears to be no dispute

¹⁶⁸ Today the Orthodox Rabbinical Court's exclusivity in the matter of religious conversion has been to some degree diminished due to the recognition extended by the High Court of Justice to non-Orthodox conversion abroad, when the learning process towards it took place in Israel (dubbed "leaping conversion."). All the same, it is understood that the Rabbinical Court is not required to recognize these conversions for the purposes of marriage. See: HCJ 2597/99 **Rodriguez-Toshbeim v. Minister of the Interior**, PD 58(5), 412, 486. In May 2006 the Chief Rabbinate of Israel announced in response to this decision that it would restrict its recognition of conversions performed abroad according to the identity of the rabbis performing the procedure, even if they are Orthodox.

that the legal situation in Israel is unacceptable and unstable and needs to change. But controversy over the nature of change has meanwhile stymied all progress. Some want to introduce change by means of a constitution that includes a bill of rights and gives the courts the authority to overturn laws. Others would rather change the situation by means of legislation in the *Knesset* itself. The latter course seems preferable.¹⁶⁹

Although there is no officially recognized state religion in Israel, obviously there is a significant difference between the status of the Jewish Orthodox religious establishment and that of other religions' establishments.¹⁷⁰

c4. Social and economic rights:

All Western countries are contending with problems of social justice and the provision of a safety net and social solidarity to the weak. All the same, there is continuing controversy whether to regard this in terms of **social and economic rights** or merely as a matter of **policy**. These problems are important in any event, but the answer to this question will determine whether policy that does not insist on distributive justice is seen as a threat to human rights or "merely" a threat to social cohesion and economic prosperity.¹⁷¹ I place this topic among the problems unique to Israel because in our case it not only constitutes a clash between political or socioeconomic ideologies, but also carries direct implications for relations between the national and cultural groups in society. As we shall see in the next chapter, there is significant congruence between the weaker groups from a socioeconomic aspect and the ultra-Orthodox and Arab groups. In the Jewish public outside the ultra-Orthodox, people of *Mizrahi* origin and residents of peripheral regions rank lower on the socioeconomic scale than people of Western origin, native Israelis and residents of central Israel. The socioeconomic gaps have thus become part of the internal tensions between identity groups in Israel.

¹⁶⁹ For a discussion of these topics, see the background material on religions and state submitted to the *Knesset's* constitutional committee for its discussion of the chapter of principles in 2005.

¹⁷⁰ For the effect of this legal situation on non-Jewish religious communities in Israel, see discussion by Michael Karayani in *Religion in the Public Sphere* (2006).

¹⁷¹ For a general survey of the topic of socioeconomic rights in Israel, see in Rabin and Shani, *Zechuyot Kalkaliyot ve-Chevratyot be-Israel* (Heb.: "Economic and Social Rights in Israel"; 2004) On the theoretical issue see my "The Relations between Civil and Political Rights and Economic and Social Rights". In addition, some would argue that welfare politics undermine progress and economic development because it interferes with the workings of free markets. This is a matter of substantive political and ideological position, not of the choice of rights discourse vs. policy discourse issue.

In this area Israel has gone from one extreme to the other. At the time of its founding there were very small socioeconomic gaps in the country and a significant measure of solidarity (at least within the Jewish sector.) Today Israel has become the country with the largest gaps in the developed world (welfare payments unaccounted), and in recent years there have been painful cuts in just these payments. We shall return to this issue in the next chapter.

Here I would like to focus on the question of whether this is a matter of human rights or a matter of policy only. As mentioned above, this question has an important institutional aspect: in matters of policy, complaints or demands for change should be addressed to the political authorities who determine policy. In matters of rights, however, the courts are the natural venue in cases of alleged violation. The problem was dramatically illustrated by the High Court of Justice's recent decision regarding the legality of the cuts in income assurance grants that were made in 2003.¹⁷² The Court did express a willingness to regard the state's policy concerning poverty in terms of the **right** to dignity, but determined by majority opinion that in the concrete case no violation of such rights had been proved. The judgment drew criticism from the representatives of social organizations for not sufficiently protecting people's right to live in dignity.

If there is one clear-cut conclusion to be drawn from the 2006 elections in Israel, it is that a large majority of the public appears to think that the time has come to place the social and economic issues as a top national priority, and that Israel's governments have not paid sufficient attention to the state of the social security net and the requirements of social cohesion in Israel. All the same, the understanding that this issue needs to be brought before the elected government strengthens the argument that in this matter extreme caution should be exercised: we should be very careful when placing authority and responsibility in the hands of a non-representative body, which does not have the ability to make judgments concerning overall budgetary priorities.

¹⁷² HCJ 366/03 **Commitment to Peace and Social Justice Association v. Finance Minister** (forthcoming).*

4. Challenges to Israel as a Developed and Prosperous State

One of Israel's striking accomplishments is its level of socioeconomic development. Early in the 20th century the Land of Israel/Palestine was an integral part of the Middle East, resembling its neighbors in terms of its scientific, social and economic development. There is no disputing the fact that Israel is today a regional economic powerhouse, with a per capita GDP at a European level, significantly higher than all of its neighbors.

The current levels of its development and economic activity place Israel in the bracket of an advanced Western nation. As of 2004, GDP stood at \$18,000 per capita, ranking Israel above such developed countries as Greece, Portugal and South Korea.¹⁷³ After a few years of recession during the second *intifada*, the Israeli economy recently resumed expanding, and in 2005 the annual growth rate was 5.2%. A comparison on the basis of the UN's human development index (HDI) confirms Israel's place among the advanced nations: 23rd in the world.¹⁷⁴ Israel is home to a concentration of the world's leading technological industries, which account for 46% of exports to other countries. Israel ranks first in the world in the share of total business product that is accounted for by information and communication technologies, and invests the largest sums in the world in research and development as a percentage of the product—4.8%. These investments are in turn responsible for most of the growth (70%) in the economy's overall production rate.¹⁷⁵ The number of scientific publications per capita is very high, and Israel is also a world leader in the number of registered patents. After a period in which inflation reached unprecedented levels, over the past two decades Israel has enjoyed stability in prices with inflation rates equivalent to those of the "Euro bloc."

Although these latest figures are indeed encouraging, they nevertheless conceal a gloomy picture of the goings-on behind the scenes of the Israeli economy. For several decades Israel has been exhibiting troubling signs with regards to the domestic

¹⁷³ In nominal terms, per capita GDP for Israel in 2004 was valued at \$17,780, putting Israel in 29th place in the world. In terms reflecting Purchasing Power Parity (PPP), per capita GDP in 2004 came to \$22,077, putting Israel in 32nd place. Source: International Monetary Fund, World Economic Outlook Database 2005.

¹⁷⁴ The Human Development Index (HDI) is an indicator of the quality of life, which weighs in addition to domestic product such factors as life expectancy, literacy, educational levels, etc. Source: United Nations Development Program, Human Development Reports 2005.

¹⁷⁵ Source: Finance Ministry, Ministry of National Infrastructures.

economy's chances of progress over time and the acute gaps that are appearing within it.

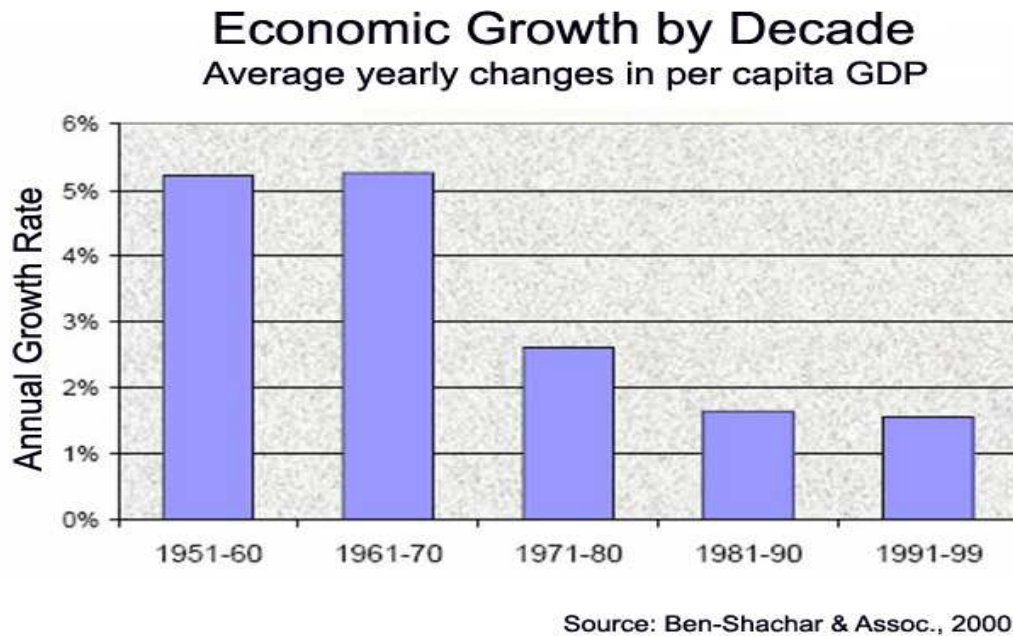
Three basic problems afflict Israel's socioeconomic situation.¹⁷⁶ Inequality in the distribution of income in the state is intensifying and has placed Israel at the shameful top bracket in lists ranking countries by their measure of inequality. The rise in inequality is accompanied by the spread of poverty in Israeli society. This phenomenon is fueled by low growth rates over time, a trend that widens the gap in quality of living between the Israeli economy and other developed economies. A spike in growth rates, such as Israel has experienced in the last two years, turns out subsequently to be no more than a local deviation from a pattern of sluggish growth over time. The continuing rise in the unemployment rate is also cause for serious concern.*

a. Growth

During the years 1951-1972 Israel's average annual rate of growth was 5.5%, among the most impressive in the world at the time. 1973 constituted a turning point on the route of economic growth, after which the Israeli economy grew at a rate of only 1.4% a year. The economies of many industrialized nations have been characterized by bumps on the road of economic growth at some point in time during the 20th century; the decline in economic activity experienced by Israel was and continues to be the most dramatic of them all.

¹⁷⁶ The following analysis is based in part on the work of a team of economists and sociologists led by Haim Ben Shachar, which prepared a "Plan for an Agenda of National Priorities in the Socioeconomic Field" for former Prime Minister Ehud Barak (2000), and on a series of articles by Dan Ben-David, *I-Shivyon u-Tsmicha be-Israel* (Heb.: "Inequality and Growth in Israel"; 2003).

Figure 1



Closing the gaps in the standard of living between Israel's economy and advanced economies, which was the prevalent trend of the initial decades after the country's establishment, has been reversed: currently the gaps are growing consistently.

Rapid growth might conceivably be typical of new economies, while they are still relatively small and any growth at all translates into a dramatically high rate of growth. It seems, however, that these figures alone are not responsible for the decline in economic activity in Israel. Some of the principal structural factors in the problematic patterns of growth in Israel—unemployment rates, levels of education and professional training, labor productivity and the structure of the labor force—shall be discussed below.

b. Labor, Inequality, Poverty and Unemployment

The level of equality in the distribution of income within an economy testifies to the society's moral foundation, cohesion and ability to bequeath the fruits of prosperity to all of the country's inhabitants (who are all supposed to contribute to producing them). In the last three decades Israel has been undergoing a process of acute deterioration from one end of the scale to the other: from one of the most egalitarian societies in the world

to the bottom of the rankings. A survey of the inequality in gross income (according to the *Gini index*) points to a consistent widening of gaps, which began in the late 1970s. In the 1980s the inequality in gross income was already at a level among the highest in the West; from 1979 to 1997 it grew by an additional 17%. To this accrues a poverty rate that today measures over 20% of the population.¹⁷⁷

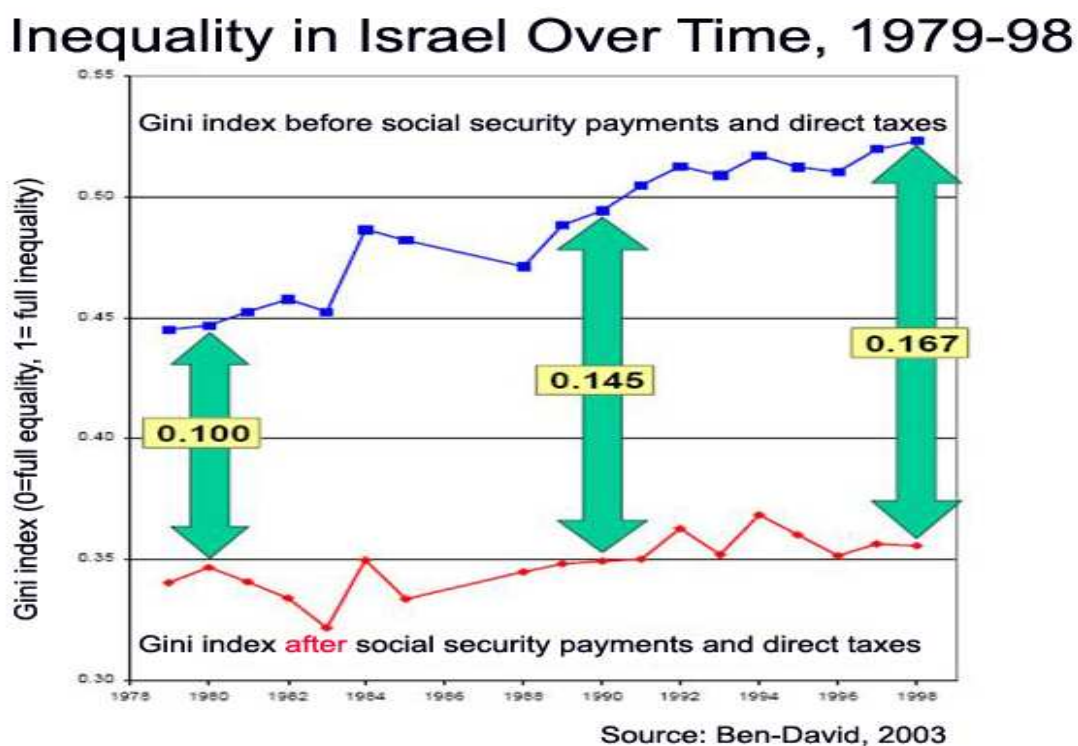
To contend with the blight of poverty, the official policy of Israel's governments has traditionally focused on social security payments and pensions. These were indeed successful over the years in reducing the scale of poverty in terms of net income; in 1979 the *Gini index* for net income was 23% lower than the same index measured by gross income. The rise in the net income gap was also significantly smaller than that in gross income, amounting to only 5% from 1979 to 1997. A stormy controversy surrounds this policy for contending with poverty and inequality. Highlighting the improvement in the distribution of income after social security payments, some point to the country's commitment to care for those who are unable to support themselves; a competitive playing field is fair only if all the players are physically fit. To the contrary, others contend that the "culture of subsidies" encourages abandonment of the workforce and the development of sloth and dependency. The payments constitute an incentive not to work, so the argument goes, and they should be replaced by incentives to work in the form of placement programs, which forge a link between receipt of payments and attempts at integration in work (such as the well-known "Wisconsin plan"), and the introduction of a negative income tax, among other things. The effectiveness of this approach depends, of course, on the economy's ability to provide jobs for all job-seekers, an ability which is put to the test at times of economic recession when the demand to slash social security payments grows. To this we must add the high rate of "working poor," which is rising yearly.¹⁷⁸ Without deciding the ideological argument encapsulated in a debate of this kind, however, we can confidently say that the current policy is not sustainable. The gaps in both gross income and net income are only widening, as we have seen. Furthermore, the gap in gross income is growing at a much faster rate than in net income; in 1997 the discrepancy between the two trends stood at

¹⁷⁷ National Insurance Institute, Poverty Report 2004.

