

# Between a “Jewish and Democratic State” and Issues of National Security

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A comprehensive strategic analysis of the issues affecting Israel’s national security requires consideration of the internal challenges and disputes in Israeli society, particularly given that half of the public is either more concerned about internal social threats than about external security threats, or concerned about the two types of threat to the same extent.<sup>1</sup> Internal unity is also important as an element of national resilience, which affects the ability of Israeli society to withstand crises. There is therefore a direct connection between the country’s national security and the internal arena. Furthermore, a significant number of the important disputes within the Israeli public are related to topics involving national security.

This essay discusses four principal disputes in Israeli society related to national security, focusing on approaches to these issues among the Israeli Jewish public (hereafter, “the public”). It outlines the connection between these disputes and different world views among the public, based on respective approaches to the country’s core values. To this end, the essay discusses the significance of Israel’s definition as a “Jewish and democratic state,” the role of liberal values in the Israeli democratic context, and possible ways to balance competing values. It considers the proposed “Basic Law: Israel as the Nation-State of the Jewish People,” currently debated in a special Knesset committee. The essay then examines how the values discourse affects the analysis of the four disputes, and refers to the criticism of the Supreme Court, which is increasingly cast as an agent promoting liberal

values at the expense of national values. It concludes with an analysis of the implications for national security and recommendations for the future.

## **The Material Disputes in Israeli Society**

In an oft-quoted speech toward the end of his first year as president, President Reuven Rivlin described the “four tribes” in contemporary Israeli society that are redefining Israeli identity. He contended that four sectors have emerged in the country, “principal tribes” that differ substantially from one another: secular, national religious, haredi, and Arab.<sup>2</sup> As such, in his view, the nature of one’s identity is an element that divides Israeli society.

Using a complementary perspective, this essay focuses on four material disputes in Israeli society concerning questions connected to national security, and current issues related to each.

- a. *The solution to the Israeli-Palestinian conflict.* The main dispute concerns the idea of Greater Israel, or the Land of Israel in its entirety, as opposed to a solution involving partition of the land. Issues in 2017 reflecting this dispute include increasing discussion of a one-state solution; the evacuation of Jews from illegal dwellings, as in Amona; and the deliberation of the Judea and Samaria Settlement Regulation bill designed to legalize homes and communities constructed on private Palestinian land.
- b. *Attitudes toward the Arab minority.* There are basic tensions between the Jewish and Arab populations in Israel, arising from the definition of Israel as a Jewish state; the establishment of the state while it was engaged in a struggle – that has not yet ended – against Arab countries, which opposed, and some of which still oppose, Israel’s existence; and the ongoing conflict with the Palestinian people. Current issues related to this dispute include the state’s approach to illegal construction in the Arab sector and the friction created by this issue, and the ongoing question of the Arabs citizens’ loyalty to the country.
- c. *The balance between security needs and human rights.* This dispute results from the manner in which the state imposes restrictions on the use of force and security measures, out of human rights considerations. This dispute is reflected in the attitude toward groups perceived as posing a threat to the state, including enemy combatants and civilians; illegal infiltrators and migrants seeking work; and parties in Israel and abroad

who express criticism of the State of Israel. Key examples of current issues in this context include the attitude toward terrorists who do not constitute a danger, as highlighted by the affair of IDF soldier Elor Azaria, who was convicted in January 2017 of manslaughter for shooting a wounded terrorist who the court ruled did not constitute a danger; the question of collective punishment following terrorism events; and the approach to organizations such as B’Tselem and Breaking the Silence.

- d. *The status of religion in Israel*. This issue focuses on questions concerning the role of religion in public life in the country, and the extent of religion’s intervention in issues of state. This dispute impacts on the country’s basic identity. In the context of national security, however, it reflects mainly the interface between religion and the IDF, for example, the tension between the military rabbinate and the education corps over involvement in formulating the IDF’s values and instilling them in soldiers, the rabbis’ authority in the IDF, especially versus a commander’s authority, and the inclusion of women in the IDF.

Many of these disputes overlap. There is a clear connection between positions on the Israeli-Palestinian conflict and positions on the subject of the Arab minority. These positions are also often affected by the attitude toward the role of religion, which in turn affects the concept of the proper balance between security needs and human rights. Yet beyond this interface, an examination of these disputes shows that they are all influenced to a great extent by differing outlooks concerning the values on which Israel is based, and more specifically, the proper balance between the competing values involved in the definition of Israel as a “Jewish and democratic” state.

### **The State’s Fundamental Values: “Jewish”/“National”/“Democratic”/“Liberal”**

It is usually said that the two main values that constitute Israel’s foundation are its status as a “Jewish state” and a “democratic state.” These terms raise key questions: is “Jewish” intended in a religious or national sense? Does “democratic” refer to democracy in the narrowest sense of majority rule, or to “substantive” democracy, which includes additional elements such as basic equality and civil liberties, including freedom of expression and association, a multiparty regime, a free press, an independent judiciary, and others.

There is widespread agreement in Israel that the “Jewish” element is primarily national. In other words, it does not reflect a religious idea of establishing a theocratic state, but refers mainly to Jewish values and to the national aspect of Judaism, similar to other nationalities.<sup>3</sup> As for the democratic element, there is basic agreement that the regime in Israel is democratic in the sense that it reflects the rule of the people, which elects its representatives every few years. On the other hand, there are varying opinions about the extent of other elements expressed in the idea of a democratic regime.<sup>4</sup>

When it was founded, Israel chose to be democratic. This choice was not self-evident, because Israel was a young country with no democratic tradition, composed of immigrant communities with diverse values that did not naturally include a commitment to the democratic ethos. Adopting the democratic concept was an important step that supplied an effective and unifying system of values for a new and emerging society that featured – and still features – national, ethnic, and class divisions.<sup>5</sup>

Over the years, there has been a consensus in Israel about the desire to maintain a substantive democracy, not just a democracy in the narrow sense of majority rule. This position is also heard among right wing groups. For example, in an article on governance in Israel, Justice Minister Ayelet Shaked refers to the “democratic” element of the state. In addition to the need to give the elected representatives enough power and freedom of action, she emphasizes the imperative to minimize as much as possible harm to the individual and maximize consideration for the freedom to shape one’s life as one sees fit. In other words, she affirms that democracy includes principles that go beyond mere majority rule.<sup>6</sup> The debate about the essence and extent of substantive democracy is linked to the role of liberal values in a democratic framework. While these concepts are connected and there are no clear boundaries between them, they are not synonymous. Though there is no dispute concerning Israel’s being a democratic state, there are different approaches to the question of whether Israel’s democratic element includes a liberal element, in other words, whether Israel is a “liberal democracy.”

