

ISRAEL

Since 1980

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The Political System: Government, Parliament, and the Court

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On the eve of the 1980s the State of Israel underwent a profound transformation. The *mahapach* (electoral upheaval) which put Menachem Begin and the Likud movement into power on May 17, 1977 was far more than the first transfer of power to another party since David Ben-Gurion established Israel's first government on May 14, 1948. The political transformation indicated a profound change in the Israeli political system that included, on the one hand, a political tie between two political parties and two ideologies and, on the other hand, growing instability and a governance crisis. Various attempts to stabilize the political system in the past two decades, described below, have largely failed. The political system, far from providing answers to the deep schisms in Israeli society described in previous chapters, seems to be dominated by them.

The *Mahapach* (Electoral Upheaval)

During Israel's first three decades, the Labor movement enjoyed hegemony over politics, economics, culture, and the dominant ideology in Israel. Earlier still, from the middle of the 1930s, the Labor movement had similar hegemony over the World Zionist Organization and the *yishuv*.¹ The Labor movement had also formed the historical narrative of the establishment of Israel, and by excluding the Zionist right wing from the national historical consciousness, had fortified its control all the more. The Party of Workers of Eretz Yisrael (Mifleget Poalei Eretz

¹ *Yishuv*, meaning "settlement," was the term for the Jewish community in Eretz Yisrael (the Land of Israel) under British mandate, prior to the establishment of the State of Israel.

Yisrael – Mapai) – the primary group in the Zionist Labor movement – had controlled the axis of the political system: without Mapai it was impossible to establish a government, and Mapai was always the primary ruling party in a coalition structure in which the junior partners came and went. In light of the first signs of weakening in the middle of the 1960s, Mapai had begun to unify the factions of social-democratic Zionism into a common alignment, and had ultimately established a single party: the Labor Party.

On the right, a similar organizational process had begun. The Herut (Liberty) movement and the Liberal Party had established a parliamentary bloc, and in the early 1970s additional bodies had joined them, establishing the Likud Party. At the center of public discourse was the question of the future of the territories that Israel had conquered in the Six Day War (1967). The Labor movement supported negotiation with Arab states, in which the state's borders, on all its frontiers, would be determined through territorial compromise. The Likud placed the idea of *Eretz Yisrael ha'Shlema* ("Greater Israel") – the demand to annex the West Bank and Gaza Strip to Israel – at the top of its election platform, leaving somewhat vague the future of the Sinai peninsula and the Golan Heights, conquered from the Egyptians and Syrians, respectively.

Settlement policy was derived from this ideological schism: Labor believed that Israel should establish settlements in those territories that in the future would be integral parts of the state, and refrain from settling territories that would be returned to Arab control, according to the territorial compromise doctrine. According to Likud's stance, it was necessary to settle everywhere, in order to frustrate territorial compromise, which would mean repartition of the country. It was no coincidence that Begin visited a settlement in Samaria after his election victory, there declaring: "there will be many Elon Morehs." (Elon Moreh was a group of settlers wishing to establish a settlement by the same name, which is the name of the settlement from the time of Abraham near Shechem [Genesis 12:6], in Samaria.) The city of Shechem as it exists today is called Nablus in English, Arabic, and most other languages, and is one of the main Palestinian cities. The establishment of a Jewish settlement bearing the biblical name Elon Moreh proximate to Arab Nablus symbolized the settlers' struggle for the restoration of Jewish rule based on the Bible. That approach fitted Begin's worldview.

The government Begin founded was composed of representatives of Likud, the religious parties (the religious nationalists and Agudat Yisrael) and the Democratic Movement for Change (haTnuah haDemocratit l'Shinui, a centrist party that won fifteen Knesset seats but crumbled away during one term). Begin's rhetoric and the politics of the religious parties granted the government a quasi-religious character. For example, pursuant to the coalition agreement, the restriction upon the number of yeshiva² students exempt from mandatory military service was revoked. The National Religious Party was also satisfied. It received the education portfolio. The Labor Party had not, for ideological reasons, been willing to allow the religious to run the education system, and the education portfolio had always been in the hands of a "Labor" minister; yet now the National Religious Party had an opportunity to affect the curriculum. In the eyes of Prime Minister Begin, that entailed no concession, as he saw Jewish nationalism as essentially connected to the Jewish religion. Indeed, beyond the material and symbolic achievements of the religious parties, Begin's nationalistic rhetoric was also of religious pathos. In presenting his first government to the Knesset, he said, *inter alia*:

The Government of Israel shall not ask any nation, near or far, great or small, to recognize our right to exist. We received our right to exist from the God of our forefathers at the dawn of human civilization nearly four thousand years ago, and for that right, which has been sanctified with the blood of Jews from generation to generation, we have paid a price unheard of in the history of nations . . . I thus reemphasize that we do not expect that it be requested on our behalf that our right to exist in the land of our forefathers be recognized. Recognition of another sort is needed between us and our neighbors: the recognition of sovereignty and the mutual need to live in peace and understanding. (Knesset Protocols 80 (1977) 15)

