The Value of Security VS. The Security of Values: The Relationship Between the Rights of the Minority and the Security of the Majority in Israel

A Thesis

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Of

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By

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MALD, Master of Arts in Law and Diplomacy   2003
The Fletcher School of Law and Diplomacy, Tufts University
- Academic Concentrations: International Legal Order, Human Rights Law
- Thesis Title: "Questions of National Identity and Democracy – Can the Rights of a Palestinian National Minority Be Protected in a Jewish-Democratic State?"

LL.B, Law Degree (Israel)   2000
The College of Management Law School
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TEACHING EXPERIENCE

Political Science Department, Tufts University   2004-2007
Faculty Lecturer
- Develop, direct, administer and teach courses titled: "Comparative Politics in the Middle East", "Israeli Domestic Politics", "Israeli Foreign Policy and National Security", "Human Rights and the War on Terror"
- Responsibilities include: advising students on research papers, exam writing, exercise development, teaching and grading
- Developed curriculum, syllabi, prepared reading materials, class exercises and class outlines

OSHER Lifelong Learning Institute, Tufts University   Summer 2006
Lecturer
- Developed, directed, administered and taught seminar titled: "One Step Forward, Two Steps Back? What do the results of the Israeli 2006 elections tell us about the future of the Middle-East?"

- Responsibilities include: in-class exercise development, class discussion preparation, inclusion of external use of media such as movies, elections ad campaigns, news clips
- Developed curriculum, syllabi and prepared reading material and class outline

Experimental College, Tufts University   2005-2006
Lecturer
- Developed, directed, administered and taught courses titled: "Foreign and National Security Policy in Israel" and "Human Rights and the War on Terror"
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The College of Management, Law School   2000-2001
Teaching Assistant
- Course Title: "International Law Cluster, Jessup Moot Court Competition Preparation"
- Responsibilities include: coordination between students and professors, preparation of course materials and personal supervision over team of 5 students representing the Israeli team to the Jessup International Law Moot Court Competition in Washington DC, March 2001
- Assisted students in developing written and oral legal arguments concerning international law
- Assisted in the strategic planning of the course

LEGAL EXPERIENCE

Jessup Moot Court Competition, International Law Student Association (ILSA)
Judge   Spring 2003
- Reviewed, evaluated and graded written memorials of competing teams in the case concerning women trafficking, rape and inter-state conflicts
- Judged oral rounds in the regional and international rounds. Responsibilities include: examining the strengths and weaknesses of the contestants' legal arguments, knowledge of international legal issues and norms, assisting contestants' in improving their presentations

United Nations Headquarters, Office of Legal Advisor, Department of Management
Legal Researcher   Summer 2002
- Reviewed, summarized, and prepared briefs of all cases adjudicated by the UN Administrative Tribunal
- Assisted in the project headed by the Legal Advisor to the Department of Management in codifying UN Administrative Law
- Produced a final report to the Under-Secretary to the Secretary General for the Department of Management concerning the existing administrative legal code of the UN Administrative Tribunal based on case law produced by UN

Central District Attorney's Office, Criminal Division   2000-2001
Assistant District Attorney, Clerkship for the Admission to the Israeli Bar Association
- Argued criminal and civil cases and motions before the Municipal and Family Courts
- Conducted case analyses, prepared criminal indictments and wrote legal briefs in criminal cases

- Specialized in child abuse cases
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PROFESSIONAL SERVICE

Israeli Defense Forces (IDF), Intelligence, Research Division 1994-1996
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- Dissimilated and analyzed military intelligence and produced intelligence briefs for principals
- Presented classified information before Head of Research Division in IDF Intelligence

GRANTS AND AWARDS

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Presentation title: "2006 Israeli Elections: The New Emerging Center"

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Women in Security Studies (WIIS), Georgetown University, DC   June 2005
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Women in International Security (WIIS)	2005-2007
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International Law Student Association (ILSA)	2000-Present
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Abstract

This dissertation examines the rise in the legal discrimination of the Palestinian Israelis since the eruption of al-Aqsa intifada in September 2000. The objective of the study was to explain the reasons for this rise and its implication of the majority-minority relations in Israel.

The study finds that there has been a rise in the legal discrimination of Palestinian Israelis since September 2000 with the introduction of new legislation, which seeks to further marginalize this minority. The legal policies adopted in Israel since September 2000 have been anchored in the interest of national security. The Israeli policy-maker and the security community views the Palestinian minority as posing a direct threat to the security of the Jewish majority and thus, policies which seek to impose political and legal limitation on the Palestinian minority in Israel are justified.

Contrary to the assumptions made by the Israeli policy maker, this study finds that it is the rise in the legal discrimination of the Palestinian minority and its exclusion from the Israeli polity, which contributes to the rise in the use of political violence by that minority against the state. Relying on prospect theory and relative deprivation theory the study develops a model employing six criteria to indicate the likelihood of the eruption of internal violence in the Israeli case study.

The findings indicate that the Palestinian minority may be comparing its current legal status to its previous one, during the Oslo Peace process, in which the minority had experienced improvement in its status within the State. The use of the Oslo Peace Process period as a reference point results in the minority viewing its current situation as an unjust loss (in legal status) giving rise to the likelihood of the use of political violence against the state to gain those perceived losses.

The findings show that as the level of violence in the external Israeli-Palestinian conflict rises, there is a cyclical pattern in which the pre-existing sense of apprehension and mistrust of the Palestinian-Arab minority results in their alienation and disaffection through the introduction of discriminatory legislation that leads few to commit acts against the states, which in turn reinforces the perception of threat and legitimizes the discrimination.

Dedication

To my parents whose love and support is without limit

And

The Palestinian and Jewish Israeli activists who work hard under challenging conditions to improve their mutual futures and who exhibit the utmost dignity and inspiration to all who seek to live in a world were all persons are in fact created, and treated, as equals.

Acknowledgements

My committee:

To Jeswald Salacuse who, despite taking over as chair late into the dissertation process, had nevertheless embraced me not only as a student, but also as a scholar. His enthusiasm for the law and its relationship with politics his impeccable attention to detail and the coherency of his arguments has inspired my analysis. In addition, professor Salacuse has greatly aided in the development of the dissertation framework and has the structuring of my arguments. I thank you for your time and patience and for moving me along in this process.

To Richard Shultz who went far and beyond what any student can expect from their committee member, providing constant encouragement and support in every way imaginable. His engagement in this research provided for a rich and stimulating discussion and often invigorating analysis. His guidance, support and friendship has made this often challenging journey one worth taking. Thank you for taking an intellectual chance on a liberal human rights activist, and providing me with the tools through which to channel my thoughts. It was a pleasure and a privilege to learn from you.

To Hurst Hannum who has lent his support from the beginning, guiding me in this long journey with his attention to detail and providing alternative perspectives which were both helpful and refreshing. Professor Hannum had inspired me to continue my graduate degree at Fletcher. I did not come to the study of law starry-eyed. I know that law is all too often a privileged discourse. But Professor Hannum has taught me that I can use the privilege I enjoy in having mastered its tools in order to ensure that it does not remain a discourse for the privileged. I especially wished to do so in what I categorize as the least "privileged" field of law: that of international human rights law. I characterized international law as a servant to many masters. People often see that as a source of weakness; Professor Hannum has taught me that it was a source of its inner strength. I thank you for providing me with this perspective.

To my family in Israel, without who's support I would not have succeeded in this endeavor. To my friends in Israel who remind me that it is my homeland, my people and that the struggle is worth fighting for.

To my friends in the United States who supported me, inspired me, and challenged me during this process. First and foremost Tao Nguyen who lent a critical eye and an enthusiastic spirit throughout what was, at times, a challenging process to complete this dissertation. From tackling the theoretical framework to providing critical analysis, his dedication and sincere encouragement has often inspired my thoughts and enhanced the poignancy of my arguments. Thank you for all your help and support.

To Joshua Gleis whose unconditional support and friendship sustained me throughout this process and had a critical role in providing an encouraging environment, which enabled me to continue throughout this challenging endeavor. You are family.

To Susan Banki, Alejandra Bolanos, Henrietta Lake, Itamara Lochard, Assaf Moghadam, Sharifa Pastori, Ahsiya Posner and Rocky Weitz who listened to my ideas and frustrations, provided encouragement and support in those bleak and dark moments when I was ready to give up, particularly during the writing phase. Those moments meant the world to me and I am grateful for your love and friendship.

Finally, to the Palestinian Israelis who participated in this study, some are dear friends, others are colleagues and inspiring activists. I dedicate this dissertation to all the nameless individuals who provided me with insights, information, and stimulated this study and its conclusions. These people reminded me of a quotation of C. Rhyne I came across while taking my first course on international law, which read: "*What we lawyers want to do is to substitute courts for carnage, dockets for rockets, briefs for bombs, warrants for warheads, mandates for missiles*". It remained inscribed in my mind. On those meeting with my interviewees, I quoted it to them. Law can be our contribution to that bridge. It is why I went to law school; why I pursued my graduate studies at the Fletcher School; and how I can construct a meaningful life. Perhaps it is through this construction that we, both Jews and Arabs, can construct a homeland in Israel.

Glossary

Legal Discrimination

For the purpose of this study, legal discrimination is defined as unequal treatment of persons by statute, the judiciary or by government policy sanctioned by law relating to civil and political rights. Economic, social and cultural rights are not specifically addressed in this study.

Green Line

The territorial boundaries of Israel on the eve of June 5th, 1967 (not including areas occupied during the Six Day War including Gaza Strip, West Bank (including East Jerusalem, Golan Heights and Sinai Peninsula.

Occupied Territories

Anyone of the following: West Bank and Gaza strip conquered and occupied in since June 6, 1967. Also referred to as the "territories" or "the Palestinian territories". The occupied territories are referred to in Israeli legislation as "the area".

Oslo Peace Process

The interim negotiation process (1993-2001) commencing in secret negotiations between the Israelis and the Palestinians in Oslo in the summer of 1993 which resulted the signing of the Declaration of Principles on Interim Self-Government Arrangements or Declaration of Principles (DOP) on the lawn of the White House in September 1993. The interim process continued in a series of agreements signed between the governments of Israel and the PLO. The process ended in the failure of the Camp David Negotiations between Ehud Barak and Yassir

Arafat in July 2000 and the subsequent Taba talks in January 2001.

Palestinian Israelis

Israeli citizens of Palestinian descent granted Israeli citizenship through the Citizenship Law, 5712-1952. Also referred to as "Arab Israelis," "Palestinian Minority," "Arab Minority," "Palestinian citizens of Israel," "Palestinian citizens," Arab citizens," "Palestinian Arab Citizens," Palestinian Arab Minority." These terms are used interchangeably in the dissertation, reflecting the different terminologies use in the literature as well as respondents in the study.

Security Community

Referring to the Israeli Defense Forces (IDF), General Security Services (GSS or SHABAK), Mossad, Police forces, military and civil intelligence agencies as well as defense ministry personnel and security advisors to political echelon including office of the Prime Minister.

Chapter 1: Introduction

Framework of Analysis

1. Problem - Defined

On September 28, 2000, following the breakdown in negotiations between the Israelis and Palestinians in July 2000 at the Camp David summit, the second Palestinian uprising had erupted. This new and violent chapter in the long, on-going bloody conflict between Israel and the Palestinians came to be known as the 'al-Aqsa' Intifada, ending with a cease fire in February 2005.

The subject matter of this study is the rise in the legal discrimination of Palestinian citizens of Israel by the state since the outbreak of the al-Aqsa intifada in 2000 and the security implications of that rise.

While the political ramifications of the al-Aqsa Intifada have been discussed extensively in the literature with regard to the Israeli-Palestinian relations; there are important internal implications resulting from the fragile social and political situation in which the Palestinian minority citizens of Israel (also referred to as "Arab Israelis") found themselves since the outbreak of the al-Aqsa Intifada.

The Palestinian Israelis are an ethnic minority in Israel. Both their political and legal status are quite different than their brethren in the Palestinian territories, since they remained in what became the territory of the state of Israel and were granted Israeli citizenship.

Israel is constitutionally defined as a "Jewish-Democracy". While there is no

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consensus in the literature regarding the question of whether a state can be both Jewish and democratic at the same time; all agree that in Israel, non-Jewish ethnic minorities have always been regarded as "second class citizens". [1]

During the first intifada (1987-1993) the Arabs in Israel were sympathetic to the plight of the Palestinians in the occupied territories. Some took action by extending material support to the Palestinians, this included food, blankets, clothing, money and so on,[2] however, there was little political cooperation between the two groups. Though citizens of Israel most did not feel that assisting their compatriots compromised their loyalty to Israel, in this sense, they adopted an attitude similar to that of Diasporas (that is, externally supporting one's won ethnic group abroad but remaining loyal citizens in your country of citizenship). The 1990s brought new hope and optimism for the Palestinian minority in Israel. In 1992 a labor government was elected and the Arab parties were invited, for the first time in Israel's history, to serve as an electoral block for the leftist government, led by Yitzhak Rabin. While not equal coalition partners, this development was a great breakthrough for the Arab parties in the Knesset since the labor government did not have the 61 required seats for a majority in the Knesset, leaving the survival of the government in the hands of the Arab parties. This gave the Arabs the necessary political leverage to assert their demands and to receive better allocation of resources for their needs. Furthermore,

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[1] See Alan Dowty, The Jewish State: A Century Later (LA: University of California Press, 1998); Nadim Rouhana, Palestinian Citizens in an Ethnic Jewish State (New Haven, CT: Yale University Press, 1997); Majid Al-Haj, "The Status of Palestinians in Israel: A Double Periphery in an Ethno-National State", in Critical Issues in Israeli Society, ed. Alan Dowty, (Westport, CT: Praeger Publishers, 2004; Sammy Smooha, "Ethnic Democracy: Israel as an Archetype," Israeli Studies 2, no. 2 (1998); As'ad Ghanem, Nadim Rouhana and Oren Yiftachel, "Questioning "Ethnic Democracy": A Response to Sammy Smooha", Israel Studies 3, no. 2 (1998): 253-67. This question will be addressed extensively in later chapters of this dissertation.

[2] Don Peretz, Intifada: The Palestinian Uprising, (Boulder, Co: Westview Press 1990), 143.

and more important, the Oslo peace process served to enhance the Arabs' hope that with the resolution of the Israeli-Palestinian conflict, their status in Israel would improve. When researching the affect of the Oslo peace process on the Arab Israeli national identity, Elie Rekhess noted that:

> [T]he peace process led to a significant reinforcement of the Israeli Arabs' Palestinian identity. A new era of national awakening had begun, with distinctive characteristics.
>
> …The traditional reciprocity between Israelization and Palestinization was reversed…. The result was that a distinctive synthesis was gradually coalescing between certain components of the Israelization process and other components of the Palestinization process. The Israeliness of the Arabs in Israel acquired national Palestinian content, while their Palestinian-ness, in parallel, acquired Israeli content.[3]

While remaining fairly outside the realms of conflict during the first intifada, the events of October 2000 have marked a new development in the relations between the Jewish-Democratic Israeli state and the Palestinian national minority within it. In October 2000, following the eruption of al-Aqsa Intifada, 13 Arab Israelis were shot dead by Israeli Police forces during a solidarity demonstration in support of the Palestinian uprising. These events have brought about new challenges both to the status quo between Israel and its Palestinian citizens; and between the Palestinian Israelis and their national Palestinian brethren. Although the Palestinians in Israel are an integral part of the Palestinian people by virtue of their history, culture, and national identity; and although they are citizens of Israel with legal and political rights; nonetheless they are not fully Israeli, and in a sense, not fully Palestinian.[4]

Since these events, Israel has enacted new legislation which further

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[3] Elie Rekhess, "The Arabs of Israel After Oslo: Localization of the National Struggle" Israel Studies (Fall 2002): 9.
[4] Nadim Rouhana, Palestinian Citizens in an Ethnic Jewish State.

discriminates against the Palestinian Israelis. In addition, there has been a shift in the interpretation of existing laws, which result in aggravation of the Palestinian Israelis' status within Israel. In this respect, the effects of al-Aqsa intifada are two fold: it has brought the Palestinian minority within Israel to reexamine its national identity in relations to the Palestinian national liberation endeavor, it has also brought the Israeli government to view this minority as an increased security risk, requiring the introduction of new legislation, resulting in a rise in the legal discrimination of the minority.

1.1. <u>Legal Discrimination - defined</u>

For the purpose of this study, legal discrimination is defined as unequal treatment of persons by statute, the judiciary or by government policy sanctioned by law relating to civil and political rights. Economic, social and cultural rights are not specifically addressed in this study.

1.2. <u>Research Questions</u>

The Palestinian minority in Israel has always been viewed as a "fifth column" by virtue of their ethnic ties to the Palestinian people; moreover, during the outbreak of the first intifada, the Palestinians in Israel remained fairly neutral and did not participate in the uprising of their brethren. Thus, the change in the Israeli policies since the outbreak of al-Aqsa intifada raises the following questions:

Background research Question: Has there been a rise in the legal discrimination of Palestinian Israelis since the eruption of al-Aqsa intifada in September 2000?

Primary Research Question: What may account for the rise in the legal discrimination of Palestinian Israelis since the eruption of al-Aqsa intifada?

Secondary Research Question: What are the security implications of the rise in the legal discrimination of Palestinian Israelis?

1.3. <u>Hypothesis</u>

Since October 2000 and the eruption of the al Aqsa Intifada, Israelis and Palestinians had experienced an unprecedented rise in the level of violence between the two nations. Palestinian Israelis in turn, have been the target of new political policies, which found legal manifestation through the introduction of new legislation, and judicial decisions that seek to further marginalize them to the point where they cannot hope to exist as equal members of the polity. As a result, Palestinian Israelis are more likely to engage in risk seeking behavior, since they perceive the rise in discrimination as a comparative loss in their legal status.

Based on results of previous studies and the aforementioned description of Israeli society, it is argued that when inequality and injustice are both experienced and perceived by members of a minority group in society, it may lead to de-legitimization of the legal and political systems and readiness to disobey or disregard those systems.

On the basis of this argument this study proposes that Israel's legal policies are influenced by the status of the conflict with the Palestinians, and as a result:

1. There has been a rise in the level of legal discrimination of Palestinian Israelis since the eruption of the al-Aqsa intifada;

2. This rise is linked to the growing sense of insecurity within Israel which leads governments to view its minority population with

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increased suspicion and threat;

3.   This increased sense of insecurity translates into an increased emphasis on "security" of the majority (Jewish) at the expense of the minority (Arab) which results in the adoption of discriminatory policies, viewed by the Palestinian minority as a loss in legal status.

4.   Finally, there would be a link between the perceived loss and the readiness of the Palestinian minority to engage in risk seeking behavior, which makes the use of political violence against the state more likely.

1.4. Methodology and Research Design

The following dissertation presents a case study, which incorporates primary and secondary sources of evidence. The objective of the dissertation is in producing qualitative analysis, incorporating the individual level of analysis with that of the macro-structural level of analysis.

For the establishment of the background research question regarding the rise in the discrimination of Palestinians in Israel since 2000 the study relies on the following resources historical sources available in the literature as well as:

Mada al-Carmel (Arab Central for Applied Social Research, herein after: Mada) annual reports on the all legislation, government policy and public polling relating to the Palestinian minority in Israel.

The Justice for All project data set conducted by Arye Rattner and Gideon

Fishman – the study compared Arab and Jewish defendants in the Israeli criminal justice system to determine whether there was discrimination between the groups and if so – to what degree. The dissertation relies on the results of that study.

Public polling data conducted by the Asher Arian and the Israeli Democracy Institute (IDI) and published in the democracy index developed by IDI and published annually.

Sikkuy- Association for the Advancement of Civic Equality (herein after: Sikkuy) annual reports on the status of the Palestinian minority in Israel.

For data regarding the status of the Israeli democracy this study relies on the following:

➢ IDI democracy index annual report

➢ Freedom House project led by Ted Gurr in ranking democracies and democratic practices in national across the world.

➢ U.S. Department of State, Bureau of Democracy, Human Rights and Labor Country Report on Human Rights Practices: Israel and the Occupied Territories.

➢ Statistical abstract from the Israeli Central Bureau of Statistics.

For the establishment of the implications of the rise in the legal discrimination of Palestinians in Israel the study relies on the following:

➢ Semi-structures interviews with academic, public officials, representatives of the Palestinian political leadership and activists.

➢ Public polling methodology researched from various academic sources including but not limited to the IDI, Mada, and justice for all projects.

Finally, prospect theory was used as the theoretical framework of analysis for

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the implications of the loss in legal status. In the application of prospect theory by the use of a survey, conducted among 59 Arab respondents from three towns in Israel. A detailed description of the methodology and analysis of the questionnaire is provided in chapter eight of this dissertation.

Research design of the theoretical framework is developed in the following chapter and will only be summarized here. The dissertation develops a model titled 'Prospect for Violence' model to determine the conditions under which a minority may adopt political violence when operating under risk. The model relies on the application of prospect theory – the theory explaining how individuals make decisions under risk – and the use of Relative Deprivation Theory (RDT) as well as the literature regarding the conditions for political violence in order to develop six conditions for the eruption of political violence and then applies those conditions to the case study.

Demographic Context

1.5. <u>Who Are the Arabs in Israel?</u>

On the eve of Israel's declaration of independence in 1948 there were roughly two million inhabits in mandatory Palestine, of which 2/3 were Palestinian and 1/3 were Jewish.[5]. Approximately 940,000 Arabs and almost all the Jews resided in the area, which became the State of Israel.[6] However, at the end of the war only 154,000 Arabs remained in the territory of Israel, mostly as a result of expulsion by the Jews

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[5] As'ad Ghanem, Palestinian-Arab Minority in Israel, 1948-2000, (Albany, NY: State University of New York Press, 2001), 1.
[6] Ibid.

as well as mass flight.[7]

As of 2006 there are some 1.35 million Arab citizens (including Druze) in Israel out of its 6.9 million population.[8] The population of Israel consists of 76% Jews (compared to 77.8% in 2000). The non-Jewish population is divided between Moslems, Druze, Arab Christians and non-Arab Christians (which consist of only 0.4 of the population).[9] Figure 1 illustrates the breakdown of the Israeli populations.

Figure 1.1: Population Distribution
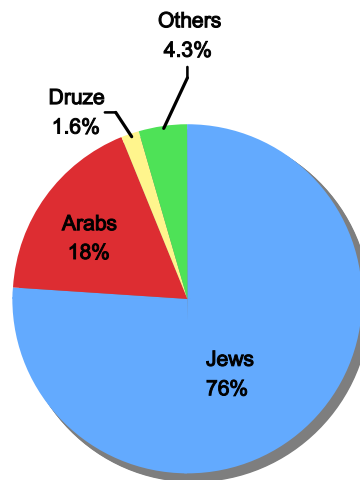
In 1948 there had been 156,000 non-Jews in Israel (compared with 872,000 Jews)[10] comprising 17.8% of the population. It is anticipated that due to higher Arab birth rates, in 2025 the Jews will constitute only 70% of the population with 25% out

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[7] Ibid.

[8] *Statistical Abstract of Israel.* 2.1, (Jerusalem: Central Bureau of Statistics, 2006).

[9] Ibid.

[10] In 1948 the CBS only provided the population division between Jews and Non-Jews, without a detailed account of the divisions within the non-Jews population between the various religions and ethnicities. See Israel Government, Prime Minister's Office, Office of the Advisor for Arab Affairs, Demographic Data, Yitzhak Reiter, ed., (March, 1980) [Hebrew].

of the 30% non-Jews being Palestinian-Arabs.[11] This number could reach 31% (of Arabs) by 2050.[12]

As previously stated, the subject matter of this dissertation is the Arab citizens of Israel of Palestinian descent. The study does not look at the status of all non-Jews in Israel and is limited to the 18% of the population[13], categorized by the Central Bureau of Statistics (CBS) as Arab. This does not include Druze and Bedouin Arabs, which are largely excluded from the analysis. As discussed herein, this Arab population is ethnically tied to the Palestinians in the territories, with only an artificial line drawn between them – the Armistice Agreement of 1949, which determined Israel's borders following the end of the 1948 war of independence. The only difference between the Palestinians in Israel and those in the Gaza and the West Bank is that the former remained in what became the state of Israel during the war and thus were granted Israeli citizenship in accordance with the Nationality Law[14], passed in 1952. Article 3(a) of the Nationality Law reads as follows:

> 3(a) A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become a Israel national under section 2, shall become an Israel national with effect from the day of the establishment of the State if -
>
> (1) he was registered on the 4th Adar, 5712 (1st March 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949(2); and
>
> (2) he is an inhabitant of Israel on the day of the coming into force of this Law; and
>
> (3) he was in Israel, or in an area which became Israel territory

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[11] Projections of Population in Israel for 2010-2025, Statistical Abstract of Israel. 2.27, (Jerusalem: Central Bureau of Statistics, 2006).

[12] Ibid. see also International Crisis Group, Identity in Crisis: Israel and its Arabs Citizens, ICG Middle East Report no. 25 (March 2004).

[13] Where available statistical data refers only to Arab citizens, however some data collected by the Central Bureau of Statistics only refers to the "Non-Jews" collectively and thus, some data presented relates to all non-Jews not specifically to the Palestinian Arabs.

[14] The Nationality Law, **S.H. 95 (1952),** 146.

after the establishment of the State, from the day of the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period.[15]

As a result, some 156,000 non-Jewish resident of Israel received citizenship and now constitute 19.6% of the Israeli population.

1.6. <u>Geographic and Religious Distribution</u>

The geographic distribution of the Arabs in the country is divided into 3 areas:[16]

- ➢ Most of the population (~50%) is located in the Galilee (Northern region of the state)
- ➢ 30% live in "Triangle" – a region in central Israel running along the Green Line between Haifa and Tel Aviv, separating Israel from the Palestinian Territories. The "Triangle" includes town such as Umm el-Fahem, Tireh, Taibeh, Baqa al-Gharbiya and Kfar Qasem (which will be referred to later in this dissertation).[17]
- ➢ The Negev desert in the south of the country inhabits approximately 140,000 Bedouin Arabs.
- ➢ An additional 10% of the population lives in mixed Arab-Jewish cities across the country: Tel Aviv/Jaffa, Haifa, Acre, Lod, Ramle, and Upper Nazareth. Within these mixed cities, the Arabs largely reside in separate neighborhoods.

As described herein, the Arabs in Israel share the same ethnicity, language and historical background although they are divided along religious lines. 82% of the population is Sunni Muslims while the rest are Christian or Druze.[18]

Christian Arabs live mainly in urban cities, predominantly in the Galilee and

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[15] Ibid., article 3(a).

