

# Introduction

RAPHAEL COHEN-ALMAGOR

This collection aims to shed light on Israeli democracy and its schisms. The articles are written from different perspectives, employing different methodologies that enrich the discussion and exhibit a multitude of views. The volume brings together contributions from leading scholars that reflect on crucial themes and questions. Their careful consideration and insights will undoubtedly enrich public discourse concerning Israeli democracy and its institutions.

For each of the themes a leading scholar was selected to write the article. Contributors were given a long period of time to write their essays, and then received comments and critique aiming to improve the quality of their pieces and to sharpen arguments. Sometimes contributors submitted a third draft, after digesting the constructive critique. They analyze practical questions from theoretical and analytical perspectives, combining theory, law, and scientific knowledge. The result is truly inspiring. This volume significantly contributes to the ongoing debate on major issues in Israeli society.

The values of liberalism are enshrined throughout the essays. Most are written from the liberal perspective. Respect is given to individual autonomy; recognition that people are different is granted, and pluralism and variety are cherished throughout. Liberty, tolerance, rights, autonomy, equality and justice are the common themes that run through these articles. We all yearn to promote these values and strive to find compromises and solutions when we feel that they might come into conflict. For instance, liberty and justice often coincide but on occasion they might conflict with one another. We all cherish equality but often we act upon criteria, deemed relevant and justified, that betray the principle of equality.

Liberals usually utilize principled terms: liberty and tolerance (John Stuart Mill,<sup>1</sup> Alf Ross,<sup>2</sup> Alexander Meiklejohn,<sup>3</sup> Franklin Haiman,<sup>4</sup> Frederick Schauer,<sup>5</sup> Lee Bollinger<sup>6</sup>), rights (Hugo Black,<sup>7</sup> Aryeh Neier,<sup>8</sup> Hillel Steiner,<sup>9</sup> Alan Gewirth,<sup>10</sup> Samuel Walker<sup>11</sup>), equality (Ronald Dworkin<sup>12</sup>), autonomy (Martin Hollis,<sup>13</sup> Gerald Dworkin<sup>14</sup>), justice (John Rawls<sup>15</sup>). They wish to promote liberty, tolerance and individual autonomy, to seek ways to accommodate different conceptions of the good,<sup>16</sup> and to reach compromises by which the system will respect variety and pluralism and at the same time continue to uphold the rationale of

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liberal democracy, which may be summarized by the twofold dictum: do not harm others; promote respect for others.<sup>17</sup>

The liberal ideology places the individual at the centre: everything derives from and flows back to the individual. The tradition, evolving from the philosophical thought of John Locke (1632–1704), Thomas Paine (1737–1809), Alexis de Toqueville (1805–59), John Stuart Mill (1806–73) and, in our time, John Rawls and Ronald Dworkin, sees the individual—in contrast to the collective - as the basis of the state, and sees the state as a tool meant to serve the interests of the individual. The state is conceptualized as a means of protecting society from external attacks, a framework regulating the implementation of the law for the prosperity of the citizens, a sophisticated tool to ensure individual rights. Therefore, the function of the state is to promote the well-being of the individuals, including when they are ill. The state has an obligation to preserve individuals' rights, namely it recognizes that certain demands of individuals are legitimate, and must be satisfied within the state's framework. The right to life is recognized as a first-priority right. Followers of John Locke call it a natural right in the sense that it is a consequence of nature, a right that comes before the state.

#### GENERAL THEMES

Ben-Zion Zilberfarb, the former director general of the Ministry of Finance (1988–99), analyzes the shifts and turns of the Israeli economy from the establishment of the state in 1948 until today. He argues that the first years were characterized by massive involvement of the government in the economy. This is the result of both ideological and practical reasons. Economic constraints imposed on the government the need to be very active in the economy. Later on, the government moved to cooperation with the private sector which marks the second economic phase. Thus, during the 1960s a gradual liberalization took place. There was a greater involvement in foreign trade.

A major shift in the Israeli economy took place in 1977 when Mapai, the ruling party since 1948, lost power and the right-wing Likud Party won the elections. The economic platform of the Likud reflected the views of the liberal component inside the party that adhered to free market principles. The government announced an economic revolution which focused on the liberalization of the foreign exchange markets. However, Zilberfarb argues that this liberalization did not last long. Within a year, not much remained of it. The revolution failed since it was not accompanied by the necessary macroeconomic policies that were needed to make it successful. Finance ministers in the next five years were not committed to free market principles, and were interchangeable in terms of their commitment to free market principles.