Thus, at one of the climactic moments of his political career, Begin described the covenant between the pieces (Genesis 15:1–21) as a real historical event, which took place in time, at the beginning of the evolution of human civilization, and in which God granted the Jewish people its right of existence in the Land of Israel. Begin's political theology did not end at the significance of God's single moment of revelation to Abraham, rather it continued along real history, during

² A yeshiva is a place of Jewish religious study.

which persecutions and bloodshed were the lot of the Jews, expressing the historic uniqueness of that people. Emphasis of the unprecedented human price the Jewish people paid for its national right is a reference to the Holocaust, which was a central motif in Begin's speeches and policy, used as a source and justification for the offensive security view which would lead him to adopt the "Begin Doctrine" in Israel's nuclear strategy, according to which the State of Israel will prevent – even through use of military force – her enemies from succeeding in their plans to destroy her. It was by force of this doctrine that in June 1981 the Israeli air force bombed the nuclear reactor built by Saddam Hussein in Iraq. The justification for the 1982 Lebanon War was also based on the lessons of the Holocaust, as he understood and presented them. He saw the Palestinians' leader, Yasser Arafat, as Hitler's successor, and thus Israel was, in his opinion, permitted to initiate a military offensive against Arafat and the PLO (Palestine Liberation Organization) that he headed, even though at that time (1982) Israel had other options as well.

Begin's concept of Jewish history was one of survival. Persecution of the Jews continued throughout history, a fact adding to the right deriving from the divine promise a dimension of human moral duty, owed by the persecuting world to the persecuted Jewish people. The religious experience and ideology of martyrdom are connected to the right to be a free people in the land of the forefathers, and that right will be realized through mutual recognition between Israel and her neighbors. Thus Begin progressed from a theological discussion of history to the diplomacy of peace, which, with the assistance of the United States, yielded the peace treaty signed by Israel and Egypt in March 1979, less than two years after Begin's ascent to power. The peace treaty was based on the international border between Egypt and mandatory Palestine. In 1982 Israel evacuated all her forces from the Sinai Peninsula conquered in 1967, and returned it to Egyptian sovereignty. In return, Israel received a peace treaty with mutual recognition, normalization agreements, and demilitarization of the area from which the military threat to Israel had been posed. In the framework of the negotiations with Egypt and the United States, Israel raised the proposal of autonomy for the Palestinians in the West Bank and Gaza Strip as an interim arrangement toward resolution of the conflict between the two peoples. That proposal was accepted in the Camp David Accords between Israel and Egypt, signed by US President Jimmy Carter as a witness (1978), and was also the basis of the Israel–PLO agreement ("The Oslo

Accords”), signed by US President William Jefferson Clinton (1993). It was by force of that agreement that the Palestinian Authority was established, but the process of putting an end to the hundred years’ bloody conflict has not yet been completed.

Economic and Political Instability

Begin’s ideology, and the economic and social policy of the Likud governments in the 1980s, were based on liberalization of the economy, accompanied by massive investment in renovation of poverty-stricken neighborhoods in large cities and of the development towns which had been established in the 1950s and 1960s without sufficient economic infrastructure. A special agency was established for the renovation project (Project Renewal), and a fundraising drive was made for it in financially sound Jewish communities in the West, each of which adopted a neighborhood in Israel, creating involvement of the donor community in the life of the recipient community. Most of the renovation was of housing. Funding having been attained and bureaucratic hurdles removed, the size of many families’ apartments, and thus their standard of living, were increased.

Projects for social and environmental rehabilitation were also undertaken, but they were less successful than the physical renovation. Likud governments increased welfare payments through the National Insurance Agency, but the social gap deepened as a result of the repercussions of their economic policies. One of the weak points of the economic policy was inflation, which, together with the balance of payments, threatened to topple the economic structure (see pp. 95–7). It is no wonder that finance ministers were replaced rapidly, as seen in Table 3.1.

The fast pace of personnel changes in the Finance Ministry contributed to the instability of the political system and expressed a serious difficulty to govern. Finance ministers were also replaced in quick succession after the stabilization of the economy and the overcoming of inflation in the mid 1980s. In the twenty-nine years since the *mahapach* (1977–2006) there have been fifteen finance ministers, as opposed to only five during the first twenty-nine years of the State of Israel (1948–77). Comparison of the two periods reveals a dimension of instability, which has been all the more prominent in the decade since the assassination of Prime Minister Yitzhak Rabin: from 1996 until 2006 there have been eight finance ministers, with an average term

Table 3.1. Finance ministers and the rise and fall in inflation, 1977–86

Year	Annual inflation rate (in percentages)	Finance minister
1977	42.5	Simcha Erlich (June–Dec.)
1978	48.1	Simcha Erlich
1979	111.4	Simcha Erlich (Jan.–Nov.); Yiga’el Horowitz (Nov.–Dec.)
1980	132.9	Yiga’el Horowitz
1981	101.5	Yoram Aridor
1982 ^a	131.5	Yoram Aridor
1983	190.7	Yoram Aridor (Jan.–Oct.); Yig’al Cohen–Orgad (Oct.–Dec.)
1984	444.9	Yig’al Cohen–Orgad (Jan.–Sept.); Yitzhak Moda’i (Sept.–Dec.)
1985 ^b	185.2	Yitzhak Moda’i
1986	19.7	Yitzhak Moda’i (Jan.–June); Moshe Nisim (June–Dec.)