[16] ICG Report; see also Ghanem, 2.

[17] The Islamic movement, an important political actor in the Arab Israeli political spectrum largely operates from the Triangle, leading some on the Right in Israeli politics to call for the transfer of the Triangle to the Palestinian state in any future peace agreement. This call is led by the Israel Beitenu (Israel is out Home) party led by Avigdor Lieberman which is a member of the governing coalition as of October 30, 2006. See Gideon Alon, "Knesset Approves Lieberman's Entry into Olmert's Coalition", Haaretz, October 31, 2006.

[18] CBS 2006 report. Additional data on Israeli population available at the Ministry of Foreign Affairs, The People, (accessed October 31, 2006), available from: http://www.mfa.gov.il

are divided into many dominations including: Catholic, Greek-Orthodox, Maronite, and Protestant. There is also a small community of Circassians and Armenians.[19] The Druze are not recognized as a separate religion in most Middle Eastern countries. They do have separate religious beliefs and customs, which largely derive from Shiite Ismaili Islam. As a religious group, the Druze tend to assign allegiance to the country within which borders they reside. As a result, they have been granted a different status in Israel than other Arabs, for example, they may serve in the Israeli Defense Forces (IDF) and as a result enjoy privileges not extended to other Arabs in Israel (who are excluded from serving in the security services). Therefore, the Druze are excluded from the framework of analysis.

1.7. Age Distribution, Economic Situation and Standard of Living

The Arab population, on average is much younger than the Jewish population. For example, the average age of Jews in 1955 was 27.6 while the average age of non-Jews was 20.7.[20] In 1978, the average Jewish age was 30.4 while the average Arab age was only 23.[21] In 2005 the Jewish median age was 30.6 while the Arab Median age was only 19.8, with Arab Muslims averaging 18.6 and Christian Arabs averaging closer to the Jewish population at 28.6 years of age.[22]

The age distribution between the Arabs and the Jews relates to the economic situation in which the Arabs live and their access to income and welfare. While the economic inequalities and issues of land distribution exceed the scope of this study

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[19] ICG Report; Ghanem.
[20] Avraham Burg, "The Arabs of Israel: A Statistical Portrait", in Every Six Israeli: The Relationship Between the Jewish Majority and the Arab Minority in Israel, ed. Alouf Hareven (Jerusalem; Van Leer Jerusalem Foundation, 1983), 16.
[21] Ibid.
[22] Statistical Abstract of Israel, 2.11, (Jerusalem: Central Bureau of Statistics, 2006).

which is limited to the legal discrimination of Palestinian Israelis, a brief description of the economic gaps between the Arab and Jewish communities is required.

The Arab economy in Palestine prior to 1948 was largely based on agriculture, however through a series of land expulsions and expropriations though legal tools such as the Absentee Property Law[23] and the Land Acquisition (Validation of Acts and Compensation Law[24] discussed in chapter 4, the Arabs have lost their land. They have been forced to seek employment in Jewish cities and have not developed independent industries. As a consequence, they have developed a dependency on the Jewish sector.[25]

Nevertheless, the Arab standard of living has risen consistently, and yet the gap between the Jews and the Arabs remains wide. In 1980 the income of a Jewish family was 23% higher than that of an Arab one. In 1985 the gap widened to 30% but by 1993 it had dropped to 28%.[26] According to the poverty report released in August of 2005 and relating to 2004, 23.6% of the Israeli population lived beneath the poverty line. However 31% of Arab families were poor (this number had risen from the previous report in which 28% of Arabs were poor).[27] In 2005 that number has risen and non-Jewish families consist of 33.3% of all families living below the poverty line. Recall that non-Jews consist of only 19.6% of the population and thus their representation here is significant and indicates that Non Jews (consisting mostly

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[23] Absentee Property Law, **S.H. 37 (1950)**, 86.
[24] Land Acquisition (Validation of Acts and Compensation) Law, **S.H. 122 (1953)**, 58.
[25] As'ad Ghanem, The Palestinian-Arab Minority in Israel, 3.
[26] Ibid.
[27] 2005 Poverty Report, (Jerusalem: National Insurance Institute of Israel) (accessed January 23, 2006) available from
http://www.btl.gov.il/NR/rdonlyres/4B3E27EB-E703-49B5-995D-BAF3938F445E/0/oni_2005.pdf

of Palestinian Arabs) are significantly poorer than their Jewish counterparts.[28] Moreover, Non-Jews had 33% lower income than Jews in 2005. Arabs comprise 56% of the bottom income level, while Jews only comprise 16% of that group. At the highest income level, Arabs represent only 3% while Jews represent 22% of that group. Only 39% of Arabs ages 15 and up were members of the working force, compared with 57% of the Jews as of 2002.[29] Moreover, while the employment rate of Arab and Jewish men tends to be equal on average, there is a significant difference when looking at age groups. Arab men tend to lose their employment at a much younger age than Jews, with the employment rate of Jewish men ages 45-54 being 87% while the Arabs are only 63.1%. The gap becomes more significant as the age increases with a 69.4% employment rate for Jews between the ages of 55-64 while only 39.6% of Arab men are employed at that age.[30] Therefore, 40% of Arab men between the ages of 45-54 are unemployed. This is particularly problematic in the Arab communities in which women tend not to work outside the household. Only 17.1% of Arab women above the age of 15 are employed compared to 54% of Jewish women. Finally, the unemployment rate among Jewish families in 2003 was 9.9% while in Arab families it was 13.4%.[31]

The data presented here paints a clear picture in which Arabs are significantly at a lower social-economic standing than their Jewish counterparts. They comprise most of the lower income level in the society and their rates of employment or under employment are significantly higher than those of the Jews. A critical analysis of the

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[28] Ibid.
[29] Statistical Abstract 2003.
[30] Ibid.
[31] CBS, Statistical Abstract, 2003.

economic status of the Arabs in Israel is beyond the scope of this paper, however the data presented herein suggests a clear disparity between the two communities to the disadvantage of the Arabs.

Despite the disparity between Jews and Arabs within Israel, the Arabs economic standing in Israel by far exceeds that of other neighboring Arab states, due to the relative strength of the Israeli economy compared to other nations in the its Middle East. According to the World Bank Development Indicators,[32] 2005 Israel ranks 28 among the Gross National Income per capita (GNI) rate in the world. In comparison, Jordan ranks 89; Egypt ranks 104, while Syria ranks 108. The Palestinians in Gaza and the West bank came in last on the list, with only Zimbabwe scoring lower. Moreover, in 2003 the Israeli total GNI was approximately 109 billion while that of the West Bank and Gaza was only 3.7 billion. Egypt has the second highest GNI among Israel's neighboring countries with 93 billion dollars. Clearly the economic disparity between Israel and its neighboring countries is significant, especially between Israel and the Palestinian Authority and it is therefore not surprising that the Arabs in Israel would opt to remain Israeli citizens, albeit second class ones, rather than emigrate to one of the surrounding Arabs nations.

1.8. Political Activity

Surprisingly, despite living under military rule until 1966 and lacking effective political mobilization, the non-Jewish political participation was relatively high, both in voting and in the number of non-Jewish members of Knesset. Initially the Arabs voted and ran within Jewish parties and did not compose their own political

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[32] World Bank Group, 2005 World Development Indicators, (accessed November 3, 2006); available from http://devdata.worldbank.org/wdi2005/Cover.htm

parties. Namely, the communist party represented a Jewish-Arab Party that included both Jewish and non-Jewish Knesset Members. Some Arabs voted for Zionist parties such as Mapam (a socialist-left rival to Mapai, the predecessor of Labor) as well as Mapai and later Labor. Figure 1.2 presents the percentage of the non-Jewish (Arab) vote as well as the total percentage. [33]

Figure 1.2: Percentage of Arab and Total Votes in Israeli Elections
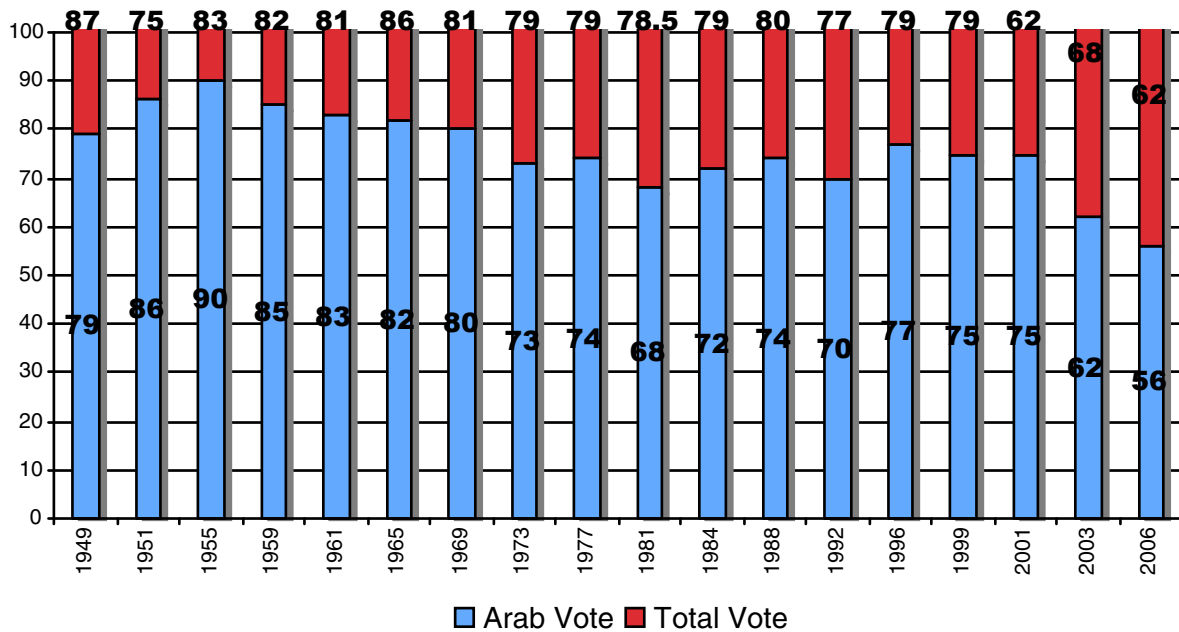
The literature regarding the political development of Arabs in Israel identifies 2 models. The first tends to view this case study in light of political developments of minorities in Western democracies. [34] The second model, "the distress model" [35] sees

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[33]Data available from Knesset website, (accessed November 2, 2006); available from http://www.knesset.gov.il

[34] For full review of the political developments of the Arab minority in Israel see Sammy Smooha, The Orientation and Politicization of the Arab Minority in Israel, (Haifa: University of Haifa Press, 1984); Sammy Smooha and Ora Cibulski, Social Research on Arabs in Israel, 1948-1976: Trends and Annotated Bibliography, (Haifa: Jewish-Arab Center, Haifa University, 1987); Nadim Rouhana, "The

the political developments of Arabs "in light of the ethnic character of the country."[36]
It is not necessary, for the discussion here to assess the validity of each of these
models, I will thus briefly detail the two as laying the foundation for the political
development of the Arab minority in Israel.

According to the normal development model, the Arabs in Israel do not seek
self-determination as their Palestinian counterparts, nor do they seek secession from
the Israeli state. Since 1948 this group has gone through a process of self-evaluation
in which it has developed a dual identity, which it transitions through. The
Palestinization and Israelization of the minority mark this dual process. According to
this theory, developed by Elie Rekhess, the Palestinian minority sees itself as part of
the Palestinian people and recognizes its unique status in the Palestinian national
movement but it also recognizes itself as part of the Israeli society. This minority
does not seek to change either elements of its identity, but rather maintain its
Palestinian national identity alongside its Israeli citizenship.[37] As a result of the
interaction with the Israeli society, the Arabs experienced a process of modernization.
As a result, this community has adopted Western norms, values and lifestyles. This
process of modernization (especially compared with the Arab world and specifically
the Arab neighboring countries) has helped the minority integrate into Israeli
society.[38] There is an assumption that these values are "progressive" compared to

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Political Transformation of the Palestinians in Israel: From Acquiescence to Challenge," Journal of
Palestinian Studies 18, no. 3 (1989): 35-59; Nadim Rouhana and As'ad Ghanem, "The Crisis of
Minorities in an Ethnic State: The Case of the Palestinian Citizens in Israel," IJMES 30, no. 3 (1998):
321-346.
[35] Asa'd Ghanem The Palestinian-Arab Minority in Israel, 7.
[36] Ibid.
[37] Elie Rehkess, 8-23.
[38] See Rekhess, Ghanem (2000), Rouhana (1998).

those held by the Arab societies outside of Israel.[39]

The interaction with the Israeli society has resulted in the adoption of democratic norms, values and political diversity within the Arab minority, indicative of democratic development. This development promotes integration into the national political system, in line with the natural development process and normalization. Most of the literature adopts this framework of analysis in which the development "involves the ongoing process of construction and consolidation that are turning [Israel] into a society with all the characters of a modern well-ordered society."[40]

The Arabs have experienced an increased process of political organization, especially since 1966 after the end of the military government, which severely limited the political mobilization of the minority. Traditionally, Arab voters had supported the Communist party known as "Hadash" and the party dominated the Arab political map until the emergence of new parliamentary and extra-parliamentary political parties since the 1970s. These parties consist of the Islamic Movement, the Progressive Movement, the Democratic Arab Party to name a few. In addition, the Zionist parties have moved from accepting satellite list to accepting Arab members as equals on the party platforms. Today there are numerous ideological and political streams in the Arab political map. During this period the Arabs organized the various political movements in several committees. This include, *inter alia*, the Committee of Heads of Arab Local Authorities (1974), and the Land Defense Committee (1975). The most important committee is the Supreme Monitoring Committee for Israeli Arab Affairs, which is an umbrella representative organization and is recognized by the

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[39] As'ad Ghanem, 7.
[40] Ibid.

Arabs and the Israeli government as well as the Palestinian leadership in the occupied territories as a collective leadership organization of the Arab minority in Israel. It serves to consolidate the internal political movements in accordance with the normal political process of development.[41] As a result of this development, the Arabs established their own institutions on the local level to address the problems and challenges of the local communities. These organizations attempt to require the central government to allocate appropriate funds for the development of the Arab communities. As stated, this model views the political development of the Arabs as a process that results in integration and the adoption of the democratic values of the society.

The distress model on the other hand, looks at the political development of the Arab in Israel not through the context of a democratic society, but rather an ethnic one. Since Israel is not a democratic society, which grants full equality to all its citizens, the argument goes, the "normal" conditions for political development asserted previously do not apply. While Israel is a democracy on the procedural level, Ghanem argues that with regards to its relationship with the Arab minority, it lapses into an ethnic state in which the minority may not compete on equal footing in defining the "general good" of the society, which is defined and dominated by one group – the Jews.[42] Because of the ethnic character of the state, it only allows for the limited political development of the minority within the context of the Jewish state

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[41] As'ad Ghanem, 6.

[42] In later chapter the dissertation addresses the debate in the literature on the nature of the Israeli polity and whether a state can be both Jewish and Democratic at the same time and thus will not dedicate much of the discussion herein to these questions. See chapter 3 and 5 of this dissertation.

and the minority only enjoys limited individual and collective rights.[43] Ultimately, the majority dominates the minority in this situation creating a distress among the latter.[44] This distress can create a crisis in the relationship between the minority and the majority as well as internally within its own community. This crisis may eventually lead to the eruption of tensions and the degeneration of the system into political violence. This dissertation seeks to examine the security implication of systematic discrimination of minorities. This determination exceeds the scope of this chapter, which lays the background foundation for the discussion to follow. The distress model was developed to respond to the normal development model, which assumes that the Arabs in Israel are operating in a fully democratic environment. The proponents of this model argue that this is misleading, inaccurate, and thus inadequate as a model in explaining the political development of the Arabs in Israel. The distress model suggests that the political development of the Arabs in Israel suffers from a distress, which is manifested in the limitations posed on their political development as a result of the inequality they suffer from. The Jewish character of the state and the limitation of its democratic one, it is argued, prevent the normal development of political process in the Arab sector.[45]

In later analyses this study presents the argument that the Arab community, especially during the Rabin government (1992-1995) had in fact experienced normal political development, which has led to a process of political integration into the Israeli system. However, since the eruption of the al-Aqsa intifada, which marked a

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[43] For full discussion on this issue see chapter 3 and 5.
[44] As'ad Ghanem, 8.
[45] Ibid., 9.

new period in the history of the majority-minority relations in the state, the Arabs have in fact been experiencing a "crisis" in which they are further discriminated against as a result of the enhancement in the "Jewish" character of the state, at the expense of its democratic one, creating the conditions which may lead to the eruption of political violence.

In order to assess the validity this hypothesis, a brief description of the history of the Arab in Israel is required.

Historical Context

The analysis of the legal status of Arab Palestinians in Israel is divided into 4 periods. The first addresses the pre-statehood period and examines the ways in which Zionism dealt with the issue of the Arab minority within Israel. This period was defined by the lack of coherent policy regarding the minority and the "Arab Problem" was largely seen as a peripheral issue, to be dealt with in the way most effectively serving the central objectives of Zionism, which was to create a homeland for the Jewish people in Israel.[46] The second period, from 1948-1966 is defined by the military rule declared over the Arab population in Israel. The third period, from 1966-2000 is defined by increased political activity of the minority and the change in its status during the 1990s. Finally, the fourth period, between 2000-2005 is defined by the external context of the Israeli-Palestinian conflict and the adverse change in the legal status of the Palestinian minority within Israel. The framework of analysis in this dissertation is limited to February 2005 (the "official" end of the al-Aqsa intifada) although the defining elements of the status of the minority are still relevant.

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[46] Ian Lustick, Arabs in the Jewish State: Israel's Control of a National Minority, (Austin: University of Texas Press, 1980), 29.

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1.9. <u>First Period: Pre-Statehood</u>

The objective of the Zionist movement in the pre-state era was to create an infrastructure of the Jewish state. The Zionists focused on the creation of organizational, territorial, demographic and political infrastructure so that when the state emerged it would have that infrastructure at its disposal. The Zionist ideology provided for fairly coherent policies regarding the social, economic, security and political challenges the Jewish state would face. What was lacking was a coherent policy regarding the role of the non-Jews in the emerging state. In fact any discussion relating to the status of the small, yet significant minority within Israel, was rare.[47]

It is necessary to provide a brief description of the attempts to deal with the problem of the status of the non-Jews community before describing the relationship between the state and its minority after independence.

The *Yishuv* (the Jewish settlements and infrastructure in the pre-state era) leadership avoided developing a long-term policy towards the minority, preferring ad-hoc solutions, which most effectively served the Zionist objectives.

In the early stages of its inception, Zionism was rather vague in its aims. This was not coincidental, as the numerical disparity between Arab and Jews at the end of the 19th century was not lost on the Zionists. The Arabs made their opposition to the political aspiration of the Jews in Palestine clear and thus the Zionists did not make their intentions explicit. In addition, not all Jews supported the notion of a "Jewish state" which would imply that Jews were a nation rather than a religion. They feared that this would allow for their host nations to expel the Jews and revoke their

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[47] Ian Lustick, Arab in the Jewish State, 29.

citizenships.[48]

Nevertheless, in 1917 the British issued the Balfour Declaration (discussed in more detail in chapter 4) stating that the British government viewed in favor the establishment of a national home for the Jewish people in Palestine. The declaration also stated "nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine."[49] In the early stages of pre-statehood, the political leadership in Palestine, led by David Ben Gurion[50] and Chaim Weitzman[51] resisted the Revisionists'[52] call for declaring the Zionist ultimate objectives as a Jewish homeland in all of Palestine. At a time, the Jews only consisted 10% of the population and by 1930 only comprised 17% of the population.[53] Ben Gurion and Weitzman supported the notion of "organic Zionism," a flexible approach, which took into consideration the developments on the ground and revised their objectives as they went along to respond to the realities surrounding them. In this vain, organic Zionism did not formulate a fixed, long-term policy to deal with the Arabs in Palestine, even when those erupted in riots against the Jewish *Yishuv* in 1929 and again in 1936-1939. Organic Zionism, much like those who articulated it, was inspired by tactical realism characteristic of most of Ben Gurion's policies. The

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[48] Ibid., 30.

[49] Ibid.

[50] Ben Gurion later became Israel's first Prime Minister and head of the Mapai party, the predecessor to Labor

[51] Weizman became Israel's first President and led the "territorialist" who believed the objectives of Israel would be promoted through "blood and sweat" by working the land. Weizman led the movement which sought to acquire as much land as possible from absentee Arab landlords and remove the Arab workers from the land to allow for Jewish to work the land

[52] The right wing stream of Zionism, led by leaders such as Itzhal Shamir, later Israel's prime minister from the Likud party and Ze'ev Zabotinsky who was later assassinated by a Palestinian gunman in 1940. Menchem Begin, who later became Israel's first prime minister from the Likud party in 1977, was one of his greatest disciples.

[53] Lustick, 31.

tactical realism rejected maximalist and minimalist approaches to the ultimate character of the state of Israel and rather than commit itself to a set of goals, it allowed for those goals to formulate and adjust in order to respond to new realities. The Zionists at that early stage did not clearly formulate the nature of the state, whether it be bi-national, separation, or a federation in which the Jews were a minority and so forth. However by 1930 the Zionist actively promoted the parity policy, according to which neither the Jews nor the Arabs "was to dominate or be dominated by other in the self-governing institutions of the country. The principle was to apply under the mandate, while the Arabs were the majority, and it was to apply in independent Palestine when it was hoped that Jews would be the majority."[54]

In explaining the objectives of the parity policy Ian Lustick notes the following:

> Parity was originally put forward as a constitutional scheme and political principle which would protect the rights of the Jewish Yishuv to grow, develop, and absorb immigrants while it was still a minority in Palestine. Parity meant preventing the Arab majority from "democratically" putting an end to the development of the Jewish national home. [55]

However, the doctrine also provided that the Arabs could rest assured that if and when the Jews became the majority, the Arabs' rights as a minority, would be protected and they would nevertheless remain equal partners in the affairs of the state.[56] In addressing the Zionist Congress in 1931 in Basel (home to the first Jewish congress held in 1897, in which Herzl later declared he "had founded the Jewish nation") Chaim Weitzman stated:

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[54] Ben Halpern, The Idea of the Jewish State, (Cambridge: Harvard University Press, 1961), 340.
[55] Ibid., 33.
[56] Ibid.

> The Arabs must be made to feel, must be convinced, by deed as well as by word, that whatever the future numerical relationship of the two nations in Palestine, we on our part, contemplate no political domination. But they must also remember that we, on our side, shall never submit to any political domination. Provided that the Mandate is both recognized and respected, we would welcome an agreement between the two kindred races on the basis of political parity."[57]

Ben Gurion supported this approach as well by stating:

> I see the future of Palestine in the political constitutional sense as a federal state of cantons. We must take this approach not because of political tactics but because this is the political reality of our Zionism: non-domination of the Jews over the Arab and non-domination of the Arabs over the Jews…. we will demand change by bringing Jews and Arabs in equal numbers into the government of the country, who will practice also in the legislative power and executive power.[58]

Despite this progressive posture, the Arabs were not invited to equal power sharing in the state's institutions after the war of independence. What happened to change the political course of action adopted by the Zionist leadership at the time?

As the Jewish refugees started pouring in Palestine and thus becoming more of a significant number (growing from 17% of the population in 1931 to 33% by 1940), the doctrine of parity was abandoned. By 1936 Ben Gurion had changed his tone. In discussing parity he argued:

> What does parity mean? Parity means joint Jewish-Arab government, cooperation between representative. …If I were to formulate it I would not say "two nations," I have said that the Jewish nation is not in the country and I do not recognize the Arabs [of Palestine] as a nation.[59]

Thus, Ben Gurion adopted a new policy, which rejected the notion that the Palestinians were a separate nation in Palestine; in fact, they were not a nation at all. This policy continued to dominate the Israeli policy making well into the 1980s

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[57] Susan Lee Hattis, The Bi-National Idea in Palestine during Mandatory Times (Jerusalem, Shikmona Publishing Company, 1970), 91.
[58] Ibid., 97.
[59] Ibid.,167.

changing only with the first Palestinian uprising in 1987. In his testimony before the Peel Commission (the commission entrusted by the UN to find a solution for Palestine and which eventually recommended the separation of Palestine into two states: one Jewish and one Arab)[60] Ben Gurion argued that the Jews had emerged as the only true "national" group in Palestine. Aside from the Jews, who as a nation had full historic rights to Palestine, there was no other nation that had the same historical claims. This is not say the Ben Gurion did not recognize that there was a population in Palestine that was not Jewish, but that this population did not constitute a "nation" with nationalistic aspiration similar to the Jews.

As the Holocaust raged in Europe this was yet more evidence that the Jews could not continue to reside in Europe and that Palestine was the only place they could build a secure homeland.

It was clear that from the first Jewish Congress, in which the idea of a Jewish homeland in Palestine was adopted, the Jews regarded themselves not merely as a religion, but rather as a nation; a nation with entitlement to a territorial homeland in Palestine.[61]

As the horrifying dimensions of the Jewish holocaust started to emerge, the World Zionist Organization made its intensions explicit by approving the "Biltmore Platform" (named after the hotel in New York in which it was adopted), which contained a declaration that Palestine should be established as a "Jewish

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[60] See additional background information on the Peel commission and the separation plan of Palestine in chapter 3 of this dissertation.
[61] For more detail on the emergence of Zionism see chapter 3 of this dissertation.

Commonwealth."[62] By 1942, Ben Gurion was defending the Biltmore Platform and rejecting parity.

There were still some left-leaning elements in the Yishuv which resisted making an explicit claim for a Jewish homeland and still explored some bi-national solutions however these voices were quelled as Ben Gurion's political stream dominated the Jewish institutions and political map of the Yishuv. Up until 1947, with the acceptance of the partition plan, the Jewish Yishuv maintained its objective of creating a homeland in all of Palestine.

The long-term relationship between non-Jews and the Jewish state was never specified. Even immediately following independence, the question of what would the "real" status of the minority be in Israel was not discussed among the Zionist leadership. Even when addressing the issues when probed by the international investigatory officials in Palestine working on the solution for the territory, the Zionist were vague and did not demonstrate any systematic analysis of the future of the non-Jews in the emerging state. Instead, they committed themselves to vague assurances to provide for strict equality for all citizens. While testifying before the Anglo-American Committee of Inquiry on Palestine in 1946, Ben Gurion stated that the state was committed to take care of the welfare of all its citizens, regardless of their nationality while at the same time promoting the Arabs' culture, language, religion etc. The state would make every effort to assure that all citizens are treated equally while promoting their standard of living.[63] The Zionist did not perceive a contradiction between the objectives of Zionism and promoting civil-political rights

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[62] Lustick, 35.
[63] Lustick., 38.

of the Arabs. Nonetheless, they failed in translating these principles into actionable policies. The Zionist leadership, largely ignored the issues which affected the equal treatment of minorities such as disposition of Arab owned land, the relationship between the Jewish Agency and the state and its effect on non-Jewish population, and the question of the loyalty of the Arab population from a security stand point. And thus, once the state was established, the policy towards the Arab minority was ad-hoc, based on what most effective served the objectives of the regime, taking little notice of the long-term implications for the status of the Arab minority vis-à-vis the Jewish state.

