

The Hebrew Republic

ALSO BY BERNARD AVISHAI

The Tragedy of Zionism
A New Israel

The Hebrew Republic

HOW SECULAR DEMOCRACY
AND GLOBAL ENTERPRISE
WILL BRING ISRAEL PEACE AT LAST

Bernard Avishai

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A C E G I K J H F D B

For Sidra

At the fringe of the sky, at the edge of the desert,
There's a faraway place, full of wildflowers.
A small place—forlorn and deranged—
A small place for worry.

All-that-will-be is spoken of,
And all-that-has-happened is thought,
God sits there and shudders, guarding all He has created.

“You are forbidden to pick the flowers of the garden—
You are forbidden to pick the flowers of the garden!”

And He's worried. Awfully worried.

—YONATAN GEFEN,
from Matti Caspi's hit album,
Side A Side B, 1978

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The Hebrew Republic

PROLOGUE

The Situation

Jerusalem's a place where everyone remembers
he's forgotten something
but doesn't remember what it is.

—YEHUDA AMICHAI,
Songs of Zion the Beautiful

Six years ago, I moved to Jerusalem for the third time, to join my new wife, a professor of literature at the Hebrew University, and to teach at an Israeli business school. This was the winter of 2002 and not the best of times to move to Israel, for the Al-Aqsa Intifada had become a scatter of suicide bombings, and Ariel Sharon's government was preparing the first of its fierce responses in Operation Defensive Shield. When I met one old friend, she put her hand to the back of my head and started feeling around through my hair. "I'm looking for the hole," she said. I had spent the best part of the 1970s living in Israel, and the better part of the 1980s visiting and writing about the country, so the new disturbances, and little ironic gestures of solidarity, were not unfamiliar. But something had changed, certainly among my graying friends, a sadder but wiser air, a sense of being unlucky—a barely suppressed hunger to speak in big categories about formative years.

There have been dramatic turns since then, which raised spirits for a time, the way shock treatments are said to cure for a time: the fall of

Saddam, the Saudi peace plan, Arafat's succession by Fatah's Mahmoud Abbas, Sharon's blitz evacuation of Gaza, the launching of the centrist Kadima party. Hamas then won a majority in the Palestinian parliament, refusing recognition of Israel, and Israelis elected a government sworn to unilaterally erecting permanent borders—each vote a relapse into the logic of vendetta.

Then there was war again in Southern Lebanon, which took nearly all Israelis by surprise, though in a way that seemed to vindicate the working hypothesis. My wife noticed that even educated Israelis had begun to refer to the *matzav*, the “situation,” no longer to the “conflict.” And that is still the case. As I write, the Israeli Defense Force (IDF) exchanges periodic fire with Hamas-controlled Gaza, Tony Blair has assumed the post of Middle East envoy, and Secretary of State Condoleezza Rice has convened a peace summit in Annapolis for later in the fall. If, by the time these words are published, peace talks are not in the headlines, then the consequences of their failure will be. But you listen to the talk shows, or have dinner with a colleague, and there is little about possible diplomatic openings. The conversation is rather about managing a chronic condition, like cancer, or earthquakes.

Not that Israelis are stoic about people they think are insufficiently worried about them. During the Lebanon fighting, in July of 2006, I got in touch with an old friend who has lived in and around Tel Aviv since the 1970s. His parents' big Hungarian family had been decimated by the Holocaust; I have known (and dearly loved) him since we were children in Montréal. I happened to be out of Israel at the time of the war, and I had called to express my concern. But I also wanted to share misgivings about the Israeli Air Force bombing Lebanese ports, oil refineries, and southern towns in response to Hezbollah provocations—not just instinctive misgivings about the deaths of so many Lebanese civilians (among them, children), but the fear that, by bombing in this way, Israel could only alienate the Beirut middle classes and inadvertently

strengthen the prestige of insurgent groups it could not destroy. And how long before scenes of bloody rubble, broadcast on Al Jazeera, would prompt demonstrations in Cairo that the Mubarak regime would be unable to contain?

These were not particularly shrewd misgivings. The Winograd Commission, later appointed by the government to look into the conduct of the war, restated most of them as if they were self-evident.¹ But by the time I reached my friend that summer, Hezbollah missiles were falling by the hundreds on Northern Israeli towns, and our conversation grew fraught. I had missed, he told me, the “robust consensus” that had spontaneously developed in the country. He e-mailed the next day:

I believe that you are profoundly out of touch with the realities of dealing with our neighbors; that you mirror the ideas which have made the left increasingly irrelevant to the great Israeli debate of how to disengage from the settlements and the Palestinians, on the way to rescuing Israel as a Jewish and democratic state, and finding some workable formula first for co-existence, and later for peace. The brutal and reactionary nature of the regimes and ruling élites involved, and the imperialistic interventionism of regional powers (now it's Iran's turn), continue as in the past to sabotage the effort to move us in a constructive direction. The new factor, which did not exist before, is an Islamic, jihadist imperialism with global aspirations and the mega-trillions of oil revenues to back it. I'm well aware of its non-homogeneous nature, internal contradictions and weaknesses. And I contend that to belittle or underestimate it is suicidal folly . . .

I'm writing to confirm what my red line is, even though you know it very well. It's the commitment to the *two-state* framework. It's because I know how deeply you care about Israel, and about the Jewish people, that I can handle anything you say, no

matter how much I may disagree. What I can't do is accommodate people like Meron Benvenisti, whom I respect, or Tony Judt (less so), who have concluded that the Jewish state is a lost cause. I don't need to question their good intentions or integrity, and I don't. But being under attack for merely existing is radicalizing, which makes middle grounds and moderate positions increasingly untenable... [No peace plan] has a chance if we don't demonstrate once again that we have the will to exercise the force necessary to defeat attempts to undo 1948...

What I'm wondering is where *your* red line runs. We have been like brothers for the vast majority of our lives, over 50 years. I won't repeat my earlier comments about the polarizing effects of such conflicts. I want to believe, as I always have, that nothing could ever come between us, no matter how much we might disagree about anything. But this is too deep, too central to my entire life and being, too critical for my system of meaning, for it not to be a threat. It's not an intellectual difference. It's absolutely about who we are, in our deepest essence.

There are many claims in my friend's letter that might seem true to the situation: that naïveté about Arab intentions has marginalized the old Israeli peace movement; that a measure of this naïveté is the refusal to recognize how national power derives from military power (or the credible threat of military power), and that Jews have no excuse for believing otherwise; that older Arab regimes are more or less reactionary and positioning themselves for regional hegemony; that they pander to Islamist fundamentalists, who have Israel's destruction (but not only Israel's) in their sights; that Israelis, in contrast, have always stood ready to offer reasonable terms for peace, while the regime in Iran, bound to acquire nuclear weapons, would have no compunc-

tions about exterminating Israel; that last summer's war was the moment to draw "red lines."

These claims are arguable. Anyway, you don't have to be Thucydides to notice how, in a time of war, people will see immediate threats and apparent loyalties, and fail to see their own past provocations or, indeed, the absurd violence historians see. But the most revealing moment in his letter comes in the second paragraph, a barely noticeable elision he assumes I will understand, the slide from an analysis of Arab intentions, which raises the question of Israel's preparedness, to a demand that I endorse a Jewish state, which raises the question of Israel's legitimacy. What is the connection, really, between Israel's need to defend itself against its enemies and his need to hear that Israel is a just cause? The answer is not as obvious as it seems.

PERHAPS THE HARDEST THING for people not living in Israel to grasp is that for most Israelis, talk about how to deal with the Palestinian militants, Islamists, and others is just foreground. In the background is a contest over what kind of state Israel must be. It is not just thinking about war that makes the situation demoralizing. Thinking about peace is also demoralizing, though in a different way. For Israel would not come out of a sustained war the same country it was when it went in, but nobody expects it to come out of a peace process the same country, either. What leaks into nearly every conversation these days is uncertainty about Israel's future boundaries. I don't just mean geographic boundaries. I mean legal, institutional, and cultural limits. Most people in the country will insist that Israel is and must remain Jewish and democratic. Almost nobody can tell you what this means.

Obviously, Israel cannot maintain an occupation, denying a great many people political rights, and remain democratic in any ordinary sense. But there is an even more disturbing problem, which (my friend

knows) calls Israel itself into question. Can a state for world Jewry be a republic of citizens, many of whom are not Jews? The question is troubling enough as it is, but it also has immediate consequences for the ways Israelis imagine their fight. “Look,” most Israelis will tell you, “we might have to push the Arab states around, or make them believe that we can—and we have to be able to do this with the blessing of Western democracies.” If you ask them, “But isn’t preemption and lethal force making your neighbors more determined to fight you?” they answer, “Our neighbors hate us anyway, and, sadly, most of our own Arab citizens do, too. It is naïve to believe that they won’t, given the kind of state we are.”

Israelis of my own generation do not commonly see a way out of this bleak reasoning. And younger Israelis are certainly no more confident about their neighbors. A former student, who saw hard action in Lebanon, now goes on about the clash of civilizations. Yet another student, a Herzliya entrepreneur, wryly told me just after Sharon was hospitalized, “It is my friends and I who’ve lapsed into a coma. We’ve tried thinking and it doesn’t work.”

THIS BOOK ARGUES that there *is* a way out, and an emerging Israeli élite quite capable of leading the country to it. But Israelis, especially members of this élite, first have to see how much better things are than what they commonly imagine, and worse than they commonly fear.

Better, because Israel’s democracy—indeed, its survival—does not simply depend on how its military does against jihadist threats in Israel’s immediate neighborhood. Israelis live in a wider world and have already met the more daunting challenge: building a vibrant Hebrew culture and an exacting economic engine, qualifying themselves to be included among advanced, global players. The challenge of the old industrial world was national self-sufficiency—some called this self-determination—which Israel’s socialist and military leaders of the 1960s

were reasonably good at. The challenge of the new economy is integration into global markets, corporations, and universities, which today's Israelis are *really* good at. Israel's technology entrepreneurs, scientists, designers, and artists provide their country with a staying power more impressive than anything the Israeli armed forces could ever achieve for it. This cosmopolitan economic and intellectual power reduces to insignificance any fight over tracts of land. It should also reduce anxieties about Jewish cultural survival in Israel's immediate vicinity.

Some call success at globalization a soft form of power. This is short-sighted. The ultimate aim of realpolitik today is to gain the capability of participating in the knowledge economy—the power to create wealth, cultivate human capital over time, develop technologies into entrepreneurial innovations—the power to attract, rather than the power to deter. There can be no winners in war now, only rival claims to make the other side suffer more. Israelis could anchor regional development and contribute in myriad ways to the future prospects of their neighbors—and their neighbors know it. America lost the Vietnam War, but who if not America is winning the Vietnam peace? In my capacity as a consultant for a global strategy firm, I have personally trained dozens of Libyan managers and entrepreneurs who are impatient for openings to the West—even to Israel, should peace be possible.