^aOn June 6, 1982 the Lebanon War (“Operation Peace for Galilee”) broke out.

^bOn July 1, 1985 an emergency plan for stabilization of the economy was instated.

Source: The Central Bureau of Statistics.

of a year and a quarter each. During that same period, which overlaps Tony Blair’s term as prime minister of the British government, there have been five prime ministers in Israel (Shimon Peres, Benjamin Netanyahu, Ehud Barak, Ariel Sharon, and Ehud Olmert), with an average term of a mere two years each. There have been seven defense ministers in the past decade (Shimon Peres, Yitzhak Mordechai, Moshe Arens, Ehud Barak, Benjamin Ben Eliezer, Shaul Mofaz, and Amir Peretz). The number of justice ministers is even greater – no fewer than nine justice ministers have served since Rabin’s assassination. The core of government in Israel has thus found itself in a chronic instability crisis.

Power Shifts

Dramatic failures, as Table 3.2 demonstrates, underscore the transfers of power. By 1977 the fall of the Labor Party could not be detached from the Yom Kippur War (1973), in which Israel was caught by strategic surprise, which prevented her from winning unequivocal military

Table 3.2. Results of the Knesset elections, 1977–2006 (number of Knesset seats)

Year	Likud	Labor	Right including Religious	Left including Arab	Center	Prime ministerial elections (in percentages) ^a
1977	43	32	20	10	15	
1981	48	48	16	4	4	
1984	41	44	20	9	6	
1988	40	39	25	16		
1992	32	44	27	17		
1996	34	32	32	18	4	Netanyahu 50.5 Peres 49.5
1999	19	26	41	22	12	Barak 56.08 Netanyahu 43.92
2001						Sharon 62.39 Barak 37.61
2003	38	19	31	17	15	
2006	12	19	38	15	36	

^aDirect prime ministerial elections have been held only three times, and the crises which led to the relevant constitutional amendments are discussed below.

Source: Knesset website www.knesset.gov.il.

decision. A legal commission of inquiry headed by Supreme Court President Shimon Agranat dismissed the chief of the IDF general staff and a number of additional generals, but the public did not find that sufficient. Public pressure led to the resignation of Prime Minister Golda Meir and the establishment of the first Rabin government (1974–7). However, the process did not end with the replacement of Labor Party heads, and in 1977 that party lost its political precedence and the Likud rose to power.

A similar process occurred in the years 1982–4. Israel's war against the PLO in Lebanon had become a quagmire; the number of casualties rose, and, as a result of a mishap in the operational liaison with the (then) pro-Israeli militia of the Christian community in Lebanon, that militia was able to commit a massacre of Palestinian civilians living in refugee camps in Beirut (Sabra and Shatila). A commission of inquiry headed by the then Supreme Court President, Yitzhak Kahan, dismissed Defense Minister Ariel Sharon and a number of high-ranking officers, reasoning that because of their failure to predict the tragedy despite all that was known to them about that militia they should bear indirect responsibility for it. Six months later Begin stepped down and went into seclusion; his successor to the Likud leadership, Yitzhak

Shamir, had to ward off an attempt within his own party to undermine his leadership; the economy deteriorated, and inflation reached impossible dimensions. The elections were advanced because of a political crisis which also contributed to crystallizing the awareness of Likud's failure.

The public opinion polls taken prior to and on the morning of the elections showed that the left wing was headed for a dramatic victory, and that Shimon Peres was to be the next prime minister. There was a change, however, at the last moment, and a considerable percentage of right-wing voters changed their minds and gave their vote to their old party, despite the dismal record of the past years. The explanation for that can be found in an understanding of voting patterns in the eighties and nineties as an expression of personal, family, and group identity. People's votes did not always reflect their views, and that cognitive dissonance led to a delay in their arrival at the polls because of vacillation which continued until the last moment. The result was a tie. The right-wing bloc had sixty-one seats in the Knesset, but that number included the single-seat party of Meir Kahana, who was disqualified from partnership in any government owing to his racist and anti-democratic positions, and thus the right wing had sixty seats, the left wing had fifty-nine, and one right-wing seat was disqualified. That situation forced the central players to establish a rotational national unity government – during the first two years Labor leader Shimon Peres was prime minister, and during the next two years the position was transferred to Likud leader Yitzhak Shamir.

In 1984, 1992, and 1999 elections were held against the backdrop of the failure of the Likud's policy during the term prior to the elections: in 1984 elections were held against the backdrop of Begin's resignation, the Lebanon War, and the inflation crisis; in 1992 elections were held against the backdrop of the first Intifada and the failure of the right wing's security policy; in 1999 elections were held against the backdrop of Benjamin Netanyahu's government's difficulties and his inability to stabilize his leadership within the government itself, in the Knesset, and in public opinion. To that should be added the right wing's returns to power: in 1996 Knesset and prime ministerial elections were held against the backdrop of the assassination of Yitzhak Rabin on the one hand, and the failure of the security policy of the left wing on the other; in 2001 elections were held against the backdrop of the outbreak of the second Intifada and the failure of Ehud Barak's policy and leadership.