In sum, the Zionist ideology provided little guidance to the question regarding the status of the non-Jews during the pre-statehood era. With the declaration of independence all surrounding Arab nations and Iraq declared war on Israel. In this crisis environment the Israeli state could not find the time or the energy to formulate a coherent policy regarding the status of the Arabs in Israel as it was pressed to defend itself against powers, which called for its annihilation. The internal problem of the status of the Arabs seemed trivial and insignificant compared with the insurmountable task of defending its existence while building national institutions at the same time.

The two most important objectives of the Jewish nation following the declaration of independence were security and settlement of the land. The state needed to consolidate its hold on the territories acquired during the fighting and it had massive immigration of holocaust survivors pouring into the country following the end of World War II. By settling the land the leadership hoped to prevent the return of Arab refugees at the end of the war. Ben Gurion had stated that "our territorial

conquests and redemptions will not be assured if we do not succeed in erecting a great and closely linked chain of settlements, especially settlements of soldiers, on the borders, in the Negev, on the coast, in the Jerusalem corridor, around Safed, and all other areas of strategic importance."[64]

Thus, the formulation of a long-term policy regarding the Arabs in Israel did not correspond with the two main objectives of the young nation – securing its survival and creating facts on the ground through the settlement of the territory acquired during the war. As a compromise, the Zionist decided to naturalize those Arabs who remained in Israel through the Nationality Law described herein above. Through a policy of expulsion and Jewish resettlements on formerly Arab owned land, the Zionist secured that only a small minority of the Arabs would qualify to become Israeli citizens, securing a Jewish majority in the state and despite the parity policy which rejected domination, the Jewish establishment was secure in the domination of the Jews over all state institutions. The establishment of the military government to rule over the Arab minority crystallized this domination in the first stage of the State's independence. Thus, true confrontation with the "Arab question" was deferred. In the state of chaos, following the declaration of war by the Arab states, the Israeli government could not muster the energy and the willingness to address the "Arab problem". The military government, which is the subject of the following section, allowed for a deferral of this issue to later, perhaps more peaceful times.

1.10. <u>Second Period: 1948-1966</u>

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[64] Don Peretz, Israel and the Palestine Arabs, (Washington, DC: Middle East Institute, 1958), 156.

Since the independence war in 1948 Israel's physical boundaries had changed tremendously. The border of the Israeli state in 1948 far exceeded those allotted to it in the UN partition plan, which was subsequently rejected by the Arabs. In 1967, Israel tripled its size in a mere six day war, conquering the Sinai Peninsula and Gaza Strip from Egypt, the West Bank, including East Jerusalem and Temple Mount for Jordan, and the Golan Heights from Syria. Following the six-day war, Israel annexed East Jerusalem to unite both east and west Jerusalem under Israeli rule[65], and it applied its law, jurisdiction and administration over the Golan Heights without officially annexing them.[66] These changes did not affect the status of the Palestinians within Israel following the 1948 war. Those who remained in what became Israel were granted citizenship. Figures 1.1 through figure 1.4 illustrate these vast changes in territory. While the change in the physical boundaries since 1948 have not affected the presence of the Arab minority in Israel, the territorial changes have influenced the relationship between the state and the minority because of its affect on the Israeli-Palestinian conflict. It is asserted that the relationship between the State of Israel and the Palestinian minority within it is affected by the status of the external conflict and thus, the territorial changes have great significance for the discussion here.

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[65] Basic Law: Jerusalem, Capital of Israel, **S.H. 980 (1980)**, 186.
[66] Golan Height Law, **S.H. (1981)**. Article 1 states: "The Law, jurisdiction and administration of the State will take effect in the Golan Heights, as described in the Appendix."

Figure 1.1 Partition Plan Map (1947)
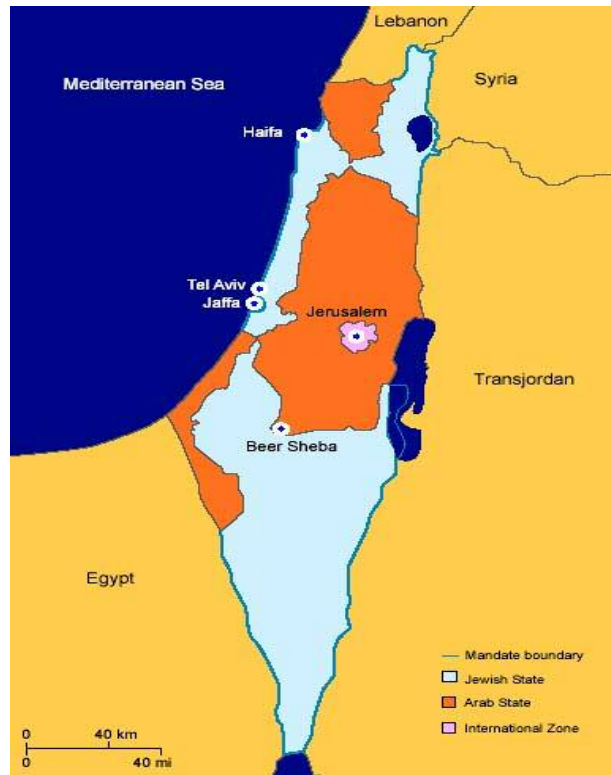
Figure 1.2 Israel after 1948 War

www.manaraa.com

Figure 1.3 Israel after 1967 War

Figure 1.4 Israel Today (2007)

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As a result of the Israeli-Arab war, which erupted in May 1948 subsequent to the Israeli declaration of independence, most of Arabs in the areas controlled by the Israelis either left or were expelled from their homes. Roughly 150,000 (out of approximately 950,000) had remained.[67] As previously discussed, the Nationality Law granted citizenship to those who remained on their land during the war. Nonetheless, they were regarded by the Israeli authorities and security forces as part of the Palestinian 'enemy', and were therefore subjected to measures that were placed in order to repress any subversive activity.

The first era following the creation of the Israeli state was characterized by feelings of hostility, resentment and threat towards the Arab minority. The Zionist leadership was extremely suspicious of the Arabs.[68] Taking into consideration the emergence of the Jewish state after a war, it is not surprising that the state showed little concern for the needs of the Arab minority.[69] Instead the Israeli leadership decided to enact laws subjecting the areas in which the Arabs resided to military government, which was formally established in October 21, 1948. Five military governors were named to take control over Arab districts conquered by Israel during the 1948 war.

The control over the Arab population manifested itself in several forms. First, the Israeli authorities found it necessary to undertake political supervision. Fearing

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[67] William L. Cleveland, A History of the Modern Middle East, 2nd ed. (Boulder: Westview Press, 2000), 261. As'ad Ghanem, Palestinian-Arab Minority in Israel, 1948-2000 (Albany: State University of New York Press, 2001), 13.
[68] This suspicion is reflected in the fact that most of the men who have served the prime minister as an Adviser on Arab Affairs had previously been members of the GSS, this includes, Yehoshua Palmon, Uri Lubrani, Shmuel Divon, Rehavam Amir and Shmuel Toledano. See Ian Lustick, Arabs in the Jewish State: Israel's Control of a National Minority, (Austin: University of Texas Press, 1980), 66.
[69] Ibid., 185.

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any mobilization of the Arab minority into an Arab national organization, the authorities prevented the emergence of any Arab leadership during this period. The Israeli government decided to deal with the Arabs as a religious minority through the Ministry of Religion, thereby completely excluding them from the Israeli society despite them being Israeli citizens, entitled to equal treatment.[70] Furthermore, the Israeli authorities limited the movement of the Arabs during this period, and one needed a special permit in order to travel from one place to the other. In addition, many of the Arabs newspapers, which were published during the mandate era, ceased to exist. These measures prevented the development of an Arab Israeli leadership, since the mobilization of the public opinion, both literally and figuratively, were nearly impossible.

Secondly, the Israeli government created an Arab economic dependency on the Jewish state – a systematic disparity in economic rewards by the government was maintained to the disadvantage of the Arabs. The Israeli authorities concluded that if the Arab cities and villages developed economic stability or even viability, that could then lead to the establishment of their own separate economic, political and cultural center. Israel conducted its policies according to a zero sum game; any advantage of the Arabs, necessarily meant a disadvantage for the Jews, and therefore, Israel could not afford any economic development of its Arab citizens. Zionist-Jewish interests guided the economic policies and those did not include economic benefits for the Arab population.[71] Therefore, many restrictions were put on the Arab production; the

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[70] As'ad Ghanem, 20.
[71] Uzi Benziman and Atallah Mansour, Sub-Tenants, the Arabs of Israel: Their Status and The Policies Towards Them, [Hebrew] (Jerusalem: Keter, 1992), 127-178.

authorities sought to control the distribution of the products from the Arab agriculture. The government expropriated Arab land, leaving many of the Arab farmers completely dependent on the developing Jewish economy for work. Furthermore, many job opportunities were restricted from Arab applicants. For Instance, civil servants had to pass a security clearance in order to hold jobs as teachers in their own communities, and prove their loyalty to the Jewish state. Much like their imperialist predecessors, the Israeli authorities used the Arab notables in order to 'keep a close eye' on the Arab population by helping these notables in securing jobs and leasing land in exchange.[72] This created an economic distress in the Arab communities. The Arabs were concerned with trying to feed their families, deterring them from any political activity for fear of losing their livelihood.

1.11. <u>Third Period: 1966-2000: Opportunity for Integration?</u>

The most important change in terms of the relationship between the Jewish state and its Arab minority was the abolition of the military rule in 1966. This period marked a significant change in the Arab existence in Israel. Following the 1948 war and the creation of the Israeli state, the Arab minority found itself confused, unsettled and scattered in different areas of the former Palestine. The community was characterized by lack of leadership and any form of organization. However, with the end of the military regime, the Arabs felt a new sense of confidence, and increasingly demanded more equality[73]. Several factors contributed to this newfound self-confidence amongst the Arab minority in Israel. First, the demographic growth of the

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[72] Ian Lustick, 230.
[73] As'ad Ghanem, 21-27.

Arabs in Israel reinforced their self-assurance[74]. Throughout the years, the Arabs had developed a growing community in their villages and cities. They had developed a cultural life, political organizations which served the needs of the community, and a greater influence in the joint Arab-Israeli organizations[75]. The opening of the General Labor Federation, the *Histadrut,* and the major political parties to Arab membership was extremely significant in this respect[76]. Furthermore, the balance of power between the Israeli parties started to shift, ending the Labor dominance of the first period. The two major parties, the Labor on the left and the Likud on the right, were now competing for dominance in the *Knesset,* the Israeli Parliament.

The Arabs had formed their own separate political parties. The two blocs now needed the Arabs' votes in order to tip the scale in their favor. The political parties were competing for the Arab vote by improving the status of the Arab minority. The rise of the Palestinian Liberation Organization (PLO) also played a significant role in the enhancement of the self-confidence and sense of nationalism of the Arab minority in Israel. Although the Arab minority in Israel did not necessarily wish to join the Palestinian state, if and when it were to be created, they did share a sense of common nationality and saw the PLO as the representative of the Palestinian people.[77] The renewed contact between the Israeli Palestinians and those living in the occupied

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[74] According to the Statistical Abstract of Israel (1988) (SAI88), the total population of Israel at the end of 1987 within the Green-line borders was 4,406,500 of whom 783,600 were non-Jewish minorities (Moslems, Christians and Druze). Today it is estimated that the Arab minority consists of approximately 19.7% of the population. See Israel at 54: A Statistical Glimpse (accessed December 9, 2002); available from http://www.mfa.gov.il/mfa/go.asp?MFAH0li20; Statistical Abstract of Israel 2006 (accessed October 10, 2006); available from http://www1.cbs.gov.il/reader/; see also Moti Bassok, "Study Shows Growing Divide in Life Expectancy for Jews, Arabs," Haaretz, September 19, 2006.

[75] As'ad Ghanem, 21-27.

[76] David Kretzmer, 4.

[77] As'ad Ghanem, 24.

territories served as an important factor in the development and enhancement of the national identity of the Palestinians within Israel. Following years of existence under an oppressing military regime, the Arabs found themselves interacting with members of their ethnic nation, albeit as Israeli citizens. The Palestinian national identity emerged as a direct result of the 1967 war and the occupation, and this concept affected the Arab citizens of Israel as well. Although not conveyed in the goals of the PLO or those of the new political Arab parties within Israel, the notion of a national identity emerged during this period. During the 1970's numerous local based nationalist movements emerged, namely in the form of student movements. This trend resulted in the successful Land Day Strike of 1976, which became a landmark day of successful resistance against the government policy of expropriation of Arab owned land for the Jewish interests and Jewish housing. During this time, the Democratic Front for Peace and Equality (DFPE) was created, which merged the Communist Party with Arab nationalists. The late 70's and early 80's were characterized by the emergence of several Arab parties such as the Progressive List for Peace (PLP), which was an Arab nationalist group that emphasized the Palestinian identity and the identification with the Palestinian movement and its leaders in the occupied territories and those in exile. This group represented the "swing in the pendulum towards Palestinian national identity and away from Israeli identity."[78] The 1990's witnessed the emergence of the National Democratic Alliance (NDA) under the leadership of Azmi Bishara, which attempted to bridge the concepts of equal citizenship and national identity. This was the first intellectual exercise in dealing

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[78] Nadim Rouhana, "Outsiders' Identity: Are the Realities of "Inside Palestinians" Reconcilable?, Palestine-Israel Journal 8, no.4 (2002): 68.

with both the Israeli citizenship and the Palestinian national identity of the Arab citizens of Israel. "The NDA presented in utmost clarity the possibility of equal citizenship for Arab and Jew in a non-Zionist Israel that should be transformed to a state for its citizens rather than a state for the Jewish people."[79]

The NDA supported the de-ethnocization of the state, which would allow the Arab citizens to develop a proud national identity, thereby bridging both elements of their identity and allowing both to flourish side by side. The NDA explained the nature of this transformation in the Palestinian identity only as it related to the Israeli society but excluded discussion about how this would affect the relationship between the Palestinian Israelis and those residing in the occupied territories.

The development of the Islamic movement is another notable characteristic of this period. The Islamic movement developed in Israel in the early 1970s, inspired by the growing Islamic movement in the Arab world, particularly the Muslim Brotherhood and the Khomeini revolution in Iran in 1979. During this period, there was a growing phenomenon of radical Islamism in the Middle East and a growing number of Arab Israelis were becoming increasingly more religious.

Following a failed attempt at illegal action against the state in the 1970s the Islamic movement in Israel and its leader, Sheikh Abdallah Nimr Darwish of Kfar Kasem in the Triangle, changed its course of action to adopt lawful activities, promoting Islam. The Islamic movement developed an infrastructure in the Arab sector, which provided for education, welfare services, religious school, emphasizing Islam, building Masques, and so forth. In 1983 the movement ran for municipal office

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[79] Ibid. 69.

for the first time, winning the majority of two local councils. By 1989 it won races in six municipalities including Umm el-Fahm, which became the base of its operations.

The central steam of the Islamic Brotherhood is the parent movement of the Islamic movement in Israel. Initially, it separated itself from the institutions of the state (and did not run for Knesset elections) and even the institutions of the Arab sector such as the Supreme Monitoring Committee discussed earlier in this chapter.

During the 1990s against the backdrop of the Oslo peace process and the division between Hamas, Islamic Jihad and the PLO, the Islamic movement in Israel also went through a transition period in which its members broke into two camps. The first, the pragmatic branch – the southern branch led by Sheikh Darwish argued that the Islamic movement had no choice but to integrate into the political life in Israel and even run for Knesset elections while continuing its policies of Islamic proselytizing and its other activities enhancing Islam in the Arab sector. Darwish also supported the peace negotiations between the PLO and Israel. Sheikh Ra'id Salah, the Mayor of Umm el Fahm and Kamel Hatib, the leader of the movement in Galilee, headed the second branch – the radical faction or northern branch. This faction believes in the political, cultural, economic isolation of the Arabs of the Israeli state and thus opposes integration. They reject any participation in national elections and only run in local elections to address the specific needs of their communities. They also will not swear allegiance to the Jewish state and thus cannot become Knesset members as such as swear is required by Basic Law: The Knesset. On the local level, however, the Islamic movement can promote their values and objectives, by implementing Islamic norms such as separation between females and males in

schools, forbidding the selling of alcohol in their local municipalities, promoting religious schools teaching the Quran and so forth.

In 1996 the Darwish camp joined the United Arab List (RA'AM) together with the Democratic Arab Party (MADA) of MK Abd al-Wahab Darawshe and won 4 Knesset seats in 1996 and 5 seats in 1999.

The radical faction does not recognize the state of Israel. They argue that there is no "Israeli" state, because in essence there are two nations: a Jewish one and an Arab-Palestinian one. The goal of this faction is to establish an Islamic state. Their existence raises many problems for the state of Israel and they are viewed by great threat and are constantly monitored by the Israeli authorities, with their leaders often incarcerated. After the eruption of al-Aqsa intifada Sheikh Salah was arrested for support of terrorism but was released after several months for lack of sufficient evidence against him. The activities of the radical faction of the Islamic movement will be discussed in later chapters assessing the rise in support for political violence against the state, however, during the 1990s three terrorist attacks were carried out by members of the Islamic movements. The first, in 1992, near Kibbutz Gal-Ed with the murder of 2 soldiers. The second in August of 1999 with the murder of an Israeli couple in the Megiddo Forest, and the last on the eve of Rosh Hashanah (the Jewish new year) with the explosion of 2 bomb-carrying cars in Tiberius and Haifa. These terrorist attacks are suspected to be linked to Hamas operatives and were not sent by the Islamic movement alone. It is suspected that members of the extremist faction maintain contact with Hamas and some members have been arrested for financial and

other connection with Hamas.[80] The link between the Radical branch and Hamas or other radical groups in the Palestinian Territories is a dangerous one, which clouts the policies adopted by the state with regard to the minority. Although this branch still consists of a minority in the Arab Sector, polling since 2000 suggest that there has been a rise in the support of the pro-isolationist faction.[81]

In opposition to the radical pro-isolationist branch, another school of though developed in the Arab sector and consists of the majority of its members. The pro-integrationist camp, headed by the Israeli Communist Party (MAKI) and the Democratic Front for Peace and Equality (HADASH) believe that while the aim of the Zionist parties is to isolate them they must pursue of policy of successfully integrating into Israeli society to bring about change in their status. Successfully doing so will require maintaining a delicate balance between pursuing recognition on a collective national basis and standing firm for Arab civil rights on an individual basis.[82] They advocate for change of the definition of the state to a "state for all its citizens." they stress the importance of cooperating with Jewish parties in the Knesset to achieve gradual improvement in their individual rights and a move to recognize their national/communal rights while at the same time supporting the Israeli-Palestinian negotiation and final resolution of the conflict which they see as connected to improving their status in the state.

Recall that most scholars view this period through the model of normal

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[80] For more on the connections between Hamas and Islamic movement as well as incitement activities of the movement against the state of Israel see chapter 8 of this dissertation as well as Nachman Tal, "The Islamic Movement in Israel," Strategic Assessment 2, no. 4 (February 2000): 1-10.

[81] Uri Horowitz, "Arab-Israelis and the Events of October 2000: Trends and Attitudes towards the state of Israel, Strategic Assessments 4, no. 2 (August 2001): 1-7.

[82] Uri Horowitz, Ibid.

development. The interaction with the Jewish population, and the influence of the modernization from the west, effected the Arab population and developed a process of continued modernization of the community. This especially was important in terms of education; there was a consistent rise in the average educational level of the Arabs in Israel and more and more Arabs were seeking higher education in the Israeli universities. Finally, and possibly most important was the discrimination factor. Despite all the progress the Arab minority had made during this second period, they have always suffered from discrimination in every aspect of their lives, from allocation of resources by the government, to education and employment opportunities. This will be further analyzed in this study, however suffice to say that the ongoing discrimination which, has not been dealt properly by the Israeli governments throughout the years, has encouraged the Arab minority to seek alternative methods of participation, creating public pressure in order to correct the situation of consistent discrimination against them.

1.12.   Fourth Period: 2000-2005: al-Aqsa Intifada

The literature clearly identifies two periods in the history of the Palestinian Arab minority in Israel. The first, between 1948-1966; and the second from 1966 until the present. However, this dissertation seeks to lay the foundation for a new analysis which asserts that a new period in the minority-majority relations has begun with the eruption of al-Aqsa intifada and the October riots resulting in the shooting and killing of 13 Arab Israelis by Israeli security forces.

The fourth period is marked by the eruption of the most violent episode in the long, on-going conflict between the Palestinians and the Israelis. On September 28,

2000 the al-Aqsa intifada erupted after a visit of Ariel Sharon to temple Mount in Jerusalem, home to the Wailing Wall and al-Aqsa Masque. On October 2, as an act of solidarity, Arab took to the streets of Israel in protest of the Israeli actions in the Occupied Territories. The protestors were met with live ammunition employed by the Israeli police and resulted in the shooting and killing of 13 Arab citizens of Israel and the injury of hundreds. It is proposed that this served as a watershed event in the relations between the state and the national minority, creating the context in which further actions against the minority have been adopted. This period and the events which sparked it will be discussed and analysis will follow in later chapters of this dissertation.

As protest against these new policies the some Arab political leaders called for the boycott of the elections in 2001 and 2003 as evident by the lower voter turnout in the Arab sector. Nevertheless, the pro-integrationalists are still the silent majority. It is argued here that the dynamic between pro-isolation and pro-integration in the Arab political map is a process influenced by the on-going development in the majority-minority relations and is largely connected with the Israeli-Palestinian relations.

The analysis presented in this dissertation seeks to establish that there has been a rise in the legal discrimination of the Arabs and their alienation. During this period, the Israeli government has sought to redefine the boundaries of citizenship with the amendment to the Nationality Law, which seeks to prevent family unification between Israeli Arabs and their Palestinian spouses. Moreover it is asserted that Israeli policy, since the eruption of al-Aqsa intifada has resulted in the attempt to de-legitimize political protest of Arab Knesset members with the change in

the Basic Law: The Knesset, which seeks to out-law any political activity, which promotes the support for the struggle of an enemy against the state. The objective of the change in the legislation, it is argued, was to illegalize the activities of some Arab political parties, which supported the Palestinian cause and violent struggle. Moreover, this period is marked by a rise in racist attitudes among the Jewish community in Israel, by an increased suspicion of the minority as a threat to the state and an increase in a sense of alienation suffered by the minority. All of these developments amount to fertile ground for the political violence. It is argued that the change in the legal status of the minority is perceived as a loss in asset by this group, making them more likely to engage in risk seeking behavior to regain that loss, and in the context of a deeply divided society, in which an external violent conflict exist, this can translate into the adoption of political violence against the state to address the grievances of the minority.

Overview of Dissertation Chapters and Outline of Arguments

The dissertation comprises of four parts. Part one presents the theoretical framework employed by this study. The dissertation develops an analytical framework defined as *Prospect for Violence*. By using prospect theory, the theory of decision making under risk, the study examines the condition under which the minority in Israel may adopt political violence as means to voice its grievances regarding its deteriorating legal status. Thus, the following chapter presents a comprehensive literature review of prospect theory, political violence theory and the conditions for political violence. Furthermore, this chapter aims to develop the analytical framework used in this study. The second part of the dissertation presents

the structural foundation of the Israeli state. Chapter three explores the foundation of the state, first by providing a brief description of the historical roots of the state and its ideology of Zionism and later by examining the structure of its constitutional law and relating history to structure by examining the practical application of the Jewish character in state laws.

The following chapter examines Israel's security doctrine. Since the Palestinian minority in Israel is seen to threaten the security of the state it is important to examine the Israelis security doctrine, which provides for the framework through which the security policies are adopted. This chapter examines to two elements of threat posed by the minority – the demographic threat to the Jewish majority which threatens the constitutional framework of "Jewish democracy" since, if the Arabs become a majority Israel could no longer remain Jewish and democratic at the same time. Second, the Palestinian minority presents a threat to the state by virtue of its ties with the Palestinians, which are currently engaged in a protracted war against Israel using unconventional uses of force, namely terrorism.

Chapter five examines the foundation of the majority-minority relations in Israel, the nature of the Israeli democracy, both internally with regard to the Palestinian minority and externally, comparing it to other democratic nations. It has been argued in the literature that the status of the Palestinian minority is directly linked to the constitutional definition of the state as "Jewish" and thus it is important to explore the various meanings of the term as well as its affect on the relations between the majority and the minority in Israel. Finally, the chapter examines the nature of the Israeli democracy and the status of the minority in the Jewish

democracy. Part three applies theory to practice. In chapter six the change in the status of the Palestinians since 2000 is discussed. An examination of all legislation, government policies and court decisions relating to the Palestinian minority result in the rise in the discrimination of that minority.

The use of counter-terrorism as means for discrimination is discussed in chapter seven. Specific attention is paid to the implications of the violent clash between Israeli security forces and Palestinian Israeli demonstrators following the eruption of al-Aqsa intifada and resulting in the killing of 13 of those Palestinian citizens.

Finally in part four, the assessments, conclusions and policy recommendations are presented based on the findings of this study. Chapter eight applies prospect theory to examine the prospect for the adoption of political violence by the minority in response to the rise in its legal discrimination. The result of this application leads to the final conclusions presented in chapter nine and the policy recommendations made to both the minority and the Israeli government.

PART I – THEROETICAL FRAMEWORK

Chapter 2: Literature Review: Prospect Theory and Political Violence

The following chapter consists of a literature review of all relevant theories relating to the framework employed in this dissertation. The purpose of this dissertation is to examine the rise in the legal discrimination of Palestinian Israelis and the implications of that rise on the adoption of risk seeking behavior by the minority in the form of political violence.