During the 1973–84 period, the economy growth rates sunk to about a quarter of their pre-1973 level. At the same time, inflation has soared from 12% in 1972 to a staggering 400% in 1984. On the verge of economic collapse, the national unity government that was formed in 1984 adopted measures to control inflation. The year of 1985 marks another turning point. The government adopted many reforms that reduced its involvement in the economy and increased competition in markets controlled by the big monopolies. It had carried out reform in the capital market. The privatization process was accelerated. In 1998, almost all restrictions on the flow of foreign exchange were lifted. If between 1987 and 1998 all foreign exchange activities were forbidden unless specifically allowed, in 1998 all foreign exchange activities were allowed unless specifically forbidden.

During 1990–95 social and welfare expenditures grew considerably, and that trend continued during the second half of the 1990s in spite of a reduction in the growth rate. Zilberfarb notes the significant rise in economic freedom that took place in the second half of the 1990s. This was the result of lower inflation, improvement in the legal structure and property rights, and the liberalization of foreign exchange markets. The growth period, however, came to an end in 2001. During 2001 and 2002, the economy entered a period of recession. Inflation, which was a mere 1% in 2000, increased to 6.5% in 2001 due to an erroneous monetary policy. The outbreak of the so-called second intifada required additional resources for military expenditures, and the recession led to a loss of tax revenues.

The 2001 Sharon government adopted a new economic plan which included painful cuts in transfer and welfare payments for the first time in many years. Indeed, the experience of the last two and a half years reveals the government's strong commitment to move towards market economics in spite of the unpopular steps that harm the poor and the unprivileged sectors of society.

Economic considerations enter every sphere in Israel, including the media, which is controlled by a few dominant and wealthy barons. These barons, like many media barons around the world, try to maintain good contacts with the political establishment. Dan Caspi studies the relationship between politics and the media. As more and more newspapers and radio waves come into existence, the political institution is investing more effort in controlling the media. Politicians learned how to manipulate information by maintaining proper relations with journalists. Caspi argues that media abundance not only encourages competition, but also increases dependence on the political institution. Politicians are not oblivious to the power of the media and invest much effort in trying to control the media and exploit it to their own needs and interests.

Caspi identifies a three-stage process of regulating the media: maturation, implementation and negotiation. The process commences

each time new technology appears, or when there is a demand for the introduction of a new communication technology. In the stage of maturation, a diverse lobby composed of politicians and interest groups usually conducts a campaign for the desired regulation. The lobby speakers find an ear among the policy makers. Negotiations are conducted regarding the nature of the change and the conditions of the broadcasting permit. The first stage ceremoniously comes to a close with authorization to broadcast granted to the fortunate franchisers.

In the implementation stage, the actual economic constraints are revealed, like limited professional resources and economic feasibility lower than those given in the preliminary estimations. Negotiations are then carried out between the franchisers and the regulators, usually at the initiative of the former and usually regarding improving the tender's original conditions.

The three-stage bargain regulates the interaction between the political institution and the media, and perpetuates the mutual dependence between them; the political institution grants a broadcasting concession and decides the conditions for competitors. The franchiser is constrained by the concession granter, and the more power he accrues after receiving the concession, including unavoidably political power, the more balanced are relations between the two.

The media in Israel is very centralized, in the hands of a few families. This is not unique to Israel. In many democracies a few organizations control the media (i.e., Canada, Germany, Britain, USA). This fact creates an unhealthy intimacy between media barons and politicians. Furthermore, those barons represent limited interests and deny access to large sectors of the public. Large segments of the population were under-represented in the print media because of the inordinate amount of control the few media giants had in shaping public opinion. The process through which a paper's content is filtered by the interests of owners and advertisers is a subtle one, yet we may acknowledge that journalists are unlikely to report a story or to cover a certain issue if they do not believe it will be accepted by the editor or the owner. Similarly, an editor is unlikely to assign a reporter to cover a story that will frame an issue in a radically different view from that of the owner, or that might upset major advertisers.<sup>18</sup> Democracy is better served when media ownership is diffused. As Caspi concludes, regulation and control are not obscenities in a democracy when they are aimed to balance political interests and market powers.<sup>19</sup>

#### RIGHTS AND SCHISMS

David Kretzmer analyzes the relationship between human rights in Israel in its Green Line borders and in the occupied territories, the implications of the constitutional definition, accepted in Israel's Basic Laws, of Israel as

a Jewish and democratic state, the continued state of emergency, and the respect for human rights of Palestinians in the occupied territories since the outbreak of the second intifada.