The Unbroken Tie

Politically, the root of the instability problem was the unbroken tie between the two main parties of the 1980s and 1990s – Likud and Labor, as Table 3.2 shows. The data in the table shows a right turn on the part of the Israeli public. During the thirty years since the 1977 *mahapach*, power has been transferred from Likud to Labor three times (the 2006 elections are not included, as power was transferred from the right to the center, which was fundamentally a faction of the right); however, as it appears from the concentration of data according to blocs, even when the Labor candidate succeeded in establishing a coalition by enjoining part of the right-wing bloc (usually a religious party with a right-wing orientation regarding foreign policy and security, which joined the left-wing coalition since the right-wing was unable to establish a stable coalition), the right wing held approximately 50 percent of the seats in the Knesset.

The unbroken tie was the result of an unresolved ideological struggle between right and left. As mentioned, standing in the center of Israel's political discourse since the Six Day War (1967) was the future of the areas of the West Bank (Judea and Samaria) conquered from Jordan and the Gaza Strip conquered from Egypt (see chapter 1). From the geographical-historical perspective, those areas are parts of historical Eretz Yisrael. It is the land of the Bible, and as Menachem Begin wrote to President Ronald Reagan in 1982, there the kings of ancient Judaea and Israel ruled, and there the prophets of Israel handed down morals for all of humanity. However, those strips of land were also densely populated by Palestinian Arabs. Symbolic components developed in the political discourse beside strategic ones, affected the governability distress and the difficulty in reaching political decisions. The hard-line ideological position toward the territories held by Israel (the “hawkish” position) was that Israeli rule should be preserved there – for security reasons, because of the historic tie, as a secular version of the idea of Greater Israel, or as fulfillment of the divine promise, as per the national religious camp which stood for Greater Israel. On the other hand, the moderate (“dovish”) stance toward the territories was that most of them should be conceded for peace – for reasons of preferring peace to the territories, since peace was seen as the best guarantee for security, or because of the “demographic problem” – the statistical gap between the natural population growth of the Palestinians and

Table 3.3. Bloc distribution in the Knesset, 1977–2006

Year	Right-wing bloc	Left-wing bloc	Center bloc
1977	63	42	15
1981	64	52	4
1984	61	53	6
1988	65	55	–
1992	59	61	–
1996	66	50	4
1999	60	48	12
2003	69	36	15
2006	50	34	36

Source: Knesset website www.knesset.gov.il.

that of Jewish Israelis, endangering the continued existence of a Jewish majority in Eretz Yisrael from the Mediterranean Sea to the Jordan River.

The reasoning behind each of the two stances was a force to be dealt with, and the public had difficulty deciding between them. The right wing tended toward the hawkish position; the left toward the dovish position; and the center usually tended toward the dovish position, with a few exceptions. Table 3.3 shows the bloc distribution resulting from the elections over the past three decades. The significance of the data is the lack of a clear mandate for solving the central problem on the political agenda. For almost thirty years the Knesset was split, with an extremely small alternating majority, and with a light tendency to the right for most Knesset terms.

Fragmentation and Sectorialism

Although the governmental system in Israel is parliamentary, voting is relative (one votes for a list of candidates presented by a party, with no dimension of personal election), and the level of representativeness is higher than is common in most Western countries. Those factors lead to an abundance of small parties, and thus each prime minister must spend a considerable amount of his time maintaining his coalition by dividing out political payoffs and spoils. The sectoral parties (such as the religious parties) are likely to support or even participate in a coalition whose policy on the central national issue is very different from theirs, as long as their constituents' real interests are well compensated:

for example, by considerable state budgetary funding for their separate education system. For the Ultra-Orthodox parties, such funding is an existential interest, as it allows the existence of the society of learners, exempt from military service and work, which has characterized Israel's Ultra-Orthodox society for the past three decades in complete contradiction to what is common among Ultra-Orthodox Jews in Europe and the United States.

In order to attain a parliamentary majority to approve his policies, the prime minister has had to fulfill the demands of groups whose nominal power is relatively small, but whose real power is great, as they constitute the final vote for a winning coalition. Thus it was in Likud governments, which despite their tendency to the right enjoined the Ultra-Orthodox parties of moderate political orientation, primarily in light of Likud's positive attitude toward religious tradition. Labor Party prime ministers used the same strategy. They needed the support from within the right-wing camp, and by the spoils system – by granting political payoffs beyond a party's nominal strength, or granting personal political payoffs for crossing party lines – they succeeded in receiving the Knesset's approval for policies for which it was doubtful that they would have a majority according to bloc distribution.

The Rabin government (1992–5) established a coalition with the support of the Shas party (an Ultra-Orthodox party of Sephardic Jews identified, in most aspects, with the right wing), but, in order to attain Knesset approval for the implementation of the agreement with the Palestinians, political manipulation was needed, including creating a split in one of the right-wing parties and granting ministerial and vice-ministerial positions to Knesset members who crossed over to the government. That was necessary since Shas members were unwilling at that point to support the Oslo process, after their support of the agreement at the first stage had led to sharp attacks on them and their spiritual leader, Rabbi Ovadia Yosef, the religious figure with the most influence among Mizrachim, who had served as the Sephardic Chief Rabbi.