Besides, the global economy depends on political institutions that portend a global commonwealth. The European Union, with which Israel enjoys free trade, is the most impressive diplomatic fact of my generation. But there is also NATO, the Group of Eight, the Organisation for Economic Co-operation and Development (OECD, which Israel just joined), the span of world corporations, international peacekeeping protocols, the political pressure of twenty-four-hour newscasts and blogs—changes that define much of democratic life today and that make the political language of Israel's majority (indeed, phrases like *Jewish majority*) seem unexamined.

The great achievement of Zionism, the creation of the Hebrew-speaking nation, is a settled fact. The country that serves as its homeland might now adapt to any number of international political arrangements, while preserving its cultural distinction. The bloodshed between Israelis and Palestinians may not end anytime soon. Yet Greater Israel has a rival in global Israel. Palestinians, Israeli Arabs, even the vast majority of Jews removed from settlements could do worse than find themselves in the gravitational pull of Greater Tel-Aviv.

AND YET THINGS are also worse because Israel's Arab citizens, a fifth of the population, are threatening a shock to Israel's civil society, which the state apparatus has no means to absorb. Talk about Israeli vulnerability is usually focused on Gaza and the West Bank, or on Iran's long-term nuclear ambitions. But even if the occupied territories just disappeared, and if things were somehow to revert to the status quo ante 1967, the country would face, soon, another intifada, this time from within—not an uprising like Gaza's, perhaps, but something far worse than Watts in 1965, or the suburbs of Paris in 2005.

Sure, Israeli Arabs are the children and grandchildren of Palestinians who were led by reckless strongmen at the end of the British Mandate. They were wrong to reject partition in 1947. Ethnic cleansing happened on both sides during the 1948–49 war. And, also true, Israeli democracy has been a kind of liberation for many Arab intellectuals; Israeli Arab workers earn, on average, about seven times the average income in the territories. None of this changes the fact that the vast majority of Israeli Arabs are now third-generation Israelis. They cannot be told that Israel is a haven in a heartless world. Nor is their resentment of Israel just natural; polls show that about two-thirds of Israeli Arabs accept their country as "Jewish and democratic," enigmatic as this term is.² Rather, their country has evolved into an advanced, global, multicultural state, and its democratic flaws have therefore become insufferable to them.

Arabs believe, and their experience confirms, that no matter how well they perform as citizens they cannot aspire to live as equals or even live where they please. Their resentment is toward a pervasive legal structure that discriminates in favor of Jews as individuals.

Make no mistake: The danger of alienating a million and a quarter Arab citizens is imminent and very serious. This danger is exacerbated by the spectacular increase in the population of Israel's ultra Orthodox Jews, whose legal privileges encourage them to wonder why Arabs fit in their state at all. And what's going wrong with the country threatens to destroy what's going right. Israeli élites cannot hope to have an economy like Singapore's and a nationalities war like Serbia's. Israel will have to grow at an unprecedented rate, not only to absorb this large Arab minority into a Hebrew urban society, but also to mitigate growing inequalities in the Jewish population itself; globalization has left many undereducated Israeli Jews behind. If civil disturbances break out, the economy will go south, and Israel's brightest children will go west.

This danger is lodged in the back of every Israeli's mind, but most here still treat it lethargically, or brush it aside while stewing over Iran, or Israel's image abroad, or the latest political scandal—most, that is, except for Jewish settlers and rightist politicians who exaggerate the Otherness of Arab citizens and just assume a fight to the finish.

AT THE HEART of my argument is a tribute to democratic standards of the most ordinary kind—not just to a fair electoral system but, as V. S. Naipaul writes, to a certain kind of society, a certain kind of awakened spirit: “the idea of the individual, responsibility, choice, the life of the intellect, the idea of vocation and perfectibility and achievement. It is an immense human idea. It cannot be reduced to a fixed system.” He might have added other attitudes embedded in this idea: scientific doubt, a utilitarian approach to property, the idiosyncrasy of religious imagination, the hybridity of national identity.³ We are all born adorable little

fascists, Naipaul implies, so the question is: What laws, norms, experiences, etc., in our social milieu will prepare us for tolerance, “the individual, responsibility, choice”?

Democracy, in this sense, cannot just be something that happens after a peace process. It is itself a peace process. And even if it cannot be reduced to a “fixed system,” we have nevertheless seen democratic movements succeed because they pursued radical principles without quite knowing where these would lead. They fixed on the dignity of individuals, openness to federal power sharing, racial integration, collective security. Think of the early development of the European Community, or the American civil rights movement, or Québec’s Quiet Revolution, or the newly minted peace in Ireland. Are Israeli leaders approaching their problems with anything like these precedents in mind?

Still, the Israel envisioned by this book will be a republic in which the Hebrew language predominates, partly through established legal protections, but also naturally, because the commercial hegemony of Israel’s Jews will make Hebrew the language of work. It is a country already largely in existence. This Israel—this Hebrew republic—would be patently the state of the Jewish people, with voluntary links to Jews around the world, but it would be organized in a way that does not presume to straighten the crooked timber. Nor, I should emphasize, would it presume to replace Jews with Hebrews. A language is an ambience, not an indoctrination. Hebrew will provide a distinctly Israeli context in which its citizens—mainly Jews, but also Arabs, and others—work out their own lives.

No doubt, some of Israel’s most prominent defenders—in the Israeli diplomatic corps, or American Jewish organizations—will rush to say here that Israel is already a fine democracy, or that exceptional circumstances make full democracy impossible, or that Israel’s democracy is much better than anything its neighbors have produced, or that Israeli

Arabs are actually cavalier about democratic values—or all of these claims at once. And it is true that Israeli democracy is, at times, wildly underestimated.

But these people are missing the most interesting paradox here. Israel's deficiencies as a democratic state have always been most transparent to Israel's Arab citizens. Yet its promise as a Jewish state is also most transparent to them. I do not mean that Israeli Arabs want this state more than Jews do. They just envision it more clearly than Jews do, especially Jews of a certain generation. Israel's Arab citizens contend with its promise every day in the ambient pressure to integrate into Israeli civil society. It is a pressure exerted by the force and grandeur of secular Hebrew culture.

ISRAELIS TAKE IT personally—the arguments, the hyperbole, the history. Needless to say, I do, too, though I have followed debates about what is Jewish and democratic with a particular fascination since my return to Jerusalem. More than twenty years ago, I published a book, *The Tragedy of Zionism*, which explored the uncertain influence of democratic ideas on classical Zionist theories and, in turn, the influence of Zionist institutions on Israeli democracy. I tried to show that the residual Zionism of the state after 1949, and the settlements in occupied territory after 1967, were one problem. I'd often wondered if I had not been too rash or elliptical in making the case. (I'd learned from many subsequent years of business consulting that being called “ahead of your time” was no real compliment.)

The book, obviously enough, did not make friends among people for whom any criticism of Israeli democracy was seen as a comfort to Israel's enemies. (“Jew Against Zion,” the *New Republic* cover declared.) But even people I admired—people who were otherwise quite prepared to entertain public criticism of Israeli government policies—were surprisingly hostile. One colleague at the Hebrew University

publicly accused me of “liberal theology.” Over the years, close friends in Jerusalem, people active in the peace movement for decades, insisted that my focus on the performance of Israeli democracy was putting the cart before the horse, that one first had to get to a two-state solution, and then deal with the internal problems of democracy—which would become more tractable, presumably, once the peace process succeeded. I returned to Israel in 2002 still wondering if they had had the bigger part of the truth.

By now it is clear that democratic principles are no cart, and the old peace movement’s tactical sequence—first, a two-state solution, then, everything else—has not worked out as planned. Consider, if nothing else, the skeptical reaction of even moderate Palestinian leaders, in advance of the Annapolis meeting, to the proposition that Israel be recognized as a Jewish state. Would that not mean, they say, recognizing discriminatory practices against Israel’s Arab minority? If they are wrong, do Israeli Jews really understand why? For even if a peace treaty were signed tomorrow, it would take many years for peace to take root. Peace will never take root unless Israeli Jews reform the ways they approach their future with Arab citizens. Recent decisions of Israel’s supreme court suggest how far-reaching those reforms will have to be.

But this book has another task—which *The Tragedy of Zionism* could not have anticipated; namely, to create an intellectual bridge between Israel’s veteran peace activists and Israeli entrepreneurs. There are exceptions, of course, but most people who’ve worked for peace over the years, in and out of Israel, have backgrounds in left-wing movements. One way or another, they’ve deplored international capitalism; the idea that Israel’s entrepreneurial élite has itself become a natural peace camp seems to them strange, even vaguely cunning. I shall not explore all the ways the knowledge economy has transformed capitalism in our lifetime, spreading what often seems a magical egalitarianism on the

job along with dreadful inequalities in society at large. What I shall do is connect the dots between Israel's economic and democratic prospects. There are novel pressures building on Israel's politicians, themselves increasingly members of a global professional class. Indeed, Israel's room for maneuvering has narrowed as its economic horizons have widened. Western diplomats should particularly take note of these novel pressures on Israeli leaders. Israel and Palestine cannot make peace alone.

A FINAL WORD about the book's title. I first heard the term *Hebrew republic* from Hillel Kook, a minor Zionist celebrity, whom I met in 1975. I was a young political scientist living in Jerusalem and had written a series of articles on Israeli affairs for the *New York Review of Books*. Kook had read them and decided I needed some mentoring.

He was then a man in his sixties, still robust and almost always accompanied by (and in what seemed intimate conversation with) his striking new wife. He sported a gray goatee, tweed jacket, and had a lean aspect—a modern Jewish aristocrat, I thought, with an air of precise, perpetual disappointment. He was the nephew of Jewish Palestine's first chief rabbi, Abraham Isaac Kook, and had been an aide to Revisionist leader Vladimir Jabotinsky. In the 1940s, under the pseudonym Peter H. Bergson, he organized the New York-based Emergency Committee to Save the Jewish People of Europe, the first American group to organize against the Nazi horrors then unfolding.

Kook became a member of the first Knesset in Menachem Begin's Herut party—which he left in disgust after one term. Israel, he began to warn, was heading for a fall because it had not shaken free of its revolutionary Zionism. It had failed to enact a written constitution. It was still in the thrall of old socialist Zionist institutions. It was being blackmailed by rabbis. It was completely lost regarding its own minorities. It

had failed to redeem the real promise of Zionism, which was to create a “Hebrew republic.” These ideas struck a chord, but there was something so familiar, so *material*, about Kook’s liberalism that I could not quite believe it applied to the bloodied, noisy, metaphysical Israel emerging around me after the Yom Kippur War. He died near Tel Aviv in 2001, and I had not been in touch with him for years.