In this essay, “liberalism” is intended as an approach that puts the person in the center; seeks to honor the rights and freedom of the individual; ensures implementation of the principle of equality; opposes discrimination; and

tries to prevent the possibility of tyranny of the majority and oppression of the minority by the elected rulers.

Since it was founded, at least at the declaratory level, the State of Israel has aspired to be liberal. Israel’s Declaration of Independence, the country’s statement of principles, states explicitly that the new country “will be based on freedom, justice and peace,” and that “it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex” and “freedom of religion, conscience, language, education and culture.” The adoption of liberal concepts in the country is probably one of the explanations for its prosperity, despite its difficult starting conditions. Indeed, there is a connection between the liberal model and the measure of human development, i.e., the composite index of life expectancy, education, and the level of income in countries. The thirty countries with the highest scores in the human development index are all liberal democracies.<sup>7</sup>

At the same time, there is inherent tension in Israel between its national and liberal values. At the moment of its founding, Israel was confronted with a major challenge to liberal values, due to the preference given in the country to Judaism and Jews over the Arabs and other national minorities,<sup>8</sup> and also due to the desire to give the country a religious character, even when this meant interference with individual freedom. This is a special case of identification of nationality with religion, because what is detrimental to religious aspects of the county is often perceived as detrimental to its national identity as the state of the Jewish people. This basic tension has been compounded due to the constant threats to Israel’s security since its establishment. Israel’s control of territory in Judea and Samaria since 1967 with Palestinians living in this territory adds a significant layer to this tension.

In the past year, the discussion of the role of liberal values and their relation to national values has also come to the fore in Western countries outside Israel. In the United States, the election of Donald Trump as President and his statements during and after the election campaign have brought anti-liberal attitudes that were thought to reflect the views of only a marginal part of American society to center stage. In Europe as well, anti-liberal voices have begun to resonate more, particularly on the issue of immigration, together with the rise of a national character bordering on nationalism. A concrete expression of this can be seen in the results of the elections in Germany

in September 2017, in which 80 representatives of a right wing nationalist party were elected to the Bundestag. Similar trends are evident elsewhere in European politics. There have been many analyses of this phenomenon, most of which treat it as a reaction to exaggerated ideas of globalism.<sup>9</sup> At the same time, the dominant groups in Europe are still those whose outlook is based on liberal values.

The balance between the Jewish and democratic essence of Israel and the role of national and liberal considerations are at the heart of the debate over the proposed “Basic Law: Israel as the Nation-State of the Jewish People” (hereafter – “the nation-state bill”) currently considered by the Knesset.<sup>10</sup> The proposed basic law establishes as “fundamental principles” that the State of Israel is the national home of the Jewish people, and that the right to exercise national self-determination in the State of Israel is unique to the Jewish people.<sup>11</sup> It anchors practical elements reflecting Israel’s status as the nation-state of the Jewish people, including the symbols of the state, its language, the right of return, the ingathering of exiles, Jewish settlement, and the connection with the Diaspora.<sup>12</sup> The idea underlying the bill directly concerns the subject of this essay – anchoring in a basic law the national elements of Israel as a Jewish state in order, according to the rationale for the bill, to give these elements equal status with that of the state’s democratic elements, which are anchored in the existing basic laws.<sup>13</sup> In other words, the origin of the bill is the assumption that in the existing legal situation in Israel, in particular the basic laws, there is no balance, or there is an improper balance, between the state’s values as a democratic state and its values as a Jewish state, because the status of the former is superior to that of the latter. The ostensible purpose of the proposed bill is to rectify this situation by giving the national-Jewish values the same status as the democratic values. For their part, the critics of the proposal hold that the bill actually causes distortion by creating inequality between the status of the state’s Jewish and democratic values by giving preference to the national-Jewish elements over the democratic elements.<sup>14</sup>

While the original proposal stated that the goal of the basic law was to protect Israel’s status as the nation-state of the Jewish people in order to anchor Israel’s values as a “Jewish and democratic” state, another version of the bill was submitted for discussion to the joint committee at the initiative of the

haredi parties. Instead of the words “Jewish and democratic,” this alternative uses the words “Jewish state with a democratic regime.” Accepting such a version would constitute a significant deviation from the concept of Israel as a substantive democracy, while emphasizing only the formal element of a democratic system. This would change the character of the state by turning it into a Jewish state whose democratic character is limited and secondary.

The various definitions of “Jewish,” “national,” “democratic,” and “liberal,” have much significance and many implications, but they are beyond the scope of this essay. Rather, the essay now looks at the four principal disputes mentioned above, and considers how each embodies the substantive debate concerning the role and extent of democratic/liberal values in the country and the balance between them and Jewish/national values.

### **The Dispute Concerning the Israeli-Palestinian Conflict**

Discussion about the dispute concerning the Israeli-Palestinian conflict usually focuses on the security aspect. For most of the Israeli public, the main consideration is for Israel to exist as a Jewish state while providing for the security needs of its citizens. Accordingly, a majority of the public is willing to accept territorial compromises, as long as it does not come at the expense of security.<sup>15</sup> At the same time, in view of the prevailing belief, which has increased greatly in recent years, that progress in the political process is not possible now, ideas have been raised concerning the option of a one-state model in which the Palestinians will not have their own country, and will in effect continue to be under Israeli control with extensive autonomy, but without civil status equal to that of citizens of Israel. There are other one-state models that do grant Palestinians full equality, including the idea of a bi-national state or a country of all its citizens. These, however, have negligible support among the Israeli public and therefore are not explored here. The idea of moving away from a two-state solution brings to the fore questions that directly concern the balance between the state’s national values and democratic-liberal values.