To provide some theoretical and general background for the study the following chapter examines the theories and empirical evidence relating to decision-making processes, particularly decision-making under risk. The first section provides a brief description and overview of prospect theory. The discussion then moves to review some of the challenges prospect theory faces as a model describing human decision-making. The application of prospect theory to international relations is examined followed by a discussion on the applicability of the theory to group based decision-making processes. This study is focused on implications of legal discrimination on the eruption of internal violent conflict. For this purpose, the literature regarding the conditions for political violence is reviewed and the various competing theories are discussed. Finally, this chapter concludes with a discussion on prospect theory and the conditions for violence, providing a theoretical model applying the propositions of prospect theory for risk propensity to better explain the motivations for the use of violence in the context of this study.

2. <u>Prospect Theory: Brief Description and Overview</u>

Prospect theory is a theory of decision-making under risk that allows for

systemic explanations and predictions of risk propensity.[83] Two Israeli psychologists, Daniel Kahneman and Amos Tversky, developed the theory after they had observed that subjects tested, systematically violated the axioms of expected utility theory. According to expected utility theory (also known as rational choice theory), if option A is preferable to option B, and B is preferable to C, then A is preferable to C. In addition, option preference is independent of how it is presented, and finally, an option will be preferred when all other things equal, it demonstrates superiority in one way. However, the experiments conducted by the Tversky and Kahneman indicated that individuals consistently violated these axioms when making decisions under risk.

Kahneman and Tversky developed an alternative approach to predict behavior under risk, which they believed addressed some of the violations observed in the rational choice model. They named it *prospect theory* since they viewed the decision making process under risk as a choice between prospects and gambles.[84]

Prospect theory is a model of human decision-making under risk suggesting that people overvalue losses relative to gains. When operating in a loss domain, resulting in the need to make choices between negative prospects, individuals are risk seeking even when their expected utility is negative and risk averse when making choices in a gains domain, choosing between positive prospects.[85]

Kahneman and Tversky observed that the *certainty effect* contributes to the violation of expected utility axioms. Thus, outcomes, which are obtained with

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[83] Rose McDermott, Risk Taking in International Politics: Prospect Theory in American Foreign Policy (Ann Arbor: University of Michigan Press, 1998), 4-5.
[84] Daniel Kahneman and Amos Tversky, "Prospect Theory: An Analysis of Decision Under Risk," Econometrica 47 no. 2 (March 1979): 263.
[85] Ibid., 268.

certainty, are overweighed relative to outcome, which are uncertain <u>regardless of their</u> <u>expected utility.</u> According to expected utility theory, rational actors seek to maximize their utility and thus would choose the option that best achieves that result. However, the study of prospects indicated that individuals consistently chose a *sure* gain over a *larger* one.[86] Similarly, in a negative domain, individuals consistently preferred a larger *probable* loss to a *certain* one, albeit smaller. They concluded that "certainty increases the aversiveness of loss as well as the desirability of gains"[87] resulting in subjects being risk seeking when operating in a loss domain and risk averse when operating in a gains domain.

Tversky and Kahneman distinguish between two phases in the choice process. *The editing phase*, in which the actor identifies the reference point, the available options and the possible outcomes of those options – the value and probability of each option; and the *evaluation phase* in which the actor combines the values of possible outcomes with their weighted probabilities and then maximizes over the product. Both processes determine the attitudes toward risk and the combination usually results in risk aversion for gains and risk acceptance for losses.[88]

Kahneman and Tversky represented their findings in a value curve that is steeper for losses than it is for gains. The S shaped value curve suggests that the utility people experience as a result of gains is disproportionate to the suffering they experience from losses. Thus, "the aggravation that one experiences in losing a sum

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[86] Ibid.

[87] Ibid.

[88] Most of the research conducted in applying prospect theory to international relations focuses on the editing phase and rather neglects that evaluation phase since it is difficult to empirically measure the weight and probability and numerically present those probabilities in cases examined by the research relating to political science and international relations. See Taliaferro.

of money appears to be greater than the pleasure associated with gaining the same amount."[89]

Figure 2.1: Hypothetical Value Function
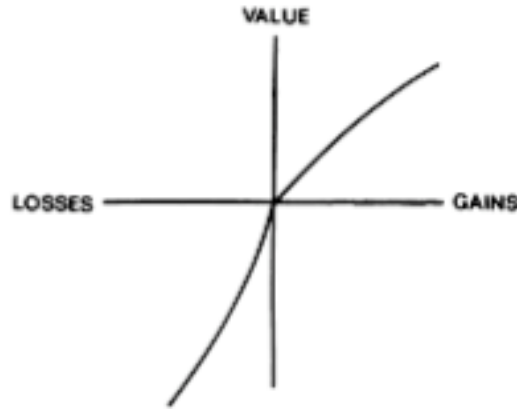
The ***Weighing Function*** is complicated by the value. Unlike expected utility theory, which assesses net assets, the researchers found that people generally perceive outcomes not in final states of net-wealth but rather in gains and losses ***relative to a reference point.[90]*** The gains and losses are defined relative to some reference point, which usually corresponds to the current status quo – this is also known as the ***status quo bias***. However the reference point can be affected by "the formulation of the offered prospects and by the expectations of the decision maker."[91] If the decision maker expects to gain but breaks even (no gains but no loses either) this nonetheless can be perceived as a loss because of the expectation to gain. In the same vein, if the decision maker expects to lose but breaks even, this can be perceived as a gain. Therefore, prospect theory suggests that decision-making under risk is not divorced of formulation or presentation of options as expected utility theory would have us

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[89] Ibid., 279.
[90] Ibid., 273.
[91] Ibid., 274.

believe.

Therefore, people tend to be more sensitive to *changes* in assets rather than to net asset levels – to gains and losses relative to the reference point, and thus the *reference dependence* is key to the analytical assumptions of this theory.[92] People react to changes in wealth or welfare not to final status. Decision makers evaluate changes based on perception and judgments and react to changes rather than to the evaluation of absolute terms.[93] In this regard, prospect theory offers an alternative approach to preferences than rational choice theory, which assumes that preferences are non-changing. Rose McDermott notes:

> In most rational choice models, preferences are assumed to remain constant, fixed and given. Estimates of probability might change, other factors might influence the choices that are available to certain decision-makers, but preferences themselves are assumed not to shift. This is not the case in prospect theory, where a decision maker's risk propensity is expected to shift in response to changes in the environment. In particular, as the domain shifts from one of the gains to one of the losses, prospect theory would predict that individual risk propensity would become more risk-taking.[94]

The reference point is critical in this regard. The reference point is the "past and present context of experience"[95]. Changes or differences are perceived in relation to this reference point. A state of wealth X can be perceived as poverty for one and great riches for the other, depending on their current state. The same can apply to legal status. In democracies, where citizens develop a political culture of freedoms and liberties, the limitation of those may be perceived as losses whereas in countries with authoritarian or totalitarian regimes, in which there is a heavy involvement of

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[92] Amos Tversky and Daniel Kahneman, "Loss Aversion in Riskless Choice: A Reference-Dependent Model", The Quarterly Journal of Economics, Vol. 106, No. 4 (Nov. 1991): 1039.
[93] Tversky and Kahneman, "Prospect Theory," 277.
[94] Rose McDermott, "Prospect Theory in Political Science: Gains and Losses From the First Decade," Political Psychology, 25 no 2 (2004): 292.
[95] Ibid.

government in individuals' lives, such limitations are accepted as the norm. Furthermore, the reference point can relate to an asset position that one *had expected* to attain, not just to actual changes[96] and as stated, expectations can play a role in the definition of one's losses or gains. .

The reference dependence is also significant because people tend to overvalue losses more than they value gains. That is, they hate to lose more than they like to win. This is known as *loss aversion.*[97] The asymmetry between gains and losses affects *risk orientation*[98] because people tend to be risk seeking when they operate in a domain of losses and risk averse when they operate in a domain of gains.

As a result of the asymmetry between losses and gains the identification of the reference point is critical. A change in the reference point can result in a change in preferences[99] (reference reversal) even if the values and probabilities remain the same. The identification of the reference point is know as *framing*, and changes in preferences and choice as a result of change in the frame is known as the **"*framing effect*".**[100] When options are framed in losses – people tend to prefer the riskier option and when the options are framed as gains they tend to be more risk averse in their selections even if the probabilities are equal. Tversky and Kahneman use several examples in which the subjects where given a scenario which presented a problem with the same probabilities but were framed differently, one in losses and one in gains – these experiments demonstrate clearly how people make their selection of behaviors

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[96] Ibid., 286.
[97] Kahneman and Tversky, "Prospect Theory", 279; Tversky and Kahneman, "Loss Aversion", 1044.
[98] Levy , handbook of war studies II, 195.
[99] Tversky and Kahneman, "Prospect Theory", 280.
[100] Levy, handbook on war studies II, 195.

based on the framing of the options.[101]

In the first experiment subjects were asked to imagine they were faced with an epidemic, which was expected to kill 600 people. They were asked to choose between two policy options. The subjects were split into two groups. The first group was presented with the following options: policy A would result in saving 200 people. Policy B would result in one-third chance that 600 people would be saved and two-third chance that no one would be saved. 72% chose option one. The second group was presented with the following options: Policy A would result in 400 people killed while option B had a one-third chance that no would die and two-third chance that 600 people would dies. 78% chose option B.[102] Despite the exact same "net" worth of both options, the way in which options were framed affected the choices people made. In another example, physicians were asked to choose between treating lung cancer with radiation or with surgery. In this scenario they were told that surgery had 90% rate of immediate survival and 34% rate of five-year survival. In the first experiment doctors were told that all patients survived radiation and that 22%remained alive after five years. In the second experiment, doctors were told that 10% die during surgery and 66% die by the end of 5 years. With radiation no one dies during the treatment but 78% dies within five years. Here again there is no difference in the likelihood of the options but rather they differ in the way they are presented to the subjects. In the first option which is framed in a gains "survival" domain, 18%

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[101] Tversky and Kahneman, "Prospect Theory", 280.

[102] Amos Tversky and Daniel Kahneman, "The Framing of Decisions and the Psychology of Choices," Science 211 (1981): 455.

chose radiation while in the second loss "death" option, 49% chose radiation.[103] These examples demonstrate the affect framing of options has on the actual choices made despite the exact same net worth of both options.

In sum, prospect theory exemplified the systematic violations of the expected utility principle in individual decision-making and thus offers an alternative theory. In summarizing the principle of prospect theory, Jack Levy notes that:

> Experimental evidence suggests that people tend to evaluate choices with respect to a reference point, overweight losses relative to comparable gains, engage in risk-averse behavior in choices among gains but risk-acceptant behavior in choices among losses, and respond to probabilities in a nonlinear manner.[104]

2.1. Critique of the Theory and Methodological Challenges

2.1.1. Measuring Loss Aversion, Probability and Risk in the Field

Prospect theory found its vast application in political science in the field of international relations, specifically within international security studies.[105] Surprisingly, few economists have shown interests in the theory, despite its origins in the field of psychological economics.[106] Robert Jervis was one of the first to use prospect theory and it is not surprising that his students from the Columbia university school of thought have been the leading scholars in this field.[107]

Some of the methodological problems associated with prospect theory revolve

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[103] Rose McDermott, Risk Taking in International Relations, 22.

[104] Jack S. Levy, "Prospect Theory, Rational Choice, and International Relations", International Studies Quarterly (1997) 41, 87-112, 87.

[105] Jonathan Mercer, "Prospect Theory and Political Science," Annual Review of Political Science, 8 (2005): 2.

[106] Ibid.

[107] See Rose McDermott, Risk Taking in International Politics; Rose McDermott, "Prospect Theory in International Relations: The Iranian Hostage Rescue Mission," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara Farnham (Ann Arbor: University of Michigan Press, 1994), 73-100; Barbara Farnham, "Roosevelt and the Munich Crisis: Insights from Prospect Theory," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara Farnham (Ann Arbor: University of Michigan Press, 1994), 41-72.

around its application to group behavior and international relations. Critics argue that prospect theory suffers from internal validity problems, that is, can we be sure that the observed behaviors in laboratory experiments derive from the hypotheses of prospect theory rather than from other factors? The internal validity question (falsification) arises in every tested theory and thus is not unique to prospect theory. The second and more challenging problem is the external validity problem, that is, can we generalize the empirical findings to real world behavior? Since the theory is based on experiments run in a laboratory, in which subject are provided with scenarios framed in terms of losses and gains, with the status quo provided as the reference point, it is difficult to apply those findings to real life situation because "choices between gambles in the lab are different from studying complex political decisions in the field."[108] Real world scenarios, especially in international relations, rarely present themselves in a clear form. Often it is difficult to decipher between options and in some cases the reference point may not represent the status quo. Moreover, the empirical experiments ignore the issue of salience – often quantitative indicators cannot measure actors' assessment of values, opinions, beliefs, etc, making the assessment process difficult to measure. Other problems relate to the danger of the researcher aggregating "objective" values to certain outcomes that may not correlate to the value or importance the actor associates with that outcome. Thus, what may be perceived as a "loss" by the researcher may not be perceived as such by the actor. In the same vein, Taliaferro recognizes another challenge in the application of prospect theory in political science:

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[108] Jonathan Mercer, 3.

> Another problem involves the tendency of international relations and comparative politics scholars to aggregate the costs and benefits associated with different policy arenas into a single domain of gains or losses. Decision-makers may not perceive gains or losses in one dimension (for example, domestic politics) as determining values in another dimension (for example, foreign policy).[109]

In examining the paradigm for great power intervention in the periphery, Taliaferro assumes that leaders evaluate outcomes relative to a single expectation level associated with a only the international realm of policy. Similarly, this study assumes that the subjects (Palestinian Israelis) evaluate the outcomes and risk propensity within the internal system (which includes the policy associated with the occupied territories but does not relate to the international system or other international actors).

2.1.2. Internal Validity

As previously mentioned, the application of prospect theory to "real life" scenarios is not without its challenges. Sounds theories should be testable and therefore falsifiable. Theories that provide predictions do not meet the criteria of falsifiability.[110] The internal validity of falsification is not unique to prospect theory. Many theories commonly used in political science and international relations (most notably rational choice) suffer from the problem regarding the ability to associate observed behaviors in laboratory experiments to hypotheses of prospect theory rather than from other factors. Like any social science theory, prospect theory presents a simplified relationship and cannot provide for all the possible variables, which may or may not affect risk-taking behavior. It is not a theory of international relations and as

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[109] Taliaferro, 193.

[110] Gary King, Robert Keohane and Sidney Verba, Designing Social Inquiry: Scientific Inference in Qualitative Research, (Princeton, NJ: Princeton University Press, 1994), 100-105; Steven Van Evera, Guide to methods for Students of Political Science, (Ithaca, NY: Cornell University Press), 20.

such cannot stand on its own in social research. Instead, as suggested in this study, its concepts are embedded into specific theories on political violence, discussed here below.[111]

Moreover, critics argue that prospect theory is predictive in nature; it predicts behavior rather than examines it. Predictive and normative theories are not accepted with validity as the basis for doctoral research. Rational choice theory is nothing if not normative. It tells us what we ought to do in order to achieve our objectives of maximizing the utility of our actions. The normative nature of rational choice theory has not prevented its extensive use by political scientists is describing political and social observations in the field, or invalidated it empirical findings. In contrast, evidence from increasing studies discussed in the following sections suggests that prospect theory is both is descriptive and predictive, it provides for a model on *how* most individuals make decisions[112] and it effectively describes organizational and group decision-making processes.[113]

The objective of this study is not in expanding the existing body of prospect theory literature, nor is it to develop the theory further. Rather this study adopts a limited use of the theory to explain possible outcome of legal discrimination of minorities. The objective is not to limit the possibilities but rather to expand on them. Thus, while prospect theory hypothesis are utilized, the use is not exclusive. The study recognizes the limitation of both the empirical sample used in this study to

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[111] Jack Levy, "Prospect Theory, Rational Choice and International Relations," International Studies Quarterly 41(1997): 106-107.

[112] Taliaferro, 185.

[113] Howard Garland, "Throwing Good Money After Bad: The Effect of Sunk Costs on the Decision to Escalate Commitment to an Ongoing Project," Journal of Applied Psychology, 75 (1990): 728-731; William Qualls, "Organizational Climate and Decision Framing: An Integrated Approach to Analyzing Industrial Buying Decisions," Journal of Marketing Research 26 (1989): 179-192.

examine the hypotheses of prospect theory in this case study, and the use of prospect theory itself. The objective is not to exclusively associate the decision making process of minorities subject to systemic discrimination with prospect theory hypotheses, but rather to explore a myriad of theoretical frameworks (including frustration-aggression theory and relative deprivation, discussed in the following sections) combined together to paint a picture of the ramification of that discrimination regarding the minority's decision to support political violence.

2.1.3. <u>External Validity</u>

Jack Levy, one of the leading authors on prospect theory and international relations, noted that the theory is a one of individual choice, it does not provide for collective action or group decision-making and thus falls short of explaining group behavior, state-to-state interaction or group-state interaction, making it inapplicable to international relations.[114] However, the same criticism can be levied against rational choice theory, which also explains individual, rather than group or state behavior. Nonetheless, rational choice has become one of the dominating paradigms of international relations over the past two decades in prescribing, describing and predicting individual, group and state behavior.

The second and more challenging problem is the external validity problem, that is, can we generalize the empirical findings to real world behavior, specifically to group decision-making process.

Jack Levy summarizes the analytical challenges in the application of prospect theory to international relations. First, he argues, prospect theory is based on findings,

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[114] Ibid., 88.

which emerged from testing in highly structured environments, in which the subjects are given a choice between outcomes and a lottery, which involves two or more possible outcomes. The expected values of the prospect are known and easily measurable in a numerical scale. Levy explains:

> [T]he experimental designs are such that expected value utility theory and prospect theory give different predictions as to likely choices. This facilitates a test of the hypothesis that the combination of the value function and probability weighting function lead individuals to prefer a prospect in spite of its lower expected value than the alternative. Moreover, subjects are generally given a one time choice, and outcomes are not affected by choices made by an adversary. The framing of the choice problem is usually inherent in the problem presented by the experimenter, and when framing itself is a variable it is usually clear how the subject frames an outcome and why he does so in that manner.
>
> Few of these conditions are satisfied in the highly unstructured choice problems which foreign policy decision-makers typically face. These choices rarely involve one riskless and one risky option but rather two risky options, and which is more risky is often difficult to define conceptually or measure empirically.[115]

One's choice is not solely determined by one's preferences but rather by the choices of others. Moreover, "current choices may have future consequences which are themselves risky or uncertain and which need to be incorporated into one's current risk calculus."[116] This is particularly true in the field of political science, which is so concerned with the distribution of wealth, power, influence, reputation and domination.

As a result of the difficulty both to determine the value of outcomes as well as their probability, it is hard to rule out alternative explanation why one prospect is chosen over another, and the possibility that they choice does not relate to framing,

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[115] Levy (1994), 129.
[116] Ibid.

loss aversion or overweighting of certain outcomes.[117]

The objective of this study is not in explaining hypotheses or variables based on methodology grounded in nomothetic explanations. The following study suggests a qualitative methodology, employing a case-study research design. The dissertation is a single case study focused on the structure of the Israeli legal and political systems and their affect on the minority rights of Palestinian Israelis. My analysis is idiographic, rather than attempting to make statistical generalization concerning the affects of violent conflicts on the rights of minority populations, the concern of the following dissertation is in comprehending the rich complex factors that define the case at hand. The social context of action and interpretation, along with the emphasis on historical, ideological and societal explanations, leads much of the research presented herein, thus requiring a depth of thick description of the case at hand. "In this respect, social and political theorizing is interpretive, but also structural. Hence, it cannot be reduced to the ideographic interpretation; it retains a strong quasi-casual explanatory interest, but one consistent with the nature of social reality."[118]

The basis for the qualitative analysis is the determination and representation of meaning. Nothing about qualitative research necessarily precludes the use of quantitative representations on nonquantitative formal methods.[119]

The use of empirical representation employing prospect theory is combined with the historical roots of the relationship between the state and its minority

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[117] Ibid.

[118] Raymond A. Morrow, *Critical Theory and Methodology* (London, UK: Sage Publication, 1994), 211.

[119] David Braybrooke, *The Philosophy of Social Science* (Englewood Cliffs, NJ: Prentice-Hall Press, 1987), 60-66.

population, the legal structures of its institutions, the affect of the Israeli-Palestinian conflict on this relationship, the ideology of Zionism within the Jewish democracy and the concept of security.

Thus, the issue of the external validity is overcome by the limitation of the empirical representation. Prospect theory hypothesis are not tested empirically, but rather discussed to illuminate the reader on the possible outcomes of policy. Combined with other more idiographic context, the issue of generalizabilty is mitigated.

2.1.4. <u>Lack of Framing Theory</u>

Prospect theory suffers from a lack of theory on framing, since it provides no illumination on how actors locate themselves in a domain. The decision making process depends on the domain in which one is operating. Framing influences that determination and thus is crucial for prospect theory. The lack of theory on framing is no different however, than the lack of theory on the origins of preferences in rational choice theory,[120] which has been used extensively in the field of political science and international relations. Moreover, studies conducted utilizing prospect theory in the field of international relations have yielded similar propositions to those described in the Tversky Kahneman model which indicates that actors are indeed more risk accepting for losses and risk averse for gains. These studies will be discussed herein. In summarizing the contribution of prospect theory in the field of political science, Robert Jervis notes that "the psychological world does not appear to be symmetrical,

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[120] Rose McDermott, "Prospect Theory in Political Science: Gains and Losses From the First Decade," Political Psychology, 25 no. 2 (2004): 304.

and the implications for human and national behavior are many and important."[121]

These criticisms notwithstanding, the ability of prospect theory to provide insight into human decision-making process under risk is found to be most applicable to the case at hand.

2.2. <u>Application of Theory to International Relations and Political Science</u>

Despite the challenges discussed herein above, political scientists have shown interest in the application of prospect theory, particularly in international relations. Prospect theory's prescriptions on loss aversion, risk seeking propensities status quo bias and framing effects have led several scholars to conclude that it has potential in "explaining a wide range of international behavior."[122] The political context can be incorporated into prospect theory through the assessment of the domain. When political decision makers assess their domain (whether they are operating in a loss or gains domain) they refer to the political context, which includes "the history of the event, the actors, and the trajectory."[123] This has led researcher to apply prospect theory in explaining the way states and leaders continue their commitments to policy that offer little to no chance of success. For example, scholars have used prospect theory to explain President Carter's decision to order the Iranian hostage rescue mission,[124] the behavior of President Roosevelt and the Munich Crisis,[125] the US

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[121] Robert Jervis, "Political Implication of Loss Aversion," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara Farnham (Ann Arbor: University of Michigan Press, 1994), 39.

[122] Jack S. Levy, "Prospect and International Relations: Theoretical Applications and Analytical Problems," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara Farnham (Ann Arbor: University of Michigan Press, 1994), 119- 146.

[123] Rose McDermott, "Prospect Theory in Political Science: Gains and Losses From The First Decade," 300.

[124] Rose McDermott, "Prospect Theory in International Relations: The Iranian Hostage Rescue Mission," ," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara

decision to launch Operation 'Desert Storm'[126], the Japanese policy of escalation during WWII despite minimal chances of success,[127] and a number of other decisions made by President Nixon and President Carter have been examined.[128]

Prospect theory has also been applied to explain interaction between states. Audrey McInerney applied prospect theory in explaining the Soviet policy toward Syria,[129] Louise Richardson examined the interaction between the great powers during the Suez Crisis in 1956,[130] arguing that the British had established control over the Suez Canal as their reference point and thus perceived Nasser's nationalization of the canal as unacceptable loss leading to the assumption of risk behavior. Taliaferro has used prospect theory to examine the intervention of Great Powers in the periphery.[131] Daniel Masters' work is most relevant to this study. Masters applied prospect theory to argue that the way in which people perceive their reference point has an effect on their support or non-support for the use of political violence. Masters examined the support for rebellion in the Occupied Territories among different Palestinian groups and in Northern Ireland. He concluded that the individual

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Farnham (Ann Arbor: University of Michigan Press, 1994), 73-100.

[125] Barbara Farnham, "Roosevelt and the Munich Crisis: Insights from Prospect Theory," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara Farnham (Ann Arbor: University of Michigan Press, 1994), 41-72.

[126] Rose McDermott and Jacek Kugler, "Comparing Rational Choice and Prospect Theory Analysis: The US Decision to Launch Operation 'Desert Storm', January 1991," The Journal of Strategic Studies, 24, no. 3 (September 2001): 49-85.

[127] Jeffrey W. Taliaferro, "Quagmires in the periphery: Foreign Wars and Escalation Commitment in International Conflict," Security Studies 7, no. 3 (Spring 1998).

[128] Rose McDermott, Risk Taking in International Politics.

[129] Audrey McInerney, "Prospect Theory and the Soviet Policy Towards Syria, 1966-1967," in Avoiding Losses/Taking Risks: Prospect Theory and International Conflict, ed. Barbara Farnham (Ann Arbor: University of Michigan Press, 1994), 101-118.

[130] Louise Richerdson, "Avoiding and Incurring Losses: Decision-Making in the Suez Crisis," in Choosing to Cooperate: How States Avoid Loss, ed. Janice Gross Stein and Louis W. Pauley (Baltimore, MD: John Hopkins University Press, 1993).

[131] Jeffery Taliaferro, "Power Politics and the Balance of Power: Hypotheses on Great Power Intervention in the Periphery," Political Psychology 35, no. 2 (2004): 177-211.

definition of a reference point relates to their support or non-support for violent options to recover loses. Moreover, Masters found (in the cases he examined) that the territorial issues are "an important factor in determining individual willingness to accept rebellion."[132] Despite limiting the research to the individual level, the study presents an interesting application of prospect theory. A similar application will be used in this dissertation using the Palestinian minority in Israel as the subject of examination.

The problem with these studies is that they limit their applicability, for the most part, to individual decision makers, and do not expand the literature beyond the individual level. However Prospect theory is well suited for analyzing group behavior as well.

2.3. <u>Application of Theory to Group Behavior</u>

One of the most significant criticisms levied against prospect theory is its inapplicability to group behavior or collective action. However, studies conducted examining the applicability of prospect theory to group behavior indicates that in fact, groups often exemplify similar preferences to risky behavior as do individuals.