But more and more I’ve been thinking about him, and how he personified Gramsci’s famous dictum that the pessimism of the intellect should be coupled with the optimism of the will. So let us say, willingly, that it will take another generation to implement a Palestinian peace and, with it, slowly realize the vision of a Hebrew republic, which is actually a return to the most original Zionist vision. Fresh arguments will have to be made for this inspired vision, in Israel and in Western democracies. And fresh arguments, coming at a dark moment, have to pass a plausibility test that standard arguments, however stale and improbable, do not. Then again, a generation or more is not too much to ask. That is the time it took all of us to create the disaster we will now have to unmake.

PART ONE

Jewish and Democratic

The phrase *Jewish and democratic* is not simply a slogan. It appears in something like constitutional law in Israel and has become as iconic as *life, liberty, and the pursuit of happiness*. I say *like* constitutional law because the Knesset never actually enacted a constitution. It enacted fourteen Basic Laws since 1949 (three of which have been repealed), which govern the operations of the state apparatus, elections, public lands, and so forth. Bundled together with the 1950 Law of Return—which accords immediate citizenship to any Jew who immigrates to the country—and with the (partly informal) Status Quo Agreement, establishing the Orthodox rabbinate as officials of the state, the Basic Laws amount to the so-called small constitution.

Which brings us back to the phrase *Jewish and democratic*. The most important law to be passed in recent years, the Basic Law on Human Dignity and Liberty, took final shape in 1994, and is the closest thing Israelis have to a bill of rights. It was enacted—so the text states—to advance the “values of the State of Israel as a Jewish and democratic state.” Since that time, virtually all Israeli leaders assume the justice of the phrase. They speak it unreflectively, as if it needs no explanation.

Of course it does. For there are no definitions of *Jewish* or *Judaism* in any of the Basic Laws. Nor were there any in Israel’s Declaration of Independence, read, memorably, by David Ben-Gurion on May 14, 1948, as Arab armies prepared to invade—only some euphemistic references

to the Book of Books and the Rock of Israel, to “freedom, justice and peace as envisaged by the prophets of Israel.” Democracy, for its part, was not mentioned at all in the declaration, though, intriguingly, the document made a commitment to “the complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex” and to “freedom of religion, conscience, language, education and culture.” Sadly, these liberal norms were never incorporated into the Basic Laws. They are even less pervasive in Israel’s comparatively large and diverse population today than they were in the small, pioneering community that brought the state into being, just after the fight against fascism had been won.

The Basic Law on Human Dignity and Liberty, for example, guarantees the protection of life, body, dignity, property, privacy, and (touchingly) “intimacy.” No citizen of a Western country would be embarrassed by its language. But unlike some other Basic Laws, this one can be revoked by a simple majority of the Knesset. Although liberal norms are fixed in the hearts of elite Israelis—journalists, scientists, business professionals, and scholars accustomed to working in the West and performing by its standards—the Basic Law on Human Dignity and Liberty falls well short of the European Union’s Charter of Fundamental Rights, or Israel’s Declaration of Independence, for that matter. There is still no civil marriage in Israel, no separation of religion and state, and no universal (or, for most, secular) standard for earning Israeli nationality. There is weak protection against being held without charge for “security” offenses, and very weak protection against discrimination on racial or ethnic grounds. One could go on.

No wonder, then, that a 1999 poll of the Israel Democracy Institute exposed a fascinating anomaly: 96 percent of Israeli Jews wanted a “democratic” state, and 85 percent wanted it “Jewish.” Yet where democratic freedom and Jewish law clashed, only 54 percent said they

would protect democratic freedoms. Thirty-eight percent said they wanted a state at least partly based on Jewish law, or Halakha. A 2003 IDI poll revealed that some 56 percent of Israelis agreed with the statement “A few strong leaders would do more good than all the discussions and laws,” which makes you wonder what more than half of the 96 percent of Israeli Jews who approved of democracy were really thinking.

Speak of these holes in Israel’s democracy, and hardliners will tell you that Israeli Jews must naturally treat their Arab minority with suspicion—hence, without full equality. Peace activists, in contrast, will say that it is Israel’s occupation of Palestinian territories since 1967 that has coarsened democratic attitudes in everyone. Few on either side seem prepared to discuss the questionable legal construction the state has always put on Jews and Arabs alike, irrespective of enemy encirclement or the occupation. The simple fact is that Israeli Jews call their state Jewish and democratic, but the laws have engendered premodern notions of Jewish and partial ideas about democracy. Why?

THE ANSWER IS that Israel came into being, in effect, as two states, not one. Israel was established so successfully after 1948 because a revolutionary Zionist national home—populated by Hebrew-speaking worker-citizens—had succeeded in establishing a pioneering state within the larger colonial state administered by the British Mandate. This informal Jewish state, recognized by the United Nations after the Holocaust, had many sources of power: a land bank for settling Jewish collective farms (the Jewish National Fund); dozens of exclusively union-owned industrial enterprises; a system of self-government, with competing Zionist parties; a world organization to represent, and raise funds for, Palestinian Jews (the Jewish Agency); a Jewish health fund; a British-sanctioned Orthodox rabbinate to perform Jewish marriages

and funerals; a Jewish defense force; and Labor Zionist schools, theaters, newspapers, cultural institutions, and much more.

Ben-Gurion originally thought this Zionist state would be a kind of scaffolding to be dismantled when the Israeli state was built. Alas, it proved more resilient than that. Israel's new leadership incorporated into their fledgling democracy most of the institutions, improvisations, regulations, etc., that had worked so well in settling Jews for the previous fifty years. Presumably, Israel would need them to ingather exiles for the next fifty.

So Israel is inarguably Jewish and democratic, but this really means that Israel is a democratic state encasing an older, heroic state, made up of residual Zionist institutions and an officially sanctioned rabbinate. Israelis share a public realm of democratic law and judicial protection, assuring the equality of all citizens, including the minority Arab population. But Israeli Jews share an inner state, in both senses of the term, focused on the material and spiritual needs of Jews alone.

This odd architecture has produced three crises. Israelis readily acknowledge them but rarely see the common root. First, the institutions designed to advance the heroic Zionist state have become unworkable for the democratic one. Laws alone did not create either the "situation" or the predicament of Arab citizens, but far-reaching legal reform will be needed to get beyond both. Second, settlements in occupied territory after 1967 were a true, if twisted, product of Israel's residual Zionism. A rollback of settlements, even for obvious security reasons, will be especially painful to a large number of Israelis; it will prompt them to rethink Israel from its inception—its culture heroes, the deeper claims of democracy, the price of love for the Land of Israel, and the prestige of Jewish religious Orthodoxy. Third, the legal status quo maintained for the Orthodox rabbinate has not maintained a social status quo. It has engendered a community whose political power is growing along with a burgeoning population—a power that threatens

to sink the democratic part of Israel, irrespective of Israeli Arabs or the occupation.

Israel can emerge from these crises a stronger, better place. But today, one quarter of Israeli first graders are Arab and one quarter are ultra-Orthodox Jews. Many critical institutions are anachronistic; the laws are a muddle. You don't have to be a prophet to see where the children of Israel are heading.

CHAPTER 1

Basic Laws

What geniuses you are! What strategists! Don't you get it? Don't you see that our principle of "territorial compromise" means "as much land as possible, and as few Arabs as possible"?

—YITZHAK NAVON,

Labor leader, and former president of the State of Israel
(from a speech before a jeering audience in Yoqneam,
a Likud stronghold, during the 1984 election campaign)

Israel is an open society: Palestinians will be the first to tell you this, often with a hint of envy. Most Jewish Israelis, 81 percent according to reliable polls, also think "equality before the law" is essential, regardless of "political opinion."¹ And the judiciary is pretty much with them. Under the tenure of its recently retired president, Aharon Barak, Israel's High Court of Justice (its Supreme Court) broadly applied the Basic Laws to protect a wide array of civil liberties. Barak's court, for example, overturned the military censor's effort to ban Mohammed Bakri's 2002 film, *Jenin Jenin*, which charged (on thin evidence) that elite IDF combat units intentionally caused civilian casualties during Operation Defensive Shield. The court also rejected government efforts to ban Arab political parties.

Actually, when people speak of Israeli freedoms they usually mean speech. Hundreds of foreign reporters, including reporters from Al

Jazeera, are permanently posted to Jerusalem. Government politicians are notorious for their efforts to manage the broadcast news at Channel One, which is state owned²; but this did not stop veteran news anchor Haim Yavin from broadcasting (on the rival, and commercial, Channel Two) an independent documentary, filmed with his own video camera over a couple of years, exposing the extremist views of many West Bank settlers. In a country about the size and scale of Massachusetts, there are three fiercely independent Hebrew newspapers that together sell about a million papers a day (the more impressive when you realize that the mother tongue of a million citizens is Arabic, and the mother tongue of another million citizens is Russian).

John Stuart Mill wrote that the majority-but-one had no more right to silence the one than the one had the right to silence the majority. Israelis might have added that the one also had the right to jump into everybody else's sentences. Television talk shows are nicknamed *tarshelee*—"allow me"—shows, as in "Allow me to finish." Former Knesset speaker Reuven Rivlin used to call out warnings to disorderly members the way a basketball referee calls fouls; three get you expelled from a session. He had to ban cell phones from the chamber.

But then, cell phones are themselves an infrastructure of expression. Roughly 100 percent of Israeli households have one. Most of the Israeli high-tech business community has acquired the libertarian feistiness of Silicon Valley. Israelis are adopting high-speed Internet access at twice the rate of Americans. Over 180,000 students are enrolled in five major universities and nearly fifty colleges and institutes. More than 30 percent have over thirteen years of schooling. Israelis publish more scientific papers per capita than any other country. Typically, about twenty political parties organize for elections. Gays march proudly in Tel Aviv. If their society is not exactly civil, silencing Israelis, including Arab Israelis, seems almost unimaginable.

YET ISRAEL IS A society where institutional discrimination against individuals for an accident of birth or a profession of faith has been so routine it is hardly noticed—not, at least, by Jews. The real contradiction in Israeli democracy is not between people who claim the right to dissent and people who would stop them, but in the conflicting impulses of officials, even in the judiciary, to realize democratic standards and yet protect the extraordinary mission of Israel as a state that ingathers, but cannot quite define, Jews. The most widely embraced Zionist principle is the justice of Jewish settlement. The most conspicuous inequality is, everywhere, preferential residency.

Start with population figures. There were about 180,000 Israeli Arabs in 1949, and they lived under military government until 1966. Now as then, Israeli Arabs constitute about a fifth of the country's population, roughly 1.2 million people. Of the 15 percent of Israelis who are Muslim, bedouins account for just under 3 percent. Druze and Circassians account for about 2 percent of Israelis, and Christians about 3 percent. (Incidentally, many now prefer to be called, not "Israeli Arabs," but "Palestinian citizens of Israel." The latter term is more fashionably defiant, but implies the very tribal concept of nation that Arab citizens normally try to break down. It is also more clumsy, creating a confusion with Palestinians across the Green Line, the internationally recognized border prior to 1967; will *they* be called "Palestinian citizens of Palestine"? In common Hebrew parlance, Arab citizens are called Arviyei Midinat Yisrael—"the Arabs of the State of Israel." I'll just continue saying Israeli Arabs.)