The model of a one-state solution that does not grant equal rights to Palestinians, which has commanded increasing political and media attention, promotes the Jewish-national values of the state. It gives Israel the option of continuing to settle anywhere throughout the Land of Israel, while

addressing arguments of a demographic threat by withholding full rights to the Palestinians. It also ostensibly provides a solution for security needs, despite the ever-present concern about Palestinian unrest, especially if severe measures can be taken against this unrest. The counter-argument to this idea is based above all on the concern that it conflicts with democratic-liberal values. Continued rule over the Palestinians, with no horizon or intention of ending it, detracts from the rights and freedoms of the Palestinians, including the right to self-determination, the right to freedom of movement, and potentially other rights that are liable to be compromised if it becomes necessary to adopt a harsh policy against attempted uprisings. Such prolonged control, with no effort by Israel to end it, undermines Israel's ability to continue to adhere to democratic and liberal values.

This is the heart of the value dispute between those favoring a solution that calls for retaining the entire Land of Israel and those favoring a solution of separation. In other words, beyond the security and political considerations that dominate the discourse, there are also value-based considerations underlying Israel's need to separate from the Palestinians and allow a Palestinian state or another solution that will allow the Palestinians full exercise of their rights. These considerations weigh the consequences of the alternative solutions for the values of the State of Israel. This does not mean that control of the territories today prevents the country from being democratic or liberal, because it is regarded as temporary control until a solution is found, and such a solution has yet to be found. The emphasis is rather on Israel's stance concerning what it regards as the ultimate preferred solution, while ignoring the question of whether this solution will be acceptable to the other side, and whether it can be implemented.

The clash between competing values is not highlighted in the public debate on the subject. The prevailing framing portrays one side as "ideological," referring to the land's integrity as a religious and national ideal, against a side described as driven by utilitarian considerations, driven to divide the land through security and political prisms to promote the state's internal and external interests. As soon as it is realized that there is also a value consideration in favor of dividing the land, based on the desire to preserve the state's democratic-liberal values in the long term, it emerges that the argument is between competing values. This clarification removes the



basis for the existing rhetoric that there is a “just” side against a “smart” side, a side that is asked to concede its fundamental values merely for the “convenience” of the other side. Actually, each side is asking the other to concede a fundamental value that it upholds.

In order to conduct a substantive and significant debate, it is important to begin with a discussion of the desired goal with regard to the envisioned character of the state. Defining the goal will clarify the way each side sees the values on which the state is to be based. In this framework, both the territorial framework – i.e., the status of the territory, and the personal aspect – i.e., the population living in this territory, should be addressed. The desirable goal is shaped by the respondent’s value system. Those embracing a national outlook that emphasizes the importance of holding the land and the importance of religious and national rights will favor solutions that will protect these values, whether through separation or full control over the whole territory, even at the price of impairing the rights of the Palestinian residents of the territory.<sup>16</sup> Those with a liberal outlook centered on the rights of the individual will prefer to forego control of territory, despite the religious and national affinity towards it, in order to avoid indefinitely continuing Israel’s rule over people without granting them equal rights. It is true that it is difficult to reconcile these attitudes. Nevertheless, referring to the underlying values makes it possible to conduct a principled discussion, while clarifying the substance of the issue.

Moreover, a discussion of the final goal and how it matches the different outlooks in Israeli society will facilitate a better understanding of the alternatives facing Israel, and the adoption of measures that help make progress toward the desired goal. The question of how to attain this goal, which is currently the leading issue in discourse on these topics, is secondary. It is important to discuss it, but centering the entire discussion on it diverts attention to questions of process that can only follow an understanding of the objective. Questions such as whether there is a Palestinian partner, whether a territorial compromise will promote or undermine security, and whether it is right to make a territorial compromise in an unstable regional situation are therefore secondary, and should be clarified only after the goal is defined.

## **The Dispute over Attitudes toward the Arab Minority in Israel**

The question of the attitude toward Arabs in Israel is an issue that brings the tension between national and liberal values into sharp relief. Some hold that the fact that Israel is a state that belongs to the Jews, and not all of its citizens, by definition prevents it from being a liberal democracy.<sup>17</sup>

The national outlook emphasizes the fact that Israel is a Jewish state. This inevitably leaves its Arab citizens on the outside, at least in some areas. This is joined by the suspicion concerning the loyalty of Israel's Arab citizens to the state, given their identity as part of the Palestinian people, with whom Israel is in conflict.<sup>18</sup> Every terrorism event in which Arab citizens are involved, directly or indirectly, contributes to this suspicion and encourages the view of the entire Arab minority as a possible security risk. The attitude of a large proportion of the Jewish public toward the ordinary Arab citizen is "respect him and suspect him." More than a third of the public regard Israel's Arab sector as enemies, and only approximately one quarter see them as citizens with equal rights.<sup>19</sup>

The nation-state bill does not explicitly refer to the Arab minority and its rights. On the other hand, it proposes elimination of the status of Arabic as an official language, and awards it a "special status" whereby Arabic speakers have the "right of language access to state services." The bill also includes a constitutional anchor that gives the state the authority to enable a specific religious or national group to have a separate residential community closed to other nationalities. This clause legalizes discrimination in land allocation and the establishment of exclusively Jewish communities. These stipulations reflect a trend toward giving national values preference over liberal values in relations with the Arab minority.<sup>20</sup>

Followers of the liberal approach, on the other hand, seek to promote equality for members of the Arab minority and to minimize discrimination against them on the basis of their affiliation. There are also some who hold that beyond that, the Arab minority in Israel should be given collective rights that will ensure the preservation and advancement of the sector, including in language, culture, and religion.