Kretzmer argues that one cannot discuss human rights in Israel without relating to the situation in the occupied territories. He outlines the legal regime for protection of human rights of Israelis and Palestinians and examines the human rights implications of Israel's definition as a Jewish and democratic state. He concludes that real advance in protection of human rights in the country is not dependent on strengthening the legal regime for protection of human rights, but in reaching a political settlement with the Palestinians. Such a settlement will relieve Israel of its role as an occupying power, and will hopefully facilitate attempts to come to grips with other pressing issues, including the implications of Israel's definition as a Jewish and democratic state.

An important and inherent human right is the right to health. Carmel Shalev suggests a theory of justice to complement the theory of liberty in the jurisprudence of Israel's courts of law, in order to address the social rights challenges. She argues that just as individual rights can trump considerations of policy, so too can social rights. Shalev invokes the principle of justice as a constraint not only on the power of governmental authorities but also on the free market forces so as to intervene in private transactions, insofar as they infringe upon the basic human right to health. Shalev further speaks of fairness in rationing of health care, articulating the need for setting priorities in the allocation of scarce resources.

Frances Raday, who devotes much of her time to promoting women's rights in Israel both as an academic and as a litigator, explores the impact of the value dichotomy between religion and constitutional human rights as regards gender equality in Israel. She attempts to show how the dichotomy has affected the formulation of constitutional principles, legislative norms and judicial policy. Raday argues that women are entitled to full personhood in all spheres of political, spiritual and social life. Therefore, the state and the courts have an obligation to support women's right of equality also by refusing to subsidize religious activities that deprive women of this entitlement.

Israel is saturated with schisms which pose a real challenge for our vulnerable democracy. Human rights of all, majority and minorities alike, need to be protected. Yossi Yonah shows how some of the main schisms characterizing Israeli society (Israeli Palestinians and Israeli Jews, Mizrahi and Ashkenazi Jews, religious and non-religious, veteran and immigrants and gender relations) should be addressed from a multicultural perspective. He argues that one cannot separate claims of recognition from claims of distribution, and that while the Palestinian divide and the religious/secular divide require multiculturalism in separate public spaces

(MSPS), the Mizrahi/Ashkenazi divide and the gender divide requires multiculturalism in common public spaces (MCPS).

The distinction between the MSPS model and the MCPS model is not definitive. But in contrast to the MCPS model, the MSPS typically involves the demand of minority groups to be granted self-government rights, which, in turn, requires the establishment of separate arrangements and institutions. In contrast, the MCPS model involves polyethnic and representative rights. The main concern of these rights is that the cultures of various minority groups and their histories are integrated within the common public spaces. The groups which advance the multicultural demands that accord with this model do not wish to establish their own segregated communities. Instead, they argue that society at large misrecognizes them and their respective cultures and hence encourages the creation of formal and informal obstacles that impede their full and equal integration in society. The cultural demands that accord with the MCPS model amount to temporary measures aiming to secure equal and full participation of minority groups in society.

Tamar Horowitz discusses the integration of the recent Russian immigrants, arguing that they have enriched the social and cultural fibre of Israel. Almost one million immigrants arrived from the former Soviet Union between 1989 and 2002. By the late 1990s, however, 30% of the newcomers were not Jewish. Horowitz explains that three factors account for how the integration of the Russian immigrants has proceeded: government policies; climate of opinion regarding the immigrants, and the Russian community's ability to organize itself. She argues that the new wave of immigration blurred the boundaries between Ashkenazim and Sephardim, and the emphasis is now on class differences rather than ethnic differences. Horowitz notes that there is some competition between Ashkenazim and Sephardim, especially in occupations that call for post-secondary and technical education, and there have been few cases of overt hostility or violence against immigrants. At the same time, there is more tolerance of secularist activities: shopping malls are open on Shabbat, non-kosher food is widespread in Israel, non-religious burial is an option, and many young non-immigrants are having secular weddings.