¹⁷⁸ In 2004 the share of families with one breadwinner whose disposable income fell below the poverty line came to 20.8%, compared to 18.6% in 2003 and 17.6% in 2002. Source: National Insurance Institute, Poverty Report 2004.

58%. In addition, the recently instituted cutback in payments has slashed their ability to fulfill their function: in 2004 such payments elevated only 40% of poor families out of the cycle of poverty (as opposed to 43% in 2003).¹⁷⁹ In other words, in order to carry on with the existing policy Israel would have to invest continually growing sums.

Figure 2



According to the country's current list of priorities, additional investments of this kind can be expected to increase the sum total of public expenditures, which is already at a high level relative to developed countries. Recently efforts have been made in Israel to reduce public expenditures, which nevertheless came to 52% of GDP in 2004, as opposed to the 41% average for OECD countries.¹⁸⁰ An additional and consistent rise in

¹⁷⁹ National Insurance Institute, Poverty Report 2004. These data needs to be examined together with the criteria to determine poverty levels. In Israel poverty lines are relative. This is significant but it does not change the direction of the trends discussed here.

¹⁸⁰ Including interest payments. Source: Finance Ministry, Israel's Economic Overview (2005).

public expenditures in order to finance rising payments is liable to increase the public debt, raise interest rates in the economy and harm growth.

The picture looks even worse when we break down the aggregate into sectors and settlements, which reveals that Arab towns and villages hold a "place of honor" among the poorest settlements (Cluster no. 1). There are also huge differences at all levels between Arabs and Jews as a sector (in addition to significant differences between groups among Jews).¹⁸¹

One of the negative factors affecting both the increase of poverty and inequality and the decline in economic activity is the **low rate of workforce participation** customary in Israel. The rate has hovered at around 50% since the country's early days; today it stands at 54%, the same as in 1955. This relative stability is the outcome of two contrary trends that cancel out each other: men's rate of participation in the workforce has been dropping constantly since the 1950s, standing today at 60% (compared to 80.1% in 1955 and 64% in 1980), while women's rate has risen to 48% of women in Israel (compared to 26.5% in 1955 and 36% in 1980).¹⁸² These rates are low in comparison to the accepted standards in developed countries. Discounting at an estimate soldiers serving in the military, conscripted or regular, the difference between the rate of participation in Israel and the average in OECD countries is 9.6%, which translates to a loss of 5% in GDP, or 20 billion NIS.¹⁸³ The productivity rate in Israel is also not among the highest in the world.

A more detailed breakdown of the workforce structure reveals that two populations are prominent by virtue of their nonparticipation: ultra-Orthodox men and Arab women.¹⁸⁴ In 2004 the rate of Jewish women not participating in the workforce stood at 44.9%; among non-Jewish women it stood at 82%. An analysis of the factors that inhibit

¹⁸¹ For the data, see Jerbi and Levy, *Ha-Shesa ha-Kalkali Hevrat be-Israel* (Heb.: "The Socioeconomic Rift in Israel"; 2006), and the very detailed figures regarding the Arab sector in Haidar (ed.), *Sefer ha-Hevra ha-Aravit be-Israel 1* (Heb.: "Book of Arab Society in Israel 1"; 2006). For an analysis with a historical dimension, see therein Haidar's own article, "The Arab Economy in Israel: Policy Creates Dependency," pp. 171-200.

¹⁸² Source: Central Bureau of Statistics, Manpower Surveys, correct to 2002.

¹⁸³ The detailed calculation appears in Ben-David, *I-Shivyon u-Tsmicha be-Israel* (Heb.: "Inequality and Growth in Israel"; 2003).

¹⁸⁴ See Fichtelberg, *Hishtatfut Nashim Arviyot be-Koach ha-Avoda ba-Asor ha-Acharon* (Heb.: "Arab Women's Participation in the Workforce in the Past Decade"; 2003), which appears in the website of the Ministry of Industry, Commerce and Employment. She notes that working women's rates in Arab countries are slightly higher: 20% and 21% in Egypt and Syria, respectively, compared to only 18% in Israel.

leaving the house to work points to four parameters: uneducated women work less than educated women; women residing in small towns and villages work less than those residing in the bigger cities and cities of mixed population; Muslim women work less than Christian women; and married women work less than single women.¹⁸⁵

The rates of workforce participation among the ultra-Orthodox population are very low. Only 50.8% of women aged 25-54 work, as compared to a rate of 68.5% among the general population. One third of Jewish men do not participate in the workforce, but for the ultra-Orthodox the rate stands at about 80%.¹⁸⁶ Whereas the main reason women do not leave home to work is to raise their children, among men this seems to stem from lack of motivation and the absence of relevant education and skills. The correlation between not serving in the army and not working plus the fact that *yeshiva* students study only Torah all their lives makes it difficult for them to start working at the age of 30.¹⁸⁷ Since these two populations' fertility rates are high relative to the rest of the population, it is reasonable to expect that without a sharp change of trend, current patterns will continue to intensify.¹⁸⁸

Among the ultra-Orthodox and the Muslims, the combination of low workforce participation, lack of suitable skills for integration in a competitive market and large families explains the fact that these groups are overly "represented" among the poorer strata in Israel. This situation bears implications that go beyond the socioeconomic

¹⁸⁵ In percentage figures: 62% of university degree holders as opposed to less than 15% of those without academic education; 50% of residents of big and mixed cities as opposed to 13% of residents of smaller communities; 34% of Christian women as opposed to 14% of Muslim women; 30% of single women as opposed to 19% of married women. The data appear in Fichtelberg, *ibid*.

¹⁸⁶ All the same, the rate among non-ultra-Orthodox men also lags behind the average in OECD countries by 16%. Source: Ben-David (2003).

¹⁸⁷ The situation obtaining among the American ultra-Orthodox is completely different. For students at the Hassidic *yeshivas* it is customary to begin working at ages 20-22, for students at the Lithuanian *yeshivas* at ages 24-28 (see Amiram Gonen, *Me-ha-Yeshiva la-Avoda: Ha-Nisayon ha-Amerikani u-Lekachim le-Israel* [Heb.: "From the Yeshiva to Work: the American Experience and Lessons for Israel"; 2000]). Before the enactment of the *Tal* Law, a *yeshiva* student in Israel could start working at the age of 31 (if a father of five) or 35 (if a father of four). Not surprisingly, 57% prefer to stay on at the *yeshiva* even after the age they are "permitted" to start working. Under the *Tal* Law, *yeshiva* students are supposed to enter a "year of decision" at age 22 and subsequently perform shortened military or national service. The law meanwhile has been applied to only a very limited extent (see article in *Haaretz*, Sept. 27, 2005).

¹⁸⁸ The data show a rise in the rate of workforce participation among young Arab men, although they begin working at a later age due to academic studies. Furthermore, Arab young women are working at much higher rates than their mothers. All the same, there is a problem here. Since relatively large numbers of young women have acquired an education in recent years, the percentage of working degree holders has gone down during the same years; from Fichtelberg's article, *supra* notes 184, 185.

figures themselves. A state of poverty relative to society at large and prolonged immersion in it will generate feelings of frustration and deprivation. When such feelings are concentrated in minority groups that are culturally distinct, which also have complex mechanisms for secluding themselves, it poses a threat to civic cohesion beyond the threat stemming from the socioeconomic gaps themselves.

Any effort to change these patterns of inequality and poverty must contend carefully and with sensitivity with all the factors contributing to a situation in which poverty becomes a vicious cycle that is difficult to escape.

But of course even those participating in the workforce have no guarantee that they will be employed. Indeed, the long-term trends in unemployment in Israel suggest a troubling picture regarding the chances of finding work. In parallel to the breaking of the pattern of rapid growth in Israel, which we have already discussed, the unemployment rate has been rising constantly since 1973.

Figure 3



The two processes are of course intertwined and affect each other. When we examine the connection between the figures for "local" growth (i.e., over a limited period of time) and unemployment rates over the same period, we find a conspicuous negative coefficient.¹⁸⁹ This means that accelerated growth lowers the unemployment rate and vice versa.

There are explanations for this continuing trend in terms of labor supply and demand. The process of technological progress which all economies are experiencing has increased the demand for skilled workers at the expense of unskilled workers.¹⁹⁰ Additionally, in all the developed countries it is evident that local workers, both skilled and unskilled, are refusing to perform certain jobs altogether, or at the wages offered for them. In Israel this phenomenon is especially conspicuous in construction and agriculture, and in certain service jobs such as caring for the sick and elderly. The result is a situation of unemployment sometimes accompanied by a large demand for labor. A job market in which unemployment rates are constantly rising is one in which the demand for labor is out of step with supply. There is a surplus of demand for skilled workers in professions that require knowledge and skills, but a surplus of demand for skilled workers also in economic branches that have no supply at the competitive wages offered. Israel encourages the growth of this latter supply by the addition of foreign workers, who are employed under conditions favorable to their employers. 270,000 foreign workers are currently employed in Israel, accounting for 12% of the workforce.¹⁹¹ This is one of the highest rates in the Western world, far higher than in Germany, Belgium, England and France—all of which are also contending with problematic aspects of the phenomenon. Foreign workers also deflect the already low wages downward, further reducing any incentive Israeli workers may have to perform these jobs. Thus the phenomenon contributes to worsening the situation of these

¹⁸⁹ Achdut, Lavi & Sola, *Ha-Avtala be-Israel be-Perspektiva shel ha-Asor ha-Acharon* (Heb.: "Unemployment in Israel from the Perspective of the Last Decade"; 2000). The connection was found in periods during which there were no exogenous changes in the data series.

¹⁹⁰ Achdut, Lavi and Sola (ibid.) investigated the causes of the unemployment crisis since 1997 and found no distinctive connection between it and the expansion of advanced industries at the expense of traditional industries. All the same, they did find a high negative coefficient between level of education and the unemployment rate. Similar findings appear in Ribon, Flug and Ksir, *Avtala ve-Haskala be-Israel* (Heb.: "Unemployment and Education in Israel"; 2000).

¹⁹¹ Source: Israeli *Knesset*, Information and Research Center, *Ovdim Zarim be-Israel – Tmunat Matsav* (Heb.: "Foreign Workers in Israel – Situation Report"; 2003).

populations, whose wages are among the lowest anyway, intensifying the inequality in distribution of income.

Educational and professional training systems, which aim to lessen the relative part of unskilled workers in the market and increase the supply of skilled workers, are thus one of the primary tools in reducing the scale of poverty and inequality. Ways must also be sought to improve productivity in order to be able to offer decent wages for the entire gamut of required employment.

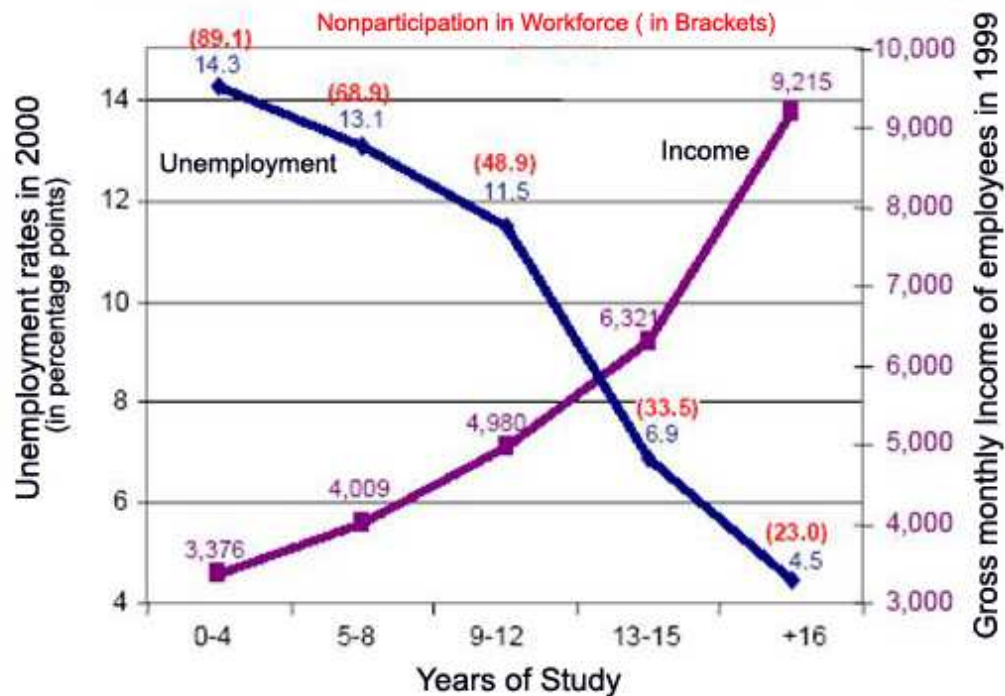
c. Education and Professional Training

As we have seen, educational levels have a positive correlation with the chances of finding employment. But their contribution to reducing inequality is measured also by their increasing the inclination to participate in the workforce and their raising income. A little more than half of the working age population in Israel has 12 years of education or less; the rest have some form of higher education. The average monthly income of the latter group is currently 60% higher than that of the former (7,768 NIS and 4,843 NIS, respectively). In other words, providing higher education to more and more workers will increase their income and reduce the gap between them and higher income earners. It can also be expected to increase the rate of participation in the workforce: among those with 11-12 years of education it stands at 55%, while among those with 16+ years of education it stands at 77%.¹⁹² Additionally, strengthening the education and job skills of workers can be expected to increase both the product and production rate in an advanced economy, by augmenting its ability to assimilate external technological innovations and develop technological industries on its own.

¹⁹² Source: Central Bureau of Statistics, Manpower Surveys.

Figure 4

Connection between Education, Unemployment and Income



Source: Ben-David, 2003

(As mentioned above, all of these figures are also related to family size.)

The educational system in Israel is finding it difficult to accomplish these aims. When the achievements of Israeli schoolchildren are compared against those of others in the world, an alarming picture emerges: There is a sharp drop in the system's ability to impart appropriate knowledge and skills. Mathematics and science are two of the fields whose development can contribute to enhancing skills in an advanced economy; they are not the only measure of an educational system's success, of course, but nevertheless highly relevant to the matter at hand. In the early 1960s Israel's schoolchildren were ranked first in the world in their mathematical achievements, far above those of the United States, England, France and Germany. Four decades later Israel has fallen considerably in the rankings. In the Third International Mathematics and Science Study (TIMSS) test, which was conducted in 1999, fourth-graders from Israel were ranked in 23rd place out of 26 participating countries; their grade was 13% lower

than the average. Eighth-graders who also participated in the test reached 39th place out of 53 countries, scoring lower than all the industrialized nations and many nations considerably poorer than Israel.¹⁹³ Neither do these results bode well in regard to reducing the gaps. The standard deviation among fourth-graders who participated in the test puts Israel in seventh place out of 26 countries with respect to gaps within the group of examinees. The picture among eighth-graders is even gloomier: the standard deviation in the grades of Israel's schoolchildren is higher than 49 countries out of 53 that participated in the tests.

Where do the achievements of Israel's schoolchildren stand in relation to the costs of the education that they attain? The national expenditure (which includes both public and private expenditure) on education in Israel is 15% higher than the average in the West.¹⁹⁴ Schoolchildren's achievements, however, put them in 24th place out of 25 Western nations. The same gaps between achievements and costs are found in the elementary schools. Israel is ranked in last place out of 17 countries on the measure of the differences between the national expenditure ranking and level of scholastic achievement.

Another problem that concerns the educational system stems from sectorial gaps, which deprive various populations of the ability to attain higher education, which would make them more likely to find suitable employment.

Ultra-Orthodox education for boys provides students with only a basic knowledge of such subjects as mathematics, English and science; in the exempted institutions (about a third of ultra-Orthodox institutions) even this little is denied them. At the high school level, all of the ultra-Orthodox institutions provide not even a single hour of instruction in secular subjects.¹⁹⁵ At later stages this raises difficulties for those of them who would like to become employed. In the wake of a petition to the High Court of Justice, starting

¹⁹³ Mullis, Ina V.S. et al., *TIMSS 1999: International Mathematics Report* (2000).