So the Israeli Arab population has grown by a factor of six since the founding of the state, pretty much the same rate as the Jewish population. Arabs are disproportionately engaged in farming. Remarkably, however, land available to Arab municipalities has meanwhile declined by 50 percent, to just under 3 percent of land within the Green Line. When you include privately held land outside their towns and villages, Israeli Arabs own just under 4 percent of their country.³

This segregated pattern of settlement is not the result of normal market forces. It results from the fact that some 92 percent of Israeli territory is public land, in effect, closed to Arab residency since 1949. The Knesset, not the municipalities, controlled public land from the start; in 1960 it handed over custodianship to the Israel Lands Administration (ILA), a state agency it created through a Basic Law. There were three kinds of land to administer, moreover. First and foremost was the land of the Jewish National Fund, the JNF or Keren Kayemet, including all properties originally purchased by Diaspora Jews during the time of the British Mandate. Today, JNF land is about a sixth of public holdings. The second parcel belonged to Israel's Development Authority, perhaps another sixth of the total. The remainder was said to be "state land," eventually to also include Jordanian publicly administered lands captured in 1967.

All of this would seem innocent enough if one could think of the ILA as an impartial state agency, considering development projects on their merits. Now and then, the ILA has behaved in just this way, allowing Arab towns to expand. But on the whole, the ILA has acted like the continuation of the JNF by other means. Official government brochures still justify the foundation of the ILA by adverting to "the special relationship between the People of Israel and the Land of Israel and its redemption."⁴ This language, and mission, were borrowed directly from the JNF. The ILA did not formally adopt pre-state JNF regulations, which had stipulated that land could not be alienated to non-Jews. But until very recently, when it was challenged in the courts, the ILA strictly enforced JNF regulations on lands it had inherited from that old Zionist body.

Just to be clear, the JNF owned about half the territory assigned to Jews at the time of the UN's partition proposals—disproportionately arable land, on which most of the veteran settlements had been built. A majority of Jews still live on what does, or did, belong to the JNF. Nor

did the JNF remain a mere land bank, funded by Western Jews for pioneering settlement. After 1948, once the War of Independence was won, the Knesset swelled JNF holdings with land no Jew had ever paid for. The Knesset passed a series of laws to confiscate “abandoned” Arab property, that is, the homes of Arabs who had either fled or were driven from war zones. While the UN pressed Israel to allow the refugees to return—or at least to compensate them—the Israeli government simply assigned their land to the JNF, tripling its holdings.⁵ Of the 370 settlements established in Israel between 1948 and 1953, 350 were established on formerly Arab property.⁶ All of this land, too, was closed to Arabs.

There were desperate Jewish refugees as well, of course, as Israel emptied out displaced-persons camps in Germany, Cyprus, etc. The new Jewish state soon offered homes to refugees from Iraq, which dispossessed its Jews in 1950–51. As the historian Howard Sachar wrote of the 1949 turmoil, “Two hundred thousand Jewish immigrants preempted 80,000 Arab rooms.” But nothing can change the fact that Israel simply extended JNF regulations to vast stretches of land forcibly confiscated from Arabs, and the ILA pretty much took over from there. JNF regulations wound up being applied even to “internal refugees,” Arabs who never actually left the country at all, but may have fled short distances to escape the fighting, for example, the several hundred yards from the new city of Acre to the walled Old City. Some 40 percent of lands belonging to legal Arab residents of Israel found their way into JNF ownership. (These residents were ultimately compensated for only a small portion of the value of their lands.)

“THE MOMENT ONE of the people took one of the truths to himself,” Sherwood Anderson writes in *Winesburg, Ohio*, “[the moment he] called it his truth, and tried to live his life by it, he became a grotesque, and the truth he embraced became a falsehood.” This might have been written about Israelis who swore by the JNF, or took the work of the ILA

for granted. Today, few outside observers are able to penetrate the ILA's convoluted leasing arrangements, for instance, with the Jewish Agency's mortgage companies, or preferred contractors, or the large and secretive JNF holding company, Himanuta, which has had particular responsibility for extending the reach of Jewish settlers into occupied territory. Government planning commissions may include one or two Arab mayors, but many representatives of old Zionist agencies, including the JNF. The JNF itself remains a quasigovernmental institution, presiding over a \$150 million budget, and raising funds among Jewish communities of the Diaspora.

The result of these arrangements is serious material discrimination in favor of Jewish citizens, or planning policies in which the Arab presence in the land is simply effaced. Recently, the JNF, Ministry of Tourism, and Mount Hebron Regional Council published a brochure inviting visitors to the region of the Hebron Hills—partly in Israel, partly in the West Bank—in which the Green Line was not even acknowledged. But ignore, for now, settlements in occupied territory. Israeli politicians still speak urgently of *yehud haqalil*, literally, the “Judaization of the Galilee.” Just after the evacuation of Gaza, the then vice premier Shimon Peres announced a plan to put ten thousand housing units in the Galilee for Jewish families from the center of the country. The housing ministry, the Israel Lands Administration, and the Jewish Agency also announced a plan to bring 250,000 Jewish residents to the Negev.⁷ “The ILA has obviously followed a ‘Zionist’ policy since its founding,” David Kretzmer, a Hebrew University legal expert on land policy, told me; “it has aimed for Jewish control of the land, through settlements, hilltop outposts, and so forth, and governments never considered any of this secret or embarrassing.”⁸

In 2000, before the recession caused by the Al-Aqsa Intifada, about 100 million shekels were slated for Arab communities, about 5 percent of the development budget. In 2002, this was cut to under 70 million

shekels, or 3 percent. That same year, the ministry budgeted over 11,000 shekels per resident in the booming Jewish border town of Modi'in. Arab localities, in contrast, were budgeted about 100 shekels per resident. An investigation launched by *Haaretz* revealed that of the 104 northern communities offered various incentives to grow, only four of them were Arab or Druze towns.⁹ Recently, the Arab town of Sakhnin—which has a population of 25,000 and provides services to a large rural area in the eastern Lower Galilee—petitioned the interior ministry to extend its own municipal boundaries to include some 8,400 dunams, to account for natural growth. The government approved 1,700. The Jewish Misgav Regional Council opposed expansion. The amount of municipal land per Jewish inhabitant in Misgav will come to thirty-six times the amount of land per Arab inhabitant in Sakhnin.

Finally, some of the most important forms of discrimination are indirect. The government traditionally provides subsidized mortgages to young men and women who've completed their army service. Only Jews and Druze are conscripted—and Arab youth are not provided a comparable national service option—so the subsidy has greatly favored Jews. For their part, Jewish immigrants still get preferred mortgages from the Jewish Agency.

Serious people will tell you that Israel is a young democracy, as if more time and heat will, by some political alchemy, burn things down to a democratic residue. But if democracies can be said to age gracefully, Israel's has not. Its essentially segregated nature has only gotten more extreme over the last sixty years, as Israeli Jews moved away from agriculture and into large cities. Arab farmers and Jewish collectives once lived side by side, albeit distrustfully, and more or less at the same standard of living. But today well over a million Israeli Arabs live in townships in the Galilee or in strings of towns to the east of—and removed from—the Jewish urban mainstream on the coastal plain. In towns like Lod and Ramle, drug gangs control the streets.¹⁰ Towns like

Tira, Taibe, and Umm el-Fahm are prosperous in the way 1950s Jewish towns were prosperous.

No wonder that even as Hezbollah missiles fell on their towns, more than a third of Israeli Arabs refused to back either side during the 2006 Lebanon war, while a small number, about 18 percent, actually backed Hezbollah over Israel. (Instructively, more than 65 percent of Jewish Israelis assumed that a majority of Israeli Arabs backed Hezbollah.¹¹) Another recent poll revealed that 68 percent of Israeli Jews would refuse to live in the same apartment building as an Israeli Arab, 46 percent would refuse to allow an Arab to visit their home, and 63 percent agree with the statement that Arabs are “a demographic and security threat.”¹²

THE SEGREGATION does not go unchallenged. Israel’s High Court of Justice has, almost single-handedly, tried to reverse it, addressing Arab inequality much the same way the Warren Court began to change the face of the South with *Brown v. Board of Education*. The court unanimously struck down one government development plan for towns in the Galilee as “racially biased.”¹³ In 2002, in a landmark decision, the court used the Basic Law on Human Dignity and Liberty to rule that JNF ownership regulations could not be used to keep an Arab citizen—in this case, Adel Ka’adan, a surgical nurse from Baqa al-Garbiya—from building a new home for his family in the neighboring village of Katzir. (“All I want is to give my family better living conditions, my daughters a better education. That’s all I’m interested in,” he said.¹⁴) In 2007, Israel’s attorney general, Manny Mazuz, extended the Katzir decision, advising the ILA that the JNF’s restrictive regulations could not be used to deny Arabs from participating in its land auctions around Carmiel.¹⁵ Civil rights experts like Kretzmer have been heartened by such decisions. “No way could they uphold a policy of not leasing public land to Arabs,” he told me.

Yet as American civil rights workers learned during the 1960s, court

decisions have little tooth in the absence of an executive authority willing to enforce them. As of this writing, Ka'adan has still not moved into Katzir. The land auction around Carmiel has been delayed pending appeal. In Israeli cities, most landlords will simply not rent or sell to Arabs. The justice ministry ignores such cases. In towns that have grown from farming collectives (like Katzir), residents get around the High Court's decision by forming "acceptance committees" whose criteria are vague.

Nor have Israel's elected governments been supportive of the judiciary in such cases. When the court decided Katzir, Tzipi Livni, then the justice minister under Sharon, stated that the ILA was "not obligated to the principle of equality" when selling lands.¹⁶ The Sharon government immediately voted 17–2 to support a law overturning the court decision (a law never brought to the Knesset, where it would almost certainly have passed). At the time of Aharon Barak's retirement, polls showed that only a narrow majority of Israelis expressed confidence in the High Court as an institution. One reader of the polls, the Olmert government's justice minister, Daniel Friedmann, has proposed reforms that could, says Barak, "annul the High Court of Justice, [or] the subordination of the army to the civilian authorities" with a simple majority vote of the Knesset. Other polls reported that over two-thirds of Israeli Jews opposed allocating lands owned by the JNF to Arabs, and the JNF threatened to withdraw its land holdings from administration by the ILA.¹⁷ In July 2007, the Knesset voted on the first reading of a law that would overturn the High Court's decision and permit the JNF to continue its policy. The vote was 64–16 in favor.