The next two articles touch upon the intricate relationships between state and religion. Aviezer Ravitzky, laureate of the Israel Prize, argues that Judaism is a religion of legal, societal and national dimensions. It is a religion of law (*halakhab*), in that it concentrates on its adherents' way of life and takes a greater interest in their tangible actions than in their declarations of faith. It is a social religion, in that it deals with communal values and seeks to shape the public domain, sometimes even before getting involved with the private. And it is a national religion, in that most of its commandments and directives pertain to a particular people, the congregation of Israel, and only a few are directed toward humanity

*per se*. Taken together, these three elements afford the Jewish religious tradition a definite political character.

Naturally, such a religio-political tradition can never be indifferent with respect to a state that it regards as the state of the Jewish people. It will strive mightily to influence that state's laws and values and to impose its imprint on its culture and symbols. Therefore, asserts Ravitzky, before the religious leadership could agree to separation of religion and state on all these planes (and not merely the legal-institutional), it would be necessary to bring about a profound change in the historical character of the Jewish religion: either by diminishing its halakhic nature and national character (as the early Reform movement did) or by accepting the separation of nation from state, that is, waiving the Jewish character of the state or denying it *a priori* (as do the radical *haredi* groups). Can one conclude therefore that a consistent religious position requires either fashioning the State of Israel into a halakhic theocracy or negating it altogether? To state the question differently: if adherents of the Torah gained control over Israeli society, would their faith require them (or permit them) to impose the Torah's laws on one and all, even against the will of the community and its elected representatives? Would there be no escape from having the rule of Torah undercut that of the state?

Ravitzky explains how the vision of halakhic theocracy is vulnerable to challenge both on the basis of the Jewish tradition's inner logic and considering the condition of contemporary Jews. He argues that the concern of the Halakhah for the social stability of the Jewish polity precedes its care for that polity's religious character and halakhic fitness. Even if there existed a religious directive to establish an independent regime of Torah sages, that directive would be perpetually suspended due to considerations of societal will, common good and peace. Furthermore, according to the classical halakhic literature, the 'ideal' hand of Torah alone falls short of being able to maintain the 'real' world. It needs the engagement of leadership that can rule, adjudicate and impose sanctions outside the bounds of Jewish law and sometimes even contrary to it. Theocracy itself asserts that it depends substantially on the existence of a secular, human and political sphere. Finally, the vision of halakhic theocracy faces conceptual and practical difficulties related to the juridical standing of non-Jews, to the present-day figure of the Jewish person, and to the current image of the halakhah and its advocates. These obstacles grow out of the very grafting of the modern state onto Torah and Jewish law with their traditional, pre-modern meanings.

In turn, Asa Kasher, another laureate of the Israel Prize, outlines a conception of the state as a Jewish one and a conception of the state as a democratic one, which are compatible with each other. He claims that <sup>Q5</sup> couple of conceptions constitutes the 'high road' of the map, the proper way of understanding the combination of 'a Jewish and democratic state'

in the constitutional context, and that at present Israel is Jewish but is not of the desired democratic profile. We should aspire to a state with a high democratic profile, whose moral foundation for making moral demands of its citizens, its institutions, its neighbours, and all others is viable and progressing. Kasher suggests the road of cooperation, which is based on two conceptions between which there is no contradiction: a complete conception of the idea of a Jewish state and a complete conception of the idea of a democratic state. In order to properly address issues related to the role to be played by the Israeli Palestinians, one should introduce a broader view of Israel, within a justified world order, in which all people have a practical way of exercising their right of self-determination, as long as they are willing to respect the right of all people to exercise the same right. Kasher argues that much of what seems to be discrimination against Israeli Palestinians will evaporate the minute Palestinians have their own state alongside Israel.

The next two articles discuss the schism between Jews and Arabs in Israel. Both Al-Haj and Frisch find the influence of the Islamic Movement significant. Both conceive the El-Aqsa campaign of violence, which erupted in 2000, as a milestone in the internal Jewish-Palestinian schism, arguing that the violent events deepened the Jewish-Arab rift and sharpened the problems of identity among the Arab population. Both mention the boycott of Arab businesses by Jewish clients, the result of fear and disappointment. Many Jews felt they were betrayed by the Palestinian Israelis, many of whom showed explicit alliance with their fellow Palestinians on the other side of the Green Line. Both show that the peace process has not improved the status of the Arabs in Israel. After all, the Oslo accords made no mention of the Palestinians in Israel. In this sense, Al-Haj argues that the Oslo process has reinforced the status of the Palestinians in Israel as a 'double periphery': being placed at one and the same time at the margins of Israeli society and at the margins of the Palestinian National Movement.