¹⁹⁴ In performing the calculation, correction was made for per capita GDP in the country, since the wage component is a central factor in expenditures on education and changes with the standard of living. It is important to note that some researchers calculate the national expenditure without such correction, thus obtaining different results from those shown here.

¹⁹⁵ A comparison of general studies among the ultra-Orthodox in the United States as opposed to Israel reveals that at high school age the Lithuanian ultra-Orthodox study at a high level and usually pass the matriculation exams, whereas the *Hassidim* do not teach secular subjects in their *yeshivas*; thus their situation resembles that obtaining in the ultra-Orthodox educational system in Israel. See in Gonen, *Me-ha-Yeshiva la-Avoda*, [Heb: From Yeshiva to Work] *supra* note 187.

in 2007 the state was enjoined from budgeting ultra-Orthodox higher education establishments so long as they fail to meet the core curricular requirements.¹⁹⁶ This constitutes a "time bomb," for ultra-Orthodox educational institutions are doing nothing to prepare for the introduction of secular studies in the yeshivas.*

There is a different problem with regard to Arab education. Although the founding of the state and application of the Compulsory Education Law to all sectors did indeed spark a revolution in the Arab sector's education, nevertheless in many senses the gaps between the sectors are not closing in a satisfactory measure.¹⁹⁷ The rate of students who qualify for matriculation in most Arab schools is remarkably lower than in the Jewish educational system.¹⁹⁸ It is even less when the benchmark is grades required in order to be eligible for higher education.¹⁹⁹ Since college studies have become the ticket for entry to numerous professions, the reduction of gaps that has been achieved in the field of high school education is no longer enough. The matter concerns a culturally distinct population group, and hence this social "time bomb" is all the more pressing.

Regarding both these groups—Muslim Arabs and the Jewish ultra-Orthodox—the personal and social problem is aggravated by both groups' relatively rapid rate of reproduction. Though nationwide the ultra-Orthodox and Arabs (including residents of East Jerusalem and the Golan Heights) constitute 6% and 20% of the population, respectively, in the younger age brackets the percentages are considerably higher.²⁰⁰

¹⁹⁶ HCJ 10296/02 **Organization of High School Teachers in Seminars and Colleges v. Minister of Education, Culture and Sport et al.** [In the summer of 2007, the government allowed ultra Orthodox institutions not to teach the core studies in their schools for reasons of keeping the coalition together.]

¹⁹⁷ For a comprehensive and updated survey, see the chapter on education and higher education in Haider (ed.), *Sefer ha-Hevra ha-Araviv be-Israel* [Heb: The Book of the Arab Society in Israel] I, *supra* note 181.

¹⁹⁸ In 2003 51% of twelfth-grade graduates in the Arab sector qualified for matriculation certificates, compared to 56% in the Jewish sector. Taking into consideration the fact that the share of twelfth-grade graduates is lower by 10% in the Arab sector, the gap becomes even bigger. Add to this the fact that within the Arab educational system the Christian group is prominent by virtue of the highest rate of entitlement to matriculation in the country—67%—and we arrive at huge gaps between the Jewish and Muslim populations. All the same, these figures are misleading in that they do not reflect the actual quality of the education provided in a considerable number of Arab educational institutions. The issue gained prominence *apropos* of the arguments regarding university admission standards, when doubts were raised about the comparative reliability of matriculation grades in all sectors, and in the Arab sector in particular.

¹⁹⁹ In 2003 48% of twelfth-grade graduates achieved such grades in the Jewish educational system, as opposed to 31% in the Arab system. The share of Arabs among BA graduates in the universities, which stood at 5.4% in 1990, rose to 7.5% in 2004—still less than half of the Arabs' share of the population (not including East Jerusalem). (These figures, however, demand a more differential treatment due to the fact that the population in the Arab sector is significantly younger than in the Jewish sector.)

²⁰⁰ In 2004 it was noted in the background material for the Herzliya Conference that half of all first-graders study in Arab or ultra-Orthodox schools. Not all of the Arab and ultra-Orthodox institutions are characterized

The system of professional training in Israel is also deficient. Most of the professional training is currently conducted in post-high school setups. In the past, these setups were follow-up programs to professional high-school studies, in which about half of all high school students were enrolled until the 1980s. These studies, however, did not fulfill their function and were even accused of perpetuating ethnic-class inequality. Since then most of the professional studies programs have undergone considerable modification, mostly to blur the differences in content between them and the academic programs. At the same time, access to higher (academic) education has broadened. The establishment of numerous colleges has led to a significant rise in the numbers of undergraduate students: 40% of the 20-24 age bracket in 1998, a majority of them studying in colleges rather than universities.

The professional training setups, mostly established by the Labor Ministry, have not enjoyed a similar resurgence. Their numbers of graduates (in technician and engineering technician tracks, for instance) are low, and they do not have an efficient placement system. It is evident that they do not operate in close liaison with employers, and consequently there is no appropriate adaptation to the demands of the job market. By not fulfilling their function, they abandon to the mercies of the marketplace an extensive population lacking in higher education and ill-equipped to successfully become integrated in it.²⁰¹

by a low level of secular studies. Nevertheless, this figure points to a systemic problem in terms of the development of Israeli society and not just fear of additional increase in the magnitude of inequality and unemployment.

²⁰¹ Any claim made here is bound to be complex. What the best integrative skills are and how an educational system meets its objectives are the most central questions to the life of any society. It is also reasonable to suppose that the answers we give today are not the same as were given in years past, due both to changes in social and economic systems around the world and to changes in values. It is impossible to compare the educational system of an immigration-absorbing country harboring a desire to instigate a social revolution with an educational system whose objectives include good and competitive integration in a global and knowledge-based economy. Even in the latter kind of society it is vital that a society should aspire to accommodate the entire gamut of occupations, so that every form of work dignifies the worker. The training of systems planners does not solve the problem of the skills of the many who are supposed to perform less challenging (and perhaps less remunerative) jobs. Education towards human and community values does not necessarily accord with the demands of competitive education towards excellence and achievement. The topic of professional education, for instance, can be seen as a desire to put people to work at manual labor instead of concentrating unhealthily on "theoretical matters". But it may also be seen as a means of labeling and channeling those deemed unfit for prestigious academic studies. With regard to the Arab public, an additional gap was manifest in that during the early years of statehood no decent professional education at all was on offer in the sector. For a discussion on professional education in the Jewish sector, see in Tsameret, "Zalman Aran and the "Productivization" of Bnei Edot Hamizrach", *Hevra ve-Kalkala be-Israel: Mabat Histori ve-Achshavi* (Heb.: "Society and Economics in Israel: a Historical and Contemporary View"; 2005).

Another of Israel's problems stems from being situated in a region where labor costs are much lower than in Israel. This creates an incentive for Israeli manufacturers to move operations or workers to neighboring countries, in order to avoid the costs stemming from minimum wage and other labor legislation. Such moves are even grasped as contributing to the political effort to stabilize the region. This gap between labor costs in Israel and labor costs in other regions also creates a great incentive to smuggle in foreign workers and employ them here under conditions of semi-slavery. As mentioned above, this also increases unemployment, as well as the employment of weak workers in conditions below the minimum mandated by law. Large employers dodge the laws by employing workers through manpower contractors. The catch for workers in this reality is that many employers can and do pay less than the minimum wage, while the minimum wage itself does not permit a dignified existence. The ensuing problems are of course both social and economic.

To this analysis we have to add another three factors: the weighty burden of **public expenditures on defense**, which stems from the absence of a stable peace between Israel and its neighbors; the large rise in life expectancy, exposing the **weakness of the health insurance and pension schemes**, which had assumed a lower life expectancy in all their calculations; and an **immigration policy** that does not generally take social and economic factors into account—at least not with regard to those entitled to immigrate to Israel under the Law of Return and to those awarded status as part of a process of family unification. Whereas the second of these factors is common to all Western countries (which are also having to contend with increasing unemployment and the poverty and attendant problems of those unable to integrate in the labor market), the other two factors carry unique weight in Israel, especially due to the economy's relatively small size.

Thus although in terms of economic strength Israel occupies a prominent position in the region, the figures are so troubling it is not inconceivable that a deteriorating economic situation will strike not only at people's welfare and sense of cohesion but at the stability of democracy itself. In this field the problem is particularly difficult because change requires long-term processes, from the efficiency of primary and high school education to the quality of professional training and the public's work ethics. When we add the differential patterns of population growth in Israel an even more worrisome

picture emerges: the populations that are growing the fastest are those that are weakest in terms of their ability to integrate competitively in the economy and contribute significantly to economic growth. On the other hand, these populations are in need of a high level of services due to family size.

If Israel wants to preserve its capabilities, its standard of living, its levels of development and prosperity, and a substantial ability to distribute the fruits of prosperity to all sectors of the public, so that the standard of living should be cause for public cohesion rather than division—then significant long-term planning and reorganization is required in all these areas. In recent years several structural reforms in the right directions have been carried out in the economy, but the structural weakness is still there and regarding at least some of the issues (mainly in the field of training and participation in economic life) a long and hard road still lies ahead.

5. Challenges to a Peace-seeking Israel

The fact that almost sixty years after achieving statehood Israel is still in conflict with a great many of its neighbors, in part an active conflict periodically deteriorating into violence, is no doubt one of the biggest disappointments of the Zionist enterprise. So much has been written on this topic that there is no need for me to outline a comprehensive argument here. Peace is a part of Israel's strategic objective from a combination of reasons, both prudential and moral. A situation in which there is no need to invest exceedingly in defense, impose prolonged compulsory conscription on the population, and embark every once in a while on a military operation that wreaks death and destruction is preferable in every respect to a situation in which such things are necessary. In the absence of a perpetual existential or military threat to the state, it would be possible to invest more in the civic and social fabrics of life within it. The elimination of conflict would improve personal security and would be likely to have a very positive impact on the relations between groups in Israel and in the entire region. One need only compare the mechanisms for managing disputes in the European Community, or even between Quebec and Canada's other provinces, to those extant here, in order to recall how beneficial it is when a country does not have to contend with existential threats from its neighbors or from groups within it.

If real peace is not a feasible possibility, it would be best to arrive at a stable balance of mutual deterrence. Such an equilibrium enables each of the sides to preserve its deterrent force yet devote its best efforts to internal development, knowing that none of its neighbors has good reason to either go to war or pose a threat that might plunge the region into renewed conflagration.

Peace, however, or a stable *status quo*, is a state of calm or mutual acceptance. The debate over whether peace in the region is possible and how to arrive at it has been complicated by several factors: a failure to distinguish clearly between assessments of the desires, intentions or capabilities of the sides, the difficulty of determining what these assessments and capabilities are, and the debate over the way these assessments should impact Israel's desired course of action. Additionally, because of the many different assessments and values there is profound controversy on this issue in Israel, which makes it difficult to stake clear-cut positions or arrive at a policy that garners broad support.

As opposed to the other objectives—which can still be spoken of coherently as objectives of the entire state, though there may be internal conflicts of interest regarding them—here the controversy is much deeper. Despite the very broad consensus that Israel would be better off in a state of peace or non-belligerence with its neighbors, the fundamental question is what the territorial and demographic basis of this stable situation should be. Its prolongation imparts an added dimension of intensity to the controversy, which is fed by opposing fundamental conceptions of Zionism, Judaism and the meaning of Jewish national revival in the Land of Israel. It also depends to a large extent on assessments of the positions and capabilities of the other side to the conflict. It appears that in the Arab world in general, and among the Palestinians in particular, there is a similar variety of approaches to the conflict and the proper way to manage or resolve it.*

Another significant point is that the Zionist enterprise's approach to many issues, including this one, was never exceptionally sober or cautious. There was a strong element in it of revolt and defiance, a willingness to take risks on behalf of vital existential objectives. One of the movement's important mottoes was, "If you will it, it is no dream." Will and sacrifice would yield results which the more cautious would say

were unrealistic. Zionism did indeed succeed in places where cautious people would have foretold it would fail. There are those who think that Israel should continue to espouse this approach. Others think that a more cautious approach should be adopted now that the objective of statehood has been achieved. A prominent exponent of this second approach is Yehoshafat Harkaby, who has contended in a series of essays that the Arabs have long since come to the conclusion that they cannot destroy Israel without paying too high a price; and the time has come for the Jews also to stop thinking like Bar Kokhba, put aside their dreams as just that, and start conducting a pragmatic and sober policy. It seems that Israel of the 21st century is heading in exactly this direction. Many welcome this trend as a laudable development, whereas others think it heralds a dangerous weakness.

I admit that I am no optimist in the matter of "peace" with the Palestinians. From this standpoint, even though the peace treaties with Jordan and Egypt were a great accomplishment for Israel, in retrospect they were shortsighted. The 1967 war made it clear to all the Arab countries excepting the Palestinians that it would be impossible—without paying a terrible price—to turn back the wheel and erase what was done in 1947-49. In the 1967 war Israel won an important political achievement, which it had not been granted until then (nor immediately after the war): willingness on the part of the neighboring Arab countries, which had lost territory in the war, to recognize Israel on the basis of the same principles as the treaty with Egypt: complete return of lands captured in 1967 and a commitment to deal with the Palestinian problem. Although these treaties did not include explicit recognition of the Jewish right to self-determination in Israel, Israel itself was of the belief that it would be able to deal with this issue within the country's sovereign borders once these had been agreed upon.

But solving the territorial problem separately with each country leaves the Jewish-Palestinian problem in an untenable situation, for the solutions to it are then restricted to the small territorial unit of Palestine or the Land of Israel west of the Jordan. As early as the Peel Commission in 1937, it appeared that this territory alone could not accommodate the conflict. The Commission proposed to partition the country on a demographic basis, concomitantly with the transfer of some of the Arab population to other countries in the region. The situation has only worsened over the years.

In order to debate in a sober fashion the conditions for arriving at peace, or at least at a stable *status quo*, it is necessary to suggest a reasonable prospect for accord and a reliable way of arriving at it. These two factors are complexly interrelated, for the more reasonable the accord, the easier it will be to arrive at. Contrariwise, the greater the opposition to the accord on either of the sides, the harder it will be to arrive at it without inflaming not only the conflict between the sides, but also violent conflicts within each of them. The more distrust there is between the sides, the harder and more vulnerable becomes the process of reaching an agreed compromise—at least a tacit one or one based on passive consent—and implementing the gradual political steps to put it into place.

The difficulty is aggravated in that both nations bear the deep scars of a prolonged conflict. As many have argued, it is a conflict that cannot be understood without studying the past, but impossible to resolve without ignoring the past and adopting a future-regarding policy. Even a stable *status quo*, forgoing a permanent agreement, an end to all demands, and "peace," require far-reaching concessions and acceptance on both sides. There needs, at least, to be an actual acceptance for a certain period of time and a clear mutual preference for engaging in development rather than continuing the struggle and subordinating all other goals to achieving one objective.

The Zionist movement's original vision encompassed a Jewish state not only in the Land of Israel west of the Jordan, but in parts of the Transjordan as well. It also included peace between Jews and Arabs. Hopes of peace were based on the assumption that Jews would succeed in becoming a considerable majority in the entire territory, and that the progress they would bring to the region would make them welcome to the local Arab minority. This was Herzl's vision in *Altneuland*. Jabotinsky had the same end in mind but foresaw it would arouse Arab opposition, as any proud nation would resist losing sovereignty in its homeland. Therefore he predicted there would be an "iron wall" stage, followed by Arab recognition of the balance of power. This he thought would pave the way to a large Jewish majority living in mutual dignity and equality alongside a small but proud Arab minority.