Dealing with the dispute concerning Arab citizens of Israel requires a flexible attitude toward notions of nationality and liberalism and finding a

balance between them. The solution does not require abandoning the character of Israel as the nation state of the Jewish people, the Law of Return, or the symbols of the state, and will therefore not provide a complete response to liberal values. On the other hand, Jewish nationality need not be emphasized in a way that is antagonistic to the Arab minority. The feelings of this group must be taken into account and a balanced solution sought. A strong expression of this balance appears in the report of the Or Commission, the state commission established following the events of October 2000:

That the Jewish and Arab populations are neighbors is a fact of life, leaving the parties with but one practical possibility – that of coexistence in an atmosphere of mutual respect... The Arab citizens must remember that the State of Israel constitutes the realization of the Jewish people's yearning for a state of its own, in which Jews constitute the majority, a state in which the ingathering of the exiles is a basic foundation, and which is the essence of the national ethos for its Jewish citizens... The Jewish majority must remember that the state is not only Jewish, but also democratic, because – as noted above – equality is one of the main elements of the state's constitutional structure, and that the ban on discrimination applies to all of its citizens. It must understand that the events that turned the Arabs into a minority in this state constitute a national disaster for them, and that from their perspective their integration into the State of Israel involved painful sacrifices. The Jewish majority must honor the identity, culture, and language of the Arab citizens.<sup>21</sup>

## **The Dispute over Balancing between Security Needs and Human Rights**

The dispute over the proper balance between security needs and respect for human rights is intimately connected with the question of the role of liberal values in the state. Those favoring the liberal approach generally embrace a universalist outlook that emphasizes tolerance of foreigners and concern for all mankind. From this is derived an attitude that elevates human rights, even perhaps at the expense of detracting somewhat from security, and that regards freedom of expression and other freedoms as important even when those involved strongly oppose the state.

Those with a national outlook, on the other hand, give more weight to protection of those sharing the common nationality than to those who are not part of the nation. In particular, willingness to concede rights or take risks in order to protect the rights of “outsiders” is perceived as a worthy but unrealistic ideal belonging to the elites living in ivory towers and luxury suites far away from the masses. From their perspective, the people taking a liberal approach are actually fighting for the rights of “foreigners,” or worse, of “enemies,” at the expense of the country’s citizens. This phenomenon is not unique to Israel, as can be seen by the public discourse in recent years in Europe and the United States on the issue of immigration, which shares a great deal with the discourse in Israel concerning infiltrators/refugees/migrant workers.

The gap between liberal outlooks and national outlooks, and the argument that liberal outlooks are adopted by elites at the expense of the economically disadvantaged, is expressed, for example, in the discourse about the approach to infiltrators/migrant workers, and highlighted in the court ruling on this issue, whereby infiltrators could not be held in detention for an unlimited period in order to force them to consent to expulsion.<sup>22</sup> The ruling protects the basic value of an individual’s right to freedom. However, the price of protecting the immigrants’ rights is paid by residents of the poorer neighborhoods in Israel, in southern Tel Aviv and elsewhere. The solution in this case is not necessarily absolute abrogation of the right of migrant workers, which undermines the state’s liberal values, but finding a solution for the residents of these neighborhoods, for example by devising a plan for dispersing the migrant workers in a way that will not burden specific neighborhoods. Justice Melcer referred to this in the margins of his ruling.<sup>23</sup>

The gap between these outlooks is also expressed in the longstanding discussions of military ethics. Those with a liberal outlook emphasize the importance of honoring values such as purity of arms and reducing collateral damage and harm to civilians not involved in the fighting. In contrast, it is argued that in order to promote national values, absolute priority should be given to the security of Israeli citizens and IDF soldiers over concern for the enemy, above all the terrorist and combatant himself, but also the civilian population.

A prominent example in this context is the broad debate that arose concerning the Elor Azaria affair. Although the criminal proceedings themselves eventually focused on the question of whether the soldier believed that the terrorist was still dangerous, what is significant for this essay is the public discourse on the question of whether or not it was right to shoot the terrorist, even assuming that he no longer constituted a danger, and the opinions voiced to the effect that every terrorist should be killed. The parties who called for restraint in the use of force were portrayed as alienated elites who give priority to a terrorist's rights over those of the soldier who found himself in the dock. Arguments in this spirit were also raised against the IDF Chief of Staff and other senior officers, as well as against former Minister of Defense Moshe Ya'alon, who emphasized that the IDF was committed to preserve the values of warfare and the purity of arms. Their statements drew severe criticism, and were portrayed as abandonment of the soldiers. This criticism was combined with a charge that the IDF high command reflected liberal outlooks at the expense of the "common soldiers." One interesting example was a headline in the *Makor Rishon* newspaper, "Soldiers are from Mars, Officers are from Venus." The writer of the article argued that the army is divided between soldiers and field officers on the one hand and what amounts to a "separate" army that includes senior officers who also want to be "philosophers and educators." The latter, according to the writer, are not on the same wavelength as the rest of the army. The writer concludes that Israeli society features a widening gap between the people and lower ranking soldiers on the one hand, and the detached senior command on the other.<sup>24</sup>

A similar trend was evident in the discourse concerning the humanitarian needs of the Palestinian population, including discussions of the plan to expand Qalqilya, the solution to the crisis in the Gaza Strip, the legitimacy of collective sanctions following terrorist events, and any matters concerning the attitude to the Palestinian civilian population. The senior military command is frequently a restraining factor, exerting pressure to ease conditions of the Palestinian population, against opposition by the political leadership. In these affairs too, it is sometimes argued that the senior military command is part of the old elites that favor liberal values.

Where conduct during warfare is concerned, the national outlook justifies taking harsh measures against terrorist groups, including against

the surrounding environment that supports or allows terrorism, and is more permissive toward the use of force, while the liberal outlook imposes more restrictions on freedom of action. The charge against these latter restrictions is that the country is fighting “with one hand tied behind its back” against people who have no scruples whatsoever. However, liberal values in combat do not mean that the country commits suicide or denote restrictions that prevent the state from taking measures necessary for its defense.<sup>25</sup> In essence, it is not a dichotomous choice between the different values, but finding the proper balance between national values, reflected in this case by giving the security forces maximum freedom of action, and liberal values, which seek to reduce the damage caused by the use of force and restrict it in recognition of the rights of the adversary and its civilian population.