Even officials sincerely intending to apply court decisions betray ambivalence. When the showdown between the High Court and the JNF first came to a head, Attorney General Mazuz suggested, grotesquely, that the ILA should compensate the JNF from state lands for every parcel sold to non-Jews. In June 2005, he presided over an agreement that

finessed the problem: The JNF would transfer its urban holdings to the state in exchange for an equal area of unpopulated rural land to the JNF, so that residency requirements would become moot. Pleading for a “non-discriminatory” standard, and against the proposed Knesset law of July 2007, legal scholar and former education minister Amnon Rubinstein suggested that the JNF should be able to keep its Jews-only policy if it returned to the ILA the land taken from Arabs by force in the War of Independence. The JNF, he said, should be able to manage the 900,000 dunams (approximately 225,000 acres) purchased long ago by Diaspora Jews “in line with national interests,” such as building homes for demobilized soldiers. But imagine the Anti-Defamation League’s response if an Arab Muslim trust had once bought up most of the attractive land in Brooklyn with Saudi money and then forbade non-Muslims to buy it or live on it.¹⁸

So the message to Arabs has remained pretty much what it always was. If you intend to live in the big cities, you’re taking your chances on finding a willing landlord. If you intend to live in veteran towns and settlements, you had better be prepared to go to court. If you intend to apply for new housing, in developments populating Jerusalem, the Negev, or the Galilee, you had better forget about it. The message is unlikely to change without widespread privatization of public land.

“Just look at the Jewish Agency’s settlement activities on either side of the Green Line,” educator and entrepreneur David Harman told me. “A buying group, usually affiliated with a political movement, but in any case constituted as a kind of Jewish collective, will petition the Jewish Agency for funds to start a housing project. Then they may get some infrastructure money from the agency, or land from the Jewish National Fund, or mortgages for new immigrants, or parks and playgrounds, or connection to the water system—all ‘philanthropic’ projects. Then they constitute an ‘acceptance committee.’”

Could Arabs expect to become part of the housing project? I asked.

“Don’t bother applying,” Harman said. The government might formally have to allow this, since the court has decided against discrimination, but the deal is structured in a way that makes legal formalities moot. Harman was the director of the Jewish Agency’s now-defunct Joint Authority for Jewish-Zionist Education for eight years during the 1990s. He knows the ropes. Nor is the politicization of the Jewish Agency relevant only to what goes on within the Green Line.

“If the government, say, wants to invest money beyond the Green Line, it just walks over to the Jewish Agency—which is barred from such investments by American tax laws—and tells them: ‘If, by using *your* money, we don’t have to invest within the Green Line then we can invest *across* the line’—the money is fungible, you see, that’s the way it works.”

WHO IS A JEW? Here we come to the other knot in Israel’s legal tangle. From its inception, the Israeli state apparatus recognized, in effect, two categories of personal status: *ezrahut*, most commonly understood as “citizenship”; and *le’om*, which means “nationality” or “peoplehood.” Virtually all residents of Mandate Palestine who remained within Israel’s international boundary at the end of the 1948–49 war, including the 180,000 Arabs, qualified for citizenship. They enjoyed equality in the new civil society, including the right to vote. However, people legally designated *yehudim*, “Jewish nationals”—people with Jewish origins, whether coming from Mandate Palestine or the Diaspora—had other material privileges, accorded by the core Zionist apparatus: residency rights in Jewish settlements, subsidized mortgages, and so forth.

The Law of Return defined as Jewish any “child or grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew.” This was not the standard of traditional Halakha, which deemed a Jew to be anyone born of a Jewish mother, but the new state—so it was thought—should accord Israeli citizenship to

anybody who would have died as a Jew during the Second World War. (In fact, the Law of Return's standard mirrors the 1935 Nazi Nuremberg Laws.) Jewish immigrants were entitled under the law to immediate citizenship—a right extended to no other nationality. They also were also granted a package of *zekhuyot*, “economic rights”—tax breaks for a period of time, or the right to import cars and household goods without tariffs.

During those stirring days, if you could claim any kind of Jewish relative and wanted to come to the young state of Israel, you were welcome as a Jewish national. Under the Law of Return, hundreds of thousands of Holocaust survivors came to the country, making strict criteria for legal status seem tactless. Israel needed immigrants to fight the Arab siege. Western sympathizers took this all for granted. Nowhere in the 640 pages of Leon Uris's *Exodus* do Ari Ben Canaan and his English girlfriend, Kitty, speak about her conversion.

But what legal standard should apply for the long run and ordinary times? We usually think of nationals as people who have grown up and been naturalized in a particular national language and culture. Most Jews of the Diaspora still see themselves as nationals of their native lands—Americans, French, and so forth—and see their identities as Jews formed largely in private or congregational terms. They are Jews by virtue of Orthodox practice, or spiritual affiliation, or family saga, or even literary stereotype. (The writer Jonathan Miller famously quipped that he was not a Jew, but *Jewish*.)

Obviously, the term *Jewish national* was reasonably applied to the children of the original Zionist settlers at the time the Law of Return was promulgated. These were people (like Moshe Dayan or Yitzhak Rabin) who had grown up in the Hebrew national home. But how to apply the term to immigrants coming from a dispersed Jewish people (some of whom had had no connection to Judaism), speaking many foreign languages? Many of these people had survived the Nazis, and fiercely

wished to become Jewish nationals, by learning Hebrew and fighting for the national project. Yet they were not returning to their homeland except in the mythic sense, heightened by the conviction that Europe had been a killing ground. They were coming to something very new—a mobilized, compelling, parched workers' state—which Palestine's Jewish nationals had prepared for them. Novelists from S. Y. Agnon to Yoram Kaniuk and Aharon Appelfeld have written affectingly about the shock.

Early Zionists, it must be said, had never been terribly refined about these terms. Israelis still speak casually of Diaspora Jews as nationals because Israeli grandparents and great-grandparents presumed the simplifications of a workable ideology. Yiddish-speaking Eastern European Jews had lived in small, secluded, rabbi-dominated communities in the Pale of Settlement, where Zionist passions (if not Zionist organizing) got their start. Zionists called these Jews “nationals” the way Marxists called workers “proletarians,” supposing that crisis would make the potential actual. After the pogroms of 1881, when over four million Jews began moving westward, Zionist ideas attracted a small, rapt minority of Jews—people who had come to enlightened places like Odessa, Vienna, or Bialystok—but who rejected assimilation. Zionists counted on gentile majorities to make Jewish minorities feel, if not illegal, then vaguely unwelcome. Since the era of the death camps, Israelis have spoken of European anti-Semitism as if it were simply natural. “We see the spread of the wildest anti-Semitism,” Ariel Sharon lectured French Jews in 2004; they must come to Israel “immediately,” he said. Israeli friends mocked Sharon, but many later told me—with the perverse satisfaction of a subtle doctor whose grave diagnosis has been vindicated—about traveling to Europe and encountering anti-Israel headlines, “which could only be explained as anti-Semitism.” Many Israeli academics will tell you that threatened boycotts are simply anti-Semitic. Even civil rights lawyers in the U.S. and Canada warn about

the “new” anti-Semitism in Arab lands. Publishers will tell you about the steady sales in Egypt, Japan, and other countries of *The Protocols of the Elders of Zion*. If you mention, in this context, how televised scenes of occupation over a period of forty years have affected the minds of new generations, they tell you how much worse things were with, say, the Dutch in Indonesia, “which nobody complains about.”

I AM NOT SUGGESTING, clearly, that anti-Semitism is tolerable. My point is that there is vigilance against anti-Semitism that serves a kind of dialectical purpose for Israelis: namely, to make any Diaspora Jew seem to be a Jewish national, no matter how far removed he or she is from Hebrew culture. Sartre once speculated that anti-Semitism, more than anything else, made the Jews a people. That was simplistic, but anti-Semitism does seem to make any positive definition of “Jewish national” seem superfluous in Israeli law. In any case, no democratic state can assume that bigotry against nationals outside its borders will obviate the need for a reasonable path to naturalized citizenship inside. What is worse, Israel’s pliable standard for Jewish nationality has, in the absence of a constitution, become susceptible to being shaped by all kinds of rabbinic pressures.

Consider only the most important precedents. In 1960, the Israeli High Court refused to grant the status of Jewish national to a Carmelite monk, Brother Daniel Rufeisen, who had been born Jewish, survived the Holocaust, and converted to Christianity after the war. He had lived in Israel for over a decade and insisted that he had cast his lot with his nation. Remarkably, the court decided that a Jew who voluntarily left Judaism might still claim citizenship under the Law of Return—you cannot leave your genealogy—but could *not* claim the legal privileges that went along with being a Jewish national.

Nor was this the end of it. The ministry in those years was run more or less continuously by leaders of the old National Religious Party,

eager to reassert the halakhic standard for defining who is a Jew. The case of Brother Daniel emboldened them. Faced with scores of Jewish refugees who had brought their non-Jewish wives to Israel, ministry officials adopted the practice of registering the offspring of mixed marriages as, in effect, Jewish.¹⁹ But after the case of Brother Daniel, the ministry adopted a new, more stringent regulation. It declared that to become a Jew, the child of a mixed marriage in which the wife was not Jewish must convert to Judaism according to Halakha—that is, by an Orthodox rabbinic panel and complex ritual procedures. In practice, the child would require at least a year of study and training, during which time rabbis would judge the child's seriousness and piety.

This ruling set the stage for an even more important case, that of Benjamin Shalit, an Israeli naval officer, who had married a Scottish woman while abroad. The Shalits returned to Israel during the early 1960s. They then had two children. As native-born Israelis with a Jewish father who was a citizen, the children were automatically counted as Israeli citizens, too. But were they Jewish nationals? The Shalits, declaring themselves both atheists and yet a part of the Jewish nation through naturalization, attempted to register their children as Jews. The Ministry of Interior refused. The children, they said, were not born to a Jewish mother. Paradoxically, had the same children been born to a non-Jewish mother outside of Israel, knowing no Hebrew or how to find Tel Aviv on a map, they would have qualified as Jewish nationals under the Law of Return. But a child born and raised in Israel could not qualify.

Shalit went to the High Court of Justice to challenge this bizarre regulation. In 1970, the court finally ruled in his favor, five against four, implying that cultural naturalization might indeed become a path to Jewish nationality. The response of the National Religious Party was ferocious. An anchor of Golda Meir's government, the party immediately introduced legislation to amend the Population Registry Law:

Any individual registering as Jewish by nationality, the amended law said, must be a “person who was born of a Jewish mother or who has converted to Judaism”—purely the halakhic standard. Ms. Meir wanted to avoid a confrontation that would undermine her hold on power. The law passed. In 1972, when the Shalits attempted to register their third child as a Jew, the High Court was forced to refer to this amended law and denied the request.