Jabotinsky was right about Arab opposition. He was wrong thinking it would be possible to bring millions of Jews to the Land of Israel who would become a majority overnight. He was also wrong about the Jewish settlers' desire and ability to treat the

Arab inhabitants fairly and magnanimously. However, by the time of the UN's Partition Resolution, the reservoirs of world Jewry had been tragically decreased by the Holocaust, and the Jewish state established by that resolution did not have the large majority required to make Jabotinsky's dream come true. The iron wall was established to defend a state with a minority of the inhabitants in the Land of Israel west of the Jordan, on the basis of a small and vulnerable territory.

The balance of power led to the desired result, at least in the medium range, in relations between Israel and Egypt after the Arab armies' defeat in 1967 and partial victory in the 1973 war. Egypt preferred to turn to the West and to adopt a strategy of reconstruction rather than invest resources in futile wars against Israel. Egypt was willing to postpone the solution of the Palestinian question to another time, but the persistence of the problem bred a cold peace and intense continuing hostility between Israel and most of Egypt's political and cultural elites.

Egypt did, however, receive every inch of its land back. So, too, did Jordan, after to some degree renouncing any resumption of control over the West Bank. Apparently, a similar accord could have been reached with Syria. The principle that served the region well regarding these countries, however, cannot suffice to resolve the primary conflict between Israel and the Palestinians.²⁰²

The difficulty concerns not only the political will of the sides but objective reality as well. In recent years several blueprints have been proposed for a permanent settlement in the region. All of them are based on a two-state paradigm (with varying degrees of emphasis on the fact that these are two states **for two peoples**), taking the 1967 borders as baseline, on divided sovereignty in Jerusalem with effective guarantees of access to holy sites, and on a settlement of the refugee - or the "right" of return - problem, which does not include extensive resettlement of refugees and their families in the State of Israel's territory. The various blueprints differ in details of great importance, which the authors of these proposals assume will be worked out by agreement between the parties. Generally they assume that once the blueprint is implemented, relations

²⁰² For years there has been an argument whether the Palestinian problem is the heart of the conflict, or merely the focus of a deeper conflict between the Jewish state and the Arab and Muslim world within which it lies. The consistent declarations by the Iranian president in recent months, likewise the changing patterns of struggle against Israel, undoubtedly lend support to the latter view. All the same, it is unclear what might happen in the region if it were possible to arrive at a stable arrangement, in the form of an actual accord or firm understandings, between Israel and the Palestinians.

between the sides will become trusting and peaceful, and thus allow winding borders and cooperative mechanisms at all levels.

On both sides there seems to be a measure of recognition by some of the elites and some of the public that such is indeed the 'right' blueprint for a relatively stable *status quo* or peace accord. Here, however, there are two catches, which have accompanied this conflict since it began.

First, the blueprint's ability to lead to stability depends in part on the fact that there is indeed a broad consensus within both publics that it is the right one. Due to residues of the past, there is no such consensus among the publics. Such a blueprint could lead to stability if it were the result of a clear-cut military victory. But the dynamics of the conflict no longer permit a military victory of this kind. In Israel there are fears that such a blueprint will not be stable if Palestine is permitted to arm at will and strike military alliances against Israel. On the other hand, the significant demilitarization of an entire country (as opposed to demilitarization of small parts of a state's territory, as is the case in the treaty with Egypt and might reasonably happen with Syria) is something that Palestine would find hard to accept, especially against the background of the prolonged conflict with Israel. Second, and no less troubling, a large part of the Israeli public's support for such a blueprint is based on a desire to disengage and return to a reality of partition. Even in conditions of economic cooperation it is unclear whether the Palestinian state would be viable. In isolation from Israel, Palestinian independence is realizable only in tight connection with other economies to help develop the Palestinian economy. Then we come to the issue of Jewish settlements. The usual blueprint includes exchanges of territory between Israel and Palestine and the evacuation of Jewish settlements outside the agreed border. There is disagreement concerning how many settlements and how many people would have to be evacuated in this framework. In addition, this might be a long process of trust building, which might well be undermined by the fear, always present in such situations, that any long-term interim settlement might be perpetuated. This is certainly the case regarding Jewish settlements that require access roads compromising the territorial contiguity of the Palestinian state. And we still haven't touched on the thorny issue of a safe passage between the Gaza Strip and the West Bank that would not be under Israeli control, but not cut Israel itself in two!

In other words, on the assumption that time will be needed to stabilize the situation and arrive at acceptance and reconciliation, the interim period has to introduce an effective response to the Palestinian Authority's economic and political problems without requiring too much economic dependence on Israel or freedom of movement between Israel and the Palestinian state. Instability, however, is inherent in a situation where a developed and a much less developed country exist side by side. All the more so when the people of the less developed country feel that historically, culturally and ancestrally they belong to the territory of the more developed country, and a great many of them still live in it as citizens. Besides, during the transition period it is likely that some of the Jewish settlements in the Territories will remain in place, with an effective differentiation being struck between the free access of Jews and Arabs to Israel.

Indeed this is one of the topics that the blueprints for peace usually prefer to avoid: what will relations between the two states be like? How much freedom of movement will there be between them, what measure of dependence between the different parts of the land? This, too, is part of the difficulty. The problem is not just the conflict and the desire to resolve or manage it. Some acute observers of the conflict think that while the two-state solution is, on the face of it, the tragic yet most just solution to a conflict between two peoples both claiming the entire land to be all theirs, the land they are fighting over cannot in fact be divided.

This awareness among people of varying and even conflicting approaches in both groups in turn feeds a large measure of opposition to the permanence and certainly the legitimacy of the two-state solution.

It is generally said there is a lack of symmetry between Israel and the Palestinians. The Palestinians are the occupied, Israel the occupier. The Palestinians are weak and Israel is strong. Therefore Israel should bear the brunt of the "cost of peace." The Palestinians have given up 78% of their homeland. At a minimum they demand recognition of their exclusive control over the remaining 22%. There is some validity in these claims, and they are indeed part of the basis for recognizing that the two-state solution according to the suggested blueprints may not be the optimal one, but perhaps a possible one.

This kind of blueprint, however, facilitates the dynamics we now clearly see with the disengagement from Gaza and the *Hamas* victory in the Palestinian elections early in

2006: the Palestinians demand control over any territory from which Israel withdraws. They demand Israeli withdrawal from all the territories captured in 1967 not as a matter for negotiation but as a right. When Israel hesitates, they threaten to resort to "armed resistance," a euphemism for striking at Israel's civilian population. Withdrawals do not contribute to stabilization, but may have the opposite results.

It is too early to predict how matters will develop in the region. On one hand, the election victory of *Hamas* encourages continued progress at the unilateral level. Israelis will argue among themselves and give a mandate to those who promote what is deemed Israel's national interest. However, any unilateral steps that Israel takes must fall short of the more or less agreed blueprint, which is supposed to be the basis for a long-term interim settlement or an actual permanent settlement. It appears that such steps will require the massive uprooting of Jewish settlers without reaching an agreement, and will not contribute to stabilizing the situation unless there is clear and unequivocal international support for them. It is vital to demand that unilateral steps be accorded international legitimacy, which should encompass not only the designated borders but also recognition of Israel—not only as an independent state, but as one meant to ensure Jewish self-determination, with all that this entails—within the constraints of democracy and human rights. On the other hand, it might be that the *Hamas* government could possibly afford to start the necessary process among Palestinians of distinguishing between wishful longing for a homeland entirely ruled by Islam and the long-term political arrangements allowing a life of independence and dignity for both Palestinians and Jews.*

Even in the most optimistic scenario, I'm afraid there will not be a full resolution of the conflict by peace accord in the foreseeable future. There is too great a distance between the demands from significant portions of both nations.²⁰³ I hope there will be

²⁰³The primary issue here concerns the "right" of return. The Palestinian position may be tactical and they may ultimately accept—without actually agreeing to it—one of the existing formulas. From my reading of materials and protracted discussions between the groups, however, that is not my impression. The problem here is that creating a political reality of borders will not suffice; real steps must be taken such as rehabilitation of refugees, eliminating their status as refugees, dismantling UNRWA, etc. Here it is not a matter of changing (or refusing to change) a paragraph in a covenant. Until such processes take place openly and explicitly, we cannot speak of a settlement or stabilization of the conflict. The rise of *Hamas* has also honed this aspect of the problem. Paragraph 2 of the *Hamas* covenant speaks of the Palestinians' right to return **to their homes**. In every discussion the demand is heard to establish a Palestinian state within the 1967 borders with Jerusalem as its capital, and to recognize the right of return.

progress towards a reality of greater independence, freedom, dignity, prosperity and security for both nations. An enduring reality of this kind may be more helpful than any "peace accord" to the necessary processes of building trust, reconciliation, and mutual recognition.

Israel, however, must be very patient.²⁰⁴ Furthermore, it is a question of great importance here what the state's goal is. Does it consist only of peace and stability for all of the state's citizens, regardless of origin and national affiliation? Or does it include also the state's special responsibility for the effective realization of Jewish self-determination in (part of) their historic homeland? If the latter answer is given, Israel must think about both stabilizing the region and ensuring Jewish self-determination. The two may *now* go hand in hand. But looking farther to the future, these interests might no longer coincide. The policy that Israel draws up now must in the long term serve in the interest of both objectives. It has to be regional in conception and not be limited to a blueprint for relations between Palestinians and Jews in the Land of Israel west of the Jordan. This broader perspective is required for many reasons, including the fact that some of the Palestinian refugees live elsewhere and a full and stable settlement must take their welfare into account.²⁰⁵

The difficulties that I have noted here are among the factors which convince the likes of Gavron or Tilley to support the vision of a single state between the Mediterranean and the Jordan River. I fear, however, that this vision is even less practical today than that of two states. In any event, it is a vision that takes much more thought and preparation than had been given to it. Especially when one assumes – as I do – that one has to guarantee Jewish self determination even if this is done at the sub-state level. Someone who does not believe it is possible to leave any Jewish settlements at all in the

²⁰⁴ On this matter I am in agreement with Nobel Laureate Israel Aumann that whoever pursues peace too avidly is bound to be disappointed. I do not know whether these views stem from scientific insights into game theory or from simple common sense.

²⁰⁵ As noted above, I see the part of the vision that assumes that the Palestinian state is supposed to be "free of Jews" to be a problem. Yet, this result seems inevitable if Israel's deployment along recognized borders is performed unilaterally. Though there might have been some logic to it in the Gaza Strip, however, there is none at all in the complex reality of the West Bank. I do not think that Israel should maintain sovereignty in Hebron. I do think, however, that a way should be sought to leave a Jewish settlement in Hebron (and possibly in other places) under Palestinian sovereignty. A strategic view of the conflict's patterns of long-term development should dictate such an approach to immediate political problems as well.

Palestinian state will find it hard to picture the vision of a single state in which Jews and Arabs live at peace together.

This brings me to the next chapter: the interrelations between the elements of the state's meta-purpose.

IV. Elements of the Meta-Purpose: Interim Summary

Up to this point I have dealt with each of the elements in itself, just noting some internal tensions bearing on the realization of each one. But part of the meta-purpose's complexity—and some of the most basic arguments against the possibility of consistently sustaining it—rests on the argument that there are profound internal contradictions between the elements, giving rise to an overall incompatibility, or at least fundamental tensions. And this in turn, so the argument goes, makes it very difficult to realize one element without seriously undermining the others. Sometimes these contentions are mirror images of each other. Of course, my case in support of the meta-purpose would not be complete without some discussion of these contentions. I contend the exact opposite: there are indeed important tensions between the meta-purpose's elements, but these **highlight** the importance of viewing the purpose as a whole rather than only its parts. For the strength of the meta-purpose lies in its entirety and not just in the ability to realize each of the elements on its own.

It is important to note here some important differences between the meta-purpose's elements. First, there is the fundamental difference already noted above between Jewishness, which is a particularistic element, and the other elements, which are in principle universally valid regardless of religion or nationality. Ideological controversy swirls around these elements too, but there is no simple correspondence between these divisions and ethnic or religious tensions. Secondly, there is an important difference between essential elements dealing with social and political realities, such as the state's Jewish character, prosperity and modernity, or peace between the state and its neighbors; and elements dealing with the governmental system and constraints upon it, such as democracy and the protection of human rights. For while the combination of democracy and human rights is supposed to provide the answer to the question who decides and how, the meta-purpose's other elements identify the essential goals that define and constitute the given society. It is not surprising, then, that democracy and human rights enjoy broad support while there are deeper divisions regarding the other elements. It is indeed encouraging that controversy does not extend to the rules of the game and the need for a common civic framework, in which all individuals and groups

act, that includes rules for decision-making as well as essential constraints in the form of human rights.

I shall begin by discussing Jewishness vis-à-vis the other elements, move on to the internal tension between two elements of the common framework—namely, democracy and human rights—and conclude by considering the goals of prosperity and modernity as opposed to that of social justice.

1. Jewishness vis-à-vis Democracy, Human Rights, Peace and Prosperity

One of my objectives in this essay is to alert us to some risks involved in the persistent debate, which broke out with the legislation of the Basic Laws in 1992 and has since intensified, over the alleged tension or essential incompatibility between Israel as a Jewish state and as a democratic state.²⁰⁶ I myself have contributed to this debate, which was and continues to be an important one. Sometimes, however, it is grasped as exhausting discussion of Israel's meta-purpose. It also tends towards drastic conclusions. Some participants think that there is indeed an inevitable, head-on collision between these two elements, and therefore any attempt to combine or integrate them is doomed to failure. Some would infer that Israel should promote its Jewishness and let democracy take care of itself, while others put democracy first and would cancel or attenuate the Jewishness element. Furthermore, since Jewishness and democracy are grasped as conflicting elements, people in turn are depicted as being for either one or the other. A person, group or party can no longer stand for both Jewishness and democracy, in favor of both prosperity and human rights.²⁰⁷

Indeed, almost every ideal has its own internal tensions. One of my important goals in this essay is to show how a state with a complex meta-purpose should search out its

²⁰⁶ As a sociological matter, the debate began to be framed in these terms only after the enactment of the Basic Laws of 1992 and the outbreak of an argument among jurists over their status and meaning. Consequently, jurists initially took too prominent a role in the debate. The Basic Laws are significant because they mark the beginning of a process in which Israel is trying to forge an agreed collective identity for itself to be anchored in a constitutional document. However, the debate is important in itself, even if we do end up with a constitution. Indeed, deciding **not** to anchor it in such a document may be an important outcome of such a debate.

²⁰⁷ On the other hand, there are those who see no contradiction at all between the state's Jewishness and democracy. I do not discuss their position because it seems to be, in effect, that the existing tension does not necessarily lead to an internal contradiction as others assert. It is hard not to agree that a state which defines itself as serving the political self-determination of part of its population is unable to grant all of its inhabitants and citizens full equality, including equality in fully identifying with the state.

way without overlooking any of the elements; considering both the decisions it makes and the decision-making mechanisms it adopts; both the values it promotes and the constitutional and structural framework it establishes—in order to do so in the best possible way.

The strength of the meta-purpose that I have been sketching lies exactly in its complexity. Yet among the elements, the state's Jewishness is indeed distinctive as an element which a large majority of the Arab public cannot be expected to share. We have also seen that while part of the difficulty of accepting this element for the Arabs in Israel (and in the region) lies in painful residues of past history, part of it also in the fact that it is still an active conflict and Palestinians do not yet enjoy independence and political self-determination in any part of their homeland. But for Jews, Jewishness is not an element that can be isolated and discussed on its own, one element among others that may be in opposition to democracy, human rights or prosperity. The purpose includes all of these elements together. The state was established in order to make Jewish self-determination possible. The state is indeed committed to the meta-purpose's other elements. It is exactly for this reason that the state, whose meta-purpose this is, can demand of the Arab minority to accept not only those elements convenient to it but also this other element, which from the standpoint of the majority is an inseparable part of the state's meta-purpose and the distinctive reason for its existence.