### **The Dispute Concerning the Status of Religion in the State**

Here too the question of religion and state is closely connected to the role of liberal values and the relation between them and religious and national values. Even though the majority of the population in Israel is not religiously observant, Judaism is deeply entrenched in Israeli society, particularly given the inherent connection, dating back to ancient times, between the Jewish religion and Jewish nationality. There is a consensus in Israel among the Jewish majority that the state is a Jewish state, meaning that the state’s political identity contains an element of a permanent and binding affinity to the Jewish religion. A political model has accordingly been designed in which there is no separation between the Jewish religion and the state. In itself, this model does not clash with the liberal democratic model, which does not necessarily dictate absolute separation between religion and state. On the other hand, the fact that there are spheres in Israel dictated by religion, for example matters of personal status in which authority is vested in the religious establishment, conflicts with a classical liberal democratic outlook, which includes the right to freedom of religion, alongside the right to freedom from religion.<sup>26</sup>

At a deeper level, there is built-in tension between “Jewishness,” which lends Jews a privileged status, and “democracy and liberalism,” which by definition favor equality.<sup>27</sup> Furthermore, there are conservative elements in

religion that are not always consistent with ideas of complete freedom for the individual. The difference between liberal values and Jewish religious law also stands out in matters pertaining to women, the LGBT community, and other sectors.<sup>28</sup> At the same time, Judaism abounds with what are deemed democratic and liberal elements, such as representative government and adoption of the principles of democracy; equality before the law (“You shall not pervert justice in favor of the strong”), participation of the community in management of its activity and institutions, a profound and extensive commentary on human rights and human dignity, concern for the weaker sectors of society, and more.<sup>29</sup>

In recent years, two arguments have arisen in public discourse in Israel that are ostensibly contradictory with respect to the role of religion. On the one hand, there are some who argue that the influence of the religious element on the public square in Israel has become greater. On the other hand, some cite trends towards increasing secularization in this sphere.<sup>30</sup> In a related context, public opinion studies in Israel indicate that religion is the most significant explanatory factor in a person’s views on political and security issues, including with regard to the balance between national and liberal values.<sup>31</sup>

The tension in national security issues between the religious perspective and the elevation of liberal values is reflected mainly in matters pertaining to society’s interfaces with the IDF.<sup>32</sup> One example of this tension is the dispute in recent years between the IDF rabbinate and the IDF education corps about involvement in formulating IDF values and instilling them in soldiers. Claims were made that the IDF rabbinate is trying to reinforce the religious content, for example through the unit on “Jewish Awareness,”<sup>33</sup> while the education corps seeks a more pluralistic attitude that includes more universal content, emphasizing the Israeli and not necessarily Jewish element. Furthermore, it was argued that where religiously observant soldiers are involved, the influence of rabbis has gone beyond the bounds of the IDF rabbinate, and translates into a potential “contest” between the commander’s authority and that of the rabbi.<sup>34</sup>

Another prominent source of tension in recent years concerns service by women in the IDF and contact with religiously observant soldiers. Out of sensitivity to religiously observant soldiers, various restrictions are placed

on women in the IDF, some of which have been anchored in IDF orders, such as the “joint service” order (which replaced the “proper integration” order).<sup>35</sup> For example, this order gives religiously observant soldiers in compulsory military service the option of asking not to be put in a non-gender framework, or not to engage in activity with women soldiers or receive training from a woman soldier if the activity or training runs the risk of bodily contact, being alone with the woman soldier, or her wearing immodest clothing. This order in itself is not unreasonable, but it might cause the exclusion of women from particular positions or frameworks in order to avoid excluding religiously observant soldiers who are sensitive to these matters. In this case, consideration for the sensitivity of the religious public is liable to directly clash with the rights of women to respect and full equality. A balance between competing values should be adhered to, without giving absolute preference to the values of one of the sides at the expense of the other, while constantly striving to reduce the restrictions applying to women and not allow their exclusion beyond what is essential.

At the same time, together with religious radicalization in the religious society, there are various movements with more complex attitudes. These movements strive to reconcile the existing contradictions between religion and liberal attitudes. The liberal voices are less vocal than the conservative voices in public discourse, and also encounter opposition from within, but this appears to be a gradual and significant process. One of the phenomena highlighting the developments in religiously observant society is the significant rise in the proportion of religiously observant women joining the IDF. Their number has increased by 250 percent in six years. As of 2017, 30 percent of religiously observant young women reaching recruitment age serve in the IDF. Furthermore, while in the past, most of them came from liberally inclined circles and chose primarily jobs in the education corps, today they come from all parts of the religious Zionist spectrum and assume diverse roles.<sup>36</sup> There are also rabbis who issue public rulings permitting women to serve in the army.<sup>37</sup> The phenomenon is increasing, despite counter pressure being exerted by many rabbis, and the vocal counter-campaign<sup>38</sup> to a large extent highlights the force of the concerns and proves that the phenomenon is gaining traction.



In the dispute over religion and state, once again, the debate should not be portrayed as between those with value-based views and those seeking to violate these values for reasons of convenience. Here, too, the views of both sides are based on values.<sup>39</sup> For example, a policy that challenges the equality of women in the name of protecting religious values ignores the fact that it infringes upon liberal values of basic equality between women and men. The balance should be rooted in a basic equality between these values; the point of departure should not be a preference for one of them. The key to the proper balance is therefore mutual consideration for the values and beliefs of each side.

### **The Discourse about the Supreme Court**

It emerges, then, that substantive disputes existing in the country concerning national security result from different outlooks on the proper balance between Jewish and national values and democratic and liberal values. These disputes are linked to the corresponding debate over the role and status of the various actors in the public arena that are perceived as playing a role in promoting and preserving liberal values. The most important of these are the legal system, discussed below, and the media (which is beyond the scope of this essay).

This debate was especially poignant in 2017 in the heated discussion concerning the status of the Supreme Court. The Supreme Court has been severely criticized for defending liberal values in a way that thwarts implementation of government policy seeking to promote national values. This was underscored in remarks by Minister of Tourism Yariv Levin, who said, “For anyone who had any doubts, it was made clear again...that the Supreme Court justices are bringing into court a personal leftist political agenda, reflected in rulings that repeatedly harm Jewish settlers and the Jewish settlement project.”<sup>40</sup> The erosion in the Supreme Court’s status is also reflected in surveys showing a dramatic decline in the level of public confidence in this institution. For example, in 2000, the court enjoyed the confidence of 80 percent of the public (the same as the IDF) while in 2016 the level fell to 56 percent.<sup>41</sup>

This perception of the Supreme Court has given rise to two main types of measures. The first consists of the efforts to restrict the Court’s authority to cancel legislation and interfere with policy decisions. The second comprises

efforts to influence the makeup of the bench and appoint justices with a conservative and national outlook. This may be a familiar process in other democracies, for example, the United States. Nonetheless, this matter further highlights the struggle between national and liberal values taking place in the country, including a secondary struggle against groups perceived as promoting liberal values at the expense of national values.