The political tie has led four times in the past three decades to the establishment of governments shared by the two main parties: in 1984, 1988, 2001, and 2006. Cooperation has developed from the constraint stemming from the parliamentary balance of power, as shown in Table 3.3. The result of the cooperation, however, was only a temporary reduction of the smaller parties' political power and temporary

stabilization. In the longer run the national unity governments blurred the ideological differences between the parties and increased the attractiveness of the smaller parties whose agenda remained coherent. Moreover, the coalition formations themselves have made the entire political system less reliable and led, on the one hand, to attempts for structural reforms and, on the other hand, to the search for alternative channels of political influence (see chapter 6).

The rotational national unity government established in 1984 survived the performance of the prime ministerial rotation in 1986, pursuant to the agreement. In the 1988 election the possibility of establishing a right-wing government arose, but the elected prime minister, Yitzhak Shamir, chose not to depend upon the radicals in the right-wing camp and preferred the framework of a national unity government, despite the fact that it hurt the chances of realizing the ideology of Greater Israel, in which he believed and in whose name he was elected. The government established in 1988 was a coalition government shared by Likud and Labor, yet without rotation. It lasted two years, until the outbreak of the political crisis which was called by then defense minister Yitzhak Rabin *haTargil haMasriach* (“the stinking trick”).

The background to the crisis was the American administration’s initiative to jumpstart the political process between Israel and the Palestinians, a process which had been paralyzed as a result of the Palestinian Intifada. The leader of the Labor Party was Shimon Peres, finance minister of the 1988 government, foreign minister from 1986 to 1988, prime minister from 1984 to 1986, and president of the State of Israel since 2007. Previously he had been defense minister in the Rabin government (1974–7), and had held various ministerial positions since serving in the 1950s in the role of director general of the Defense Ministry, as one of David Ben-Gurion’s assistants. Peres saw in the American initiative, beyond its diplomatic value, an opportunity to alter the makeup of the coalition and to establish a government led by him. Peres counted on the support of religious parties. The Shas party was at that time of “dovish” orientation regarding the issue of “land for peace” despite its sociopolitical connection to the right-wing camp, and the Ultra-Orthodox ‘Agudat Yisrael’ party was bitter that the Shamir government had not honored promises made to it in coalition agreements.

In a no-confidence vote in the Knesset Shimon Peres voted against the government, and Prime Minister Shamir dismissed him immediately. As a result of his dismissal, all the ministers from the Labor

Party resigned, and the government fell. For two months Israel was in an acute political crisis: Peres nearly succeeded in establishing an alternative government, but at the last moment his religious partners, who preferred partnership with the right wing for ideological and theological reasons, backed out; and ultimately Shamir established a narrow right-wing government, which lasted until the elections in 1992. During the crisis there had been a number of crossings over by Likud Knesset members, accompanied by promises of personal advancement, a fact which caused rage and frustration within the party and in the public.

The public outrage over these political maneuvers led to the adoption of a number of constitutional amendments, which limited Knesset members' ability to leave the party in whose name they were elected and yet remain members of the Knesset or the government, and prohibited public sector employees from participating in the process of internal party elections. Most important, a new version of Basic Law: The Government was enacted³ that changed the governmental system in Israel from a parliamentary one, similar to that of Great Britain (excepting the parliamentary election system), to a mixed form of parliamentary-presidential government: the voter votes with one ballot for the list of Knesset candidates he or she supports, and with another ballot for the prime ministerial candidate he or she supports. The prime minister, according to this law, would serve by force of direct election by the public, but the Knesset could bring a vote of no confidence, which would lead to a new general election. The makeup of the government – the names of the ministers and the division of portfolios between them – required Knesset approval: thus the basic law did not eliminate the need to establish a parliamentary coalition, as discussed below, in order to ensure the establishment of the government and its political survival.

The objective of the change was to prevent crises like *haTargil haMasriach* by stabilizing the governmental system via the direct election of the prime minister. However, de facto, another trend altogether developed. As shown in table 3.2, instead of the establishment of a

³ Israel has still not completed the process of establishing a constitution. According to a decision by the first Knesset, the constitution is established via the enactment of basic laws which are to become chapters of the state constitution. To date eleven basic laws have been passed, a few of which determine the basic values of the state, others of which arrange the activity of the branches of government. Basic Law: The Government was first enacted in 1969, was drafted anew in 1992, and then once again in 2001.

central ruling party and a few satellite parties as junior coalition partners opposed by a central opposition party with a few small opposition parties, what occurred was a diffusion of the political system. There were no more large parties, only medium-sized and small ones. The reason for this was the opportunity that this unique electoral system granted to every voter to vote for a prime minister according to his or her stance regarding the central problem on the national agenda – which was usually his or her stance regarding the Palestinian–Israeli conflict – yet in voting for the Knesset, to choose the party close to his heart in other respects. Thus the Shas party grew at the expense of Likud, and the Labor Party shrank as the left wing and center grew. As a result, the political weight of the prime minister's coalition partners grew, negatively affecting governmental stability. The basic law's objectives had been frustrated, and its supporters claimed that the failure was a result of the compromises made in the process of legislating it in the Knesset.