Majid Al-Haj's paper deals with the patterns of encounter and orientation among the Palestinians in Israel and the territories. It traces the main trends in this encounter since 1967, placing special emphasis on the main events during this period: Land Day of 1976; the first Palestinian intifada (1987–92); and the violent events that erupted in September 2000 (the so-called second intifada). The repercussions of the peace process are also examined, and the scarcity of intensive social relations between Palestinians on either side of the Green Line are explained. Al Haj argues that despite the common national and cultural attachment of the two groups, there are clear differences in social and political milieu, forms of identification and future orientation. He observes two simultaneous and contradictory trends: while the Jewish majority and its leadership are becoming increasingly open toward a territorial compromise regarding

the conflict over the occupied territories, they are pushing toward the intensification of the Jewish-Zionist character of Israel at the expense of its civil-democratic character. The struggle by the Jewish majority on behalf of the Jewish-Zionist identity of the state has been reinforced. Whereas the first trend strengthens the Green Line, the second trend leads to its weakening and to blurring of the differences in the orientations of the Palestinians on both sides of the Green Line.

Hillel Frisch explores to what extent Israel's Jewish population faces considerable risk from the Arab minority. He asks whether Israeli Arabs are politicizing, i.e., working within the system, or radicalizing in an attempt to undermine the state as the Israeli Jewish majority perceives it is or ought to be. In trying to answer this question Frisch examines actual political behaviour manifested in the creation of political parties, electoral behaviour, extra-parliamentary organizations, especially the Islamic Movement, and patterns of terrorism. He argues that while Israeli Palestinian elites push forward motions to broaden the scope for Arab cultural autonomy, the majority of Israel's Arab citizens are still working within the system. They are well aware of the economic and democratic benefits derived from Israeli citizenship.

Ariel Merari discusses Israel's right to defend itself against the threat of terror and the conflict with the Palestinians in the territories. The article examines Israel's conduct in the struggle against terrorism, observing the tension between maintaining human rights and insuring public safety. Merari describes the physical and psychological characteristics of the threat that Israel has had to confront and examines Israel's response, focusing on collective punishment, as exercised in demolition of houses and restrictions imposed on the adversary population's freedom of movement, and targeted killing of terrorists. These measures are weighed in terms of their acceptability in liberal democracies and their effectiveness in fighting terrorism.

#### FINAL WORDS

Claude Klein argues that though Zionism has formally reached its major goal – the establishment of a state for the Jews – the achievement appears to be more than problematic. There are serious doubts whether Zionism has been able to reach homogeneity of the population. Zionism ignored the Israeli Palestinian dimension of the endeavour and since it has discovered it does not know how to cope with it. Klein observes that the existence of Zionism, symbolized by the Law of Return, is considered an obstacle to the realization of the return of the Palestinians. He notes that we are witnessing an interesting parallel between the Law of Return and the Palestinian request for a right of return of the refugees. Zionism appears to have provoked the kind of problem it wanted to solve for the Jews.

Finally, my own summary further develops some of the themes presented in the articles. I highlight problems and pitfalls and suggest amendments and improvements.

#### CONCLUSION

This is one of the most comprehensive volumes ever to be written on Israeli democracy. It offers rich analysis that would be useful to those who are interested in Israel studies: scholars and students, philosophers, political scientists, politicians, historians, sociologists, media educators and professionals, jurists and lawyers, and the public at large. The essays cover concerns which democracies confront time and again. They ponder practical problems arising from the tensions involved in democratic processes, and analyze the work of important institutions. The authors share a belief in democracy and seek to promote a better, more workable and sustainable polity amidst a hostile environment.

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#### NOTES

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16. 'Conception of the good' is a conception that encompasses both personal values and societal circumstances. It consists of a more or less determinate scheme of ends that the doer aspires to carry out for their own sake as well as attachments to other individuals and loyalties to various groups and associations.
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18. See E.S. Herman and N. Chomsky, *Manufacturing Consent*, London, 1994.
19. For further deliberation, see R. Cohen-Almagor, 'Responsibility and Ethics in the Canadian Media: Some Basic Concerns', *Journal of Mass Media Ethics*, Vol.17, No.1 (2002), pp.35-52.

# Author Query Sheet

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- 1 'stations'?
- 2 'new mode of communication' ?
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- 4 shd this be e.g. since these aren't the only countries where this applies ?
- 5 '... that these two conceptions...' or '...that this coupling of conceptions...' ?