Mention is frequently made of the tensions between Jewishness and the meta-purpose's other elements. This is a useful reminder that any unconstrained promotion of steps to preserve the state's Jewish character is indeed liable to conflict with other values, so the matter requires balancing and weighing all the factors. Stressing these tensions, however, often means that the reinforcement and interconnection between the state's Jewishness and these other elements is not given enough emphasis. Israel is Jewish because a large majority in the state wants it to continue being so. In this important sense the country is Jewish **because** it is democratic. And if it were not Jewish there would be great tensions between the state and democracy, since a primary and legitimate desire of most of the population would not be sufficiently addressed. To the extent that Israel is prosperous this is to no small degree because it is Jewish and due to the unique circumstances of the country's founding and continuing existence. The demand for social justice not only stems from universal human rights or a broad

conception of equality, which is supposed to be part of democracy, but is a tradition deeply embedded in Judaism itself.²⁰⁸ It should also be kept in mind that for the Jews, any weakening of Israel's ability to ensure both aspects of the right of self-determination for them - physical security, and a cultural security of identity based on being able to lead a full Jewish life in the variety of ways of modern Jewishness- is the biggest threat to their vision and their future. The Jews therefore will not sit idly by in the face of processes that appear to threaten this ability. It is important that this quest of theirs to preserve effective self-determination will not be pushed, by means of a universal discourse of democracy and human rights, into places where defending this right seems impossible without recourse to apartheid or an additional imposed partition, which in the nature of things will exact a terrible human and social cost.

The conclusion, therefore, is that Israel should conduct its affairs without violating the human rights of others, as individuals and groups. But if Israel were to cease to exist as a Jewish state it would greatly weaken the protection currently provided to the right to self-determination of Jews, as individuals and as a group. Israel has to be aware of both aspects, but its first responsibility is toward preserving the Jews' ability to enjoy effective self-determination in this, their only state (even if in future it may be possible to protect it without a state of their own). This is not a case of simple contradiction between Jewishness and the state's Jewish distinction on one hand and universal values of humanism and progress on the other. The relations between the elements are more complex than that. It can be said that at least in the foreseeable future the stability and rights and welfare of everyone in Israel—Jews and non-Jews alike—will be better defended under the sovereignty of an Israel in which the Jewish people exercise their right to self-determination than in any alternative political arrangement.²⁰⁹

²⁰⁸ For this reason there are interesting alliances to be found in Israeli politics. Someone considered a member of the "Left" on the issue of the occupied territories frequently might belong to the liberal school in matters of economic and social policy. The religious elements, which generally tend to the "Right" in regard to the Land of Israel, are usually on the side that supports increased investment in education and promotes a measure of social justice and concern for the weak.

²⁰⁹ Some will certainly object that this argument is begging the question and refusing to look at things reasonably from an Arab point of view. However, the vigorous objection by the great majority of Israel's Arabs to exchanging their Israeli citizenship for a Palestinian one in a territorial swap between the countries shows that they too appreciate the advantages of living in Israel. For their positions, see Arieli et al., *Avon ve-Ivelet* (Heb.: "Injustice and Folly"; 2006). Support for this idea can be found also in the *Hamas* covenant, which asserts that there will be peace and security in Palestine only under the rule of Islam, and asserts also that this is a humanistic stance.

This holds true not only for the major groups of Jews with their variety of approaches to religion, but for Muslim Arabs as well. It rather clearly applies also to other minorities, some of them Arab. For example, though the Arabs contend that they are being discriminated against under Israeli rule, hardly any Jews at all remain under Arab rule. Until the 1967 war Jews were denied access to the Western Wall and the Old City's Jewish quarter, whereas after that war control of the mosques on the Temple Mount was left in the hands of the Muslim *Waqf* authorities and worshipers have regular access to them. Jews were permitted no access to the Tombs of the Patriarchs in Hebron until 1967, despite clear international assurances, but since there has been a stable arrangement dividing access to the spot between the two communities by time and space. In Israel the Christian Arab minority and its sacred sites are protected at least no less than in Palestine or in Arab countries such as Egypt. Israel also grants full freedom of action to believers of religious faiths such as the Baha'i, who suffer from lack of recognition and lack of protection of their freedom of religion in Egypt (not to mention the ability to maintain lively centers such as the one in Haifa under Israeli rule). Anyone who proposes political solutions for the region has to contend in sober and responsible fashion with this reality.

The relationship between the state's Jewishness and peace is perhaps the most complex of all. The state of belligerence or continuation of the conflict in the region is connected, of course, historically and practically, to the Jews' desire to exercise independence here. It is important to distinguish between questions regarding the "occupation" and those regarding the continued existence of a Jewish state in (part of) the Land of Israel.

Many believe that Israel's continued existence in the region as a Jewish state will lead to perpetual conflict threatening world peace. This analysis leads to the conclusion that it was a mistake to establish the State of Israel in the first place and in any event Israel cannot viably continue to exist here as a Jewish state. The attempt to solve the problem of the Jews in Europe has only created a new focus of bloody conflict. What else follows from such an analysis of reality is unclear, however.

Others think that the UN decision in 1947 was correct and justified, and that the problem only began with the occupation following the 1967 war. They note that there has been progress also in the Arab world, which now evinces a willingness to recognize

Israel as a Jewish state within the 1967 borders. According to this analysis, Israel can possibly be both Jewish and peace-loving. Actually, it will remain Jewish only if it pursues peace and agrees to a resolution of the conflict, redeploying within recognized and defensible borders with a stable Jewish majority within them.

Some opponents of the two-state solution (which this essay presupposes) think that it is impractical, bound to be undermined by a combination of demographic processes and Arab unwillingness to accept a Jewish state; and some think that it is unjustified. There is an asymmetry amongst them in favor of those who think that Israel has no viability as a Jewish state. For a large Jewish state between the Mediterranean and the Jordan is sure to be a focus of strong international opposition and unceasing violence. The prospects of a smaller Jewish state, within borders that for the time being support a stable Jewish majority, are unclear.

This is precisely why proponents of self-determination for Jews should also think beyond the vision of two states within the current borders. In the short and medium term, it does appear that the two-state solution more or less within the 1967 borders is what will grant both nations their freedom, independence and dignity. However, the instability inherent in the fact that the Jews are a tiny minority in a region with a huge Muslim Arab majority must spur creative thinking regarding both the political structure in Israel and the possibility of expanding consideration of these issues to the regional and meta-state level.

My main goal in this essay is to induce and promote creative thinking of this kind. Several ideas have been proposed over the course of the essay. Here I will say that, paradoxically, long-term thinking of this kind may require the separation of certain aspects of the State of Israel within its current borders and structure from the institutions and decision-making mechanisms concerned with the entire Jewish nation and its existential interests. These include maintaining the ability to exercise strong political or autonomous self-determination in part of the Land of Israel. Israel has a commitment both to all its citizens and to Jewish self-determination. It is important, however, that alongside the state there should also be institutions—as there were before the state's founding—whose interest lies in the existence of the Jewish people, in Israel as well as abroad. Therefore it is vital that national institutions, such as the Jewish Agency and the Jewish National Fund, return to dealing with **Jewish** national affairs and

cease to enjoy official standing in Israel with the concomitant physical and financial support of the state.²¹⁰ This "privatization" of national institutions is critical both for the sake of restricting the contexts in which Jewish affairs take precedence over civic matters, and to allow the Jewish nation to rejuvenate and improve the efficiency of these institutions, which by nature have no egalitarian civic commitment to all of the state's citizens. The existing situation gives rise to justified contentions that policy conducted by official institutions of the state is biased towards purely Jewish interests. But it also weakens the Jewish nation's ability to promote the legitimate interests concerning its existence in Israel and abroad without frequently having to restrict itself by the consequences of its policy to Israel's non-Jewish citizens.

The constitutional structure, but mainly the spatial-territorial structure, must take into account both the needs of individuals and of groups and the Jewish collective's vital need to have a contiguous geographic unit, in which a solid and stable Jewish majority can be sustained over time. It is legitimate to take action to preserve the state's territorial integrity. But preparations must be made also for a situation in which national cohesion takes precedence over territorial integrity even within the state's current borders. Again, this doesn't necessarily require the dismantling of the political framework. It does, however, require such preparations as will make it possible to create cohesive autonomies from a territorial and national standpoint, which will be able to forge their relations according to their relative numbers and other factors. Israel should use its political sovereign powers to plan such spatial divisions, which may provide an appropriate response to all these needs. The matter has both spatial-territorial and constitutional-administrative dimensions.²¹¹

²¹⁰ In this sense, it is much the same regarding relations between religions and the state. As Yeshayahu Leibovitch noted, a certain institutional separation between religion and state is in the interests of both.

²¹¹ The issue of territorial integrity has now arisen in the context of the Palestinian state's viability in the framework of the two-state vision. Indeed, the Palestinian state will not be able to serve as a focus of Palestinian self-determination without significant territorial integrity. Such integrity, however, does not require that every single Jewish settlement be dismantled or relocated. It demands only that the Jews be not only a minority, but one lacking territorial control over large parts of the Palestinian state or its main transit arteries. Some will contend that inside Israel itself this topic is of no importance. I beg to differ, even in the existing conditions. For a discussion, see my article "Zionism in Israel: in the wake of the **Qa'adan** decision" (2001). But a long-term analysis of Jewish self-determination in the region should take into account that in Israel itself there are territorial "pockets" controlled by Jews and others controlled by Arabs. Israel has to deal not only with the absolute numbers of populations within it, but with their territorial dispersion as well. It is important to limit the areas inside Israel in which the dispersion of Jews and Arabs prevents effective community autonomy within them. This reality meanwhile exists due to a combination of historical factors, people's

Despite the prominence and centrality of tensions between Jews and Arabs in any attempt to structure reality in Israel, it is important to emphasize that not all of the country's problems stem from the tension between Jewishness and other elements of the meta-purpose. Not a few of them are also connected with internal tensions between other, more all-inclusive elements of the state's meta-purpose. Regarding these tensions, the argument in favor of promoting one element "at the expense" of another is immanent to any human society. It is not unique to Israel. It doesn't pit Jews and Arabs against each other, but different groups of Israel's citizens, the differences between whom are not necessarily national or religious.²¹² This argument too needs to be answered on both levels: the substantive issue on one hand, the decision-making mechanism on the other. The main feature of the decision-making mechanism in the meta-purpose is the relationship between democracy and human rights. I shall now turn to this topic.

2. Democracy and Human Rights

There are two parts to this discussion. I hinted at the first above in my decision to give democracy a relatively 'thin' meaning, one which does not include the defense of human rights. The second concerns the special characteristics of these two elements and the balance between them in Israel and its legal system. Both discussions will be brief. In recent years a wealth of literature has appeared in Israel and abroad on these very topics, and here I do not intend to innovate or develop but merely to place things in context.

preference to live in their own cultural and national communities, and political constraints. It is important that decisions in these matters not be based solely on the discourse of individual human rights, as central an element as it is in relations between the groups. In this context note should be taken of Arab public leaders' remarks during the 2006 Land Day demonstrations in Lod, declaring that the fight against the demolition of houses built without a permit was a fight for "Arabs' very existence" in Israel.

²¹² The way the vote breaks down in Israel reflects a conspicuous and complicated picture. It may not always be easy to follow voting patterns, but some generalizations can nevertheless be made. Very few Jews, if any, vote for *Balad* or *Ra'am-Ta'al*, but an appreciable number of Jews do vote for *Hadash*, in which there is a complex internal struggle between national and class elements. In "Jewish" or "mixed" ballot-boxes there were not enough votes to give *Hadash* a seat in the Knesset. In "Arab" ballot-boxes not a few votes went to Zionist parties. However, the Labor Party's Arab candidates were elected mainly by Jewish voters. About 80% of Arab votes (not including the Druze) went to Arab parties (including *Hadash*), 9% to the Labor Party, 4.5% to *Kadima*, and the rest distributed among *Meretz*, *Shas* and other parties.

There is no **normative** difference between adopting a rich characterization of democracy, which includes human rights, and adopting a thinner characterization of democracy together with an explicit commitment to human rights. Both contain an explicit commitment to both elements. In the first format, however, tensions between elements of the ideal are internal to democracy. Someone who does not agree with a certain conclusion stemming from a certain conception of human rights is branded not just an "enemy of human rights" but an opponent of democracy. In the second format, to the contrary, the commitment to democracy as a system of rules of the game and the rights that come with them is made independently, and a separate discussion is devoted to the question whether and how the power of authorized institutions in a democracy to make decisions that seem to violate human rights should be restricted.

I shall demonstrate the difference with one of the most controversial questions in Israel (and other developed countries)—the legitimacy of a preferential immigration policy, which greatly limits the ability of foreigners who are not Jews or their family members to obtain legal status in Israel, with particular emphasis on residents of the Territories in recent years (under the temporary amendment to the Citizenship law discussed above). This essay was being written prior to the High Court of Justice's decision on the constitutionality of the law, and here I shall not refer to its details. Nonetheless, this is a matter of principle, and it can be used to illustrate the difference between the two theoretical approaches.²¹³

Initially, the special restriction applying to residents of the Territories was based on a government resolution. As soon as it was adopted, petitions against it were filed by human rights organizations and a few individuals harmed directly by it. The government felt that its decision might not withstand the scrutiny of the High Court of Justice and therefore had a similar arrangement legislated by a Knesset law. The parliamentary debate was stormy and harsh contentions were leveled against the law, but despite this it won the support of most of the participants in the vote.

²¹³ See H CJ 7052/03 **Adalah et al. v. Interior Minister et al.** See also: Davidov, Yovel, Saban and Reichman, "State or Family?" The Citizenship and Entry to Israel Law (temporary order) 5763-2003, *He'arat Din* 61 (2004). See also Rubinstein and Orgad, *Zchuyot Adam, Bitahon ha-Medina ve-Rov Yehudi: Ha-mikre shel Hagira le-Tsorchei Nisu'in* (Heb.: "Human Rights, State Security and a Jewish Majority: the case of migration for the sake of marriage"; 2006).

There can be no doubt that the law gravely restricts the ability of Israeli citizens to marry Palestinian residents of the Territories and raise a family in Israel, which is their home, with the partner of their choice. The law also creates a significant difference between them and Israel's other citizens, for in the case of an Israeli citizen who wants to marry a foreigner the partner is entitled to be naturalized by the "gradated procedure" and can after some time and under certain conditions become a citizen. This course is not open to anyone who wants to marry a resident of the occupied territories. Naturally enough, the injury is gravest to Arab citizens of Israel, who are most likely to want to marry residents of the occupied territories.

According to the approach which views human rights as part of democracy, the law, so the argument goes, violates the rights of Israel's citizens who want to marry foreigners who are Palestinian residents of the occupied territories, and is thus also antidemocratic.

According to the approach giving democracy a 'thinner' meaning, the law is an expression of the democratic decision-making mechanism. If it does unjustly violate human rights (and if these rights have been given constitutional standing in Israel's Basic Laws), the courts may have the authority (and duty) to overturn it. However, the human rights question will be settled independently of the democracy question. Israel's democracy grants the power of legislation to the *Knesset*. It also grants a certain measure of judicial review to the courts over *Knesset* legislation that violates human rights. Comparative constitutional literature as well as analysis of principles show that though the exercise of judicial review on suitable occasions may be consistent with democracy, it is not a necessary requirement of democracy.