The direct election law was in effect for only five years: it was legislated in 1992, but went into effect in 1996, lasting until 2001. During those five years the citizens of Israel went to the ballot box to elect a prime minister three times: in 1996 Benjamin Netanyahu was elected, in 1999 Ehud Barak was elected, and in 2001 Ariel Sharon was elected. The short terms of prime ministers made the proper management of the state's affairs difficult. The prime minister served by force of direct election, but the government served by force of Knesset approval. Thus there was still a need to establish coalitions of parties who did not always see eye to eye on the problems of the state and the ways to deal with them. Furthermore, the shrinking of the Likud and the Labor Party, meant that there was no stable parliamentary ruling core for the legislation of statutes and for state budget funding according to the policy of the government. Before every important vote in the Knesset, bargaining took place between the prime minister or his representatives and his coalition partners. The political and budgetary payoff needed to ensure the support of coalition partners rose higher and higher, parallel to the waning of the strength of the Likud and the Labor Party. And thus, instead of the stabilization of the system and the prevention of the purchase of power by handing out benefits, the opposite situation was created: the government was less stable, and even more dependent upon manipulations and intrigues than it had been prior to the reform intended to prevent such phenomena.

The direct election law caused agitation, and a lobby was established in the Knesset to revoke it, drawing political support from various circles. It was not only because of these considerations that Prime Minister Ariel Sharon decided to reinstate the previous governmental system, via a coalition of direct election opponents. The party whose interest was most harmed was the Likud. In the 1999 elections, the Likud fell to nineteen Knesset seats, whereas Shas, whose voters supported the Likud prime ministerial candidate (Netanyahu), grew to seventeen seats at Likud's expense. Although that electoral success should not be detached from the protest that encompassed many Mizrachim and Ultra-Orthodox against the judgment in the trial of Shas's political leader, Arye Der'i (the former interior minister who had been sentenced to three years in prison for taking a bribe), the common opinion in the Likud was that the direct elections law had granted the opportunity to vote for Shas, whereas otherwise many of its supporters would have continued to vote for Likud. And indeed, in the elections held after the revocation of the direct elections law (in 2003), Shas's strength diminished to eleven seats, and the Likud grew to thirty-eight seats, at the expense of all of its satellite parties.

The failed attempt at the direct election of the prime minister, accompanied by the dependency of the government itself upon the parliament, served to accentuate the chronic instability problem. Basic Law: The Government was enacted three times – in 1969, 1992, and 2001 – in addition to a series of amendments on certain points in that basic law.

“The Constitutional Revolution”

As mentioned in note 3 to this chapter, Israel has not yet finished the creation of its constitution, mainly because of internal disagreements and various schisms. The Knesset Constitution, Law and Justice Committee drafted a constitution shortly before the last elections, but as of 2006 it has been neither approved nor rejected by the Plenary. With the gradual approval of eleven Basic Laws already, Israel has, in the words of former Supreme Court President Aharon Barak, “a cripple constitution.” Until 1992 these basic Laws were largely procedural rules of governance that had little significance for the political debates. In 1992 the Knesset adopted two basic laws whose constitutional significance

was, as Barak put it, revolutionary: Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation.

The two basic laws entrenched human rights which for the most part had already been recognized in Israeli law. Every person in Israel has a right to life, to liberty, to dignity, to his or her property, to privacy, to exit the country, and – if he or she is a citizen of the state – to enter it. The revolutionary significance of these basic laws was in the restriction of the authority of the legislative branch to violate those rights, and thus Israel turned from a parliamentary democracy in which parliament is omnipotent, to a de facto constitutional democracy in which parliament is restricted by the constitution. These basic laws determine that all branches of government must honor the rights safeguarded in them, and that duty naturally applies to the judicial branch as well. Thus, the Supreme Court held that these basic laws authorize it to examine whether the acts of the other branches of government are constitutional or not. That determination has far-reaching legal implications.

In Basic Law: Human Dignity and Liberty several important statements are made:

“*Violation of Rights* (8). There shall be no violation of rights under this Basic Law except by a statute befitting the values of the State of Israel, enacted for proper purpose, and to an extent no greater than is required, or by regulation enacted by virtue of express authorization in such law.”

The Knesset itself determined that restriction while acting as a constitutional convention, and it is thus not permitted, in its role as the legislative branch, to violate the human rights which it entrenched while acting as a constitutional convention. This is, in other words, the principle of constitutional supremacy over regular statutes. Violation of the rights safeguarded by the basic laws is unconstitutional, unless it is the product of the legislative process as defined in this three test article: fit with the values of the State of Israel, proper purpose, and proportionality. It is to be taken for granted that the decision whether a certain statute withstands the three tests is that of the court, which is authorized to invalidate the statute. The District or Magistrate Court can annul the statute for the purposes of the case before it, whereas the Supreme Court can annul it completely.⁴

⁴ That general ruling was made by the Supreme Court: CA 6821/93 *Bank Mizrachi Meuchad Ltd. v. Migdal, Cooperative Village*, 49 PD (4) 221 (1995). In a later judgment it was held

In practice, the Supreme Court exercises a self-restraint strategy, and from the time of the enactment of these basic laws (1992) until the end of 2006, it has annulled four statutes or statutory provisions. The first test in the process of judicial review of legislature is whether the statute fits the values of the state. “The values of the State of Israel” are defined in article one of the basic law (after its amendment in 1994) as follows:

“*Basic Principles* (1). Fundamental rights in Israel are founded upon the recognition of the value of the human being, the sanctity of human life, and the principle that persons are free; these rights shall be upheld in the spirit of the principles set forth in the Declaration of the Establishment of the State of Israel.