Maria Fanis applied prospect theory to explain the collective action in Chile between 1973-1975. She concluded that despite the assumption of rational choice that actors are better off as free riders than as participants in the production of collective good (i.e. the prisoner's dilemma) coalitions of women's rights activists and civil rights activists have demonstrated successful coalition building. She argues: "collective action successes are not deviation from rational decision-making. They

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[132] Daniel Masters, "Support and Nonsupport for Nationalist Rebellion: A Prospect Theory Approach," Political Psychology, 25, no. 5 (2004): 722.

are simply outcomes that expected utility theory cannot capture because of its assumptions about how individuals choose."[133] Fanis demonstrates how prospect theory, the other hand, is most suitable to explain the collective action when groups are operating under risk. Moreover, studies conducted in the field of organizational management reveal similar patterns of decision making to those associated with prospect theory. "Loss aversion, escalation of commitment [to sunk costs] and risk acceptance to avoid loss – occur with greater sovereignty in decision-making groups than among individuals."[134] Bazerman, conducting a study using 183 subjects, found that both individuals and groups continued to escalate their commitment and resources to a failing venture despite recognizing the risk involved.[135]

Other researchers found that individual subjects operating within a group consistently preferred riskier choices than those operating individually, suggesting that the group setting aggravates risk propensities, not mitigate them.[136] Moreover, when testing the faming effect in group decision-making, Rutledge found that management groups exhibited preference for a failing course of action when that option was presented in negative terms than when presented in positive ones.[137] It is

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[133] Maria Fanis, "Collective Action Meets Prospect Theory: An Application to Coalition Building in Chile, 1973-75," Political Psychology 25, no. 3 (2004): 364.

[134] Jeffery Taliaferro, 189. For management studies see Glen Whyte, "Escalating commitment in individual and group decision-making: A Prospect Theory Approach, Organizational Behavior and Human Decision Processes, 54 no 3 (1993): 430-455; Glen Whyte and Ariel Levi, "Origins and Function of the Reference Point in Risky Group Decision-Making: The Case of the Cuban Missile Crisis, Journal of Behavioral Decision-Making, 7 (1994): 243-260; Ariel Whyte and Glen Levi, "A Cross-Cultural Exploration of the Reference Dependence of Crucial Group Decision Under Risk: Japan's 1941 Decision for War," The Journal of Conflict Resolution, 41 no. 6 (1997): 792-813.

[135] Max Bazerman, "Escalating Commitment in Individual and Group Decision-Making," Organizational Behavior and Human Performance, 33 (1984): 141-152.

[136] Tatsuya Kameda and James Davis, "The Function of the Reference Point in Individual and Group Risk Taking," Organizational Behavior and Human Decision Processes, 46 (1990): 55-76.

[137] Robert Rutledge, "Escalation of Commitment in Groups and the effects of Information Framing," Journal of Applied Business Research, 11 (1995): 17-23.

important to note that studies show that the escalation towards risk is observed more within small groups. As the size of the groups grows there is less connection between group members, resulting in a reduced tendency to internalize the majority opinion.[138]

In sum, these studies indicate that groups demonstrate overall similar patterns of behavior when confronted with decision making under risk to those of individuals. Both present an overall preference for risk seeking behavior when facing losses and risk averse behavior when faced with expected gains. Groups, like individual, continue their commitment to a failed course of action and escalate their commitment despite the expected losses. The objective of this study is not in explaining this intragroup variation but rather the literature review herein presents the assertion that groups may present similar propensities proposed by prospect theory and thus may be utilized in this study.

2.4. <u>Application of Theory to Study</u>

2.4.1. <u>Defining the Reference Point</u>

As previously mentioned, reference dependence is the key assumption of prospect theory. When two actors are exposed to a similar situation, their reactions to it may be different because they have different points of reference.[139]

There are very few hypotheses on how actors actually identify and define their reference point and practically "no methodology for empirically measuring where those reference points are and when and how they change."[140]

Actors usually define the reference point as the status quo (although this is not

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[138] Daniel Masters, 707.

[139] Amos Tversky and Daniel Kahneman, The Framing of decision and the Psychology of Choice, Science 211 (1981), 453-458.

[140] Levy, pp. 217.

always the case). Studies conducted by Samuelson and Zeckhauser[141] on consumer and investment behavior reveal that "people adhere to status quo choices more frequently than a standard expected-utility model predicts."[142] They labeled this tendency as *status quo bias.* The reference point is also affected by aspirations, social norms, and social comparisons, which may be distinct from the status quo and can influence the framing of the reference point. For example, as Palestinian Israelis become more integrated into Israeli society they may be more influenced by the comparison with their Jewish counterparts than any improvement in their status compared to earlier periods. The promise of a new era, such as the one presented to this community during the Oslo years, may have more of an affect on the framing of the reference point than the overall political gains made during this period, if those aspirations have not been fulfilled to the level of expectation.

> Framing around a reference point other than the status quo is particularly likely in dynamic situations in which there is no stable status quo to serve as an obvious focal point. In a situation that involves a sequence of successive choices rather than s single choice, for example, it is not clear whether an actor will define her reference point in terms of her asset position at the beginning of the series of choices or with respect to her current assert position after a series of actions, or if this is affected by whether the outcome of each decision involve gains or losses.[143]

It will be asserted that the Palestinian minority in Israel has gone through at least three periods, which define their legal status in the Israeli state. Thus, the reference point cannot correlate to any one specific status quo since their status has

[141] William Samuelson and Richard Zechhauser, "Status Quo Bias in Decision Making," Journal of Risk and Uncertainty, 1 (1988): 7-59.

[142] Levy (1994), 120. See also Samuelson and Zechhaser, Ibid; Raymond Hartman, Doane Michael Doane and Chi-Keung Woo, "Consumer Rationality and the Status Quo," Quarterly Journal of Economics, 106 (1991): 141-162; Daniel Kahneman, Jack Knetsch and Richard Thaler, "The Endowment Effect, Loss Aversion, and Status Quo Bias," Journal of Economic Perspective, 5 (1991): 193-206. The marketing failure of Coca Cola in 1985, in attempting to introduce the "New" Coca Cola is associated with this status quo bias.

[143] Levy, handbook of war studies II, 197.

not been static but rather a situation, which in Levy's words; "involves a sequence of successive choices."

Recall the S shaped value curve representing the results of Tversky and Kahneman. If actors evaluate their reference point above the status quo, they will perceive the status quo as a loss and therefore will be more risk accepting even when operating under the status quo. Therefore, while in many cases there is a status quo bias, this is not always the case. The reference point bias may be destabilizing when actors define their reference point above the status quo.[144] However, as Levy concluded "whenever we find perceptions of certain losses, whether defined in terms of status quo or in terms of an alternative aspiration point, prospect theory predicts particularly risky behavior (that is, greater than predicted by expected value calculus) in order to avoid those losses."[145]

Tversky and Kahneman's studies very clearly demonstrate that actors renormalize their reference point more quickly after gains than they do after losses and they often operate under the pervious reference point which is no longer relevant to the situation after a loss has occurred. This is known as the *endowment effect*. Because of the endowment effect individuals do not adjust to their new situation following a loss as quickly as they adjust to a new domain of gains. As a result, they still frame their situation around the old reference point. This results in a perception "of any chance of "improving" their position to point that still falls short of the original reference point as a loss, and they will engage in risk seeking behavior to

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[144] Levy, 203.
[145] Levy (1994), 121,

eliminate those losses and return to the reference point". [146]

As a result of this dynamic, it can be expected that minority groups, experiencing an averse change in their legal status will not adjust to that change and thus will be more willing to participate in risk seeking actions such as rebellion and political violence in order to restore their status to the earlier reference point, rather than adjusting their reference point to the new situation. Alternatively, if the minority is successful at readjusting to their new status, this may explain the lack of use of violence to improve their legal status.

If countries A and B both have an ethnic minority population with expectations of self-determination, autonomy of some form, or a demand for recognition of their collective rights, this expectation forms the reference point for rebellious decisions. In country A, the government offers local autonomy to the group. Autonomy is less desirable than independence, but it is more desirable than subjugation to the majority group. In this situation, status quo conditions approximate the reference point of the minority group, reinforcing the status quo and enhancing stability in society. The decision to rebel is perceived as a choice between competing gains: one certain, the other risky. In this situation, people are inclined toward risk averse behavior and would likely reject rebellion. This does not imply that rebellious action will not happen, rather, if it does occur, it is not likely to gather widespread support.

In country B, the minority group is subjugated to the majority population. There is little effort by the government to address self-determination. In this case,

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[146] Levy, 198.

status quo conditions fall below the reference point of self-determination (a losses frame). Here the status quo conditions are not congruent with the reference point, thereby destabilizing the status quo as it reinforces movement away from it. A decision to rebel in this situation is perceived as a choice between competing losses: one certain, the other risky. In such a situation, people are risk-seeking and are more inclined to rebellious action.

These examples demonstrate a basic way in which prospect theory can explain the occurrence of rebellious action involving political violence. However, this application is very simplistic. It leaves the explanation vulnerable to criticism such as most individuals act not to better society as a whole but rather to better their welfare. Prospect theory does not assume that individuals will accept rebellious action in order to better society as a whole. Rather, people are more likely to accept risks they would otherwise reject when they come to see losses as personally meaningful, when personal losses are tied to group conditions, and when rebellious action is framed as an option to escape losses.

It is argued that the policies directed against the Palestinian minority since the eruption of al-Aqsa intifada in 2000 have resulted in this population perceiving the legal and political system as de-legitimizing them, limiting their ability to demonstrate dissatisfaction with the government policies by legitimate means, and subsequently perceiving the increase in discrimination as a loss in legal status. The personal losses of the individual group members are tied to the discrimination of the minority as a whole. Under these conditions, the framing of political violence as an option to escape losses may result in the adoption of such measures to gain perceived

losses in legal status within the state.

Individual level experiences will not necessarily translate into organized rebellious action. Rebellious action is more likely to occur when experiences are concentrated among members of a solidarity group – that is, when individual experiences are linked to a pattern of group experiences. Such solidarity groups take many forms, but the key feature is that members perceive themselves as affiliates of a distinct community leading to the social construction of "we" and the emergence of group interests.[147] A threat to these interests provokes group responses, not individual ones.[148] The connection between group members tends to be stronger when it is based on nationality or ethnicity. If the cultural group experiences shared grievances about unequal treatment, this is likely to galvanize the community, thereby making mobilization easier.[149] In the case examined in this study, the Israeli state is constitutionally defined by it Jewish character, creating an immediate dynamic in which members of the majority perceive themselves as affiliates of a distinct community leading to the social construction of "we" (the Jews) and them (the non-Jews). As a consequence of this dynamic there is an emergence of a solidarity group among the non-Jews as they share in their inability to fully integrate into the Israeli polity defined by an religious-ethnic criteria which they do not share.

As previously discussed, studies in management and group decision-making processes reveal that the propositions of prospect theory are exacerbated by group

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[147] Hall J, "Ideas and the Social Science", in J Goldstein and Keohane (Eds.), Ideas and Foreign Policy: Beliefs, Institutions, and political change (Ithaca NY: Cornell University Press, 1993), 31-54.

[148] Charles Tilly, From mobilization to Revolution (Reading, MA: Addison-Wesley, 1978).

[149] Ted Gurr, "Minorities, Nationalities, and Ethnopolitical Conflict", in C.A. Crocker, F.O. Hampson and P.Aall eds., Managing Global Chaos: Sources of and Responses to International Conflict (Washington DC: U.S. Institute of Peace Press, 1996), 53-77.

dynamics. Prospect theory suggests that the perception of loss concentrated among group members increases the potential for risk escalation. However, this does not mean that rebellious choices will necessarily be defined or acted upon. In essence, when losses are concentrated among members of the solidarity group, we see the emergence of a "constituent community" that a leader or the elites can draw upon to organize for collective action. In the Arab Israeli case, a well defined ethnic minority which is subject to unequal treatment with a deterioration in its conditions compared to a reference point of Oslo years will be more easily mobilized to rebellious action either by a more radical element of its leadership, such as the Islamic Movement in Israel.

Despite the notion that ethnic or cultural bonds between individuals result in stronger connections within the group, these connections may not be as strong as some connections between members of a smaller groups such as a political association. Therefore, in some cases, the rebellious action may be limited to certain groups within the society but not experienced as a national movement.

2.5. <u>Theories on Internal Political Violence</u>

2.5.1. <u>Overview</u>

One of the objectives of this study is to provide an analytical examination of the implication of the rise in the legal discrimination of Palestinians in Israel, utilizing prospect theory framework. It is argued that the rise in the legal discrimination is viewed as a loss in status by the minority, making the use of political violence more likely. There is a wide range of definitions for political violence in literature and a review of this debate exceeds the scope of this dissertation. For the sake of theory

construction and testing, and drawing on the work of Edward Muller, I will assume that political violence is defined as "the destruction of property and confrontation between insurgents and internal security forces in which people are injured or killed."[150]

Contemporary qualitative literature regarding internal violence has largely focused on the works of Eckstein[151] and Greene[152] who structure the causes of internal conflicts in the frameworks of preconditions and accelerants. The preconditions are the systemic circumstances that precipitate groups becoming disenfranchised and create instability, which then allows for the accelerants to ignite the eruption of violence.

Ruth Beitler indicates in her analysis and comparison of the two Palestinian Intifadas[153] that the preconditions depend on the existence of certain variables such as "frustration caused by the social, economic, and political dislocations and the options available to achieve political goals."[154] Michael Hudson, developed three hypotheses as indicators of political violence:[155] The Environmental hypothesis suggests that political violence is likely to occur under conditions of middle level social modernization and fragmented political culture. The Institutionalization Hypothesis indicates that political violence is likely to occur when the differentiation and

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[150] Edward Muller and Erich Weede, "Theories of Rebellion," Rationality and Society, 6 no.1 (1994): 40.
[151] Harry Eckstein, "On Etiology of Internal War" in Anger, Violence and Politics, Ivo Feieraband (Prentice Hall, 1972) ch. 1.
[152] Thomas H. Greene, Comparative Revolutionary Movements (Prentice Hall, 1990) ch. 10 & 11.
[153] Ruth Margolis Beitler, The Path To Mass Rebellion: An Analysis of Two Intifadas, (Lanham, MD: Lexington Books, 2004).
[154] Ibid. xix.
[155] Michael Hudson, "Conditions of Political Violence and Instability: A Preliminary Test of Three Hypotheses", in Comparative Politics Series, eds. Harry Eckstein and Ted Gurr, No, 01-005, Vol. 1 (LA: CA, Sage Publication, 1970).

durability of political structures are low. Finally, Hudson argues, violence breeds violence and governmental instability – political violent crises are likely to give rise to further political violent crises. According to this hypothesis, high levels of political violence or sporadic violence will be followed by governmental instability in the absence of political institutionalization.

Two theoretical schools of thought have guided the contemporary empirical research regarding political violence. The first, <u>frustration-aggression model</u>, is guided by the assumptions that people who engage in rebellion and political violence are guided by anger resulting from frustration or relative deprivation. This is a reactive model, according to which the decision to resort to violence is motivated by a reaction to social and/or political conditions.[156] The second theoretical model views violence as active, calculated choices of action.[157] It assumes that rebellious action is motivated by rational calculus of expected gains.[158] The <u>expected utility model</u> employs rational calculus to explain participation of individuals in rebellious political action at the macro level of analysis.[159] The following sections examine these two bodies of literature.

2.5.2. <u>Relative Deprivation Theory (RDT)</u>

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[156] Diego Muro-Ruiz, "The Logic of Violence," *Politics* 22 no. 2 (2002): 109.

[157] Ibid., 113.

[158] Muller and Weede.

[159] Ibid. For comprehensive review of the literature on expected utility model for political violence see Edward Muller, Aggressive Political Participation, (Princeton: Princeton University Press, 1979); Edward Muller, Henry Dietz and Steven Finkel, "Discontent and the Expected Utility of Rebellion: The Case of Peru," American Political Science Review 85 (1991): 1261-92; Edward Muller and Karl-Dieter Opp, "Rational Choice and Rebellious Collective Action," American Political Science Review, 80 (1986): 425-451; Steven Finkel, Edward Muller and Karl-Dieter Opp, "Personal Influence, Collective Rationality, and Mass Political Action," American Political Science Review, 83 (1989): 885-903; Bert Klandermans, "Mobilization and Participation: Social-Psychological Expansion of Resource Mobilization Theory," American Sociological Review, 49 (1984): 583-600. Karl-Dieter Opp, The Rationality of Political Protest (Boulder, CO: Westview, 1989).

Psychologist Dr. John Dollard developed one of the first influential theoretical models using cognitive psychology to explain the causes for political violence in 1939. According to Dollard's model, political violence erupts when humans are frustrated with their attempts at achieving a political goal, severe frustration leads to anger and anger leads to aggressive behaviors.[160] The term "frustration" was more specifically defines as **'relative deprivation'** - the gap between what one has and what one expects.

> Actors' perception of discrepancy between their value expectations and their environment's apparent capabilities. Value expectations are the goods and conditions of life to which people believe they are justifiably entitled. The referents of value capabilities are to be found largely in the social and physical environment; they are the conditions that determine people's perceived chances of getting or keeping that values they legitimately expect to obtain.[161]

The deprivation produces frustration, which then turns into anger, resulting in aggressive behavior. "[D]iscontent arising from the perception of the relative deprivation is the basic, instigating condition for participants in collective violence."[162]

According to Gurr, RD produces discontent. That discontent is politicized, then instrumentalized by a mobilizing leadership in the form of political violence.[163]

RDT expanded to include political values and rights. While writing about the causes of political violence in Britain, T.A. Critchley argued that:

> Whenever in a civilized state a subnational section of the community has reason to feel, on racial, social, or religious grounds, that it is under-privileged or otherwise deprived of elementary political rights, its protest is likely to take the form of

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[160] John D. Dollard, Frustration and Aggression, (New Haven: Yale University Press, 1939).
[161] Ted Gurr, "Psychological Factors in Civil Violence," World Politics 20 no.2 (January 1968): 252-3. See also Ted Gurr, Why Men Rebel, (Princeton, NY: Princeton University Press, 1970).
[162] Ibid. Gurr (1970), 13.
[163] Ibid., 355.

direct action.[164]

Moreover, James Geschwender employed the notion of a reference group to define RDT. He argued that relative deprivation refers to the perception that one's group is deprived relative to another group in society.[165]

Using a similar theory relating political violence to social discontent, David Schwartz argued that political alienation motivated rebellious action. According to Schwartz, political alienation results from a conflict between one's own values and the values he or she perceives to be operating in the political system.[166] The "psychological conflict occurs when the values that guide the behavior of the regime are perceived by the citizens as violating their own individual values."[167] This can be easily understood in the Israeli context where Palestinians do not share the Jewish values of the state, and thus may easily feel a sense of alienation from the state. This alienation may be mobilized by the elites for political violence. While this is a quite simplistic observation, it is not without merit. Combined with other factors discusses herein below regarding the conditions for political violence and prospect theory, the gap between one's own values and the values of the regime may serve to provide for a fertile environment for the eruption of political violence.

RDT is not without its difficulties. It does not explain *how* the changes in expectation occur, nor does it relate levels of deprivation to political conflicts or to

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[164] T.A. Critchley, The Conquest of Violence (Constable Press: London, 1970) pp. 26.

[165] James Geschwender, "Social Structure and the Negro Revolt: An Examination of Some Hypotheses," Social Forces 43 (1964): 248-56.

[166] David Schwartz, "Political Alienation: The Psychology of Revolution's First Stage," in Ivo K. Feierabend and Rosalind L Feierabend, Anger, Violence and Politics (Englewood, NJ: Prentice Hall, 1972), 58-66.

[167] Ibid., 60.

changes in the distribution of political power.[168] Moreover empirical testing has shown that "frustration is neither necessary nor sufficient for individual aggression to occur, and that a variety of other factors must be present for frustration to follow an aggressive path."[169]

While empirical testing has since invalidated the predictive aspect of RDT, its insights regarding the conditions, which produce relative deprivation, are instructive for the case study. These conditions include: a sharp decline in social and economic development;[170] discrimination based on racial, ethnic, social, religious, characteristics; inequality in distribution of land and resources; and the imposition of restriction on political participation.[171] Furthermore, RDT is defined by the ***perceived*** discrepancy between expectations and capabilities and, as such, is most relevant for this study. As previously discussed, the ***expected*** value or the ***aspirations*** of actors affect their assessment of their domain (that is whether they are operating in a loss or gain domain ***relative*** to a reference point. RDT may also affect the determination of the reference point if it is not defined as the status quo. The expectation of actors may define that reference rather than the actual net assets. The perception of deprivation compared to that expectation might exacerbate the outcomes of prospect theory that is escalating the commitment to risky choices. Perceptions play a large role in the analysis presented in the following chapters regarding perception of threat (by the

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[168] Paul Wilkinson, Terrorism and the Liberal State (Halsted Press: NY, 1977) pp. 37.

[169] Mark Beissinger, "Violence", in Alexander Moytl ed., Encyclopedia of Nationalism, vol. 1 (San Diego: Academic Press), 856.

[170] James Davis, "Towards a Theory of Revolution," American Sociological Review, 25 (1962): 5-19. Davis argues that a relatively long period of economic growth produces expectations that need to be satisfied and that if a sharp decline in that growth suddenly occurs, the discrepancy between those high expectation and the new reality will motivate people to rebel.

[171] Gurr (1970), 86-91.

Jewish majority) and perception of injustice (by the Palestinian minority), making

RDT a useful tool to employ in this analysis.

2.5.3. <u>Expected Utility Theory</u>

The alternative approach to explaining the motivations for rebellion and

political violence is the expected utility theory according to which no matter how

frustrated people are by their relative deprivation (either in comparison to other

groups in the society or compared to their own expectation) they will not rebel unless

they perceive the likelihood of the eruption of rebellion to be high and the expected

benefits to exceed the expected costs.[172] Muller and Weede which have adopted this

approach argue that:

> This approach, which will be called *power contention* theory here,
> thus differs sharply from relative deprivation theory in predicting no
> direct effect of socioeconomic and political indicators of relative
> deprivation on the likelihood of rebellion. Power contention theory
> predicts that the likelihood of rebellion is a function solely of
> indicators of the expected utility of rebellious political behavior and
> that effects of relative deprivation will be conditional on expected
> utility.[173]

Through empirical analysis the authors conclude that the prediction of power

contention theory or expected utility theory is supported. However, as previously

demonstrated, when operating under risk, subjects tested systematically violated the

axioms of expected utility theory and chose action, which did not result in

maximizing their utility. In addition, when operating in a group setting, subjects

escalate their commitment to a course of action despite the sunk costs associated with

that action. When operating in a loss domain, people consistently prefer action

associated with high risk to a sure (but smaller) gain. The tendency of people to hate

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[172] Muller and Weede (1994), 41.
[173] Ibid. 42.

losing more than they enjoy winning leads them to violate the predictions of the expected utility theory. The latter is focused on outcomes from the actor's behavior while prospect theory offers insights into the decision making process itself. Since the objective of this study is not in prescribing normative assertions regarding empirical research into the predictability of the eruption of violence but rather a qualitative analysis into the factors that may contribute to the decision making process regarding the adoption of such violent action (by Palestinian Israelis), prospect theory, rather than expected utility theory, is more applicable in this case. In comparing between an expected utility model of decision making and prospect theory models to explain the US' decision to launch Operation 'Desert Storm' in 1991, Rose McDermott and Jacek Kugler concluded that:

> Prospect theory succeeds as an enlightening and challenging approach to international relations because it generates discussion about issues and topics that might go unnoticed otherwise, such as framing. It also provides a distinct perspective on the connection between previous success and current action – anticipating that leaders will be willing to take risks when they perceive action from a losing perspective and turn risk averse when success precedes their actions. …The prospect theory model adds value by posing novel questions, which can help to uncover a wide range of explanations and understandings of decisions and the forces that motivate them.[174]

Moreover, expected utility theory focuses on the outcome of the decisions individuals make in an effort to maximize their net assets. Thus, it lacks in relativity, a concept that has been demonstrated by relative deprivation theory and prospect theory to play a crucial role in the decision-making process.

In sum, while the literature often portrays the psychological models as competing with the expected utility of rational choice model, prospect theory

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[174] McDermott and Kugler, 80.

provides for a model which bridges the gap between the two existing models, producing a more nuanced and complex analysis that integrates both "an accurate psychological portrait of human cognition, including emotional responses, into a formal model of strategic interaction."[175]

2.5.4. <u>Prospect for Violence: Prospect Theory and the Conditions for Violence</u>

Paul Wilkenson concluded that there is no formulaic theory that can explain the perceptions and grievances that lead to political violence. However, Wilkenson concedes that we can identify the "most frequent contributory causes of internal political violence".[176] These causes include - but are not limited to - political, social and economic, security, religious and ethnic factors.

As previously discussed, the empirical applicability of RDT as a predictive model has largely been refuted in the literature while the findings of prospect theory reveal that the axioms of expected utility theory are often violated when making decisions under risk. The objective of this dissertation is to attempt to throw some additional light on the conditions for political turbulence from a different perspective than the psychological and political orientation of most current research on the subject. It is assumed that violence "can be considered as a rational, and often effective, way of pursuing extreme interests in the political arena."[177] However, rational choice theory, does not account for some of the outcomes of decision-making under risk, which changes the choices and preferences of actors. Moreover, the limited focus on the rational choices does not take into account other important

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[175] Ibid., 81.
[176] Wilkenson.
[177] Muro-Ruiz, 114.

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factors employed by the cognitive psychological theories discussed in this chapter, which may serve to shape the outcomes of the decision making process. Prospect theory, like rational choice, assumes that actors rationally calculate their decisions to use violence, but it provides a more nuanced examination of the factors motivating that decision, taking into account broader, more contextualizing factors. In this sense, it lies on the cusp of the reactive psychological models and the action oriented model of rational choice.

The critical examination of the structures, historical myths, common wisdoms and fears that guide both the legal and political systems in Israel are translated into propositions of prospect theory to suggest a different perspective in understanding the implications of these policies regarding the eruption of internal violence.

The study is not geared toward theory development or any empirical assertions. Rather, the objective is in qualitatively demonstrating the possible application of prospect theory to identify the conditions for violent action in this case study. It is argued that the way people define the reference point has an effect on how they perceive the option of adopting violent action and the definition of the reference point largely depends, as discussed herein, on the larger context of the structure of the system, the perception of threat and finally majority-minority relations within the state.

Prospect theory has an advantage over the theories discussed herein because it does not simply assume that poor social or economic conditions will result in rebellion and it examines how people make decisions and does not adopt a blanket assumption that people only wish to maximize the utility of their actions. Prospect

theory allows the researcher to effectively "construct an explanation for rebellious behavior that connects social conditions with individual decisions-making while accounting for the role of rebel organizations as mobilizing agent."[178]

In the application of prospect theory to identify the conditions for political violence the following must be taken into consideration:

First, there has to be a perception of the social conditions as different from the individual reference points (such as the adverse change in the legal status of Arab Israelis relative to the period in the 19902 in which the Oslo was taking place.)