Be that as it may, a legal system and constitutional system have to contend with the question of relations between the ordinary rules-of-the-game and decision-making in a democracy and the substantive constraints on the outcomes of these rules imposed by human rights, at both the theoretical-conceptual and legal-constitutional levels. The complexity of these internal tensions reveals itself in the ongoing debate in all countries over the justification of judicial review of legislation passed by the primary legislature. The argument has not been decided. Most systems choose not to leave the primary

legislature without any judicial restraint.²¹⁴ However, in those countries there is continuing debate over its desired scope, as well as the identity, composition, length of tenure and method of appointment to the institution that exercises this review.²¹⁵

In Israel this argument has never been conducted systematically in the *Knesset* or public, and has yet to be decided. We have seen that the development of the constitutional process was not transparent and orderly, and that this compromised the legitimacy of the decision by the Supreme Court that the Basic Laws of 1992 instigated a "constitutional revolution" that gave the courts in general, and the Supreme Court in its current composition in particular, the authority to overturn *Knesset* laws which are deemed inconsistent with the Basic Laws.

It is crucial that this question be debated and decided in order to restore the legitimacy of the courts and determine an arrangement clearly backed by society regarding the balance of power between the legislature and the judiciary. The most suitable model for Israel, it seems, is not "independent" judicial decision but one of dialogue between the legislature and courts regarding what the constitution and protection of human rights in the country entail. The constitution will have to provide for the structuring of constitutional instructions so as to give this model the proper form.

In correctly structuring the relation between the democratic mechanism of majority decision in the legislature and judicial review, based on the constitution or human rights, the underlying conception is that this is not simply a case of a legislature that must be treated with suspicion and a judiciary that will watch over it. Rather, it is one of mutual commitment by the legislature, the courts and all of society to the prescripts of the constitution and human rights, which include a delicate balance between the public's decisions and those of the courts or the constitution's enforcer. The courts' primacy is

²¹⁴ Prominent exceptions are Switzerland, Holland, and in a certain sense Australia and New Zealand.

²¹⁵ That the issue hasn't been decided is attested by the plethora of writings on the topic, which continues to this day. The debate is being conducted at various levels and has different historical contexts, but the core issue remains the same: there is an inherent tension between the desire to limit the primary legislature and the fear that any such limitation might transfer the power of decision in fundamental matters into the hands of an unelected institution, delegated with authority to interpret and enforce the constitution. For a discussion from a European philosophical perspective, see Alexy, "Balancing Constitutional Review and Representation", I*CON 3; for a recent discussion of the Canadian model of judicial oversight, see Tremblay, "The Legitimacy of Judicial Review: The Limits of Dialogue between Courts and Legislatures", I*CON 3; for a modern discussion of the topic in the United States, see Mark Tushnet's writings, especially *Taking the Constitution Away From the Courts* (1999). Regarding the situation in Israel, see Marmor, "Judicial Review in Israel," in *Mishpat u-Mimshal* 4 (1997).

valid in regard to human rights only in their thinner meaning. Regarding less clear-cut matters, considerable weight need be given also to the way in which the legislature grasps the proper balance between different rights and between rights and other interests. This view is supposed to inspire both the way in which the legislature conducts the legislative procedure, devoting attention to its implications for human rights, and the way in which the courts examine the law.

Beyond this key question, in all systems and in Israel too it is necessary to examine the compatibility of the democratic decision-making mechanisms themselves with the special problems of the given society. This applies to the method of elections to the *Knesset*, the structure of the executive branch and method of election to it, the relations between the legislative and executive authorities as well as relations between national and local power *foci*.

In our introductory overview we saw that Israel faces grave difficulties in all these matters. It is important that the *Knesset* place them on its agenda and that they come up for public debate and determination.²¹⁶

Despite its importance, the systematic treatment of all these issues extends beyond the scope of this essay. Nevertheless I would like to highlight one topic which has not yet received the attention it deserves, namely the question whether of the structure of society in Israel does not justify creative thinking in a federative or quasi-federative direction. I have already noted above that this may be suited for long-term thinking about political frameworks throughout the region.

Today, the *Knesset* is elected through general, national and proportional elections. We have a single legislative chamber, in which the various groups in Israeli society are more or less fully represented. A federal or semi-federal structure based on cantons might be more suited to address the country's problems. In such a system we would

²¹⁶ From this standpoint the Israel Democracy Institute was mistaken to propose a comprehensive constitution without examining in depth the present constitutional arrangements in Israel (except for the proposal's determination of relations between 'state and the synagogue'. According to the proposal, the courts, maintaining the same appointments procedure, would have the power of judicial review of *Knesset* laws, with certain "constitutionally non-justiciable" exceptions in matters of religion and state and the acquisition of citizenship. This proposal is not in accord with the approach suggested here of a constructive dialogue between legislatures and courts, each authorized to make its own interpretation of the proper balances between rights and between rights and interests.) For a general discussion of a proper outline for constitutional thinking in Israel, see my introductory document to the material submitted to the 16th *Knesset* under the aegis of the constitutional committee headed by MK Michael Eitan.

adopt two legislative chambers, one on a national-proportional basis and the other on a regional-cultural basis. It would be necessary to ensure that the Arab minority should retain about one-fifth of the representation in the "local" chamber, and that its representation in the proportional chamber should change according to the actual balance of power.²¹⁷ A solution of this type might be helpful towards achieving several objectives that Israel is struggling with today. It would focus attention on the importance of spatial elements in the structure of Israeli society and its institutions. It would make possible increased autonomy for distinctive communities, especially at the level of Jewish-Arab relations, without threatening the majority-minority relations in the country. And it would make possible a more complex decision-making mechanism, which would on one hand reflect the population's occasionally shifting composition and on the other hand determine those relations that appear central to the country's stability, including Israel's ability to allow Jews to exercise their right to self-determination. This is a far-reaching change in Israel's constitutional structures, and it should be thoroughly examined in open debate between representatives of the major groups in the population. There is of course fear that such debate might not be possible because different groups will reject it out of hand. Despite this fear, anyone who acknowledges that the problems are real and not merely the product of caprice or "racism" or "self-loathing" should prefer direct examination and sober debate to covering them up, whereupon they are liable to explode in violent and uncontrollable ways.

3. Economic Prosperity and Other Challenges

Last but not least: what are the relations between the goal of modernity, prosperity and social security vis-à-vis the meta-purpose's other elements? We have already spoken about the relations between this goal and the state's Jewishness. Writ large, the major difference between Israel and its neighbors is its Jewishness. It appears that the state's Jewishness—in the sense of the dynamism which carried over from the Zionist enterprise and founding of the state, and the tight links of society and the universities in Israel with the vanguard of science and technology in the world—has contributed crucially to the country's prosperity. Historically and ideologically, the ideas of social justice have been

²¹⁷ For an analysis of unitary, federative and confederative structures and ideas regarding Israel and the Jewish-Arab conflict, see Dinstein (1992).

central to the vision of Israel, Judaism and the leaders of the Zionist movement. The relation between the state's Jewishness and the socioeconomic reality of today is a more complex matter. Many contend that some of the country's elites are functioning in accordance with purely capitalist free market models in this matter.²¹⁸ A more common contention is that the political-security agenda has allowed Israel's governments to ignore the deeper problems of society and the economy in Israel. In this section I shall examine the reciprocal relations between prosperity and economic development and other elements of the meta-purpose.

It is customary to think that **peace** will greatly intensify the trends towards prosperity in Israel. There is no doubt that slashing the defense budget is likely to free resources for other needs. Peace is also likely to spark a big rise in tourism and investment in the region. It seems, however, that in the foreseeable future a more realistic goal than peace is more stable management of the conflict. Israel will have to maintain a deterrent force for a long time yet for the situation to remain indeed calm and stable. On the other hand, while the defense budget is a heavy burden, the security situation nevertheless makes significant contributions to Israel's prosperity and economic development. At any rate, this topic has been widely discussed in various forums and I need not elaborate on it here.

It is the *internal* links within the element of prosperity and social justice, as well as their connections to other elements of the meta-purpose, that are beginning just now to receive the attention required to properly manage policy. In these matters it is important to go beyond the somewhat hackneyed truisms according to which peace leads to prosperity and promotes growth and investment, whereas violence or military tensions produce the opposite effects.

There is a considerable argument regarding the relations between democracy and economic prosperity. There are those who think that processes of industrialization and modernization, especially in backward economies, require an efficient central authority. It seems to me that history in fact proves the contention of people such as Hayek: at the end of the day, it is democracy and a free and competitive economy that lead to

²¹⁸ The tremendous debate over these issues extends far beyond the scope of this essay. For the claim that historically the Israeli leadership was never truly committed to socialism and its approach was based on nationalism, see the analysis by Z. Sternhal. For a more recent discussion, see the volume *Tzedek Halukati be-Israel* (Heb.: "Distributive Justice in Israel"; 2000), edited by M. Mautner.

healthier and more stable growth, as well as to the development of science and technology, necessary for the breakthroughs that push all of human society forward. In any event, this argument is of no concern to Israel, which from the outset has been democratic and is at a Western level of economic development.

It is another argument altogether regarding the relation between democracy and social justice. Here the picture is less clear. Autocratic regimes are known for their tendency to disregard public welfare. However democracies too have not always distinguished themselves with a high measure of social justice. Again, the debate has been bitter and protracted. In principle, though, I share the approach of those who believe that freedom and socioeconomic development are interconnected ideals with those of social justice and social security.²¹⁹

I have pointed above to the possible tension between economic development and prosperity and human rights, especially **social and economic rights**. This does not refer to the tension between economic prosperity and social justice. There might be such tension as well, although up-to-date analyses show that (to borrow a phrase from Shimon Peres's) "*piggish capitalism*" is simply not a good recipe for social and economic prosperity. Economic analyses of all political stripes are united in opinion that a strong civil society, capable of sustaining a stable consumer market and strong patterns of investment, is an important cornerstone of socioeconomic stability. For such a society, education that can turn its members into strong socioeconomic citizens is a prime asset. The results of rising inequality in Israel are no longer limited to the existence of a deeply impoverished stratum of the population, but are detrimental as well to the socioeconomic robustness of the middle class.

More to the point, discussion of economic policy needs to balance growth, prosperity and scientific and industrial development against the robustness of a society's members and the cohesion and social justice within it. Social justice is not only a moral matter but one of adequate long-term development policy. Here I would like to emphasize only the **institutional** dimension of the distinction between discussion of and commitment to social *justice* as opposed to constitutional recognition of social and economic *rights*,

²¹⁹ A powerful formulation of this stance from non-conservative circles appears in Sen, *Development as Freedom* (1999), who examines economic and social developments in many countries over time and arrives at the conclusion that democracy and freedom are the most important characteristic of development and the prevention of human catastrophes such as famines or epidemics.

where the latter is taken as authorizing the *courts* to overturn budgetary laws and determine that a certain policy infringes these rights "disproportionally." True enough, judicial review is an instrument that we customarily employ when we do not trust the government and not even the *Knesset* in major issues concerned with human rights. But especially in the area of socioeconomic policy, which as we have seen raises very complex questions relating to long-term planning, 'local' solutions in the form of overturning specific laws are not appropriate. It is no coincidence that this is a major topic of concern in all countries that have a bill of rights and judicial review, or that the power of judicial review in these fields is highly controversial.

One of my objectives in this essay is to emphasize that intelligent policy in these areas is not just a matter of "market efficiency" but critical to the Israeli economy's ability to continue to grow and provide this country's inhabitants with the standards of living and welfare they expect. Such policy should not focus only on the problem of inequality and people's immediate welfare, especially that of the weaker strata. There are important structural problems that demand attention. For example, the trends cited above point to a tight link between troubling symptoms in Israel's economy and educational system and the tendency of some sectors in Israeli society not to acquire the kind of education suited to "socioeconomic citizenship." In these groups we find a sort of vicious cycle involving large families, in which the mother (or father) does not participate in the workforce, and young people who in turn are unable to acquire the education and skills enabling them to integrate in the economy and support their own families in dignified fashion. These findings justify a reexamination of the ways in which it may be possible to influence the composition of the population in Israel and the quality of the education the inhabitants receive. These two variables are interconnected. A population capable of integrating easily into the educational and occupational systems in Israel will not pose any challenge from the standpoint of society's progress and prosperity. A population incapable of doing so is liable to impair Israel's ability to advance or preserve its achievements in the best interests of all its inhabitants.

We come back, then, to questions of demographics, with which we dealt at length in the chapter on the state's Jewishness. In this context, however, the challenge is presented not by non-Jewish population groups but by groups that find it difficult to integrate into the educational and occupational systems of a developed country. There

are such groups, as noted, among both Jews and non-Jews, as there are also well-educated and competitively skilled strata among both groups. In this matter the target populations cut across national and religious lines.

As mentioned above, in regard to both of the relevant main groups—the ultra-Orthodox Jews and traditionalist Arab Muslims—there is an important tension between their right to preserve their respective cultures and the state's desire to encourage citizens to integrate in the economy, support themselves and their families by their labor, and contribute to growth. The tension concerns the contents of the education provided in various communities, the cultural norms regarding higher education, employment and the status of women, and the structure of welfare policy as well. In Israel the argument arose in regard to both the demand for core curriculum and children's allowances which encouraged forming large families. Israel has gone quite far—some say too far—to meet the wishes of distinct communities to maintain separate educational institutions to preserve their distinctiveness. Indeed, both groups have contended that forcing them to adopt certain curricula is a violation of their rights. The tension between separate education and the question of socioeconomic prosperity is clear in regard to the Jewish ultra-Orthodox sector, which rejects the core, civic and "secular" studies required for gaining socioeconomic citizenship. There is no similar opposition in Arab education, but the level of science and language studies in most of those schools is relatively low. Both groups have argued that the dramatic cutback in children's allowances is injurious to the children's welfare. It is still too early to say how great an impact the cutback is having on family size in both groups, but at least in Muslim families there is already an appreciable drop in women's reproductive rate. If this trend persists, it may contribute significantly to young Muslims' ability to acquire quality education and integrate successfully in Israel's competitive economy. This would improve both the integration of the entire sector and the distribution of wealth in society, helping the state realize its goal of ensuring to all of its inhabitants a decent standard of living and economic prosperity.

The fact that this policy has been applied in equally to all sectors proves that it is not being driven primarily by a desire to slow down the erosion of the Jewish majority. The issue is the connection between family size and women's status among some subgroups in Israel and these groups' ability to integrate in social and economic life, which is

central to the state's ability to realize its goal of economic prosperity and ensuring that the fruits of prosperity are divided in the best way among all the strata and sectors.²²⁰

Of course, increasing trends of modernization in the relevant sectors will not be enough. It is important to ensure to these groups an appropriate measure of freedom from assimilation despite modernization. It is also important to devote long-term planning and make the necessary investments to improve the achievements of the educational and professional training systems in all the sectors, with emphasis on the needs of those sectors which in the past did not enjoy sufficient investment in classrooms and equipment. This merely reinforces the assertion at the heart of this essay—that the fundamental issues regarding the strength and robustness of Israeli society are complex, requiring long-term structural and systemic preparations. On none of the key issues which the state must contend with is it possible to take account of only one of the meta-purpose's elements. The complex totality of it will have to guide long-term policy on all these issues.²²¹

Arguably, the very desire to turn traditional societies, with their emphasis on large families, into modern societies whose members are capable of integrating into competitive market conditions is irreconcilable with their unique cultural character. This is a real difficulty. Society should respect family or group preferences for traditional lifestyles (as long as group members who want to do so have an effective ability to exit the community). But respect for tradition does not require the state to subsidize patterns of behavior that impair its ability to achieve its goals, or even remain neutral towards them. Among believers of all faiths we find people who are able to combine full religiosity with outstanding academic, political or economic achievement. This shows that there is no necessary contradiction between religion and tradition on one hand and

²²⁰ Keeping this policy tied to cultural and socioeconomic characteristics, rather than national or religious affiliation, is crucial to preserving its credibility and complying with human rights. Indeed, some say that in negotiations following the 2006 elections an attempt was made to allocate additional economic support to large ultra-Orthodox Jewish families, while denying it to similar Arab families. Such a policy cannot succeed.