Purpose 1(a). The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state.”

This declaration opening the basic law has far-reaching significance. Human dignity, sanctity of human life, and human liberty are linked to the concept of a “Jewish and democratic state” stemming from the Declaration of the Establishment of the State of Israel of May 14, 1948. The courts had tended to interpret the laws of the state in accordance with the view of the state as the Jewish nation-state on the one hand, and as a democratic state on the other, but only in these basic laws is positive constitutional use made of this double concept. Moreover, these basic laws speak of “the values of the State of Israel as a Jewish and democratic state”; as constitutional language tends to do, this leaves the definition of the concrete values to statute and case law, assuming that a way can be found to harmonize and synchronize both systems of values: the Jewish, which includes national-Zionist components as well as religious-traditional components, and the democratic, whose values can of course be interpreted in different ways.

According to former President of the Supreme Court, Aharon Barak, in the event of a contradiction between the systems of values, the interpreter must raise the level of abstraction to the point at which the Jewish values and the democratic values converge. That position spurred controversy. Some say that instead of adopting the American model of judicial review entailing Supreme Court authority

that all basic laws, and not only those dealing with human rights, are of supra-statutory constitutional status: HCJ 3434/96 *Hoffnung v. The Chairman of the Knesset*, 50 PD (3) 57 (1996).

to invalidate laws which contradict the constitution, it would have been better to adopt the British model of declaring the existence of a contradiction between the constitution and its values, and the specific statute, and to remand final decision to the Knesset. On the other hand, the difference between the political cultures may question the adaptability of the British model. An additional argument that has been raised is that only the Supreme Court should be authorized to judicially review the constitutionality of statutes. Since the constitution has not been completed yet, it is safe to assume that Israel will continue the academic and political debate of these questions in the coming years.

The Court, the Parliament and the Public

The very discussion of the values arising from the language of the basic laws, and to an even greater extent the discussion of the concrete contents of those values, of the settlement of the contradictions, or of determining a hierarchy between them, is likely to be a matter of public controversy. The confidence of the public in the legal system is expressed in the fact that the legal decision of questions of fact, of interpretation of statutes, or of procedure, will enjoy consensus. Naturally, however, the legal decision of questions of values is likely to stray from the boundaries of consensus, if only since the rejected values-based stance is in many cases likely to be legitimate, or to be seen as legitimate by a considerable part of society. This is especially true in Israel, where ideological clashes between religious and secular, Arabs and Jews, or doves and hawks are translated into concrete political dilemmas. When the political system, as described above, is unable to provide answers to these dilemmas, they are often brought to the court (see also chapter 6). Even prior to the enactment of the basic laws and the considerations of values involved in interpreting them, the courts found themselves in the public arena, making decisions affecting the policy of the government. An example of that is the judgment of Supreme Court President Emeritus Moshe Landau ordering the government to refrain from establishing the settlement of Elon Moreh on the site that had been chosen, as that site would necessitate the expropriation of private Palestinian land for paving an access road.⁵ That was a revolutionary judgment, which dealt a blow not only to the settlement policy of the government, but also to its abovementioned

⁵ HCJ 390/79 *Duikat v. The Government of Israel*, 31 PD (1) 1 (1979).

ideological infrastructure. As expected, the judgment sparked political controversy, but the government fulfilled the judgment, and Begin repeated what he had said when the High Court of Justice had ruled in a way which was comfortable for his government: “there are judges in Jerusalem.”

Against the background of the governability distress, the power of the Supreme Court increased during the three decades under discussion. Not only do regular citizens turn to the Supreme Court sitting as the High Court of Justice with petitions against the government and the Knesset; politicians also petition the High Court of Justice against their colleagues, against the legislative branch, and against the executive branch. In recent decades the Supreme Court has been asked to decide questions such as establishing settlements in the occupied territories, dismantling of settlements established in the occupied territories, use of torture against terrorists in order to prevent acts of terrorism, the establishment of the security fence and its location, the authority of the prime minister to dismiss ministers who might disagree with his opinion, violation of the principle of equality regarding the duty of military service, suspension of certain human rights in light of the necessities stemming from the war on terrorism, and the like. Every judicial decision in petitions such as these, whether the decision allows or rejects the petition, means intervention in policymaking.

In light of the constitutional developments on the one hand, and the relative weakness of the other two branches of power on the other hand, Israel has joined a line of states in which a phenomenon which can be called “Juristocracy” has developed in recent decades. To a greater and greater extent, politics undergo legal transformation and are decided in legal proceedings in the judicial arena. This global trend is sharply felt in Israel, on the basis of the unique characteristics of the Israeli political system, which must choose between difficult and fateful decisions at a time when it is in a confidence crisis and a state of chronic instability. One of the manifestations of the crisis is the reliance upon judicial commissions of inquiry in cases of policy failure and performance failure, from the first Lebanon war (1982) to the second Lebanon war (2006), the collapse of bank stock-trading (1983), the assassination of Prime Minister Rabin (1995), and the relations between the state and the Arab minority (2000).