Remarkably, the Shalit decisions still stand. There are no ordinary processes of naturalization other than through rabbinic courts. In consequence, the children of foreign workers—educated in Israeli schools since they were tots—have been routinely deported unless they convert to Judaism. Their plight became so obvious in recent years that Israeli civil rights groups finally brought suit on their behalf in 2005. One such child, whose parents are from Colombia, told Israeli television in perfect, idiomatic Hebrew: “My parents didn’t ask me whether I wanted to come here; I want to go to university here, go to the army, marry here.”²⁰

To its credit, and as a sign of how embarrassing this system has become, the Olmert government has recently approved new criteria: The children of guest workers could stay if they were under fourteen when entering Israel and had stayed uninterruptedly for at least six years. They also had to prove that their parents had held valid work permits and that they themselves were fluent in Hebrew. Yet when these reared-in-Hebrew children become citizens, they will not become Jewish nationals. They will become something like biblical *gerim*—“strangers who dwell in your midst”—people subject to equal protection, but legally anomalous.

SO IF YOU ARE born in Israel to a Jewish mother, then you are a Jewish national and a citizen. You are also a Jewish national if you are an immigrant who has not renounced the Jewish faith and are descended from at least one Jewish grandparent—a grandparent, that is, who was

born to a Jewish mother who had not renounced her faith. You can become a citizen of Israel the moment you land. But if you are born in Israel to a Jewish father only, then you are a citizen—but can only become a Jewish national by sincerely converting to Judaism. A non-Jew can also become a Jewish national by converting, like the child born in Israel to a non-Jewish mother, but unlike that child, cannot be a citizen without converting. An Arab Muslim can never become a Jewish national and, if born outside the country, can forget about becoming a citizen. Then again, the interior minister can just make you a citizen. Clear?

I hasten to add that getting the state to recognize unorthodox forms of conversion to Judaism is of no help here. Many Israeli liberals claimed a victory in 2002 when the High Court ruled that conversions to Judaism performed by Reform movement rabbis must be recognized by the Ministry of Interior. (The decision was meant to smooth the way to Jewish nationality for Russian immigrants, whose children serve in the army but who generally detest the Orthodox rabbinate.²¹) In March 2005, the court also ruled that people already residing in Israel who go overseas for a final Reform conversion ceremony must also be recognized as Jews.

But the question, surely, is not whether the Reform movement should have the right to declare a Jewish convert qualified for state privileges. Recognition of Reform authority may do something for pluralism within Jewish religious life but nothing for constitutional pluralism within Israeli democracy. The question is how to square privileges for Jews with the equality presumed by democratic law. The High Court's decisions only made a discriminatory standard somewhat more inclusive. It did nothing to integrate Israeli Arabs, or for that matter, the Filipinas who tend to Jewish grandparents, or the Thais who build Jewish housing.

"Israelis do not really have a familiarity with the concepts of democracy," says Rafi Cohen-Almagor, the director of democratic studies at

Haifa University. “They know the mechanisms, so when you ask them about democracy they will say something about majority rule, or balance of powers. But these mechanisms are not principles of democracy—like liberty, fallibility, equality, tolerance. They are merely functions. Israeli kids hardly study principles.”

Haven’t schools taught these principles? “We had two educational committees in recent years,” Cohen-Almagor told me; “one to study democracy, one Judaic studies. The latter is the one the government cared about. So kids study the role of the government, the role of the Knesset—all the boring stuff. When there is a math exam, citizenship studies get shunted aside. But when you speak about the relation of Judaism and democracy, you find a democracy under stress. We can’t take for granted this is going to last forever—not with all the generals we have coming into the government, the power of the rabbinate, and the enemy that we have around us, the security budget. We don’t even have a shared *raison d’être* with 20 percent of the population—Arabs, who are increasingly alienated from the symbols of the state, the flag, the currency, and everything else. And then there is another 25 percent Orthodox or ultra-Orthodox, who’d be happy to replace democracy with theocracy, and who are just looking for the right opportunity. On top of that, we have another 20 percent, immigrants from the Soviet Union, who know nothing about what democracy is all about, who are suspicious about government and have never lived under democracy.

“It is becoming increasingly difficult,” Cohen-Almagor summed things up, “to define a state that invites something in common. What we need to address is pluralism and multiculturalism, not Zionism. We have a severe problem of racism in this country, not just about Arabs—prejudice against Russians, against Ethiopians—it starts with the jokes, and ends with anxiety about property values. And we have no constitution to balance the scales.”

THINGS DID NOT have to turn out this way. Israel's first national election, in January 1949, was supposed to convene a constitutional assembly that would define the terms of Israeli nationality and pass a bill of rights. It did not. The problem was not the failure to come up with a suitable draft.

"I was a runner in Jerusalem during the 1948 War," the writer Amos Elon told me, "and one mission was to bring a message to the head of the Haganah in the Jewish Agency building in Jerusalem. I arrived one dark evening at the building in the middle of an artillery barrage, with *boom-boom* everywhere, and the place was gloomy and deserted—except for a light in one office, where I found Dr. Leo Kohn, the legal advisor to the Jewish Agency, curled over his desk, writing. 'What are you doing here?' he asked. I told him I was looking for the Haganah headquarters. He pointed me to the basement. I was young and a little brash, so I could not resist. I asked him, 'What are *you* doing here?' He answered almost nonchalantly, in a heavy German accent, 'I am writing the constitution of the Jewish state.'"

Which is exactly what Kohn did. His draft began by defining the character, official language, and citizenship of Israel. It also, in his words, affirmed "the principle of the complete equality of all citizens."²² In the chapter on human rights, he tried to embody "some of the characteristic spiritual traditions of the Jewish people." And so the sanctity of human life and the dignity of man "were postulated as major objects of the State's solicitude." The death penalty was to be abolished; habeas corpus was to be guaranteed. Preventive detention by executive order was to be prohibited, except when authorized by specific legislation in time of war or national emergency.

The draft embodied, Kohn continued, guarantees of "the inviolability of dwelling and private correspondence." Provisions were designed to safeguard the freedom of conscience and "the free exercise of all

forms of religious worship as well as the rights of all communities in their holy places and the administration of their religious properties.” It prohibited the extradition of any person to a foreign country where he or she was liable to be deprived of the fundamental rights guaranteed in the Israeli constitution. The draft also included a number of economic and social rights, such as the right of workers to form trade unions, to enter into collective contracts, and to strike in defense of their economic interests. There were, Kohn concluded, “the traditional guarantees of the freedom of speech, assembly and association, but these were not to extend to publications, assemblies and associations aiming at the suppression of human rights and the subversion of the democratic form of government.”

DAVID BEN-GURION was supposed to submit the Kohn draft to the elected assembly for ratification. But secular and Orthodox Jews soon wrangled over how Judaism might be privileged. Kohn’s draft, for all of its guarantees of equal rights, reserved the largely ceremonial post of president for Jews. Ben-Gurion’s own Mapai party, and the Marxist Mapam party—both of which represented most of the left-wing kibbutzim—actually opposed this relatively minor provision, fearing that it would be regarded in the West as racist.²³ For their part, the Orthodox parties were clear that formal privileges for Jews would be just fine with them.

Ben-Gurion quickly realized that that this dispute was an augury of a larger *Kulturkampf*, which he wanted to avoid. He also saw the possibility of appeasing the Orthodox and governing, in effect, without powerful coalition partners. So he made perhaps his most shortsighted decision and let the moment pass. He mustered a majority, combining his ruling Mapai and the Orthodox parties, and transformed the constitutional assembly into the first Knesset, which would leave the writing of a constitution to “future generations.” This was no time, he said,

to divide the Jewish people in the young state. It didn't hurt that the decision buttressed his personal power.

"He didn't want to take Mapam into the government; Mapam were philo-Soviet," Elon said. "He didn't want Begin's Herut, which he considered fascist and recently terrorist. He didn't want liberals, who would demand concessions from the Histadrut [the Jewish labor federation] for a freer market. He liked the idea of ruling without real opposition. So Ben-Gurion did the deal with the Orthodox, whose world didn't touch him and therefore didn't threaten him. He himself was a complete nonbeliever. His son had married a non-Jewish woman in London, and he thought nothing of it. It just never occurred to him that these Orthodox rabbis could eventually constitute a danger. He thought 'future generations' might well secure basic rights."

Besides, would not secular life and Jewish-Arab integration be a natural byproduct of working-class solidarity? Socialist Zionist leaders—so we learn from Tom Segev's indispensable book, *1949: The First Israelis*—had hoped that the convergent interests of workers would create a kind of de facto integration in a new Israeli nation. Pinchas Lavon, head of the Histadrut then, advocated bringing Israeli Arabs into the army, which would provide "a national and social" education: "For the first time we will be a majority living with a minority," he wrote, "and we shall be called upon to provide an example and prove how Jews live with a minority." But as the 1948 war raged on, Lavon grew wary of the anticipated results of the escalation, warning of the "Israeli-born generation with its crude and primitive nationalism," and of the Sephardi communities, "with their historical and natural urge to avenge the years of humiliation and oppression they suffered in Arab countries."²⁴

BEN-GURION'S SURRENDER of the Kohn constitution was the first instance of what would become a recurrent legal ricochet. Arabs lost a path to full citizenship—to a legal standard where nationality and

citizenship just merged—but the most salient obstacle was not a standoff between Israeli liberals and authoritarian nationalists over the rights of Arabs. Rather, the standoff was between secular and Orthodox Jews over the privileges of Judaism. On the other hand, had Jews opted for a secular solution for themselves, this would have given Arabs an opening. The writer Yitzhak Laor puts it this way: “Israelis have ascribed the absence of opposition to the ‘religious’ to the absence of a written constitution. They forget that a constitution is impossible because the State of Israel, that unenlightened enlightened state, does not want to open the constitution with a declaration of full equality for all its citizens, and particularly not regarding property rights.”²⁵

In any case, Israeli Arabs’ second-class citizenship does not simply mean getting less official status than they would like from the majority. It means getting less material support from the state than the majority. The Israeli government devotes about 8 percent of its infrastructural investments to Arab towns, less than half per capita of what it invests in the Jewish sector. It is the same with the health ministry’s budget. The Arab school system has been underfunded for many years and at all levels. Arab children constitute 30 percent of all children, from newborn to four years old, in Israel, but account for only about 7 percent of the children enrolled in institutional and home-based day-care facilities. About half of non-Jewish Israelis age fifteen and over do not have a high school education, compared with one-fifth of Jews. The proportion of Jewish youngsters who go on to higher education is double that of non-Jews.

Roads and bridges are no better. They are notorious in Arab towns, themselves mostly made up of rambling (and, on the surface, quite handsome) family compounds, which have grown without proper zoning, plumbing, or electricity. Ilan Katz, an engineering consultant and civil rights activist, told me that his own town of Zichron Yaacov has been getting as much as thirty times more land and municipal sup-

port per capita than the neighboring town of Faradis. Another nearby town, Ein Hud, is in even worse shape: "The Arab town of Ein Hud, much of which was displaced by what has become the lovely artists' colony at Ein Hod, was declared a municipality in 1994," Katz says. "They are still waiting for roads, sewers, and electricity. Drive there; suddenly you hit a dirt road."