²²¹ It is important to emphasize that Israel is not at all unique in this matter. Profound convergence between various cultural groups in terms of access to education and social mobility is creating problems in many Western societies, regarding both issues of distributive justice and equality among groups and the socioeconomic robustness and growth of society as a whole. Such problems have seriously hampered the achievement of equality among whites, blacks and Hispanics in the United States, between blacks and whites in South Africa, between local residents and Muslim immigrants in many Western countries, and between the general population and indigenous communities in Australia and New Zealand.

modernity on the other. A state is entitled to encourage its communities to find ways of integrating tradition and modernity to make it easier for the state to achieve its goals.

As mentioned above, a broad conception of **social and economic rights** enforced by the courts is liable to restrict the state's ability to conduct an effective social and economic policy. At present this does not appear to be a significant threat in Israel, but the potential for it is already visible in areas such as the debate over state sponsored health services. It should also be noted that the pressure on the courts to stand in the breach grows stronger the more widespread the feeling is that the policy of political institutions is unsatisfactory. A more balanced policy, which conveys a better sense of striking the proper balance between market needs, growth and efficiency on one hand, and social security, social solidarity and social justice on the other, may also help to alleviate expectations that it will be the courts that will do the job of protecting individuals from too great an injury to their economic subsistence ability.

Finally, I have already noted the tight link between economic prosperity and high and extensive levels of education on one hand and stable democracy on the other. Open democratic frameworks, a stable and internally robust economy, and good and extensive systems of higher education mutually support each other. They also strengthen the forces aspiring to a peaceful political solution and willing to pay its price.

In sum, it may be said that among these elements—Jewish self-determination, democracy, human rights, pursuit of peace, and economic prosperity with social justice—there are no immanent tensions that make it impossible or unlikely that Israel will adopt the meta-purpose with a strong sense of commitment to all of its elements. On the contrary, adoption of all the elements may improve Israel's ability to formulate goals and enlist the necessary support in order to promote them in responsible fashion. The test of this contention lies, of course, in the details—in political proposals, and in the development of proposals that include interim goals, strategies of action, and ways of mobilizing public support when required. The test of the latter will lie in winning support in the ballot-boxes for them and successfully implementing them.

All this of course goes beyond the scope and nature of this essay. Nevertheless, it would be remiss of me to offer nothing at all. I shall therefore put forward an example of the consequences of this analysis to the field of policy, both in matters of substance and concerning the rules of the game.

V. Implications of the Integrated Meta-Purpose for Policy

Issues: The case of Immigration Policy

In this concluding chapter I shall demonstrate, briefly and in schematic fashion, how an awareness of Israel's meta-purpose in its entirety may improve the country's ability to contend with major problems. To keep this essay from ballooning, I shall limit myself to a single important example from the field of immigration policy. This is a highly sensitive issue very much at the heart of public debate in Israel, as it is in other developed countries. It was surprising to discover early in the new millennium that Israel has no consistent and informed immigration policy, and that its approach to these issues has been based on improvisation. A series of developments, including the need to defend, before the Supreme Court, the provisional order in the matter of granting family unification status to residents of the occupied territories who are spouses of Israeli citizens, led to the establishment of a special committee for this topic headed by Professor Amnon Rubinstein. Interim recommendations were submitted in January 2006, and the 17th *Knesset* will probably deal with this issue through legislation in the early months of its term.²²²

One of the hallmarks of Israel's success is the fact that it is among the countries that immigrants want to come to. In this Israel is no different than other countries in the developed world. Indeed, all developed countries have been adjusting their immigration policies to the new reality, each in accordance with its special conditions. A tough immigration policy is always hard on those who want to improve their lives by gaining entry to a country that gives them better prospects, even more so on those who have already gained entry and integrated, but are not accorded legal status by the country in which they live.

Furthermore, many nations in the developed world are in need of workers to perform the jobs which the "ordinary" local residents are unwilling to perform. In certain

²²² For a comprehensive and in-depth discussion of some of the fundamental issues at hand, see the article by Rubinstein and Orgad, "Human Rights, State Security and a Jewish Majority: the case of immigration for the purpose of marriage" (2006). Incoming Justice Minister Chaim Ramon has indeed declared his intention of submitting an immigration law to the *Knesset* in the coming months, since the temporary order was extended until the end of 2006 and presumably will not be extended beyond that date. It need be noted that in light of the Supreme Court's ruling Ramon declared that he would consider legislating the immigration law as a Basic Law, in order to limit the possibility that the courts might overturn it by way of judicial oversight.*

European countries the problem is aggravated by the aging of the population and the rise in life expectancies. At times, the local working population is not large enough to produce enough to support the state's expenditures and ensure a decent standard of living to those who have already retired. In other developed countries there are now pockets of immigrant communities from these countries' former colonies.

This kind of immigration poses complex challenges, and contending with them is a gradual process. Today the problem concerns not only the individual treatment of people, but processes of serious demographic significance. The smaller the size of the country's original population, the more vulnerable it is to demographic, cultural, social and political changes caused by immigration, especially when it is greatly accelerated by globalization.

Immigrant communities now exist in many countries. In some of them, these communities have not been assimilated but retain their social or religious cohesion. In not a few instances, they sustain a rich fabric of community life, including non-assimilation in terms of language, culture, religion or lifestyle. At least in some of the European countries, the initial approach was multicultural: the state encouraged the immigrant communities to preserve their identity and distinction.

Today, however, there is a feeling in some European countries (Holland is a fine example) that not only has the multicultural approach not been useful, but it also seriously endangers the state's ability to best promote its objectives and effectively absorb these immigrants. In many of Holland's urban centers Muslims now account for more than half of the students in the schools. The ability to preserve their separate culture has allowed the immigrants not to assimilate in Dutch society, and they are alienated from its history and values. Immigrant groups tend to live in traditional family and community frameworks and not to acquire the type of education that might enable them to integrate well in a modern Western society. The immigrant communities therefore form pockets of poverty and segregation, which in turn give rise to hostility and tensions with their Dutch surroundings.

It is a complex threat. In certain areas of Holland, groups of Muslim immigrants already form a majority of the population, at least in the younger age brackets. They tend to keep to their traditions and engage in unskilled labor, with patterns of low workforce participation. In some of these communities' youngsters the cycle of poverty,

together with their alienation from the society in which they live, gives rise to feelings of anger and frustration, erupting sometimes into violence. The Dutch majority watches with increasing apprehension as appreciable portions of Holland's residents and even its citizens do not partake of Dutch culture or its values, or of its patterns of socioeconomic integration. The murder of Theo van Gogh for having made a film critical of certain aspects of Muslim society and the intensity of Muslim reaction to the cartoons of Muhammad published early in 2006 are also signs of the problem's severity. The violence in London in the summer of 2005 and the rioting in Paris and other French cities in the autumn of the same year additionally demonstrate the complex effects of immigration policy on society in the destination countries.

Indeed, in all European countries, as in the United States and Australia, there is an ongoing debate over immigration issues. Some countries such as Holland and Denmark have made far-reaching changes in their immigration laws in order to allay fears that significant numbers of people will immigrate who are unable to integrate in the state's fabric of life and thus endanger its ability to exist as a developed, modern and prosperous society which maintains its unique national culture. In the past, most European countries granted legal status and citizenship to aliens who had married their citizens. The assumption had been that the immigrants would integrate into their native spouse's life. Today, however, the fact that in these countries there are already large immigrant communities, which attract more immigrants, has led to the reexamination of the policy regarding the right of the country's citizens or residents to accord status to aliens whom they choose to marry. Whereas in the past authorities examined only the sincerity and seriousness of the relationship, some countries now impose additional restrictions to ensure the wholesome socioeconomic integration of the immigrant naturalized by dint of relationship with a citizen or resident. These are new trends, which are being examined in the countries where they are developing. While the new trends cause hardship to 'mixed' couples, the general approach, is that as long as it is neither discriminatory nor arbitrary, a country is entitled to conduct any immigration policy that suits its needs. Consequently, while some within the human rights community object to Denmark's immigration policy, which makes it very hard for a Danish citizen to naturalize an alien with weak links to Danish culture, this policy has not been declared a violation of international criteria of human rights.

In this area Israel has several unique characteristics:

1. Israel itself is a country of immigrants, even if most of those who arrived since the country's foundation are Jews and family members granted entry under the Law of Return. These immigrants have largely assimilated into Israel's developed Jewish-Hebrew society.
2. Israel was born out of war, one result of which was the uprooting of close to 700,000 local Arab inhabitants from the new country's territory. An appreciable number of them still lives in the region and maintains familial and emotional ties to the land and its Arab inhabitants. The Arab minority in Israel has not become assimilated and has a well-developed sense of distinctive identity. In consequence of the same war and other developments, 750,000 Jews were uprooted from Muslim countries, many of them settling in Israel.
3. Israel conducts an immigration policy according to which Jews and family members are entitled to immigrate freely to the country and automatically acquire immediate citizenship. This policy sparks anger and opposition from the Arab minority. Since the early 1990s, a considerable portion of those immigrating to Israel under the Law of Return have not been Jews.
4. The Citizenship Law gives the state full discretion regarding entry into it and naturalization (Paragraph 5). Paragraph 7 relaxes the naturalization requirements for family members. In fact, Israel has always conducted a controlled immigration policy regarding those not entitled to immigrate under the Law of Return. Israel grants citizenship from birth according to the twin principles of *ius sanguinis* and *ius domicile*, but does not grant citizenship or the right to choose citizenship to everyone born in the country. Generally speaking, the child of an Israeli citizen who was born in Israel is a citizen by birth. Thus, someone born and living in Israel but who is not the child of an Israeli citizen may be deported from the country.
5. In the past Israel allowed Jews living in the country to naturalize alien spouses under the Law of Return. This was discriminatory towards Israel's non-Jewish citizens, who could not naturalize their alien spouses in the same way. Today

there is no such discrimination, and any Israeli citizen or resident interested in according status to an alien spouse must undergo a "gradated process." The process examines the sincerity and stability of the relationship and the personal details of the applicant, but it does not include an examination of the applicant's prospects of cultural or economic integration in Israel.

6. In its early years Israel relied on a combination of the Jewish workforce and Arab workforce, and since 1967 on the Palestinian workforce as well. The country had no great need to import foreign workers, whose numbers were relatively small. Since the late 1980s there has been a considerable presence of foreign workers in Israel, however, both legal and illegal; some have integrated and wish to reside permanently in Israel.
7. Since 1967 there has been a phenomenon of Palestinian immigration into the State of Israel. After the Oslo Accords this kind of immigration was greatly accelerated in the framework of family unification policy.
8. We have seen above the reproductive rates of Muslims and Jews in Israel, leading to the gradual erosion of Jews and other non-Muslims' share of the country's population. There is a relatively high coefficient between Muslims and the Jewish ultra-Orthodox and groups with especially high rates of unemployment and poverty, among other things due to large family size, lack of relevant education for socioeconomic integration, and low workforce participation. Part of the Arab public denies Israel's legitimacy as the state in which the Jewish people exercises self-determination.
9. Like other countries, Israel is now examining solutions for foreign workers who have lived here for years, which might avoid the considerable cultural hardship they and their children might suffer if they are forced to leave.
10. The conflict between Israel and the Arab states, especially the Palestinians, has not yet been resolved. Since 2000 it has been actively violent, including terror attacks on Jewish civilian populations in Israel and the occupied territories.

Against this background, what immigration policy should Israel adopt?

1. The Law of Return

The Law of Return is generally justified by its supporters as a primary expression of the fact that Israel is the nation-state of the Jewish people: as opposed to the situation in which Jewish refugees were unable to find safe haven, and in certain cases were even sent back to Europe to be exterminated, Israel grants every Jew who wants to immigrate (and since 1970—every family member of a Jew) immediate and automatic Israeli citizenship. The Law of Return imposes no restrictions regarding age or the ability to integrate in Israeli culture, society and the economy. In the waves of immigration to Israel sometimes it is indeed the aged and infirm who have arrived, while the younger and healthier have preferred to seek their fortunes elsewhere.

Those who cast doubt on the justification of the state's Jewish distinction would like to see the Law of Return taken off the books. There are those who think the law was justified in its time, in the early years after the state's founding, but is now out of place. Someone may think that the Law of Return is justified, but still hold some of its details not to be so. For example, it is unclear why the right to immigrate should apply to distant family members who themselves have no connection to Judaism. Others criticize the fact that the Law's definition of "Jewish" is *Halachic*, viewing this as a violation of individuals' rights to self-determination and freedom from religion. It might also be wrong to grant eligible immigrants full, immediate and automatic citizenship.²²³

Another question that was discussed in its time, which has occasionally arisen again and generally is silenced, is whether it would not be appropriate to add to the Law of Return tests of cultural and economic integrative ability. In part this concerns the determination of people eligible to immigrate, namely those who are entitled under the Law but unable to integrate in Israel's primary culture—a link to Jewish culture in one of its various forms and to the Jewish people's destiny, in a modern and developed country. But even if able to integrate in certain forms of Jewishness, potential immigrants may find it hard to integrate into the modernity and development aspects of Israeli society. The immigration of large groups of people whose cultural world is essentially different from the one to which they will have to adapt is a matter to which greater thought will have to be devoted. The difficulties have been dramatically

²²³ For a justification in principle of the Law of Return and a critical discussion of some of its detailed arrangements, see the first chapter of the Gavison-Medan covenant.

illustrated by the hardships that have accompanied the absorption of the Ethiopian immigrants in Israel.

The logic underlying the Jewish state may indeed be such that no cultural or socioeconomic characterization should interfere with entitlement to immigration and naturalization under the Law of Return. But this decision should be made in an informed manner. Against the important desire to complete the ingathering of the exiles and enable family reunification stands the state's interest to preserve the level of welfare of all its inhabitants, regardless of race, nationality or religion. A responsible country should not easily volunteer to absorb large groups of people whose chances of integration are poor, and who are likely to end up living in anger and frustration on the margins of society. The absorption of such populations necessarily comes at the expense of the welfare of the country's inhabitants. Nor is it certain that this is in the best interests of the immigrants, who lose their cultural world without having a decent quality of life assured to them. Israel is a densely populated country. Some of the basic assumptions behind the Law of Return should perhaps be reexamined. This discussion also raises questions dealt with above regarding Jewish identity. Ostensibly, such examinations need not be applied to Jewish immigrants since by their very Jewishness they stand to integrate well in Israeli society. However, we have already seen that there are forms of Jewish culture that do not facilitate such integration, and it is all the more difficult when the immigrants' connection to Jewish religion and culture is itself weak or controversial.

Thoughts about limiting the scope of the Law of Return, then, may stem from a variety of the meta-purpose's elements. First, from the commitment to civic equality in the country—not to prefer immigrants who have no real connection to Judaism over others, especially such as have roots in the country; second, from a desire to sustain a developed, modern and prosperous society in Israel; and third, though this is negligible, there are some among those entitled to immigrate under the Law of Return who brazenly act against the state's interests. A desire to defend public order and the rights of all should mandate not allowing such elements to enter the country as a matter of right. Fourth, importantly, the reduction of *entitlement* to immigrate under the Law of Return of those not related to Judaism might be based on a desire to strengthen the country as the place where the Jewish people exercise their right to self-determination.

The Law of Return should apply to everyone who wants to immigrate to Israel in order to lead a full Jewish life here—but should not apply to others. Indeed, someone who wants to lead a full Jewish life does not have to be Jewish according to *Halachic* definition. But the Law of Return should not apply to someone who has no interest in a Jewish life, and who might sometimes even be a practicing member of a different religious or national community.