The perceived losses must be widely shared among members of a community. As discussed herein above, individual perception of loss is not sufficient for the eruption of rebellious activity in the form of political violence. However, as previous studies suggest, group dynamic exacerbates the propositions of prospect theory, resulting in the tendency of groups to escalate the commitment to risky behavior more than individuals do, thereby increasing the likelihood of adopting risky behavior if the group perceives losses. Masters explains the group dynamic:

> Through group discussions, leaders can exert influence, magnifying risk-acceptance positions and exposing all group members to arguments favoring such positions – especially in conditions where the decision task is not clearly defined and outcomes are nontransparent. This combined with the desire by people to be perceived favorably when argumentation involves face-to-face discussion, creates a condition where members of the group internalize and reflect the majority position.[179]

If the Arab leadership is increasingly becoming more supportive of political

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[178] Masters, 708.

[179] Ibid., 707. For role of leadership in group framing see Paul Paese, Mary Bieser and Mark Tubbs, "Framing Effects and Shifts in Group Decision Making," Organizational Behavior and Human Decision Processes, 56 (1993): 149-165.

violence, as evident by the adoption of more violent rhetoric, it is reasonable to expect a rise in support for the use of political violence as a means for achieving political goals, within the minority group, particularly if they observe that their Palestinian brethren have achieved political concessions form the Israeli government through the use of violence.

The key element that transfers an increasingly risk-accepting population into one that mobilizes for collective rebellion is organization. Studies on rebellion have indicated that rebellion is most likely to occur in societies, which have an intermediate level of civil liberties and political rights so that groups have the ability to organize and mobilize but at the same time, limitations are presented to prevent effective or comprehensive participation.[180] As a result:

> [R]ational actors are likely to judge that the benefits of rebellion exceed the benefits of participation, that the costs of rebellion are not prohibitive, and that there is a reasonable chance of mobilizing sufficient resources to prevail in rebellious political action – if not by actually overthrowing the government, then by forcing it to make concessions.[181]

The development of the Arab leadership into a well organized, articulate leadership, able to mobile its population, and the limitations put on that leadership are discussed in later chapters. The Orr Commission, established to investigate the riots

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[180] Extensive empirical support for the inverted U-curve may be found. Studies have shown that non-repressive and highly repressive regime show low rate of political violence, while political violence is most common in intermediate regime. See Terry Boswell and William Dixon, "Dependency and Rebellion," American Sociological Review, 55 (1990): 540-549; Edward Muller and Mitchell Seligson, "Inequality and Insurgency," American Political Science Review, 81 (1987): 425-451; Edward Muller and Erich Weede, "Cross-nation Variation in Political Violence: A Rational Action Approach," Journal of Conflict Resolution, 34 (1990): 624-651; Erich Weede, "Some New Evidence on Correlates of Political Violence: Income Inequality, Regime Repressiveness, and Economic Development," European Sociological Review 3 (1987): 97-108. For Studies on the hypothesis of a nonlinear inverted U-curve between regime repressiveness and political violence see Edward Muller, "Income Inequality, Regime Repressiveness, and Political Violence," American Sociology Review 50 (1985): 47-61.

[181] Muller (1985) and Muller and Weede, 44.

in October 2000, during which 13 Arab Israelis were killed by police forces, found the Arab leadership responsible for incited their communities to achieve their political goals through the use of violence and that they neglected to stop the rioters once the violence had erupted. It is argued that the situation created by the Israeli legal discrimination of the minority is very dangerous as it creates fertile grounds for rebellion once an organization is constructed.[182] The organization (as part of the mobilization effort) constructs a worldview that frames individual experiences within the context of group experiences related to an overall social condition, while also presenting the decision to rebel as one where people can accept current conditions (defined as sure loss) or engage in some form of collective effort (such as rebellion) to escape the condition (discrimination). If acceptance of the status quo is defined as a sure loss, prospect theory proposition suggests that the minority would rather engage in extremely risky behavior (such as rebellion) rather than assume the loss. All members of the solidarity group are likely to define the status quo in terms of losses but the way in which goals are defined may differ. The difference in how goals are defined can relate to risk acceptance.

The rebellious decisions must be framed as an option for escaping losses – for example, in 2003 the Arab leadership advocated a boycott of the elections. As a result, there was s harp decline in voter turnout in those elections and the center and left parties suffered great losses resulting in the composition of a far-right government led by Ariel Sharon. This indicates that the Arab leadership is able to mobilize its population into collective action, even when that action is risky and may result in

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[182] Charles Tilly, From Mobilization to Revolution (Addison-Wesley Publishing co. 1978), 62-68.

further losses for the group (as the right wing domination of the political map in Israel did produce a great loss in status of the Palestinian minority.) Evidence suggests that since then, the Arab leadership, particularly the northern faction of the Islamic movement, which is considered to be more radical, have advocated for more violent resistance of Jewish domination and discriminatory policies. In addition, the leadership has framed the Arab demand for equality in the context of the greater "struggle" for liberation of the Palestinian people. If the option of rebellion is framed as means to avoid losses in legal status associated with the adoption of the discriminatory policies since 2000, prospect theory suggests that the likelihood of use of violence would increase.

There is a need to gather and direct resources for rebellious efforts. Such evidence would be difficult to evaluate prior to the eruption of violence without access to clandestine sources of information within the group.

Fairness and injustice play a role in determining reference points and reactions to change in status relative to reference points. Daniel Maters, studying the choices for the adoption of political violence in Northern Ireland and in the Palestinian territories concluded that judgment of fairness and injustice contributed to the escalation of the conflicts.

> Judgments of fairness or injustice can be an important factor in the origins and escalation of international conflicts. They may have a particularly important impact on how actors frame their reference points and how quickly they adjust or renormalize to changes in the status quo. Actors are less likely to renormalize their reference points after the loss of territory – and more likely to adjust to gain in territory – if they perceive that territory as a long standing moral entitlement.

The issues of fairness and injustice are most relevant to this case study and

will be further discussed later in this dissertation. As the hypothesis suggests, Palestinian Israelis perceive the rise in their legal discrimination as unjust and therefore are more likely to engage in risk seeking behavior.

2.6. Conclusion

By using prospect theory, this study may connect between the social-psychological analysis of individual and group actors and the macro-structural analysis of the system. Prospect theory is a theory consisting of heuristic approaches taking into account the research of cognitive psychologists which runs counter to many of the assumptions made by rational choice theorists regarding maximizing utilities. By taking into account both the individual psychological level of analysis as well as the structural level of the Israeli political and legal systems, this study provides for a contextual examination of the status of the Palestinian minority in Israel and insight into some of the guiding principle in their decision making process regarding the adoption of political violence.

By using prospect theory as the theoretical model for the analysis conducted in this dissertation, the study remains faithful to the actual decision making process of actors operating under risk. The discussion in this dissertation will reveal the environment in which the actors, namely the Palestinian minority, are operating. This environment consists of an adverse change in the status of the minority, leading it to perceive itself operating in a domain of loss. In this domain, as prospect theory demonstrates, actors do not necessarily chose the option which maximizes their expected utility but rather they become more risk seeking adopting the riskier option which may include great costs.

Prospect theory, much like expected utility theory, is an individual based model, but this does not necessarily precludes its applicability to group based decision making processes. In fact research suggests that the axioms of prospect theory exist in both individual base decisions as well as group decisions. In the latter, often the group dynamic serves to exacerbate the framing effect and the escalation of commitment to sunk costs.[183]

The dissertation will examine the structural analysis of the Israeli legal and political systems and the place the Palestinian minority occupies within these systems. The study then proceeds to examine the adverse loss in legal status experienced by the minority, and finally concludes with the use of prospect theory framework to analyze some of the implications of that loss in legal status for the eruption of political violence in Israel.

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[183] Whyte (1993), Taliaferro.

PART II: STRUCTURAL FOUNDATION

Chapter 3: Foundation of the Israeli Political and Legal Systems

3. Framework of a Society

The following chapter examines the historical events, which led to the creation of the Jewish state and its guiding ideology of Zionism. Laws of the land serve to express the values, culture, norms and ideology of a given society. Israel's political and legal systems are an expression of the identity of its people, the ideology of its society and the values of that society. The structure of the constitutional system and the status of civil liberties in Israel will be discussed. Finally, the structure of the legal system will be related to the question of the identity of its people, the ideology of its government and the values of the system. The discussion in this chapter largely draws on existing literature in the field rather than any contribution to the academic discourse on the subject. While the discussion does in some cases refine and even broaden existing insights; its principal objective is in providing general theoretical material relevant to the Israeli case. This will allow the reader to relate observations made in later chapters regarding the rights and status of the Palestinian minority to the historical and legal context presented herein.

3.1. Historical Foundation and the Creation of the State of Israel

The events, which led to the creation of the state of Israel, were critical in defining its character. The persecution of the Jewish people in Europe, along with the attacks against them by the Arab population during the riots of 1936-1939 in mandatory Palestine, served to develop the perceptions which guide and Israeli

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policies, past and present. The broken promises of the international community, specifically those of the British government, also induced the "self reliance" mentality, which it is the core of Israel's past and current security doctrine discussed in the following chapter.

Israel was established as the nation of the Jewish people in the midst of a bitter conflict between the Jewish and Arab nations. This conflict greatly affected the Israeli governments' legal policies vis-à-vis the Arab minority in the state. Its ethnic ties to the Palestinians, with whom Israel is still at war, further aggravate the situation. The following section will describe, in short, those events and their relations to the structural foundation of the political and legal systems in Israel.

3.1.1. <u>Zionism - The Creation of Jewish Nationalism</u>

The development of Jewish nationalism relates to the impact of the ideas unleashed by the French revolution, modernism and secularism.[184] Following the rise in violence against Jews in Europe, culminating with the pogroms in Russia in the 1880s[185], Leo Pinsker (1821-1891), a Russian Jewish physician, was provoked to write *"Auto-emancipation"* in 1882. Auto-emancipation was a manifesto, which later became part of the foundation of Zionist ideology. In it, Pinsker described the "Jewish Problem" as one of majority-minority dichotomy. According to Pinsker, Jews had always been a minority in their host countries and will never be able to successfully assimilate or gain acceptance within those host societies. Thus, the Jews

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[184] Joseph Agassi, Liberal Nationalism For Israel: Towards an Israeli National Identity (Jerusalem: Gefen Publishing House, 1999), 77.

[185] Don Peretz and Gideon Doron, The Government and Politics of Israel, 3rd ed. (Boulder: Westview Press, 1997), 14.

must emancipate themselves in a homeland of their own.[186] Pinsker did not identify Palestine as this homeland; Moses Hess, a German socialist linked his vision with the Land of Israel. Later Asher Ginsberg (1856-1927), one of the most important founders of Zionism, developed the spiritual and cultural aspect of Zionism, emphasizing the importance of Jewish cultural revival in Palestine.[187] Ginsberg, which later changed his name to Ahad Ha'am ('One of the People'), became the leader of the spiritual-Zionist movement in which the Land of Israel was an important element.[188] The political-Zionist movement was dominated by the early Jewish leadership both in Palestine and Europe and led by Theodor Herzl (1860-1905), who in 1896, wrote *The Jewish State (Der Judenstaat).*[189] Herzl was a reporter covering the Dreyfus trial in Paris. The blatant anti-Semitism he witnessed during that trial led him to work on the pamphlet - which became the founding document of political Zionism. Herzl's *Jewish State* crystallized the three core tenets of Zionism. First, that the Jews are a separate people with common religious and cultural characteristics, qualifying them as a "nation". Second, that they will never be assimilated in their host countries because of anti-Semitism, and therefore; three, the only solution to the "Jewish Problem" is a homeland of their own.[190]

In characterizing the Jews as a *nation*, Herzl moved the discourse into the realms of nationalism. If Jews are a nation, the logic goes, the solution to their problem must be found in the creation of a national homeland. Modern nationalism recognizes territory as a core element of nationhood and thus, the Jews have been in

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[186] Ibid., 15.
[187] Agassi, 107-110.
[188] Ibid. 108.
[189] Theodor Herzl, The Jewish State, Israel Cohen ed. (London: A.P.C.Book Service, 1946).
[190] Ibid.

an abnormal state since they are a "nation without land".[191] In order to rectify this abnormality, the Jews must create a homeland on a sovereign territory of their own in which they will be the ruling majority. Interestingly, Herzl did not initially suggest Palestine as the sole option for the homeland and was exploring other options such as Uganda.[192]

Shortly after the publication of *"The Jewish State"* the first World Zionist Congress took place in Basle, Switzerland in 1897. In this congress the World Zionist Organization (WZO) was created as an umbrella institution for the Zionist movement. In Basle, the Zionist declared that the "aim of Zionism is to create for the Jewish People a home in Palestine secured by public law."[193] It was in this context that shortly after the congress Herzl wrote "at Basle I founded the Jewish state."[194]

The Zionist movements was divided between several streams, most notably, the political stream, led by Herzl and Haim Weisman (who later became Israel's first President), and the spiritual stream, led by Ahad Ha'am.[195] The spiritual Zionists (also known as "culturalists") were less concern with establishing a political entity as they were with reviving the Hebrew identity of the Jews. Their focus was on the cultural aspect of the Jewish nation, not the political. In addition, Ahad Ha'am did not adopt religious Zionism, religion was only utilized to the extent that it preserved the Jewish national identity. "The culturalists saw Palestine as the spiritual center of

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[191] Ibid.
[192] Don Peretz and Gideon Doron, 19. This offer came from the British government but was rejected by the Zionist movement in 1903.
[193] Ibid., 18.
[194] Israel Cohen, The Zionist Movement (New York: Zionist Organization of America, 1946), 78.
[195] Don Peretz and Gideon Doron, 19.

Jewish culture rather than as a political state."[196]

Political Zionists, later also known as "territorialists" emphasized the need for a territorial refuge of the Jews and actively sought to find such a territory, as previously mentioned, Palestine was not initially the sole option and several others were suggested, however it soon became clear that Palestine would be the only possible homeland for the Jews. Herzl famously characterized it as "A land without people, for a people without land."[197] Political Zionists saw the practicality of Palestine as the homeland. The spiritual and religious connection all Jews shared with the Land of Israel served as a building block for the national identity which was a core element of any nationalist movement. That connection could be used to mobilize the Jews to immigrate to Palestine. The revival of 'Zion' offered a tempting solution to the dire situation in which many Jews found themselves in Europe. This message spoke especially to the young generation, led by the *Bilu* movement, the first Zionist settlers in Palestine from Russia, who settled in Rishon Le-Zion (the first to Zion) in 1882 and started the first *Aliya* (Wave of immigration).[198]

Palestine provided the Zionist with both a political mobilizing solution as well as a spiritual, religious and cultural narrative for the Jewish nation. With Palestine, the nascent political concept of Jewish nationalism, received 'instant' historical legitimacy. Thus, the creation of the political entity on this particular territory became an essential objective of the Zionist movement.

The Zionists quickly approached the colonial powers to pursue their objective.

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[196] Ibid.

[197] Israel Cohen.

[198] Peretz and Doron, 34.

Herzl pleaded with the Ottomans to allow for special political consideration for the Jewish settlers in Palestine which, was controlled by the Ottoman Empire at the time, his words, however, fell on deaf ears.[199] Realizing that the Turks would not assist in promoting the Zionist objective, and following the defeat of the Ottoman Empire in World War I, the Zionist quickly focused their efforts on negotiating with the British Empire. Those efforts became fruitful in November of 1917 with the Balfour Declaration.

3.1.2.   The Balfour Declaration

The Balfour Declaration[200], issued by the British government on November 2, 1917 was a public statement in the form of a letter from the foreign secretary, Arthur J. Balfour, to Lord Rothschild, head of the British Zionist Organization at the time. The declaration stated that the British government "viewed in favor" the establishment of a national home for the Jewish people in Palestine. However it further noted that nothing should be done that might prejudice the "civil and religious rights of existing non-Jewish communities"[201] in Palestine.

This ambiguous language was used deliberately. The phrases "in Palestine" and "a national home" left the proposed entity vague and without defined borders, thereby directly contributing to the conflict which later erupted between Jews and Arabs, and is on-going until the present day, close to a century later. Moreover, the section relating to the religious and civil rights of non-Jews, referring mainly to Arabs, which constituted a majority of the population at the time, mentioned nothing

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[199] Peretz and Doron, 21.
[200] Walter Z. Laqueur and Barry Rubin, eds., The Israel-Arab Reader: A Documentary History of the Middle East Conflict, 4th ed. (New York: Penguin Books, 1984), 18.
[201] Ibid.

about their economic, cultural, political or national rights. The reasoning for the British government's willingness to issue such a declaration is beyond the scope of discussion in this study, however it is worth noting that prior to this declaration, between July 1915 and March 1916 the British government engaged in a series of correspondences between McMahon, the High Commissioner in Egypt, and Sherif Hussein of Mecca, ruler of the Hejaz. These discussions revolved around the conditions for an Arab uprising against the Turks during World War I in exchange for Arab independence in areas that were later claimed by the Arabs to include all of Palestine. This contention was rejected by the British after the war and overruled in the post-war *Sykes-Picot Agreement* signed by Britain and France dividing the Middle East between the two[202].

Despite its vagueness and ambiguity, The Balfour Declaration served as a great vindication for the Zionist movement, politically recognizing the claim of the Zionists' to the territory of Palestine. With the Sykes-Picot agreement nullification of the earlier correspondence between Hussein and McMahon, the Balfour Declaration remained the only document addressing the conflicting claims to the territory until the Peel Commission Report and the UN Partition Plan.

3.1.3. The Peel Commission
During the 1920's and 30's the level of violence between the Arabs and the Jews and against the British in Palestine escalated and reached a peak with the Arab rebellion of 1936 – 1939. The Arabs unconditionally opposed the Zionist national aspirations in Palestine and objected to their endeavors. With a growing number of

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[202] George Antonius, The Arab Awakening, (New York: Capricorn Books, 1965), 419-420.

Jewish immigrants entering the country, the Arabs initiated attacks against the Jews, which escalated into a rebellion. The Arab rebellion had began with spontaneous acts of violence by religiously and nationalistically motivated groups inspired by Sheik Izz ad-Din al-Qassam, a preacher from the northern city of Haifa, whose followers robbed and murdered three Jews in April 1936, followed by retaliation against two Arabs. This escalated into widespread chaos with Arab groups in Jaffa and Nablus initiating a strike and thousands of Arabs mobilized in towns and villages across the country. The violence against the British and Jews continued and prompted the British government to send a Royal Commission to investigate the situation. This Commission, headed by Lord Robert Peel, issued it report in 1937, putting forward for the first time, the suggestion of a partition plan, creating two separate states in the territory of Palestine; Jewish and Arab[203]. The Jewish leadership, although reluctant, accepted the recommendations. The Arabs viewed the recommendations as a violation of their inhabitants' rights to the territory of Palestine and rejected them.

With the escalation of the violence continuing, the British issued a new immigration policy in the form of the February 1939 White Paper, limiting Jewish immigration into Palestine to 15,000 a year in the next five years and stating that the British Government now "declare unequivocally that it is not part of their policy that Palestine should become a Jewish State."[204] The Jews perceived this as essentially nullifying the Balfour Declaration, although close reading of the Balfour Declaration reveals a promise to establish a national home for the Jewish people but not necessarily in the form of a Jewish state. The Arab rebellion of 1936-1939 served to

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[203] T.G. Fraser, The Middle East, 1914-1979 (New York: St. Martin's Press, 1980), 22-23.
[204] Laqueur, 66.

enhance Jewish mistrust and suspicion of the Arab population in Israel, it later fed into the "siege mentality" which dominated the Israeli security doctrine discussed in the next chapter. According to the "siege mentality", the *Yishuv* and later the young state, was surrounded by hostile nations looking to annihilate it and thus it must always aggressively defend itself.

3.1.4. <u>World War II and the Birth of the State of Israel</u>

Following the new British policy which sought to prevent mass legal immigration of Jews into Palestine, coupled with the growing number of Jewish refugees escaping from Europe, the Zionists in Palestine shifted their policy in the 1940s towards "Gun-Zionism"[205], the effective use of terror and guerrilla tactics in ousting the British from Palestine and defeating the Palestinian Arabs.

The effects of the Holocaust on the Jews in Palestine were enormous and created the determination that "never again" would the Jews be victims. It further developed the conviction among the Jews that they must defend themselves, with arms, against any enemy that would stand between them and the creation of a Jewish State in Palestine. One cannot overemphasize the important effect of the Holocaust on the Jewish psyche;

> [T]his almost fanatical but understandable resolve has been the driving force of all Israeli policies relating to the security and future of the Jewish state in its dealing with the Palestinians and the Arab states.[206]

On the other hand, the Palestinians were left with a sense of betrayal and bitterness with regard to the Holocaust. The Palestinians, although not participants in

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[205] Ian Bickerton and Carla Klausner, A Concise History of the Arab-Israeli Conflict, 4th ed., (Upper Saddle River: Pearson Prentice, 2002), 69.
[206] Ibid., 71.

the horrific acts against the Jews during World War II, felt that they were paying the price for the lack of action taken by the European Powers, which were now eager to compensate the Jews for this travesty. "The Genocide of the Jews by Hitler has been turned into a legitimizing myth for the existence of the state of Israel."[207]

Furthermore, with the United States (hereinafter: US) emerging out of World War II as the world's Superpower, the American Jews set out to mobilize public opinion and to create political pressure on the American government in order to promote and expedite the creation of the Jewish state. This pressure climaxed at the United Nations (hereinafter: UN) with the US pushing for the creation of the State of Israel. As Charles Smith notes, "whatever the nature of the Zionist accomplishment in Palestine, the victory at the United Nations was essentially won in the United States."[208]

In February 1947, the British concluded that a settlement between the Jews and the Arabs in Palestine could not be reached and decided to bring the situation before the UN. In April the General Assembly met and created the Special Committee on Palestine (UNSCOP) to investigate the situation and draw up recommendations. UNSCOP recommended the termination of the mandate and the partition of Palestine into two states; Jewish and Arab. On November 1947 the General Assembly voted in favor of the partition of Palestine by a vote of 33 to 13 with 10 abstentions, in Resolution 181[209]. The resolution assured a Jewish state and a separate Arab state in Palestine and terminated the mandate. The Jewish leadership accepted the partition

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[207] Ibid.
[208] Charles D. Smith, Palestine and the Arab-Israeli Conflict, 3rd ed. (New York: St. Martin's Press, 1996), 139.
[209] G.A. Res. 181 (II), U.N. GAOR, 2d Sess., at 31, U.N. Doc. A/64 (1947).

plan, however, the Arabs, whose leadership lacked coherence and unity, viewed any concession as defeat and was therefore unwilling to compromise, thereby rejecting the UN resolution on the matter. Although based on a two states solution, the partition plan did not assume that no Jews would reside in the areas designated for the Palestinian state or that no Palestinians would equally remain within the Jewish state.[210] In fact, UNSCOP report indicated that under the partition plan adopted by the General Assembly there were 538,000 Jews and 397,000 Arabs in the area designated for the Jewish state and 10,000 Jews in the area allotted to the Palestinian state[211]. The UN announced in September 1947 that the mandate in Palestine would be terminated on May 15, 1948. Immediately following the British withdrawal, the area plunged into chaos.

3.1.5. <u>Israel's Declaration of Independence, the Creation of Palestinian Refugees and Arab Minority Within the State of Israel</u>

A few hours after the British departure from Palestine, Ben-Gurion, Israel's first Prime Minister and leader of the Mapai party (which dominated the Israeli political map until 1977) proclaimed the independence of the State of Israel and the new state was immediately recognized by the US and the Soviet Union. On May 15, 1948 Egypt, Syria, Lebanon, Transjordan and Iraq invaded Israel, with Saudi Arabia and Yemen also committing troops, launching a regional war that lasted until December 1948 with the humiliating defeat of the Arab states. These Arab states concluded an armistice agreement with Israel, which neither amounted to recognition of the Israeli state, nor a creation of a Palestinian one. Palestine had been partitioned

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[210] An International Law Analysis of the Major United Nations Resolutions Concerning the Palestine Question, st/sg/ser.f/4, United Nations Publications, Sales No. E.79.I.19, 9.
[211] David Kretzmer, The Legal Status of the Arabs in Israel, 2.

between Egypt (which occupied the Gaza Strip), Transjordan (which occupied the old city of Jerusalem and the West Bank of the Jordan River) and Israel.

The Palestinian Arabs began their flight from Palestine during the months before the departure of the British, when the fighting between the Jews and Arabs escalated. During the spring and summer of 1948, this escape amounted to a mass exodus, with the Arabs abandoning their villages and cities, leaving their homes and businesses behind. Once the Arab flight had started, the Israeli forces encouraged it. As William L. Cleveland describes:

> In order to secure the interior of the Israeli state and protect Jewish settlements lying outside its UN-decreed borders, the Haganah in April 1948 authorized a campaign against potentially hostile Arab villages. Known as Plan D, the campaign 'provided for the conquest and permanent occupation, or leveling, of Arab villages and towns.' The Haganah field officers interpreted Plan D as giving them authority to undertake the systematic expulsion of the Palestinian Arabs living within the areas allocated to the Jewish state as well as those whose villages were situated just inside the territory awarded to the Arab state.[212]

Thus, the implementation of Plan D added to the already existing fear of the Palestinian Arabs and contributed to their flight. Hundreds of thousands of Arabs left their villages and homes, allowing the Israeli forces to seize their property, thereby securing Jewish homogenous territory. Throughout 1948 and 1949 the forced evacuation of the Arabs continued until there remained only 150,000 of the previous 940,000 existing Arabs within the borders of Israel. The majority of those who fled remained in refugee camps in various Arab states but mostly in the Gaza strip and the West Bank, occupied by Egypt and Transjordan, respectively[213], creating a refugee

problem, which remains the source of much political turmoil until the present day.

3.2. <u>Israel's Constitutional Law</u>

As discussed herein, the foundations of the State of Israel may be found in its ideological roots. Zionism had developed into the guiding ideology of the state, serving to define its values, norms and political culture.

3.2.1. <u>The Absence of a Formal Constitution: Basic Laws</u>

In its declaration of independence, the founding fathers of Israel had declared that following the establishment of the state, a constitution would be drafted by an elected constituent assembly. As the war of independence broke, a state of emergency had been declared, delaying the drafting of the constituion. Israel remained in a state of emergency throughout most of its existence and thus a formal constituion was never established. Israel is not unique in this sense. Both the United Kingdom and New Zealand lack a codified or entrenched supreme constituent document and as a result, the parliament laws in those countries, much like in Israel, are supreme. That is to say, there is no law above Knesset law, no institution above the Knesset, which can enact laws in Israel.[214]

Unable to reach a consensus on the whether the time was ripe for the drafting of a constituion amidst a war, or whether secular or religious law would be at the foundation of the Israeli system, the Israeli leadership reached a compromised known

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[212] William L. Cleveland, A History of the Modern Middle East, 2nd ed. (Boulder: Westview Press, 2000), p. 261.