Can't some of this neglect be accounted for by Arab hostility? "Yes, but does the outbreak of fire justify pouring gasoline on it? The Shin Bet [the general security service] has been asked by a succession of governments to determine if Israeli Arabs are a security threat," Katz continued. "I know for a fact that those governments have been provided a series of reports, at least fifteen, insisting that Israeli Arabs are not a threat, but that ignoring and underinvesting in Israeli Arabs is creating a security threat. All of these warnings have been ignored."

Today, average GDP per capita is three times higher among Jews than Arabs, about \$21,000 compared with about \$7,000. An Arab family is three times more likely to live under the poverty line than a Jewish family. Some 209,000 students in the Arab school system are at the bottom rungs of the scholastic achievement ladder in all elementary grades. By 2003, Arab fifth graders were almost as proficient as Jews in English—not surprising since both spend time watching American television programs and playing with Internet sites. But Arab fifth graders were about half as likely to have mastered written Hebrew.

Not surprisingly, therefore, the rate of participation in the workforce among Arabs aged fifteen and over is about 40 percent, compared with 57 percent among Jews. Currently, about 40 percent of Arab men between the ages of forty-five and fifty-four are not in the workforce at all.²⁶ About half of all working Arabs are employed in industrial and construction jobs or as unskilled labor, compared with about a fifth of Jews who work in these categories. Hebrew University sociologist Aziz Haidar observes that gaining the requisite educational credentials is

hardly sufficient to assure an Arab equal access to a job in an élite profession. Nearly one-third of the Arabs in Israel who hold master's degrees are employed as skilled workers in industry and construction. Medical schools used to base acceptance solely on the psychometric exams, like the American SAT. Today, virtually all medical schools are reducing the number of Arab candidates by including an interview process.

Finally, less than 20 percent of Arab women participate in the workforce, compared with over 50 percent of Jewish women. Most Israeli Jews will tell you that Israeli Arabs like things this way, that Arab women are trapped in backwardness. ("Their brothers still kill them for holding hands," one friend told me.) But Israeli Arab women are actually adapting to Israeli civil society at about the same rate that North African Jews are. Where opportunities exist for Israeli Arab families, women seize them. According to Aziz Haidar, the birthrate is falling palpably among educated Arabs.²⁷ For women with a college education, the participation rates in the labor force for Arab and Jewish women are similar, about 75 percent.²⁸ Frustration with the educational system is only accelerating birthrates—about 50 percent higher among Arabs than Israeli Jews. Then again, all poorer families in Israeli society, bedouin, Arab, and ultra-Orthodox, have had strong incentives to raise many children over the past two generations, owing to generous welfare benefits for families with five or more children.

"THE ARABS IN ISRAEL are the true Jews," says Salem Jubran, a Nazareth journalist and educator. "They understand that education is the only necessary capital. A national minority has two choices: to be fanatic and insular or to be pragmatic. The Arabs in Israel feel they live in an achievement-oriented society, but that the world is less open to them."²⁹ The novelist Sayed Kashua, author of the Hebrew novel *Dancing Arabs*, is more blunt. His childhood friends are feeling hemmed in

and enraged, he told me, their towns in commercial despair, many coming under the threat of young toughs.

Attitudes are hardening. According to a 2007 poll, 60 percent of Israeli Arabs say they fear a mass expulsion.³⁰ More than 68 percent of Israeli Jews fear a civil uprising in behalf of Israeli Arabs, and 63 percent say they won't enter Arab towns in Israel. "When these towns blow," Kashua told me, "Israeli Jews will say it is for intractable political reasons. But if the government would give us two meters for development, we'd all be volunteering for the army. Every time there is a suicide bombing I think two things: Thank god my daughter is not among the victims, and I hope there is an Arab Israeli among the victims, so they won't blame my daughter."

In this atmosphere, exacerbated by the collapse of the Oslo process, tensions become explosive. The first weeks of the Al-Aqsa Intifada inadvertently brought Israel to the brink. The streets of Israeli Arab towns erupted with demonstrations of solidarity for Palestinian self-determination and calls to end the occupation, culminating in a general strike to protest the visit by then opposition leader Ariel Sharon to the Haram al-Sharif, the Temple Mount. And as if on cue, Israeli police responded with a violence that would not have been unleashed against Jews. In two cases, in Nazareth and Umm el-Fahm, police opened fire with tear gas, rubber bullets, and live ammunition at youths throwing stones and burning tires. In the end, thirteen young people were killed—an incident eerily reminiscent of Land Day in March 1976, when six Israeli Arab youths were killed in a general strike protesting the confiscation of land in the Galilee.

After the violence subsided, Ehud Barak's government appointed a commission of inquiry, led by Justice Theodor Or, and including Professor Shimon Shamir, the highly respected expert on Arab affairs, who wound up becoming the primary author of the report. The commission met for twelve months and heard 349 witnesses; their report,

published in September 2003, pointed to glaring inequalities in land rights and infrastructural budgets, and also cast doubt on areas thought to be moving toward equality, employment, and education. Nevertheless, the justice ministry's Police Investigations Unit went on to exonerate the police officers charged with using excessive force. Shamir responded, "A situation where 13 people are killed and no one is indicted is one that is hard to grasp."³¹ Not coincidentally, only about half of Israeli Arabs subsequently voted in the March 2006 election.

Alas, the social blasting caps may also be deliberate. Some Israeli Arabs have colluded in acts of terrorism coming from the West Bank. The Israeli press tends to play down the arrests of Israeli accomplices but they are becoming too frequent to ignore. And Jews incite violence as well. During the week before the Gaza disengagement, a sad, fanatic youth by the name of Eden Natan-Zada, who had deserted the Israeli Army and drawn close to followers of the late Rabbi Meir Kahane at the settlement of Tapuach, boarded a bus in the Israeli Arab town of Shfaram and opened fire with an automatic rifle, killing four people and injuring more than a dozen others. He was then beaten to death by the mob that surrounded the bus.

"The hands were the hands of Natan-Zada," Ali Haidar, leader of the nonprofit organization Sikkuy, told me at the time; "but the voice was the voice of many. In recent years we have heard all kinds of statements and incitements in the media, from politicians, rabbis—public people—calling us everything from a cancer in the state to worms, snakes to fifth column. When you keep insisting you need a Jewish majority, the answer is decrease, or expel, or oppress, or in Natan-Zada's case, even kill, the Arab minority." (Haidar—ironically, revealingly—determined responsibility for Natan-Zada's crime by adapting Isaac's famous outburst in Genesis: "The hands are the hands of Esau, but the voice is the voice of Jacob.")

THE REALLY HARD QUESTION here is whether the Israeli state could do much to make young Arab citizens less disaffected. Is alienation not built into the status of the Arab minority? I decided to put the question to the hardest test I could think of and sat down with Azmi Bishara, the head of Israel's Balad party. When I spoke with him, in the summer of 2005, he was still a member of the Knesset, as he had been since 1996. But he had already traveled to Syria and met with some of Israel's avowed enemies. I knew of Bishara's reputation, which was precisely what drew me to him. What exactly was he calling for? If one could imagine how Israeli Jews might respond to his demands, could not any Israeli Arab be made a partner in the Israeli enterprise?

After our interview, Bishara traveled to an Arab book fair in Beirut and proclaimed to loud cheers (according to the Lebanese newspaper *As-Safir*) that Israeli Arabs "are like all Arabs, only with Israeli citizenship forced upon them." ("Return Palestine to us," he scolded Israeli Jews, "and take your democracy with you."³²) After the 2006 Lebanon war, Bishara showed up in the smashed-up Hezbollah strongholds of Southern Beirut, where he exhorted Arab resistance groups "to keep the pressure on Israel." He virtually dared Israeli officials to prosecute him for breaking laws prohibiting this kind of travel and these kinds of contacts. Which, in April 2007, is exactly what Israel did. The secret service, the Shabak, prepared a case of sedition against him, accusing him of aiding Israel's enemies in wartime—also of taking hundreds of thousands of dollars from enemy sources. Bishara then fled the country, resigning from the Knesset, pledging that he would eventually return.

But the man I found in 2005 gave no hint of these dramas to come. He seemed a wry, soft-spoken thinker—a man brimming with formulations, eager to be understood and, like most public intellectuals, at a loss to understand why he is not. If the charges against him prove true, then the unguarded thoughts he shared with me before the war seem all the more poignant. In a strange way, it was clear that there

was something about Israel—the experience, if not the state—that he loved.

“We naturally insist on the separation of religion and state, on Israel as a state of its citizens,” Bishara told me in his overstuffed Knesset office, “but we are also for recognition of the collective right of the Arab minority, consistent with liberal principles.” And what, in this case, is the application of such principles? “You know, most Arab intellectuals in the nineteenth century based nationality on language, like Herder did. They thought the pillar of national identity is language. Mine is Arabic.”

Like Québec, I asked? “Say we develop multiple identities,” he continued, “and intellectuals have many cultural identities—still, national identity is the cultural identity you need to politicize. I have often used the model of Québec here, and I have even met Québec’s foreign minister once—though I’m not sure what foreign relations Québec has, other than to stay in touch with France or Gabon—anyway, this model of Québec is not accepted here. I think the more problematic and richer model is Belgium, a federation of Flemish and Walloons—problematic because we don’t know if it will hold. Some say the only real Belgians there are the Jews, since they’re the only ones who want this country to continue. Whatever model might have developed here, it is clear that two national identities have crystallized here.”

So why, I asked him, choose to politicize, of all things, Israeli Arab identity as a separate nationality? Why not either join Palestine or integrate into Israel, without surrendering ethnic distinction, as Jews have done in countries where *they* were the minority? I could not have been the first person to ask him this, but he curiously had no prepared answer. What he had was a list of grievances against Israel. Consider the educational system, he said, which provides the Arabs a certain autonomy to run their own Arabic schools: “Their problem is with the content,” Bishara insisted; “Arabs have autonomy . . . but the curriculum is controlled by the center, and it forces us to teach our children about

the justice of Zionism as a settler state. Obviously, this is not an appropriate basis for Arab education, and it requires a collective response.”

I had often heard Bishara described as an extreme Arab nationalist. But this was clearly an oversimplification. His nationalism was a kind of surprise to himself. A former Communist, Bishara had spent his salad days in East Berlin parsing Marx’s thought. He had been cavalier about the claims of personal identity in the face of “material forces.” Then he discovered liberal democratic claims—what Rubashov, the hero of Arthur Koestler’s *Darkness at Noon*, called the “first person singular.” He also belatedly discovered—so he told me—the claims of national identity, the subtle ways language shapes identity and groups shape interests—the very things he had missed as a frustrated cosmopolitan. In fact, Bishara had taken up the cause of Israel’s Arabs with the self-conscious pride of one who had studied Zionism deeply. He reminded me of no one so much as old Marxist Zionists like Nachman Syrkin, who in 1898 wrote about why Jewish Marxists had underestimated the national question.