2. Naturalization

What should the state examine upon granting citizenship or residency to someone who wants to become a citizen or live in it (naturalization according to Paragraph 5 of the Citizenship Law)? The principle underlying international law is that a country may set its own preferences so that those who immigrate will contribute to the country and its welfare. A foreigner does not have the *right* to become a citizen of or live in a country of which she or he is not a citizen. Of course, a country may grant certain people status in it out of humanitarian or other considerations. But even then it is desirable—from the standpoint of the good of society—that the criteria adopted lead to the absorption of people with the ability to integrate well in the country's society and participate in its economy. Such integration is not only a cultural matter but involves also the ability to integrate in a modern and developed society and not become a burden on the state's welfare system. On these topics there is no great controversy and these general principles are widely accepted. Special problems arise regarding groups of immigrants who reside in the country for a long time (legally or not) and become culturally integrated within it. As mentioned above, Israel does not automatically grant citizenship to everyone born in the country.

3. Family Unification

What kind of immigration policy should Israel conduct regarding Israeli citizens who have foreign spouses and would like to accord them legal status in Israel? It is good that no distinction is made any longer between Jewish and non-Jewish citizens. Part of civic equality lies in an equal ability to naturalize a spouse. But which rules should apply to such requests?

Policy regarding family unification is usually grasped as a personal and humanitarian matter. In this framework, the state does well to generally allow its citizens to live with their family in their homeland. The critical question is whether a citizen of the state has the **right**, with a correlative **duty** upon the state, to accord the foreign spouse legal status. Clearly, whichever arrangement the state adopts must be untainted by discrimination or arbitrariness. Some, however, also contend that the right to family life includes the **right** to oblige the state to naturalize or at least grant legal status to the foreign spouse of a citizen.²²⁴ This was the position of the minority opinion judges in the matter of the Amendment to the Citizenship Law discussed above. They also held that this right enjoys constitutional status, enabling the courts to annul immigration laws that violate rights to family and equality in a disproportionate way. Others, like the majority opinion judges in the same matter, hold that citizens have indeed a legitimate and important **interest** in according legal status in the country to their alien spouses, but that it does not amount to a right.

It is important to emphasize that the position taken on whether a right is involved, and even as to its constitutional status, can cut either way. Someone may think that a citizen has the constitutional right to family life in her or his homeland even with a foreign spouse, yet maintain that the reasons given for limiting this right concerning residents of the territories justify the restriction, which is proportional. Contrariwise, someone may think that a citizen has no constitutional right to family life which includes a right to naturalize her or his foreign spouse, yet maintain that under the circumstances the limitation constitutes an unjustified violation of a different right (such as equality, for instance).

There is no doubt that the state **may**—and in fact has done so according to Paragraph 7 of the Citizenship Law—grant its citizens the right to accord status to a foreign spouse by means of the gradated process, subject only to examination of special risks stemming from the applicant's personal characteristics or affiliations. This is a legal right granted by the state. However, it is not a human right that the state is not permitted to withdraw or make dependent on additional conditions. The justification for

²²⁴ This is the position of Davidov et al., cited above, as also of Chaim Gans in his article on Israel's Jewishness (2006).

such conditioning needs be examined with regard to the special circumstances of the specific state.

On the basis of the data here examined, an immigration policy which makes the granting of status to the foreign spouse of a citizen conditional on the applicant's ability to integrate in Israeli society would appear to be legitimate and indeed wise. It does not necessarily violate any vested right of the local citizen. True, the state's refusal to grant legal status to the spouse might require the citizen to choose between family and homeland, a not insignificant choice. But it is not one that the state has forced the citizen to make. The choice to bind her or his life with that of a foreigner was the citizen's alone. It need be kept in mind that in every case of marriage between citizens of different countries there will be a certain measure of uprooting. When Israel grants status to the foreign spouse, it is enabling its own citizens not to be the ones uprooted. When it refuses to do so, then it is the Israeli citizen who must move to the spouse's homeland (or a third country willing to accept them both). Any other interpretation would give every citizen in the state the power of dictating to it whom it must naturalize. As stated above, the state **may** take such a commitment upon itself, but it is not **required** to do so.

As mentioned above, immigration policy may examine potential immigrants in terms of cultural and socioeconomic integration prospects as well as in terms of effects on the chances of preserving a stable equilibrium between individuals and groups in the country. Those granted status should be such as do not place any additional burdens on the state, by either requiring the help of its welfare services or by aggravating the profound internal tensions between different parts of its population.

In periods of war or conflict, it is customary practice not to grant entry or legal status to residents or citizens of an enemy state. In this case the prohibition is general rather than individual. The logic behind it is that when there are hostile and confrontational relations between countries, there is also the fear that the subject of an enemy state might pose a security risk. A country cannot be required to voluntarily grant entry to potential security risks. There is not only the danger of terrorist or espionage actions on behalf of the enemy state, but that simply of bringing in someone from an environment that is hostile to the state and its welfare. Again, a country cannot be required to

voluntarily increase the number of its residents or citizens who feel hostile or subversive towards it or its identity.

The justification for the adoption of such tests regarding applicants for status on the grounds of family unification will grow, of course, if similar tests are adopted also regarding everyone applying for citizenship or status, including those entitled to immigrate to Israel under the Law of Return.

4. Family Unification for Residents of the Occupied Territories

Residents of the occupied territories as such should not be singled out as a group under ordinary circumstances. The same tests should be applied to them as are applied in regular immigration policy. There should be no difference between an Israeli citizen who wants to marry someone from Scandinavia or the Philippines and one who wants to marry a Palestinian from Nablus or the Hebron area.

Because of the region's history and current reality, however, the considerations applying to residents of the occupied territories (and perhaps residents of other countries in the region) may well be different from those applying to others. This is certainly the case in times of armed conflict, when hostility and suspicion run especially high. But it is also the case in the ordinary state of affairs.

A spouse from the Philippines will come here and integrate in the mainstream of Israeli social life. Such integration will take place even if the person does not convert to Judaism and does not see himself or herself as 'culturally Jewish'. The children of such a couple will live in this society, learn Hebrew, serve in the army and be Israelis. A spouse from the occupied territories, especially if marrying an Israeli Arab living in an Arab village or town, themselves not integrated in Israeli society, will be joining a community that is itself not fully integrated in the mainstream of Israeli society. It is not integrated in the frameworks of military or national service. Within it there is not always proficient command of Hebrew, the state's effective language, a necessary asset for proper integration. It has ties of social solidarity in part with neighboring countries and societies, some of which are in violent conflict with the state. Furthermore, there are in it deep residues of anger and alienation towards the state. And because of the patterns of education in it, there is a greater risk that the spouse being granted status and the

couple's children will join the circle of those already on the lowest rungs of the socioeconomic ladder.

Granting status to such a person, but especially granting status to too many such people, raises questions that go far beyond the generous application of humanitarian considerations in the case of one or another individual. Therefore, although there will be a natural inclination on the part of Palestinians to marry each other, and although in the nature of things they will prefer to live together in Israel over living together elsewhere, it is legitimate on the state's part to place such requests under strict scrutiny. It is also legitimate on its part not to handle requests of this kind as a personal humanitarian matter pertinent only to the applicants themselves; it should examine also the demographic aspects of the phenomenon and its effect on the continuing erosion of the Jewish majority in Israel and the growth of a minority group which does not accept the legitimacy of Israel's continued existence as the state in which Jewish self-determination is exercised.

5. The "Right" of Return?

The considerations which I have noted regarding the distinction of Palestinians (or Arabs from the region) as candidates for being granted status in Israel under a policy of family unification are a hundredfold more forceful when it comes to the Palestinian demand that Israel should recognize the right of Palestinian refugees and their descendants to return to their homes inside Israel. This demand does not limit itself to saying that Israel does not have the freedom to treat Palestinians differently than it treats anyone else who wants to live in Israel because they have tied their destiny with that of an Israeli citizen; it presents the return of the refugees as a central component of any just settlement of the conflict. The right of return is not presented as a matter for negotiation or one that demands compromise in order to arrive at a political reality in which both nations can effectively exercise their right to self-determination. No less importantly, the demand for recognition of family unification of Palestinians in Israel is based on a perception that the spouse who is not an Israeli citizen is not actually a "foreigner," but is actually joining a member of his own people and culture living within the area of their historic homeland. In such cases – the argument goes – the claim is even stronger than

that of an Israeli who wants to accord status in Israel to a foreign spouse. For the person in question is defined as a foreigner only by the arbitrariness of the law itself. In effect, the spouse who is not an Israeli citizen is much more entitled to live in Israel—according to this view—than any Jew or non-Jew who might immigrate today under the Law of Return, without any real prior connection to the land.

The massive return of Palestinian refugees to Israel, especially if they should be absorbed in Palestinian Arab communities and come with hard feelings and a desire to resurrect the past, will only frustrate the state's ability to realize all of its goals (and not just the Jews' ability to exercise self-determination). It may bring down the level of welfare of all Israel's inhabitants, Jews and non-Jews alike, and introduce new tensions and conflict likely to plunge the country into civil war. And indeed, all the accepted blueprints for a settlement in the region figure a compromise that does not include any such 'return'. Furthermore, it is important that Israel will also object to the presentation of this claim as a matter of **right**. As mentioned above, the discourse of rights has important institutional and symbolic ramifications. The public debate should take account not only of the return issue itself, but also of the costs of discussing it in terms of the human rights discourse.

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I hope that the above discussion does indeed demonstrate how an analysis of the immigration issue demands attention to the entirety of the meta-purpose's elements and the relations between them. It is preferable that such a sensitive matter should be regulated by a *Knesset* law following public debate rather than by administrative guidelines. This would strengthen the democratic legitimacy of the adopted decisions. It is vital that immigration policy should be neither discriminatory nor arbitrary. It is also vital that it should not violate human rights. All the same, we have seen that on this topic, as on others, arrangements that seem critical to a majority of society are grasped by others as violating human rights and therefore forbidden. This argument has to be conducted openly and candidly. Ultimately, the debate will be decided according to the accepted rules of decision-making in the state. These will include administrative powers,

including public critique and judicial review over them, legislation, and perhaps also judicial review of laws.

The approach which I am proposing here accepts a commitment to all the elements of the state's meta-purpose. All the same, when it comes to making decisions it is worthwhile recalling that not every claim that a proposed arrangement stands in violation of a human right, or democracy, or the state's Jewishness, or its ability to prosper, or the social justice in it, has to be accepted as dictating a settlement which avoids any such alleged violation. Sometimes no right exists at all. Sometimes the need to promote other interests or rights justifies violation of the asserted right. Any proposed policy must be examined in context and from all aspects. It is legitimate not to voluntarily erode the Jewish majority, as it is legitimate to try to increase it by preference for Jews. It is illegitimate to grant priority in immigration to others only to keep Arabs from becoming a majority in Israel. Consideration should be given to immigrants' ability to integrate from a social and economic aspect, and to their willingness to become partners in the national enterprise. For the time being, this enterprise includes the foundation of political self-determination for the Jews.

On such issues it is also easy to see the great importance of decision-making mechanisms, the matter of a constitution, and the question of which body should enforce it. In an area where there may be considerable argument over policies, and which is a matter of different ideological and cultural perceptions, careful examination must be devoted to the relations between the representative parliament and professional courts deriving their power from the application of the law and interpretation of human rights.

VI. Where is Israel Heading?

I began this essay with a historical survey of the processes which Israeli society has undergone since pre-statehood days to the present. Our overview has attempted to connect three phenomena: 1) the weakening cohesion of Israeli society and its transition from unity of purpose to divisiveness; 2) the bitter argument over the future of the occupied territories, which has stood at the heart of the political discourse in recent decades; and 3) the continuing debate over the best system of government for Israel to help the country contend with the challenges facing it.

Usually each of the processes is treated separately. Furthermore, a distinction is usually made in how we look at each of these processes and events. Whereas the future of the occupied territories is grasped as the primary question for Israel from a strategic standpoint, the governmental system issue generally is grasped as a means of achieving a stable political regime. Features such as reduced social cohesion and the transition of Israeli society into a more civic, individualistic and post-Zionist society than formerly is grasped as a topic for sociological research, whereas its strategic implications are generally downplayed. I have discussed these phenomena in an integrated manner in order to highlight their interrelatedness also from a strategic standpoint. The argument over the future of the occupied territories is related to the robustness of Israeli society and lack of cohesion in it. Any attempt to change the governmental system in Israel—by enacting a constitution, changing to a presidential system or regional elections, or reordering relations between the different branches of government—must be examined in light of Israeli society's dynamic characteristics. The same holds true for identifying Israeli society's fundamental challenges.

In that sense, this essay defines the sociological issue as not only interrelated to other questions but absolutely critical, making it necessary to formulate a new and consensual meta-purpose for the State of Israel.

The trend toward privatization in society has both natural and indeed salutary effects (transition to a civic society, an aspiration to normalization, giving voice to personal and community and not just national expressions), and many costs. The latter are becoming clear as well, and these we have reviewed above. It is important to note that these

trends are particularly prominent within the social center but weaker in groups still struggling to be included within it, as well as for maintaining their cultural or political distinction. As a result, the central camp to a large extent defines itself today more by opposition to the 'Others' in Israeli society and less by positively defining its essential character and aspirations. A large part of these processes—even if undesirable and posing potential threats—cannot be controlled. The picture of Israeli society needs to be examined soberly and realistically, without giving in to irrational fears or false hopes of being able to create a Utopian society here. All the same, the future of society depends on the decisions it makes. In this essay I have sought to identify the weaknesses in the network of structures which implements the decisions made in Israeli society.

The meta-purpose is not designed to take us back to pre-statehood times, nor could it do so. It does represent an attempt to refashion one of Zionism's greatest sources of strength during that period and reenact it in existing reality. It does identify primary elements of agreement, a "core," which contains within it both the basic common denominator and the plurality in Israeli society. The basic assumption which underlies it is that a state and society cannot exist stably and act together without a certain measure of common purpose and shared destiny. This is especially true in light of the tension between an all-inclusive civic community, which is weak, and the national or religious affiliations that may be stronger than it.

In this sense, there has been a swing of the pendulum from a period of intense nationalism required for the purpose of nation-building to one of accelerated privatization, among other things as a result of the success of the enterprise. The formulation and clarification of the meta-purpose is meant to serve the center by positing basic defined objectives around which it can unite, But it is also supposed to help solidify the cohesion of all of Israeli society by defining a framework that all can agree on. The absence of such a framework creates a dynamic of constant struggle, from which all participating groups emerge weakened.

Despite the doubts and difficulties, this essay's general message is an optimistic one. There is in Israel the desire and ability to formulate a shared meta-purpose, despite the deep divisions. The country can find ways to strengthen the common civic identity of all its residents and citizens, yet also recognize the plurality of individuals and national, religious and cultural communities. There are forces in it which do make possible the

reality of a good life for all of the state's inhabitants. It can and should find a way to give its residents and citizens the feeling of partnership in the enterprise of the state.

As I noted at the outset, this essay introduces the problems and points out general guidelines rather than detailed solutions. Such a move is an essential basis for any blueprint for attempting to strengthen the internal solidarity of Israel's citizens. Many obstacles may preclude it: each group's suspicion of a 'trick' by others, the feeling that more might be achieved by force, and fear of too far-reaching changes. Against these stand two factors which may facilitate the success of such a conception. First, the feeling of necessity. When growing numbers of the public are troubled and worried by the processes that Israeli society is undergoing, change ceases to be an option and becomes required policy. Second, there is great strength in looking to the long term. A plan that hones Israel's meta-purpose for the long or medium term, pointing to the seriousness with which the country takes all of its elements—together with rules of the game facilitating effective progress toward the realization of these objectives—may help many people and many groups acquire a civic identification with the state beside their identification with the subgroups to which they belong. An updated civic-national identity might be helpful toward increasing the sense of belonging, the willingness to make sacrifices and investments, and even the feeling of pride so vital to quality of life in the place where we are living.

I do not think that the meta-purpose which I have sketched above is revolutionary. Its foundations exist in Israel's political and public systems today. I do believe, however, that my presentation here may serve to elucidate matters and inspire thinking in new directions. If such indeed does occur, and if Israel's ability to contend with the entirety of its meta-purpose's elements has increased even a little, this will be ample reward for my efforts.

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