[213] As'ad Ghanem, Palestinian-Arab Minority in Israel, 1948-2000, (Albany, NY: State University of New York Press, 2001), 13.

[214] Amnon Rubinstein, The Constitutional Law of Israel, 5th ed (Jerusalem: Schocken Publishers, 1997).

as the *Harari Resolution*[215], named after the Knesset Member (herein: MK) who suggested it. According to this compromise, several "Basic Laws" would draft the constitution in stages. The term "Basic Law" is used in some legal systems as an alternative to the term constitution. A Basic Law can be a codified in a constitution, or in nations lacking a formal constitution, such as Israel, it is a law with constitutional power and effect. The name is usually used to imply an interim or transitory nature and avoiding the implication of being the "highest law" especially in nations with religious law which may have higher statutory level such as in Saudi Arabia.[216] In Germany for example, the Basic Law is the constitution of Germany. It came into effect in 1949 as the constitution of West Germany in transition until the unification of both east and West Germany. When a speedy unification with East Germany did not follow because of conflicting interests with the Soviets, the Basic Law of West Germany remained. Even after unification in 1990 the Basic Law remained, having proven itself as an effective instrument for a stable democracy.[217] In the Israeli case, these laws were originally viewed as an interim measure, which would represent chapters of a future constitution.[218] Thus far, the Knesset enacted 11 Basic Laws. The first 9 address mainly the structure of the government[219], Knesset[220],

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[215] Philippa Strum, "The Road Not Taken: Constitutional Non-Decision Making in 1948-1950 and Its Impact on Civil Liberties in the Israeli Political Culture," in Israel, The First Decade of Independence, ed. Ilan Troen and Noah Lucas (Albany: SUNY Press, 1995), 83-104.

[216] Rubenstein.

[217] Ibid.

[218] Ibid.

[219] The original version of The Basic Law: The Government was passed in 1968. Then a reformed version, The Basic Law: The Government (5752-1992) entered into effect with the elections to the 14th Knesset (1996). On March 7, 2001, the Knesset voted to change the system of direct prime-ministerial elections and restore the one-vote parliamentary system of government that operated until 1996, approving a reformed version of the original Basic Law: The Government (1968).This law entered into effect with the elections to the 16th Knesset (January 28, 2003). **S.H. 1780 (2001),** 158.

[220] Basic Law: The Knesset, **S.H. 244 (1958)**, 69.

judiciary[221], the President[222], army[223], the economy[224], State Comptroller[225], and Jerusalem as the capital of Israel after 1967[226]. The most recent Basic Laws, enacted in 1992 are Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation (Amended in 1994).[227] These laws address individual rights and are considered an important contribution to the Israeli Bill of Rights. At present, these latter laws are the only Basic Laws dealing with any civil rights in Israel and their scope is limited to those rights covered by the laws, namely, the right to pursue any (legal) occupation and the right to dignity and liberty.

3.2.2. The Role of the Judiciary

But there is one way in this country in which all men are created equal-there is one human institution that makes a Pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentlemen, is a court. It can be the Supreme Court of the United State or the humblest J.P. court in the land, or this honorable Court which you serve. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.[228]

The lack of a supreme constituent document does not result in the absence of a constitutional legal system. Much like the UK and New Zealand, Israel's constitutional law consists of a collection of Basic Laws, regular laws and decisions of the courts.[229] The Israeli Supreme Court has played a vital role in developing the Israeli constitutional law in general, and civil liberties in particular. In Israel, the

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[221] Basic Law: The Judiciary, **S.H. II (1984),** 78.

[222] Basic Law: The President of the State, **S.H. 428 (1964)**, 118.

[223] Basic Law: The Israeli Defense Forces, **S.H. 806 (1976)**, 154.

[224] Basic Law: The State Economy, **S.H. 1052 (1982),** 170.

[225] Basic LAW: State Comptroller, **S.H. 5748 (1988),** 30.

[226] Basic Law: Jerusalem, Capital of Israel, **S.H. 980 (1980)**, 186.

[227] Basic Law: Human Dignity and Liberty, **S.H. 150 (1992)**; Basic Law: Freedom of Occupation, **S.H. 90 (1994).**

[228] Harper Lee, *To Kill a Mockingbird* (Philadelphia: Lippincott, 1960), 218.

[229] David Kretzmer, 8.

Supreme Court is divided into an appellate court and a constitutional court – High Court of Justice (herein: HCJ). The Supreme Court, in its capacity as HCJ, has had an extremely important role in the development and protection of civil rights in Israel, particularly before the enactment of the two aforementioned laws and later in interpreting and expanding the rights enumerated in the Basic Laws. In one of its first landmark rulings, the HCJ found that basic civil liberties, while not entrenched in the statute book, are regarded as legal principles of Israeli Jurisprudence.[230] One such principle, recognized by the HCJ is the principle of Equality. This principle has received some statutory recognition[231], although not mentioned specifically in Basic Law: Human Dignity and Liberty and Basic Law: Freedom of Occupation. The HCJ, however, has played a key role recognizing the right to equality in the Israel legal system. Former Chief Justice Aharon Barak recognized the principle of equality as following from the principle of Human Dignity, and therefore afforded it constitutional status.[232] However, even prior to the enactment of the two Basic Laws, the court had recognized the right to equality in its decisions.[233]

While lacking a formal constituion, Israel's legal system in general, and its constitutional law in particular, follows a hierarchy of norms. As previously mentioned, Knesset law is supreme in Israel. In theory, the Knesset can enact any law

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[230] Kol Ha'am v. Minister of Interior, **7 P.D. 871 (1953)**.

[231] The principle of equality has been recognized in The Employment Service Law, which obligates employers that employ workers through the Labor Exchange to do so without discrimination (although this prohibition is not extended to other sectors in which there is no duty to employ workers through the labor exchange. Following the process of privatization in the 90s, Israeli employers are no longer required to employ workers from the labor exchange, excluding industries that employ labor unions). See The Employment Service Law, **S.H. 63 (1959).**

[232] Reuben Rubenstein, 180-181.

[233] See Bergman v. Minister of Finance, **23 P.D.(I) 693 (1969)**; Rubinstein v. Knesset Speaker, **37 P.D(III) 141 (1982)**.

it chooses as long as that law does not contradict a previous Knesset law (unless specifically stated) or any Basic Laws. Basic Laws are constitutional laws in character and thus no other law can contradict them. To signify the elevated status of Basic Laws, most of them require that changes be made only by special majorities of 61 MKs or in some cases of 2/3 of MKs (80). For example, Basic Law: The Government requires a majority of MKs (61) for any changes to be made. Article 44 states:

> Permanence of the Law.
>
> 44. (a) This Basic Law can only be changed by a majority of the Knesset members; the majority under this subsection will be required for decisions of the Knesset plenum in the first, second and third readings; for purposes of this subsection, "change" is either explicit or by implication.[234]

Similarly, Article 46 of Basic Law: The Knesset requires a majority of 61 MKs for change to specific articles. It reads as following:

> 46. Under this law, changing Sections 4, 9A, 34, 44, or 45 shall require a majority vote by the Knesset plenum for first, second, and third readings; under this section, "change" is either explicit or implicit."[235]

Article 4, which deals with the nature of the electoral system can only be changed by an absolute majority during each stage of the readings. Article 44 and 45 secure the law from any changed made by emergency regulations unless 2/3 (80) of the members agree and article 9A states that a law extending the term of the Knesset must be passed by at least 80 MKs.

However some constitutional provisions have been passed by a very small number of MKs, who were present on the day of the vote. For example, Basic

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[234] Basic Law: The Government.
[235] Basic Law: The Knesset.

Law: Freedom of Occupation, was passed by a vote of 23 MKs with no objections or abstentions and Basic Law: Human Dignity and Liberty was passed 32-21 with one abstention.[236]

Regular laws in Israel are passed by a simple majority of those present (abstentions not counting). Laws are brought before the assembly for a preliminary reading. If the legislation passes the preliminary reading, it is usually sent back to the appropriate committee, taking into account reservations made by MKs. The legislation is then brought back before the Knesset and must pass three readings, after which it becomes law.

Some Basic Laws allow for deviation under particular circumstances, and only in cases where the HCJ finds that a regular law has met the requirements for deviation, it may find that law to be valid. Regular laws are all other Knesset laws that are not Basic Laws. Finally, there are government regulations. These are legislative acts enacted by the government to authorize its daily functions. These regulations may not contradict any existing Knesset law. [237]

In addition to legislation, the courts also have legislative functions. The Israeli legal system follows the British Common-Law system. Common law system is based on case law determined by judicial precedent. Under the common law system, courts may set precedents, which apply in all future cases with similar circumstances and legal questions. In cases were the is a legal void, known as a *lacuna*, the court's decision serves as a precedent which fills that void and thus become part of the

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[236]Asher Arian, Politics in Israel: The Second Republic, 2nd ed. (Washington DC: CQ Press, 2005), 302.
[237] Ibid., 297.

existing body of law. In Israel, the Supreme Court, in its function as a HCJ has utilized its authority to both interpret the law as well as establish new law in cases of a *lacuna*. This function is also known as Judicial Review, which is the "power of a court to invalidate on constitutional grounds a governmental action, whether it be committed by the executive (administrative) or legislative branch."[238] As long as the Knesset does not enact a law to override the court's decision, that decision remains the legal norm.[239] This function provides enormous latitude to the courts, especially in fairly young legal systems such as the Israeli one.

In the *Bergman Case*[240] the Court declared an act of the Knesset void for violating a Basic Law. This case referred to party election financing for parties. The Knesset passed a law that denied new parties from receiving government funds for election campaigning since it granted those funds only to parties already existing in the out-going Knesset. The HCJ found that this law violated the principle of equality since it denied new lists equal opportunity in the electoral process. While acknowledging that lack of any formal recognition of the principle of equality in written law, Justice Landau (on the Supreme Court) argued that the Court may find the justification for its ruling in the natural justice principle of equality of all before the law. According to Landau it was therefore right and just that the court use this principle in interpreting the law.[241]

Beginning in the early 1980s, with the appointment of Chief Justice Aharon

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[238] Ibid., 309-310.
[239] Pnina Lahav, "Foundations of Rights Jurisprudence in Israel: Chief Justice Agranat's Legacy," Israel Law Review 24 (1990): 211-269.
[240] Bergman v. Minister of Finance, 723.
[241] Ibid., 724.

Barak as the president of the Supreme Court, the Supreme Court's judicial activism intensified and the Court overturned many government decisions. With the enactment of the 2 latest Basic Laws, which address civil liberties, the power of judicial review intensified. While the laws seemed limited in scope, the Court interpreted them as granting it supreme power to overturn legislation that violated the right enumerated in those laws.[242] The court did not hesitate to declare that it would strike down as unconstitutional ordinary laws that did not comply with the new Basic Laws, thus subjecting the legislator and executive to the scrutiny of the court. In addition, the Court granted new interpretation to existing legislation in light of the new provision of the Basic Laws.[243]

Through its interpretation and judicial review the Court has helped in developing and safeguarding civil liberties and freedoms in Israel. The Court is constantly reviewing government action and limiting the powers of the executive. In this capacity, the courts have also played a crucial role in defining the Arab-Jewish relations in Israel and the status of the Arab minority in Israel.

3.2.3.   Civil Liberties in the Israeli Legal System

Considering that civil liberties are not entrenched in a formal constitution, and thus, often rests on the discretion of the authorities, Israel's record, compared to other nations, is quite good.[244] According to the US state Department 2005 Country Report

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[242] Pnina Lahav, "Rights and Democracy: The Court's Performance," in Israeli Democracy Under Stress, ed. Ehud Sprinzak and Larry Diamond (Boulder: Lynne Reiner, 1993), 125-152.

[243] See Alice Miller v. Minister of Defense, **HCJ 4541/94** Decision 49 (4) 94. The petitioner asked the army to assign her to the air force for training as a pilot. The Court order the air force to allow a woman to enter a combat pilot course on the grounds the refusing to do so violated the principles of Basic Law: Human Dignity and liberty.

[244] This is compared to both non-democratic and democratic nations. Israel's record is less impressive in studies comparing it solely to other democratic nations. See chapter 5 in this dissertation.

on Human Rights Practices,[245] the government generally respects the human rights and civil liberties of its citizens and violations are largely associated with the conduct of the government and the security forces in the occupied territories and the treatment of minorities.[246] As stated in chapter one, the scope of this study is limited to the internal legal framework within Israel as it applies to *Israeli citizens*, thereby excluding the human rights record and government policies in the occupied territories.

Safeguarding the civil rights of Israel's Palestinian minority has presented the most formidable challenge to the legal system.[247] Israeli Palestinians are equal citizens of Israel and are granted all formal civil and political rights as their Jewish counterpart. They have a right to vote, and enjoy representation in the Knesset. However, since they do not serve in the military they are deprived of access to all the benefits of their civic status, including welfare benefits, political access to the highest positions, and the ability to share the nation's social and civic identity.[248] The status of the Arabs in Israel will be discussed in length in the next chapters however, formally, this minority enjoys the same protection under the law as all Israeli citizens.

3.2.4. The Declaration of Independence and Individual Rights

The principles providing for the individual rights of Israelis, including minority rights, found their origins in the declaration of independence:

> The State of Israel…shall uphold absolute social and political
> equality of rights for all its citizens, without distinction of religion,

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[245] U.S. Department of State, Bureau of Democracy, Human Rights and Labor, 2005 Country Report on Human Rights Practices: Israel and the Occupied Territories, March 6, 2006 (accessed August 22, 2006); available from http://www.state.gov/g/drl/rls/hrrpt/2005/61690.htm.
[246] Ibid.
[247] Kretzmer, The Legal Status of the Arabs in Israel, 1.
[248] Asher Arian, Politics in Israel: The Second Republic, 307.

> race or sex; it shall guarantee freedom of religion, conscience, language, education and culture, it shall preserve the holy places of all religions; and it shall be true to the principle of the Charter of the United Nations.[249]

With specific regard to the Arab minority, the declaration further states that:

> We call, even in the midst of this bloody onslaught which has been carried out upon us these past months, to the sons of the Arab people who are residents of the state of Israel to maintain peace and to take part in the building of the State on the basis of full and equal citizenship and on the basis of appropriate representation in all its institutions, provisional and permanent.[250]

Although the declaration of independence is not considered a constitution or legislation, it has been ascribed a special status by the courts as the inspiration for legislation[251] and has been recognized as a 'brake mechanism' giving rise to the declaration of any legislative act that contradicts its principles, as voidable (but not void).[252] Eventually these principles were incorporated in the Judicial Foundation Law in 1980, giving them full legal status as a foundation for the legal system of the state.[253]

In addition, both Basic Law: Human Dignity and Liberty, and Basic Law: Freedom of Occupation, have incorporated the definition of Israel as a "Jewish-Democratic state". Article 1 and 2 of both laws respectively state the following:

> 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.

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[249] *The Declaration of the Establishment of the State of Israel* (accessed October 23, 2002); available from http://www.mfa.gov.il.

[250] Ibid.

[251] In one of its first rulings, the Supreme Court declared that the declaration of independence "expresses the vision of the nation and its conviction, but it does not constitute a constitutional law prescribing an actual ruling with regard to the existence of various ordinances and laws, or the revocation thereof. The institution, which was temporary empowered to legislate laws is the Provisional State Council which was established with the proclamation of the State." See Ziv v. Executive Commissioner of the Municipal District et al., **1 P.D. 85 (1948),** 89.

[252] Ori Stendel, The Arabs in Israel, (East Sussex: Sussex Academic Press, 1996), 190.

[253] **1980, S.H. 78.** Article 1 of the law states: the principles of freedom, justice integrity and peace [which are the principles] of Israel's heritage."

> 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.

The incorporation of the Jewish-Democratic definition of the state into these statutes have elevated this definition thereby granting it constitutional standing. Thus, any law violating the Jewish-Democratic character of the state would be subject to abolition by the Court.

3.3. Relating History to Structure

Israel's legal system serves to both represent and shape the ideology, culture, values, and the identity of its people. In the words of Gad Barzilai:

> State law is not merely a reflection of the state's narration processes. Rather, it plays a major constitutive role in shaping values, norms, and political practices. Law forms and articulates elite and public consciousness as to what type of citizen is the most essential for the existence and maintenance of the political regime.[254]

In this context it is argued that a legal text intending to represent an ahistorical "reality" does so precisely in order to reproduce it.

A civic national identity did not develop in Israel. Instead, the population is defined by its ethnic or religious affinity rather than a sense of an "Israeli identity". The state's national identity is defined by its dominant group - "Jewish". Israeli nationalism is ultimately Jewish nationalism with its leading ideology of Zionism.[255] Zionism has played a significant role in shaping the Israeli institutions and their doctrine. Both the institutions and doctrine are designed to serve the dominant group,

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[254] Gad Barzilai, Communities and Law: Politics and Cultures of Legal Identities (Ann Arbor: University of Michigan Press, 2003), 59.
[255] Ibid., 60.

largely excluding all others.[256]

This design must be contextualized by the history of the Jewish people and their state. Policies resulting in the protection of this population, both from internal and external threat derive form that particular history discussed herein above. The policies adopted will be discussed in detail in following chapters, namely, the security doctrine and the legal policies towards maintaining the Jewish and democratic character of the state. However, it is important to note the linkage between history and policy. The narrative of the Jewish people, their persecution, the birth of Zionism as the leading ideology of the state, and the Arab refusal to recognize Israel's right to exist, all relate to the structure of the system and the policies produced by it. Any separation between history and structure in Israel would result in an analysis void of context. The following section refers to the contextual framework presented herein above.

3.4. <u>Jewish Democracy</u>

The Jewish character of the state defines the structure of the political and legal institutions in Israel, indeed the system as a whole. The declaration of independence employs the phrases "Jewish State" and the "the state of the Jewish people" interchangeably, indicating that in the minds of the Zionist leadership of the time, the state of Israel is tantamount to the state of the Jewish people. The question remains, does this exclude all others from sharing in the national ethos of the state? In other words, did forefathers envision a state, which was designed as a safe haven for Jews, as well as a national home for all its inhabitants, creating a new political entity known

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[256] Nadim Rouhana, Palestinian Citizens in an Ethnic Jewish State (New haven: Yale University Press, 1997).

as the State of Israel, or was the grand design one geared exclusively for the Jews?

Interestingly, UN General Assembly Resolution 181[257] (referring to the partition of Palestine into two states) refers to Israel as the "Jewish state" but not as the "state of the Jewish people" suggesting that the UN did not see the creation of the state as a homeland exclusively designated for the Jews but rather the Jewish character was an extension of demographics. This further strengthens the proposition that the Israeli leadership sought to expand the definition adopted by the UN in resolution 181 to a more exclusive "Jewish" one.

3.4.1.   'Jewish' - Defined

The term *Jewish Democracy* can imply many different meanings and thus requires a clear definition. The following discussion focuses predominantly on the meaning of the term "Jewish". The discussion of exact definition of "Jewish democracy" is an important one, and will be addressed in chapter five of this dissertation.

Scholars have yet to reach an agreed upon definition of the term "Jewish State". There are several conceptual distinctions between the various interpretation of the term *Jewish* that range form most exclusive to more inclusive ones. The question regarding who is a Jew has plagued the Israeli system since before statehood. Does the term "Jewish" constitute a religious affiliation or, as Zionism proclaims, a national one. Once a workable definition of the term Jewish is developed, the discussion will move to the conceptual framework of the term Jewish Democracy used in this study.

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[257] G.A. Res 181.

3.4.2. "Who is a Jew?"

The debate over the question of "who is a Jew" has dominated Israeli politics since before the creation of the state. In June 1947, Ben Gurion,[258] in an attempt to consolidate his power over the various streams of Zionism, contacted *Agudat Israel,* which represented Jewish Orthodoxy, to receive their political support. He asked Agudat Israel to join the coalition, which would form the first government. In exchange for their support, Ben Gurion offered a set of guarantees, which would formalize customary arrangements that developed during the Ottoman period and the British Mandate concerning the role Judaism played in the society. The arrangement made between the secular Zionist parties and the Orthodoxy came to be known as the "*Status Quo*". According to this arrangement, the Orthodoxy would be the only recognized stream of Judaism in the state (at the exclusion of Reform and Conservative Judaism, which became more prominent in the Diaspora), with religious law and court governing over all personal status matters of Jews. In addition the status quo relates to matters of the Jewish Shabbat as the official day of rest in Israel (public transportation public and commercial businesses may not operate on Shabbat), matters of *Kashrut* (the Jewish dietary law), the religious school system would remain separate from the secular one but nonetheless would receive funding from the state, and rabbinical court would apply *Halacha* law (orthodox religious law) when deciding on matters of personal status. Finally, all religious orthodox Jews who opt to continue their studies in the Yeshiva, would be exempt from military

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[258] At the time, David Ben Gurion was the chairman of the executive committee of the Jewish Agency, which later became the first government of Israel, led by Ben Gurion as the Prime Minister.

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service.[259]

Both Agudat Israel (which represented Ashkenazi Orthodoxy) and the Zionist Orthodox Party, *Mizrahi* (which represented Sephardic Orthodoxy) accepted the status quo as the basis for secular-religious relations in the state until the present day. At the time, Ben Gurion was more concerned with securing Israel against its external enemies and thus internal division between secular and religious Jews, as well as the relations between the Jewish majority and the Arab minority, were not part of the larger political discourse of the time. The monopoly of Orthodox courts over personal status matters within the Jewish community was anchored in the Rabbinical Courts Jurisdiction Law (Marriage and Divorce) of 1953.[260]

The Law of Return, discussed later in this chapter was passed in 1950. According to its provision, all Jews and their family members were entitled to immigrate to Israel, and receive immediate citizenship (non-Jewish family members were entitled to receive citizenship through a slower process of naturalization.)

The question of what constituted "Jewish" nationality was relatively new. Before Zionism, Judaism was understood to be a religious affiliation, not a national one. However, as described herein, inspired by the wave of nationalism which swept over Europe during the 19th century, Jewish nationalism developed in the form of Zionism, which viewed Jews as a nation, rather than a religion. The Zionists quickly moved toward building a "national home" for the "Jewish people", recognizing that being Jewish was not merely a religious affiliation, but rather that this extended to the

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[259] Steven V. Mazie, Israel's Higher Law: Religion and Liberal Democracy in the Jewish State, (Lanham. MD: Lexington Books, 2006), 145-161.
[260] S.H. 5730 (1953).

nationality of an individual. When testifying before the Anglo-American Committee of Inquiry on Palestine in 1947, Ben Gurion stated that:

> We are building a Jewish State for two reasons. One is in order to enable us, those who are already in this country, to live our own lives, and the other is to help the solution of their tragic problem, and great tragic historic problem of the Jewish people in the world. Because, Sir, only a Jewish State will be able to build a Jewish National Home without hindrance. We need a Jewish State in order to continue building the National Home for the Jewish people.[261]

Recall that while Ben Gurion and the Yishuv, recognize the Jews as a "Jewish Nation", they did not extend the same recognition to the Arabs. By 1936 Ben Gurion had changed his opinion regarding parity and argued that there could be no joint Jewish-Arab government as that would entail two nations, and since he did not regard the Arabs as a nation, parity was impossible.[262]

The extension of the conceptual debate into the realms of nationality provided for a whole host of definitional problems. First and foremost the question regarding *who is a Jew*? Could one be religiously Jewish while holding a different nationality? And vise versa?

According to the Halacha, the Orthodox religious law, a Jews is one who is born to a Jewish mother or who converts to Judaism in accordance with the Halacha. This criterion consists of both religious and biological descent (associated with ethnicity). However, the ethnic component transcends the religious one because according to Halacha, one remains Jewish (if born to a Jewish mother) even if he or she coverts to a different religion. This understanding gave rise to the assertion that being Jewish was not merely a religious affiliation such as being Christian, but rather

invoked a national association with "The Jewish people", whose ancestry could be connected back to the twelve Tribes.

In addition, the term "nationality" requires more elaboration. While in most modern nations the question of nationality is associated with the determination of citizenship, in Israel this question takes a different meaning. The issue of nationality and citizenship are separated in Israel. While being Jewish entitles one to automatic citizenship according to the Law of Return discussed later in this chapter, this determination is connected to many other personal status matters which do not relate to issues of citizenship. The orthodox parties were less concerned with questions of citizenship and more concerned with issues of marriage (Jews may only marry other Jews in Israel, there is no recognition of inter-faith marriages within the state) and issues of religion of children, which determines their legitimacy. For orthodoxy, which has a monopoly over issues of personal status matters in accordance with the status quo agreement anchored in the 1953 law, the issue of potential marriage partners as full and proper Jews is crucial.[263]

Against this background the question of *who is a Jew* was vehemently debated. In 1958 the Bureau of Registration of Inhabitants was directed to register and issue ID cards with separate categories for nationality and religion in accordance

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[261] The Jewish Case Before the Anglo-American Committee of Inquiry on Palestine as presented by the Jewish Agency for Palestine, (Jerusalem: The Jewish Agency For Palestine, 1947), 69.
[262] Susan Lee Hattis, 167.
[263] See Steven Mazie, Israel's Higher Law. According to Jewish Halacha, Jews may not marry non-Jews. If such a union produces children those children are deemed bastards (mamzerim) for 7 generations to come. Bastards may not marry anyone in Israel with the last name of Cohen of Levy (originally the religious Priests and thus could not be "tainted" through marriage to a bastard.) This has serious implications in Israel where a predominant number of the Jewish society holds the surname of Cohen or Levy.

with a "good faith" declaration of the individual.[264] Thus, a non-Jewish mother could declare herself and her offspring as Jewish. Needless to say, the Religious parties were enraged as this threatened the very core of Jewish lineage. The government viewed registration as a civil matter, remaining outside the scope of responsibility of the Rabbinate courts. The Orthodoxy viewed this matter as directly relating to personal status issues and thus, in accordance with the status quo, governed by Jewish law. A crisis emerged, and as a result Prime Minister Ben Gurion formed a committee of Jewish scholars, which included non-Orthodox scholars from the Diaspora, to study the issue. The response of the committee was that it was premature to define who was a Jew in a way that would separate the religious aspect from the nationality one. Thus, the new minister of interior, appointed in 1960 from the National Religious Party (herein: NRP), ordered the Bureau of registration to register as Jewish only persons who were born to a Jewish mother and do not belong to another religion, or those converted to Judaism in accordance with religious Halacha law.