The main concern about the public discourse on this matter is that public criticism of the Supreme Court, however justified it may be, might lead to its inability to function properly within the mechanisms of checks and balances, and to a denial of external supervision over the government. These mechanisms are an essential element in the preservation of democratic governance. This concern was reflected in a speech by President Rivlin opening the winter session of the Knesset on October 23, 2017. Rivlin warned against the ongoing attempt to weaken the gatekeepers of Israeli democracy, including the Supreme Court. Indeed, damage to the Supreme Court is highly dangerous to the future of the State of Israel. Democracy is based on the idea of separation of powers and checks and balances, to ensure that majority government will not undermine the foundations of democracy. This idea is implied in the concept of “defensive democracy,” and the extreme case of its importance is, of course, the Nazi regime, which was elected democratically. Today, the measures taken by Turkish President Erdogan can be regarded as further illustration of the possibility that a democratically elected government will overthrow the gatekeepers and subsequently, once there is no one to stop it, attack the democratic foundations of the state.

Therefore, while discussion of the extent of judicial oversight is legitimate, and dispute regarding Court’s rulings is acceptable, it is essential to ensure that the discourse does not result in the undermining of the Court’s authority and the very existence of judicial oversight. Remarks in this spirit were underscored by the President: “An abyss lies between the responsible and courageous attempt to define, after many years, the relations between the legislative and judicial branches, to limit judicial review, to ask questions about the appointment mechanism, to seek a more varied and representative panel of judges – and the attempt to intimidate the court, to weaken it as an institution, and to invite the public to challenge its authority and its decisions.”<sup>42</sup>

## **Significance and Recommendations**

Israeli society is divided and torn by substantive disputes. While a pluralistic society is a significant asset to the State of Israel, narrowing such disputes has a security benefit, because a crumbling and polarized society has an effect on national resilience and the ability to cope with security challenges. The main disputes in the national security realm are to a large extent based on a substantive disagreement among the Israeli public concerning the proper balance between national and religious values and democratic and liberal values. Realizing the centrality of the value consideration for the main disputes can facilitate a more serious and balanced public discourse about these disputes.

The analysis shows that the gaps between the outlooks are substantial, and it is doubtful whether a common vision acceptable to the entire public can be achieved. At the same time, blurring the value discourse does not necessarily contribute to bridging the gaps. In order to conduct a substantive value discourse, it is necessary to highlight the differing outlooks, and refer explicitly to the various values guiding different parts of the public.

In order to have a chance to bridge or at least narrow gaps and disputes, it is necessary for all the parties to accept as a starting point that the various positions are based on legitimate value outlooks. Voices that attribute “value” considerations to only one side and dismiss out of hand the other groups’ sets of values preclude any possibility of an in-depth discourse that can facilitate the formation of a bridge between people with different opinions. It is therefore important that both sides avoid a condescending attitude toward each other. This does not mean that positions belonging to the extremes of each group, meaning positions that are clearly racist or anti-Zionist or unaccepting of religious belief, should be accepted. At the same time, a wide variety of national and liberal outlooks are legitimate, and the emphasis should be on finding the balance between them.

Furthermore, it appears that the parties whose positions represent liberal outlooks themselves regard their positions as value-oriented to a lesser extent, or choose to blur the value level of the discussion. In a discussion about the proper solution to the Israeli-Palestinian conflict, the discourse is therefore frequently framed as between one side guided by values and another side guided by utilitarian considerations. This framing does not

allow elucidation of the disputes from a starting point of equality between the different opinions.

In Israeli society today national values are apparently favored by the majority, to the extent that the political leadership and the general public in Israel seem to pursue a course that may lead to rejection of the state's liberal character. The public's support for national outlooks is expressed vocally and decisively. The politicians, who detect this trend, are accordingly expressing anti-liberal positions themselves, and are thereby feeding, empowering, and radicalizing these outlooks among the public. These steps are taken without a substantive debate on the consequences for the country of foregoing liberal values. Furthermore, it appears that more moderate parties among the political leadership and the Israeli public avoid casting themselves as representatives of liberal values, and thus likewise contribute to the idea that these values run contrary to the national interest.

The disavowal of liberal values and the growing challenge to the state's democratic values are an alarming development, because they constitute a deviation from the founding vision of the country, as reflected in the Declaration of Independence. A non-liberal or non-democratic country will be regarded by many as the death of the Zionist idea not less than a non-Jewish country. The consequences of such a situation for the composition of Israeli society and its character are significant.

The disavowal of liberal values also has consequences for national security at the utilitarian level. First of all, it can have harmful consequences for Israel's foreign relations and its strategic alliance with the United States and the existing cooperation with other Western countries.<sup>43</sup> The common values shared by Israel and these countries, headed by the United States, are one of the cornerstones of their relations with Israel. Liberal values constitute a significant element in the identity of the United States<sup>44</sup> and of most Western countries. Damage to relations between Israel and the United States is liable to eventually lead to the loss of this strategic alliance. Moreover, liberal values are important in the outlook of most of Diaspora Jewry, especially the significant communities in the United States, and their support for Israel might be substantially eroded if Israel appears to be a country that has abandoned these values.

At the same time, disavowal of national values is also dangerous to the country, because these values are the factor that creates the historical connection among the Jewish people and their connection to the Land of Israel. This connection contributes to the existence of internal solidarity, concern, and a desire for unity. Furthermore, willingness to sacrifice personal interests for the sake of the national interest is based on national values. This willingness is especially important in a country that regularly faces significant external threats. The situation requires the existence of a strong army, based on soldiers willing to give their lives for the state.

In addition, complete disavowal of national values or democratic-liberal values, with an absolute preference for the competing values, may render part of the public unable to live in such a state framework, due to a built-in conflict with its outlook. This could lead people who feel that the state has lost its meaning for them to leave Israel. Beyond the demographic consequences, this can prompt an abandonment of power centers in the country, whether in the spiritual, cultural, or business realm. Such a development is liable to cause decline in the country, and eventually also damage national security, which is based, *inter alia*, on Israel’s technological supremacy, the existence of a stable economy, and the presence of a strong and united society. Therefore, it is necessary to preserve both national values and the character of the state as the nation-state of the Jewish people and liberal democratic values. At stake is not a dichotomous choice between opposing values. Rather, what is needed is a balance between the various values, without completely disavowing either of them.