The purpose of these commissions is to bring about quasi-judicial decisions regarding the assignment of responsibility for the undesirable results, and to make recommendations regarding the organizational

and operative lessons to be learned. The recommendations regarding specific persons bind the government, whereas the recommendations regarding the system are left to its discretion. That rule was determined as a result of the recommendation of the commission of inquiry headed by then Supreme Court President Yitzhak Kahan, to dismiss Defense Minister Ariel Sharon because of his indirect responsibility for the 1982 massacre in the Palestinian refugee camps in Beirut committed by units of the Christian phalanges in Lebanon. Thus the role of assigning responsibility was transferred from the government and the Knesset to a legal commission of inquiry, and the dismissal of a minister owing to functional or ethical failure became a punishment instead of a political result.

Toward a Turning Point

At the beginning of the twenty-first century a dramatic ideological development occurred, leading to immediate results on the political plane. Prime Minister Ariel Sharon decided to dismantle and destroy the Israeli settlements that had been established in the Gaza Strip, Palestinian territory which from 1948 to 1967 had been under Egyptian occupation and since 1967 under Israeli occupation. Sharon's decision caused a split in the Likud. The Gaza Strip had been a part of the territory of the British Mandate and, according to Likud ideology, that territory was supposed to become part of the State of Israel. During the peace negotiations with Egypt, Begin had unequivocally and totally rejected proposals – including those made by US President Jimmy Carter – to grant the Egyptians status in the Gaza Strip. Sharon himself had been in charge of establishing settlements in the occupied territories, and as far back as his military service in charge of IDF Southern Command had dealt with creating infrastructure for settlement in Gaza. After the Six Day War there had been an Israeli consensus that the Gaza Strip would be part of the State of Israel, in order to create a territorial buffer between Egypt and Israel. When it turned out that incorporating Gaza into Israel was not a practical possibility, for demographic reasons, the idea was raised that a bloc of Israeli settlements should be established in Gaza, thus creating the buffer between Israel and Egypt. Thus, both ideologically and strategically, Sharon's decision to dissolve the Israeli presence in the strip was a dramatic turning point.

The split of the Likud in 2005 was a natural result of that move. Revisionist Zionism had stood, since the days of Ze'ev Jabotinsky, for Greater Israel, and any deviance from that principle was considered heresy. It is no wonder that a considerable part of the Likud was unwilling to accept the turn in policy which the Sharon government had made. On the other hand, opinion polls were good to Sharon, and predicted that he would receive forty Knesset seats, or even more, if he left the Likud and established a party to compete in Knesset elections. Although the disengagement policy itself was approved, the government did not have a majority in the Knesset for some of the issues vital for its functioning, and the difficulties created by Gaza disengagement policy opponents ultimately led Sharon to the decision to establish a new party, called "Kadima."

A short time after the establishment of "Kadima" in early 2006, Sharon suffered a severe stroke, and has since been comatose. Ehud Olmert was chosen in his stead, and won the spring 2006 elections, albeit with a shrunken majority – twenty-six seats; requiring him to make far-reaching concessions in the coalition negotiations. Previously, during the election campaign, Olmert announced a program called *hitkansut* (convergence) – dismantling some of the settlements in the West Bank and concentrating them in the settlement bloc adjacent to Israel's sovereign territory, which would be formally annexed to Israel. According to the plan, if such a result would not be possible through negotiations with the Palestinians, Israel would execute it unilaterally. In presenting his government to the Knesset, Olmert even stated that its goal is to bring about the partition of Eretz Yisrael and the establishment of two states, the already existent Israel and a Palestinian state, and that the idea of partition will ensure the continued existence of Israel as a Jewish and democratic state. The weakening of security conditions in Israeli towns and villages close to the Gaza Strip, however, weakened the prospects of repeating the unilateral strategy in the West Bank.

Presenting partition as the rescue of the Zionist idea is a turning point in Israeli political discourse, and it affects the stance of the Likud as well. In autumn 2006 the Likud was split not over the very idea of partition or establishment of a Palestinian state, rather over the unilateral execution of the idea, outside the framework of an agreement. The Likud's position is that all is up for negotiation, and that there will be concessions in an agreement. Thus, incidentally, Sharon began his disengagement process from the ideology of Greater Israel. The issue

is no longer an ideological rift, rather the evaluation of the situation: the weighing up of political and strategic factors. It is quite possible that Israel is about to reach a turning point, and recognize that its national interest requires separation from the Palestinians, even at the price of conceding a considerable part of the settlements which in the past seemed necessary for the national interest. Seeing as not everyone will be willing to concede “Greater Israel,” it is to be assumed that there will be additional organizational developments in the right-wing camp. Those will obviously have implications for the capacity to govern. However, it is not clear at the moment whether they will reinforce the capacity to govern, or weaken it; if they will work to stabilize the governmental system, or do the opposite – actually further weaken stability because of the lack of a clear ideological path. Only after the internal Israeli territorial debate comes to an end will the political and governmental system be able to stabilize according to the new coordinates. From that point of view, the coming decade is likely to be captivating.

Further Reading

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