Bishara saw democracy emerging only slowly in the Arab world, outside of Israel, where the development of a “bourgeois” middle class will have to precede it. One could not “build democracy without democrats, without large middle classes committed to the issue, without liberal democratic forces committed to the ideal of a liberal democracy,” he said. The danger in Iraq, for example, was a “confusion of sectarian conflicts with pluralism.”³³ So Bishara was looking for financial redress from the national government’s budgeting process and affirmative action in higher education. He wanted, he told me, an Israeli Arab technical university. “Our problem was not that four hundred villages were destroyed,” Bishara said. “We publicly emphasize this loss because of folkloric consciousness. The real problem was that our urban centers were destroyed and what remained were villages without a center.” Again, one could not build much without a middle class.

And into the breach created by this destruction stepped Israeli state planning councils, dominated by representatives of the Zionist agencies: “The whole planning process is in Jewish hands. Arab villages should be called slums—slums around Jewish cities—they are not villages anymore. They supply workers, a proletariat. If you do not deal with a collective Arab leadership to reverse this, then all you have is the market, which has been skewed by the state to put Jews at the center, with the continuous marginalization of Arabs.”

WE HAD COME to the heart of the matter. “Planning is ideological,” Bishara said, “and is still in the hands of people who believe that you need not only a Jewish majority in this country but a Jewish majority in *every part* of this country. The market does not come into play here; the state does. Even municipal planning is done by the state and Zionist organizations, motivated by ideological goals. I can shout in the Knesset—in fact, I am conceding in advance the legitimacy of Israeli democracy just by coming here, to the Knesset, something many of the people who voted for me would not concede—but then people tell me here: ‘We don’t plan.’ This is done at the level of planning commissions in districts and subdistricts.”

Who sits on the planning councils at the level of the districts and subdistricts? “You find the romanticism of the past,” Bishara insisted, “Jews longing to be in ancient places, or believing that settling the border areas brings security. There is the *tokhmit av*, the master plan for twenty years, developed by the districts; it goes back to the National Commission on Planning and Zoning, and then the plan, which can be six or seven volumes, goes back down to the districts. These commissions—all of them—have representatives of the Zionist organizations, the Jewish National Fund, Keren Hayesod, the Jewish Agency, the government, and communities—so on the national committee, for in-

stance, which has thirty-nine members, you may get one or two Arab mayors, speaking in the name only of their own villages. The same is true at the local level.”

Zionist groups are not always discriminating in favor of Jews. Just after the Shfaram murders, the Jewish Agency announced that it was giving the families of Natan-Zada’s victims a total of 100,000 NIS (one U.S. dollar = 4 NIS) from a fund it had established to compensate Jewish victims of Palestinian terror. But even this welcome gesture raised the obvious question of why the Jewish Agency existed at all, especially if it was nothing more than an extension of the state apparatus.³⁴ The only way to reconcile the existence of the Jewish Agency with the workings of a democratic state, David Harman had told me, was to reconfigure it as a huge NGO—“Let it take its \$350 million annual working budget, which it gets from the Diaspora and holdings in Israel, and do what it wants, within property law, and without a connection to the political structure.”

This was not the kind of residual Zionist institution Bishara could even contemplate. “When Zionist planners look twenty years ahead, they see beyond whole Arab villages. Is there is an Arab village here? The plan does not recognize it! I have heard this again and again. You have this odd category: unrecognized villages. You wind up having to support illegal construction in a village because the village does not exist in the plan. Or look at the Barbur neighborhood in Acco. For fifty-three years, it has been without services. When does it show up in the plan? When it was decided to build a neighborhood for ten thousand Jews on top of it. Talk about using a liberal democracy to make liberal rights illegal.”

WHICH BRINGS ME, finally, to a curious petition. In December 2003, thirty-eight signatories—most of them Jews, a number of them Arabs

(including Adel Ka'adan)—asked the High Court to order the Ministry of the Interior to inscribe their nationality as Israeli in the population registry. There were businesspeople, professors, entertainers, writers, jurists—including former Minister of Education Shulamit Aloni, and former Commander of the Israeli Air Force Benny Peled (who has since died). On the surface, Israelis asking the court to make them Israeli may seem frivolous. The petition was anything but that.

The petitioners were asking the court to recognize an inclusive, earned form of nationality, like French nationality. This, too, was tried back in the early 1970s, when George Tamarin, a Jewish Israeli, petitioned the High Court unsuccessfully to have the official registration of his nationality changed from Jewish to Israeli. But the High Court ruled that “there is no Israeli nation separate from the Jewish nation . . . composed not only of those residing in Israel but also of Diaspora Jewry.” The then president of the High Court, Shimon Agranat, explained that acknowledging a uniform Israeli nationality “would negate the very foundation upon which the State of Israel was formed.”³⁵ In effect, Agranat said that Israeli identity would undermine the cohesion of the Jewish people at a time of crisis, and that anyway, such an identity did not exist yet.

The new petitioners believed that fifty-five years after the state's founding, when a significant majority of citizens have been born in the country, the experience of Israel itself was now determinative of national identity. They were not denying the importance of nationality; the UN charter recognizes this to be a crucial matter of personal identity and choice. Yet they wanted to close the door on discrimination against people on religious or racial grounds, which is especially important for the state's Arab minority: “I am no Canaanite,” the petitioners' lead counsel, Yoella Har-Shefi, insisted, referring to the cultural movement from the 1950s that sought to distance Israelis from Diaspora

Jews. “I have staked my life on the moral and cultural power of the Jewish people. But you can’t say ‘everybody is equal here, it’s just that a Jew is valued differently’—and if there is international or internal protest, well, that’s proof that the whole world is against us.”

Har-Shefi is an unlikely Thurgood Marshall. A solid, handsome, articulate woman in her midsixties, she is in many ways the embodiment of what people who *do* assume Israel should value Jews differently point to. She was spirited out of the Warsaw ghetto on the night before the uprising; her parents were murdered in Treblinka. She was then smuggled to Palestine in 1946 on a Haganah ship—“the charming little girl I. F. Stone immortalized in his book *Underground to Palestine*,” she told me. When I first met her in the early 1980s, she was a military correspondent for the mass-circulation daily *Yediot Aharonot*, and had covered the Yom Kippur War firsthand. She was the author of a book on Arab citizens and, in her student days, had spent an hour a week studying Talmud with National Religious Party Knesset leader Zerach Warhaftig. Law school came later.

Har-Shefi does not doubt how gravely the political atmosphere has been poisoned by over a hundred suicide bombings, and how numbed Israelis have become to their own retaliations. She is well aware of the hazy, tribal, and dogmatic religious ideas on both sides, following generations of war. But then, even if the Law of Return were entirely retired, why should Israel not continue to legislate a preference for any Jewish immigrant who is a refugee from persecution? “They could come here, spend a few years, learn the language and the political system, and then become naturalized citizens,” Har-Shefi says. “But why should a Jew from Borough Park get off the plane, know nothing about this place, and immediately vote my future?” (She might have added politicians like Russian billionaire Arcadi Gaydamak, an arms dealer and fugitive, who buys votes with flamboyant giveaways, and knows virtually no

Hebrew.) Har-Shefi's petition deliberately steers clear of the controversial question of "Who is a Jew?" according to Halakha; the state should "not be subservient to any rabbinic decision about this, in any case," she says.

THE STATE'S ATTORNEY has so far responded to Har-Shefi's petition predictably enough, arguing that the petition will divide the Jewish people; that it "undermines the very principles under which the State of Israel was created." The state also argued a technical matter, that the issue should anyway be decided in district courts, under whose jurisdiction the inscription of nationality ordinarily takes place. As of this writing, the High Court has not ruled definitively. Justice Barak, who at first signaled that he might himself join a panel ruling on the matter, withdrew from the matter, and then retired. A less imposing panel, led by Justice Michael Cheshin (who had been widely perceived as Barak's somewhat more conservative judicial rival, and who also subsequently retired) accepted the state's technical objection and sent the case back down to the district courts. In response, over a dozen people then sent requests to be inscribed as Israeli nationals to the Tel Aviv court. All of these were rejected.

"When he heard the case," Har-Shefi told me, "Justice Cheshin stated tantalizingly that the Tamarin decision might have been 'in error.' He heaped praise on the petitioners. He told us we were raising the most basic issues. He suggested that the lower court might be more appropriate than the High Court to hear the expert opinion the petitioners brought forward. He implied the High Court might well declare the Tamarin decision unsustainable once the technical issue was resolved. But he also sent the petition back to where it has become stalled, and to where we are most likely to run out of resources."

In May 2006, Barak's court in effect answered the petition, with a ruling in an entirely different case. The suit in question challenged army

deferrals for ultra-Orthodox students—a clear case of inequality. Barak declared, rather clumsily, that “there is room for the idea that a law or Basic Law that denies Israel’s character as a Jewish or democratic state is unconstitutional.” Many experts interpreted this to mean that the High Court could abolish a law, or even a Basic Law, if it impairs Israel’s Jewish character, even if equality is at stake. (“The service deferral law,” Barak conceded, “deals a severe blow to human dignity.”³⁶) Indeed, to protect the Jewishness of Israel, the Knesset could do pretty much what it wanted.

Anyway, whatever the eventual verdict or the fate of the High Court’s purview, Har-Shefi’s petitioners are clearly justified in seeing the matter as urgent. As one petitioner, former education minister Aloni, recently put it,

The central question is whether Israel’s Arab citizens—as individuals or collectively as a community—should be denied the same rights accorded to ultra-Orthodox Jews, Druze and Circassians simply because of their numbers and their special relationship with the residents of the West Bank and the Gaza Strip, who have been living under Israeli occupation for the past 40 years? The denial of basic rights would mean that, instead of being a democracy, Israel would be reduced to an Orthodox Jewish ethnic group with a strong army, compulsory military service, detention centers and prisons, tremendous greed for the land of the natives—and immense fear.³⁷

As a consequence of their marginalization, Aloni knows, Israeli Arabs are already beginning to float constitutional ideas that strike at the heart of the Israeli center. Recently, the Adalah (Justice of God) advocacy center, a nonprofit representing mainstream Israeli Arabs, published a proposed draft constitution for Israel. It abrogated the Jewish

Law of Return, which awards immediate citizenship to any Jew who wants to immigrate. But it also called for (among other things) a state that recognizes “its responsibility for past injustices suffered by the Palestinian people;” coequal and separate education systems; and national symbols “determined either by a Knesset committee, half of whose members will be Arab, or by agreement of 75 percent of Arab MKs.” If their lives must be lived apart, they seem to be saying, then why not a separatist equality?

Then again, if Israel cannot, or will not, transform itself in this way, can Arab enmity ever be appeased—and why, given the intractability of Islamist forces, try such appeasement? Har-Shefi, for her part, remains adamant. Israel’s real challenge over the coming generation is not only to get back into a peace process, but to shore this up with a parallel revolution in civil rights: “If we don’t give Arab citizens this chance to become Israelis, the country will come apart. We are sitting on the edge of a volcano. Because Israel is the only country on earth that does not recognize itself.”