The political leadership plays a key role in the possibility of conducting an in-depth value discourse aimed at bridging the gaps and disputes. Conversely, leaders can be – and often are – an element aggravating the disputes and gaps. Responsible leadership is expected not to sacrifice the state’s values, national and democratic, for the sake of political achievements. In particular, changes that undermine democratic principles and detract from the power of the gatekeepers of democracy are liable to be irreversible, because every government will have very little incentive to re-impose on itself restrictions that were removed in the past.

In order to analyze issues regarding Israel’s security and foreign policy, it is clear that a principled discussion should be conducted that identifies the

strategic goals of the various players from which tactical measures are derived. An analysis of this type is also necessary when the existing disputes in the internal sphere are assessed. It currently appears that the discourse on these topics takes place almost exclusively on the tactical level. Understanding the values guiding each of the parties involved can lead to a better strategic understanding of the situation, and facilitate finding a more suitable balance that attempts to bridge the various gaps in Israeli society.

## Notes

- 1 For example, according to the 2015-2016 National Security Index of the Institute for National Security Studies, not yet published. See also "INSS Survey: The Public is Ready to Evacuate Settlements," *Ynet*, January 23, 2017, <http://www.ynet.co.il/articles/0,7340,L-4911109,00.html>.
- 2 "President Reuven Rivlin Address to the 15th Annual Herzliya Conference," June 7, 2015, President's Webiste, [http://www.president.gov.il/English/ThePresident/Speeches/Pages/news\\_070615\\_01.aspx](http://www.president.gov.il/English/ThePresident/Speeches/Pages/news_070615_01.aspx).
- 3 "Nationality" is a complex term, and will not be discussed in depth in this essay.
- 4 Ruth Gavison and Fania Oz-Salzberger, "Israel as a National and Liberal State," *Law and Man – Law and Business Journal* 14 (September 2012): 299-300.
- 5 For example, see Dan Caspi, "Cornerstones of Israeli Democracy," in *Communication and Democracy in Israel*, ed. Dan Caspi (Jerusalem: Van Leer Jerusalem Institute and Hakibbutz Hameuhad, 1997), pp. 9-26.
- 6 Ayelet Shaked, "Pathways to Governance," *Hashiloach* 1 (October 2016): 54. See also Gavison and Oz-Salzberger, "Israel as a National and Liberal State."
- 7 See United Nations Development Program, "Overview: Human Development Report 2016," UNDP, 2016, p. 22, [http://hdr.undp.org/sites/default/files/HDR2016\\_EN\\_Overview\\_Web.pdf](http://hdr.undp.org/sites/default/files/HDR2016_EN_Overview_Web.pdf).
- 8 For example, see Sammy Smooha, "The Implications of the Transition to Peace for Israeli Society," in *In the Name of Security: The Sociology of Peace and War in Israel Changing Times*, eds. Majid al-Haj and Uri Ben-Eliezer (Haifa: University of Haifa and Pardes, 2003), pp. 455-88.
- 9 For example, see Jeff D. Colgan and Robert O. Keohane, "The Liberal Order Is Rigged: Fix It Now or Watch It Wither," *Foreign Affairs* 96, no. 3 (2017), <https://www.foreignaffairs.com/articles/world/2017-04-17/liberal-order-rigged>.
- 10 The bill was proposed by Knesset member Avi Dichter. After having been approved by the ministerial committee for legislation and in a preliminary Knesset reading, it is currently being handled by a joint committee of the Knesset House Committee and the Knesset Constitution, Law, and Justice Committee founded specially for

this purpose. This joint committee is discussing the bill in order to prepare it for its first reading in the Knesset plenum. The version approved for discussion by the joint committee includes a number of changes to the original version proposed by Dichter; these changes were the result of negotiations between the coalition factions. For the version of the Basic Law: National Legislation Database – Bills, Basic Law: Israel as the Nation-State of the Jewish People, see the Knesset website, <http://main.knesset.gov.il/Activity/Legislation/Laws/Pages/LawBill.aspx?t=lawsuggestionssearch&lawitemid=565913>. For further reading, see Association for Civil Rights in Israel, “Nationality Bill,” most recently revised on September 18, 2017, <http://www.acri.org.il/he/33369> (the alternative version of the proposed basic law presented to the joint committee for discussion can be found here); Mati Tuchfeld, “Progress Made on ‘Nation-State Bill’ after Provisions Modified,” *Israel Hayom*, July 7, 2017, <http://www.israelhayom.com/2017/07/07/progress-made-on-nation-state-bill-after-provisions-modified/>.

- 11 Section 1 of proposed Basic Law: Israel as the Nation-State of the Jewish People.
- 12 Explanations for proposed Basic Law: Israel as the Nation-State of the Jewish People.
- 13 Ibid.
- 14 See Mordechai Kremnitzer and Amir Fuchs, “Proposed Basic Law: Israel as the Nation-State of the Jewish People,” Israel Democracy Institute, June 4, 2017 (opinion submitted to the ministerial legislative committee), Sections 1-3, [https://en.idi.org.il/media/5095/idi-legal-op\\_basic-law-nation-state\\_06-2014.pdf](https://en.idi.org.il/media/5095/idi-legal-op_basic-law-nation-state_06-2014.pdf). See also Debbie Gild-Hayo and Dan Yakir, “Proposed Basic Law: Israel as the Nation-State of the Jewish People” (revised version), Association for Civil Rights in Israel, September 12, 2017 (position paper submitted to the chairman of the special committee for the bill), Section 4, <https://www.acri.org.il/en/wp-content/uploads/2017/09/nation-state-september-2017-1.pdf>.
- 15 See the 2015-2016 National Security Index of the Institute for National Security Studies. See also Yehuda Ben Meir and Olena Bagno-Moldavsky, “*The Voice of the People: Israeli Public Opinion on National Security 2012*,” Memorandum 130 (Tel Aviv: Institute for National Security Studies, 2013).
- 16 For example, see Bezalel Smotrich, “The Decision Plan: The Key to Peace is on the Right,” *Hashiloach* 6 (September 2017): 86-87, 92-94.
- 17 For example, see Smootha, “The Implications of the Transition to Peace for Israeli Society.”
- 18 Gad Barzilai, “The Political and Legal Culture in Israel,” in *Trends in Israeli Society*, eds. Ephraim Ya’ar and Zeev Shavit (Raanana: Open University, 2003), pp. 707-821.

- 19 See the 2015-2016 National Security Index of the Institute for National Security Studies; and Ben Meir and Bagno-Moldavsky, *The Voice of the People: Israeli Public Opinion on National Security 2012*.
- 20 For an analysis of these clauses, see Kremnitzer and Fuchs, "Proposed Basic Law: Israel as the Nation-State of the Jewish People," Sections 5-10; Gild-Hayo and Yakir, "Proposed Basic Law: Israel as the Nation-State of the Jewish People," Sections 5-7.
- 21 Report of the Commission of Inquiry into the Confrontations between the Security Forces and the Israeli Arabs beginning on September 29, 2000, August 2003, Part 6, Sections 41-42, [http://elyon1.court.gov.il/heb/veadot/or/inside\\_index.htm](http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm).
- 22 Administrative Appeal 8101/15 Almasged Griosos Zegete v. Minister of the Interior (August 28, 2017), <http://elyon1.court.gov.il/files/15/010/081/c29/15081010.c29.htm>.
- 23 Ibid, Sections 5-6 of Justice Melcer's ruling.
- 24 Ariel Schnabel, "Soldiers are from Mars, Officers are from Venus," *Makor Rishon*, August 4, 2017.
- 25 *IDF Strategy*, August 2015, English text at <https://www.idfblog.com/2015/11/23/idf-strategy/>; Pnina Sharvit Baruch, "The Legitimacy Element in IDF Strategy," in *IDF Strategy in the Perspective of National Security*, eds. Meir Elran, Gabi Siboni, and Kobi Michael (Tel Aviv: Institute for National Security Studies, 2016), p. 157.
- 26 Benjamin Neuberger, *Democracy in Israel* (Tel Aviv: Open University, 1998).
- 27 Gavison and Oz-Salzberger, "Israel as a National and Liberal State," p. 310.
- 28 This is one of the reasons for the criticism of the clause in the proposed alternative version of the Nationality Bill, which adds Jewish law as a legal source for the court in the case of a lacuna. This addition constitutes a change of the rule established in this matter in the Foundations of Law Act – 1980, which in case of lacuna refers only to the principles of "freedom, justice, integrity, and Jewish tradition."
- 29 Shaked states that the democratic tradition that has developed in the modern era is actually based on Judaism. This is one of the arguments used in support of the position that there is no contradiction between a "Jewish" state and a "democratic" one. See Shaked, "Pathways to Governance," pp. 51-52.
- 30 For example, more places of entertainment are open on the Sabbath, and more non-kosher restaurants are operating in the public square. Religious circles also raise the claim that the Jewish identity of the State of Israel is becoming weaker. For example, see Yair Sheleg, "The Religionizing Controversy: What They Are Saying," *Makor Rishon*, September 27, 2017, <https://goo.gl/ekoy4D>.
- 31 Public opinion studies in Israel show that religion is the most significant explanatory factor in a person's views on political and security issues.



- 32 Another area is drafting haredim into the IDF, but this is beyond the scope of this essay.
- 33 This section was recently shifted from the responsibility of the IDF rabbinate to the authority of the head of personnel.
- 34 Allegations of interference by rabbis in the IDF are made, especially concerning operations that sometimes challenge the religiously observant soldiers in their commitments to two demanding systems: religion and the IDF. For more, see Reuven Gal, ed., *Between the Yarmulke and the Beret: Religion, Politics, and the Military in Israel* (Tel Aviv: Modan, 2012).
- 35 See <http://www.iwn.org.il/site/upload/photos/149379502524154393a.pdf>.
- 36 Amos Harel, “Israeli Army Combating a New Kind of Cyber Threat,” *Haaretz*, October 4, 2017, <https://www.haaretz.com/israel-news/1.815639>.
- 37 A training booklet was recently issued: “Welcome to Your Unit: Jewish Religious Rulings and Behavior for the Religious Observant Woman Soldier,” written by Eli Reif, a rabbi in a pre-military preparatory college for women. The phenomenon correlates with a general advancement of the religious feminist movement. See Chen Artzi-Sror, “Who is a Woman of Valor?” *Yediot Ahronot*, September 8, 2017.
- 38 For example, see Kobi Nachshoni, “Sephardic Chief Rabbi: Women in the Army? Only to Cook and Do Laundry,” *Ynet*, December 11, 2016, <https://www.ynetnews.com/articles/0,7340,L-4891186,00.html>; Yoav Zeitun, Kobi Nachshoni, and Moran Azoulay, “Lieberman Calls on Rabbi Levinstein to Resign,” *Ynet*, March 15, 2017, <https://www.ynetnews.com/articles/0,7340,L-4935969,00.html>.
- 39 Yuval Noah Harari, “The Secular Truth,” *Yediot Ahronot*, August 31, 2017, <https://www.yediot.co.il/articles/0,7340,L-5010322,00.html>.
- 40 See Yair Altman, “Shaked: The Judicial System is an Integral Part of the Settlement Enterprise,” *Israel Hayom*, September 26, 2017, <http://www.israelhayom.co.il/article/506269>. Levin’s remarks were made in response to the Supreme Court president’s decision not to send a representative to an event marking the 50<sup>th</sup> anniversary of settlement in Judea and Samaria.
- 41 Among rightwing voters, the percentage confidence was lower than among left wing voters. See Tamar Hermann et al., *The Israeli Democracy Index 2016*, Israel Democracy Institute, 2016, <https://en.idi.org.il/media/7811/democracy-index-2016-eng.pdf>.
- 42 Speech by President Reuven Rivlin at the opening of the Knesset winter session, October 23, 2017, <https://www.haaretz.co.il/st/inter/Hheb/images/rivlin.pdf>.
- 43 The importance of this element in national security is reflected in *IDF Strategy*.
- 44 The election of Donald Trump ostensibly indicates the weakening of the liberal outlook, but it is difficult to assess whether this trend will persist in the longer term. Furthermore, liberal values are rooted in the American system, which often

constrains the president when he tries to act against these values. For example, see Alex Wagner, “Trump Battles Constraints on his Power,” *The Atlantic*, November 10, 2017, <https://www.theatlantic.com/politics/archive/2017/11/trump-battles-constraints-on-his-power/545486/>.