The issue came before the courts in 1962, when Brother Daniel, a monk who was born Oswald Rufheisen, a Jew, but converted to Christianity and then tried to claim citizenship under the Law of Return. The Supreme Court upheld the ministry's definition arguing that it made "common sense" that a person could not claims to be both Christian and Jewish at the same time.[265] This definition strengthened the religious component of the term "Jewish" which viewed Judaism as a religious

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[264] The practice of identifying the "nationality" of citizens on their ID cards has since been abolished in 2002 as it was viewed by many as a discriminatory policy which identifies citizens based on their ethnicity. However, all ID cards issued prior to 2002 still carry the nationality criterion according to the categories of "Jewish", "Arab", "Non-Jewish" or "Other". See Asher Arian, The Second Republic, 353.

[265] Rufheisen vs. Minister of Interior, HCJ 62/72, Decision XV 2428.

affiliation not a nationality.

The matter of the distinction between religion and nationality soon came before the courts again in 1968 when Benjamin Shalit, an officer in the Israeli Navy who married a non-Jewish women, who was naturalized, sought to register his two children as "Jewish" under the nationality category but to leave the category of religion blank. This would have the effect of separating the nationality criterion of Judaism from the religious one but still fall under the "common sense" standard adopted by the Court in the Rufheisen case, that one cannot adhere to another religion and still be Jewish. Thus, the *Shalit case* forced the courts to directly confront the definitional issue of the term "Jewish". The courts originally tried to avoid adjudicating the case by asking the ministry of interior to drop the category of nationality from the registration list. Having been refused by the government[266] the Court ruled by a five to four majority that Shalit could register his children as "Jews" by nationality while not indicating any religion, essentially ruling that the two components could be separated and invalidating the directive of 1960 ordered by the interior minister at the time from the NRP.[267] The court's ruling suggested that a person could be registered as a Jewish national while not being Jewish according to Halacha (because they were not born to a Jewish mother.)

The decision caused uproar. The orthodox parties demanded that the Knesset legislate the matter in accordance with the 1960 administrative directive. The ruling party, the Labor, led by Golda Meir, despite some disagreement, conceded defeat and

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[266] The government invoked security reasons for its refusal, indicating that the national affiliation of citizens related to internal security matters. The understanding being that non-Jews were more likely to present a threat to national security than Jews and thus the national affiliation is required.
[267] Shalit vs. Minister of Interior, HCJ 68/58 **P.D. II 477**.

in 1970 an amendment to the Law of Return was passed by the Knesset in an effort to resolve the debate over the question of who is a Jew. Article 4B of The Law of Return (Amendment no. 2), 1970 defines Jews as:

> For the purposes of this Law, "Jew" means a person who was born of a Jewish mother or has become converted to Judaism and who is not a member of another religion.[268]

The issue was brought before the Court again when in 1972 the same Shalit asked again to register his third child, now born after the amendment to the law, as a Jew under the category of nationality, while leaving the category of religion blank. This time however, the Court's hands were tied by the new legislation and since the legislator had spoken on the matter, the Court denied the request, ruling that the child could not be registered as a Jew.[269]

Despite the amendment to the Law of Return, the matter arose again in 1983 when the court instructed the interior minister to register Susie Miller, an American immigrant to Israel who converted to Judaism through a reform conversion in the US but the Orthodox Rabbinical authorities deemed that conversion "suspicious". The courts found that article 4B only stated that a person had to be "converted to Judaism" and that this did not preclude reform conversions. The interior minister at the time, Yitzhak Peretz, a member of the Shas party (a Sephardic orthodox party) refused to comply with the Court's decision and was forced to resign his post.[270]

The issue of conversion continues to plague the Israeli and Jewish communities. The religious parties in Israel had been pressing for an additional

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[268] S.H. 586 (1970), 34.
[269] Shalit vs. Minister of Interior, HCJ 72/18 **P.D. I 334**
[270] Asher Arian, 354.

amendment to the law to amend the definition of "who is a Jew" to include only those undergoing Orthodox conversion. This move had been met with vociferous objections from the Jewish community abroad, especially from the US in which many conversions are done in accordance with Reform or Conservative religious laws. Thus far, these objections have prevented an additional amendment to the definition of who is a Jew, however this issue is dependent on internal domestic coalition calculations and may change in the near future.

In sum, at present the definition of who is a Jew is based on religious criteria, relating to both biological lineage and religious affiliation, according to which a Jew is one who is born to a Jewish mother or converted to Judaism and is not member of another *religion*. In Israel, only Orthodox conversions are recognized by the Rabbinate authorities since, as previously mentioned, the Orthodox stream has monopoly over these issues within the territory of Israel. However, if one were to convert outside of the Israeli state, that conversion, whether done in accordance to Halacha (orthodox religious law) or in accordance with Conservative or Reform streams of Judaism, would be recognized for the purpose of the definition of a "Jew".

Nevertheless, Zionism, the founding ideology of the state, made great effort to view Judaism not merely as a religious affiliation but as a nationality. Today, the consensus is that there is no separation between the two, and those who are deemed to be Jewish in accordance with religious law, are also seen as members of the "Jewish people", the nation.

3.4.3. Conceptual Debate over the term "Jewish"
The concept of a Jewish state may be analyzed on many levels, however it is

the objective of this study to limit the framework to the constitutional and legal implications of the term as it relates to the research question regarding the rights of the Arab minority in Israel.

Scholars have debated over the meaning of the term "Jewish" and have yet to reach a consensus. The following section will explore the various interpretations found in the literature for this term and present the debate existing in the literature between the various interpretations, concluding with the interpretation adopted in this study, which will provide for some of the conceptual framework for the dissertation.

In his book *Palestinian Citizens in an Ethnic Jewish State*[271] Nadim Rouhana makes a conceptual distinction between several interpretations of the term 'Jewish". According to the **descriptive meaning**, he argues, the term *'Jewish state'* refers to the demographic and cultural character of Israel, that of a Jewish majority, which determines the dominant Jewish culture expressed through symbols, ethos and holidays, but that is neutral with respect to the relationship between the national majority and the national minority. According to this interpretation, the national minority could take part in the shaping of national culture and would have an input (according to its demographic representation) in the definition of the state as such. This would be akin to referring to the United States as a Christian state.

The second possible meaning of the term Jewish in *'Jewish state'* is the **preferential meaning**. According to this interpretation the term *Jewish* relates to the national identity of the state. The term *national identity* may itself encompass different meanings, however as far as it relates to this study, I refer to national

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[271] Ibid.

identity as the identity which shapes the national goals of the state, the political concerns of the state, its legitimate character and public behavior, which are all those of the Jewish population of the state (as opposed to the Jewish people as a whole). Thus, unlike the previous definition, under this category, the state would not be neutral in the relations between its Jewish and non-Jewish citizens, with a clear preference to its Jewish citizens, but not the Jewish Diaspora in general. This, in Rouhana's words would be an "ethnic state that provides a national home to the dominant ethnic group or nationality".[272]

A third possible meaning is the **extensive meaning**, according to which the state is the state of its citizens, both Jewish and non-Jewish as well as the state of the Jews, whether or not citizens of the state. Thus, Israel was established not merely as a state for its citizens, but as the Zionist movement intended, a state for the Jews all over the world, regardless of citizenship. Under this definition, the Diaspora has a key role in shaping the character of the state, and the state's endeavor is that of integrating the Diaspora into Israeli society.

Finally, the **exclusive meaning** suggested by Rouhana regards Israel as exclusively the state of the Jewish people, regardless of their citizenship. It is a political tool aimed at serving the interest of its Jewish population both in and outside the state, and *only them*. According to this definition, the sole criterion for having a claim to the state is not citizenship but rather membership in the Jewish nation. Hence, Israel is the state of non-citizen Jews but not one of its non-Jewish citizens;

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[272] Ibid., 30.

this is not merely an ethnic state but as a "*constitutionally exclusive ethnic state*".[273]

The question remains which one of these meanings best describes the state's structure? There are several ways in which one could examine the validity of each of the meanings in describing the state's structure ranging from policy manifestation of the Jewish character of the state, public opinion polls representing the attitudes and perceptions of the Jewish population, statements of government officials, etc.

This study focuses on law as means of determining the state's identity, ideology and values. Law is politics, and politics are revealed through law. Law embodies a nation's values system, its culture, and in the Israeli case, its religion. It is thus found to be the most compelling tool in determining which of the meanings of the term "Jewish" best defines the foundation of the structure of the Israeli state as *Jewish*. The following analysis surveys Israel's statutes, which directly relate to its Jewish identity (8 in total) to conclude which of the aforementioned meaning best describes the Jewish character of the state.

3.4.4.   Statutory Expression of the *Jewish* Nature of the State

The first expression of the Jewish nature of the state can be found in the Israeli declaration of independence discussed herein above.[274] While the declaration has no constitutional standing to invalidate an existing legislation[275], the Supreme Court did find in one of its first rulings that the declaration presents the "aspirations of the people and its fundamental credo.[276] In 1992 the Israeli Knesset entrenched the constitutional definition of the state in the two civil rights laws; Basic law: Human

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[273] Ibid. 31.
[274] Declaration on the Establishment of the State of Israel.
[275] David Kretzmer, 17.
[276] Zeev v. Gubernik, **(1948) 1 P.D. 85**, 89.

Dignity and Freedom and Basic Law: Freedom of Occupation. However even prior to the enactment of these laws, the Israeli lawmaker explicitly expressed the Jewish character of the state in eight statutes.

The Law of Return, 1950[277]

This law gives explicit expression to the political manifesto of Zionism; the connection between the Jewish people in the Diaspora and the state of Israel.[278] Section 1 of the Law of Return states: "Every Jew has the right to come to this country as an *oleh.* [Jewish immigrant, r.o.][279]

When presenting this law before the Knesset, Prime Minister, Ben Gurion declared:

> The Law of Return and the Nationality Law which are before you
> are closely connected and have a common ideological basis, that
> derives from the historical uniqueness of the State of Israel, a
> uniqueness that relates to the past and the future…These two laws
> determine the *special character and purpose of the State*
> (emphasis added, r.o.) of Israel which carries the message of the
> redemption of Israel.[280]

This law emphasizes the special status of Jews vis-à-vis the right to settle in Israel, due to the 'special character and purpose of the state', namely as the homeland of the Jewish nation, as stated in the declaration of independence.

Every state has the right to control its immigration policies, and certain qualification factors may be stressed more than others. Non-citizens do not have an inherent right to become citizens and therefore it would seem that these policies are not discriminatory per se. However, in Israel, Jews do in fact have an inherent right to

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[277] For full text of law see Appendix A.
[278] Kretzmer, 18.
[279] Law of Return, **S.H. 51 (1950),** 159.
[280] Divrei HaKnesset,(1950) 2036-37.

citizenship.

The Law of Return gives meaning to the characterization of the state as Jewish. This does not inherently suggest that all non-Jews are discriminated against in the Israeli state. One may contend that the law of return does not discriminate against non-Jewish citizens of the state, but rather gives special status to certain immigrants who wish to become Israeli citizens, and therefore, is not, in itself, discriminatory against non-Jewish citizens. It is however clear that the descriptive meaning of the term Jewish according to which the state is neutral with respect to the majority-minority relation, cannot correspond with the objective of the Law of Return, which is preferential immigration of Jews. The implicit objective of the law is to manipulate the majority-minority ratio to provide for a demographic advantage to one particular group over the other. The Jewish majority is not "accidental" but rather construed by direct and controlled government policy to this effect. Indeed the stated objective of the Zionist ideology itself it not neutral to the majority-minority ratio. It explicitly seeks to raise the Jewish demography through actively encouraging Jewish immigration. Therefore, the descriptive meaning of the term "Jewish" is inapplicable to the Israeli system.

The World Zionist Organization Agency (Status) Law, 1952[281]
Section 1 of the law reads as follows:

> The State of Israel regards itself as the creation of the entire Jewish people, and its gates are open, in accordance with its laws, to every Jew wishing to immigrate to it.[282]

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[281] S.H. 112 (1952), 2.
[282] Ibid.

It was at the first Zionist Congress in which the World Zionist Organization (WZO) was created with the objective of working towards the creation of a Jewish homeland in Palestine. This law recognizes that role and grants the WZO and the Jewish Agency, both of which have been vital in the Zionist endeavor, special status, creating an apparatus to coordinate their functions in encouraging Jewish immigration and absorption in the state.

Granting special status to both the WZO and the Jewish Agency coupled with the Law of return both suggest that the preferential meaning, that is, the preferential treatment of Jews within Israel ((but not Jewish people as a whole), is inadequate. The stated objectives of these laws is not limited to the territorial boundaries of the State of Israel, indeed, quite the opposite, they seek to enhance Jewish immigration from abroad into Israel, indicating a preferential treatment of Jews as a whole.

State Education Law

This law instituted public state education. It replaced the system, which exited prior to 1948 in which education was run by the political movements. The object of the law is:

> … [T]o base elementary education in the state on the values of Jewish culture and the achievements of science, on love of the homeland and loyalty to the state and the Jewish people, on practice in agricultural work and handicraft. …[A]nd on striving for a society built on freedom, equality, tolerance, mutual assistance and love of mankind.[283]

Section 4 of the law provides that "in non-Jewish educational institutions, the

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[283] Section 2, State Education Law (1953); see: S. Goldstein "The Teaching of Religion in Government Funded Schools in Israel" Israel Law Review 20, no. 1 (1992): 36-64.

curriculum shall be adapted to the special conditions thereof." However, this does not alleviate the problematic nature of the education system, which, by definition, seems to ignore the existence of a non-Jewish population.

The statutory incorporation of this objective implies that the values of the Jewish religion are given a status above all others. The fact that the law also provides (in a subsequent section) for consideration of the curriculum in non-Jewish institution does not alleviate the fact that the stated objective of the educational system is to promote the Jewish culture, and only the Jewish culture. Furthermore, basing the educational system on the values of the Jewish culture *and* the achievements of science, love of homeland, loyalty to the state etc., suggests that the values of Jewish culture are different than the other numerated values, otherwise why would the legislator feel compelled to incorporate those values alongside the values of the Jewish culture? Hence, basing the educational system on Jewish culture does not necessarily provide for building a society based on freedom, equality, tolerance, mutual assistance and love of mankind, since the word *and* is incorporated in the definition.

Although the Palestinians consist of a national minority within Israel, this status is denied both on the political and psychological levels, by the Israeli state. Many states, including Israel, use education as a tool to control and mold its population in accordance to the values the state wishes to promote. Israel therefore promotes Zionist substance in the Arab education and denies the promotion of Palestinian national themes for fear that a strong Palestinian national identity of the Arab citizens will result in a civil uprising, much like the situation within the

occupied territories. This issue will be discussed further in later chapters, however it is important to note that this law embodies the preferential treatment of the Jewish population within Israel over the non-Jewish population and thus contradicts the principles of the extensive meaning of the tern Jewish which suggests that the preferential treatment of Jews is limited to those outside of Israel but that within Israel equality exists between Jews and non-Jews. It would be very difficult to achieve equality and tolerance for all citizens regardless of religion or in a system, which, in its stated objects, hopes to base its education system on one set of values relating to one religion.

The Millet System

The British mandate and later the Israeli state preserved the Ottoman system of *Millet*[284] which provided for autonomy for each religion over matters of personal status. Specialized courts corresponding to the various religions (Rabbinical courts, Muslim, the different Christian denominations and Druze) were set up to adjudicate personal status matters. However, Chief Rabbinate of Israel Law of 1980[285] allocates special status to the Jewish religion with the creation of an elected Rabbinate council and two elected chief Rabbis. The council has many functions with regards to Jews. This is another manifestation of the idea of the Jewish state. However, no such correlating statutory council or chief religious figure was created by the state for non-Jews. The Law and Government Ordinance of 1948[286]declare that the Jewish Sabbath and religious holidays are official days of rest. However the law further states that non-Jews may be entitled to days of rest on their Sabbath and religious holidays.

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[284] David Kretzmer, 18.
[285] **S.H. 986** (1980), 90.
[286] **S.H. 1948**, 1428.

Therefore this law does not inherently contradict the principle of equality and may fit into the preferential meaning of the term Jewish, although the only officially recognized holidays are those of the Jewish faith, similar to the recognition of Christian holidays in the United States.

<u>The National Flag, Emblem Law and National Anthem</u>
The Flag and Emblem Law[287] delegates the authority to decide on the national flag and emblem to the Provisional Council of State, which was composed solely by Jews (although at the time, the percentage of the Arab population exceeded that of the Jewish one). The Provisional Council decided on 28 October 1947 that the flag adopted at the first Zionist Congress as the flag of the Zionist movement, would be the flag of the state. The flag was inspired by the Jewish prayer shawl, the *Talit* and the Shield of David. In addition to the heavy religious symbolism, the flag represents the goals of the Zionist movement, which Arab citizens cannot be expected to share.[288] The Emblem is the seven-branched *menorah* (candelabrum) one of the main features of the first and second temples. Similarly, the national anthem, the *Tikva* (the "Hope") was the anthem of the Zionist movement. Although it is sung in national and international events, the anthem has no legal status. Its words are understood to be strictly Jewish, with no meaning for non-Jewish citizens. Thus, non-Jewish citizens are completely excluded from the national symbolism of the state. This does not infer that their legal status is different than their Jewish counterparts, it does suggest however, that the national symbols, which represent the national identity and ethos of the state, are exclusively Jewish.

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[287] The Flag and Emblem Law, **S.H. 8 (1949)**, 221.
[288] Sammy Smooha, Arabs and Jews in Israel: Change and continuity in mutual intolerance, (Boulder: Westview, 1992) Vol. 2.

Cultural, Educational and Memorial Institutions

The legislator has given statutory recognition to cultural and educational institutions whose purposes are defined strictly in Jewish terms.[289] The Yad Yitchak Institute is a statutory institute whose aims are to deepen the people's consciousness of the continuity of Jewish settlement in Israel and promote the research of history on the settlements. The Mikve YIsrael Agricultural School received statutory recognition as well. The object of the school is to educate youth in Israel on agriculture and settlement as well as Jewish culture and Hebrew education in accordance with Israel's heritage. Moreover, The Martyrs' and Heroes' Commemoration (*Yad-Va-Shem*) Law[290] establishes the Remembrance Authority, *Yad Va-Shem,* to commemorate the murder of the Jews by the Nazis and their collaborators. No similar non-Jewish institutions were given legal recognition by the state.

Is the statutory recognition of Jewish symbolism accompanied by the recognition of institutions geared towards the promotion of the study and remembrance of Jewish history an exclusionary practice or can it be understood in the framework of the descriptive meaning of the term Jewish, to represent the culture and history of the majority of the population?

This question will be discussed extensively in chapter five with regards to the boundaries of the definition of the state as Jewish democratic and its implications for the Majority-Minority relations. It is however, worth noting that several scholars, led by Sammy Smooha have put forth a proposition according to which Israel is an *"ethnic democracy"*. According to his definition an ethnic democracy is:

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[289] Yad Yitzchak Ben-Zvi Law, 1969, **S.H. 1969**, p. 43; Mikve YIsrael Agricultural School Law, **S.H 1976**, p. 1099.
[290] **S.H.1953,** 2.

> A system, which combines the extension of civil and political rights to individuals and some collective rights to minorities, with institutionalization of majority control over the state. The state is identified with a "core ethnic group" not with its citizens – at the same time the minorities are allowed to conduct a democratic and peaceful struggle that yields incremental improvement in their status.[291]

It would seem the Smooha would subscribe to the preferential meaning of the term Jewish, in that its national identity, ideology and national goals are concerned with the interests of the Jewish population of Israel (but not the Jews as a whole). The proponents of this interpretation would argue that it nonetheless confines itself to the boundaries of acceptable political behavior in a democracy, which is dominated by one ethnic group.[292] According to this school of thought Israel is an ethnic state, which provides a national home for the dominant ethnic group.[293] However, as previously discussed, this interpretation does not correspond to other laws such as the Law of Return, which does not limit its preferential treatment of Jews to the geographical borders of the state of Israel.

Absentee Property Law 1950

The Absentees' Property Law authorizes the confiscation of lands, properties and homes of Palestinian refugees driven out during the 1948 war. The act created an office known as the 'Custodian for Absentee Property', in which the legal and equitable title of 'absentee' property is entirely divested from the property of Palestinian owners. An "absentee" is defined under Section 1 of the act as being:

> A national or citizen of Lebanon, Egypt, Syria, Saudi Arabia, Trans-Jordan, Iraq, or the Yemen, or a person who was in any part of

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[291] Sammy Smooha, "Ethnic Democracy: Israel as an Archetype," Israeli Studies 2, no. 2 (1998): 194-241, 199-200. For the category of ethnic state see also Charles Maynes, "Containing Ethnic Conflict," Foreign Policy 90 (Spring 1993): 3-21.

[292] Similar to India, which defines itself as a Hindu state, Sri Lanka is defined as a Sinhalese state, France, a Catholic state and Russia is defined as ethnically Russian.

[293] Rouhana, 30.

Palestine or a neighboring country; or a Palestinian citizen, and who was absent from his property after 29 November 1947, or if a Palestinian had left for a neighboring country or in an area controlled by an enemy force of Israel.[294]

Under the act an absentee may have his or her property confiscated by the State of Israel, and may only have his or her property returned if he or she can prove he or she left his or her place of residence: "for fear that the enemies of Israel might cause him or her harm or otherwise than by reason or of fear of military operations"[295]

Accordingly, all Palestinians (including those Palestinians with other Arab nationality) who fled to neighboring countries 1948 are explicitly excluded and their properties have been confiscated under this act. A total of 750,000 Palestinians had their land and property confiscated by Israel or Israeli citizens.[296] In addition, by 1997 it was estimated that about 75,000 'Present Absentees' - Arabs residing within Israel but nonetheless regarded as absentees since they could not prove that they remained in Israel in 1948 - have had their property confiscated by the Israeli government.[297]

The Land Acquisition (Validation of Acts and Compensation) Law, 1953

The Land Acquisition (Validation of Acts and Compensation) Law 1953[298] permits the confiscation of land for 'military purposes' or for Jewish settlement.

The objective of these laws is clear; it was designed to prevent Palestinians from any entitlement to their former homes under Israeli domestic laws. These laws emphasize the ethnicity of the State as a Jewish State and the land is a resource of that

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[294] Article 1 of the Absentee Property Law, **S.H.37 (1950)**, 86.

[295] Ibid., article 27.

[296] Benny Morris, The Birth of the Palestinian Refugee Problem (New York: Cambridge University Press), 1987.

[297] Adalah Report 2003 (accessed January 25, 2003); available from http://www.adalah.org/intladvocacy/uncescr24.htm

[298] Land Acquisition (Validation of Acts and Compensation) Law, **S.H. 122 (1953)**, 58.

state, and its people, i.e. the Jewish population. They explicitly give benefits or privileges solely to the Jewish population or impose restrictions on the civil and political rights of Palestinian citizens because of their national belonging or because they do not belong to the majority ethnic group.

Any legal analysis should be conducted with a historical context in mind. At the time of the enactment of these laws, Israel was a young nation, surrounded by hostile nations with the stated objective of annihilating it. Jewish immigrants were flowing into the country following the end of World War II and the Holocaust and the Jewish state was emerging out of a bitter war with its Arab neighbors. It could hardly be expected that Israel allow for the hostile population, with which it was at war, to return to claim property within Israel. Nonetheless, Israel has used these laws in many cases throughout the years to justify other confiscations of Arab land to expand Jewish towns at the expense of Arab ones.[299] The same "security" argument that may have been valid in the context of the 1950s, stands on shaky grounds at present times.

To summarize, Rouhana presents four possible meaning for the term *Jewish* in the constitutional definition of the state as a Jewish-Democratic one. The descriptive meaning interprets the Jewish term to imply that Israel's character is defined by the majority of the population which is Jewish. According to this interpretation the state is neutral with respect to the majority-minority relations and ratio. The survey of the aforementioned laws clearly excludes this interpretation. Not only do these laws grant preferential treatment of Jewish both within and outside the state, they also vigorously protect and promote the Jewish character of the state and its values as

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[299] Land, Adalah Review, Vol. 3 (Summer 2002).

those of the Jewish culture. The second possible interpretation of the meaning of the term Jewish is the preferential meaning. According to this interpretation, the term does not describe the demographic reality in Israel but rather that the state belongs to the Jewish people, resulting in preferential treatment of the Jewish population over the non-Jewish population. The preferential treatment in this context is given to the Jewish citizens of the state, but not to the Jewish population as a whole. As we have seen, this interpretation may not apply in the Israeli context as well since both the Law of Return and the World Zionist Organization Agency (Status) Law directly refer to Jewish immigration into Israel and grant preferential treatment of that population over non-citizens family members of Arab citizens, which may not receive automatic citizenship in Israel. Third suggested meaning is the extensive meaning, according to which the preferential treatment of Jews relates to the granting of citizenship to Jews outside Israel seeking to immigrate. The same preference is not granted to the non-Jews. However except for discrimination in immigration policy, citizens of the state, both Jews and Arab, are treated equally. Chapter five and six discuss extensively the status of the Arab population vis-à-vis the Jewish majority in Israel and survey the discriminatory legislation affirmatively casting the Arabs as second-class citizens in Israel. However, even the legislative picture presented herein above reveals a very clear policy; the state of Israel, its institutions, resources, and government, are all geared towards the promotion of the Jewish revival in Palestine in line with the tenets of Zionism. Any other interpretation falls short of the reality presented herein. Thus, this study adopts the framework of the final interpretation of the meaning of the term *Jewish* which concludes that Israel has adopted a definition

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that is exclusive in nature. [300] Israel is a state of the Jewish people, both within its borders and outside, it is a state for the Jewish people and in that its national objectives serve not only its citizens, but also the entire world Jewry. The national identity is based on the Jewish identity and not the identity of the citizens of Israel, and the non-Jewish citizens are largely excluded form the national ethos, narrative and symbolism.

In sum, all these laws result in the exclusion of the Arab minority and contribute to the status of the minority as second-class citizens. Having equal rights in obtaining citizenship is one of the most fundamental rights citizens may enjoy, however in Israel only Jews receive automatic citizenship. Laws preventing the return of Arabs to their land while at the same time allowing for Jews to settle freely on those lands is clearly discriminatory and aimed at changing the ethnic composition of the state. Dean McHenry and Abdel Fattah Madfy, in measuring Israel's democracy conclude that:

> There is legal discrimination in Israel; that is, by law there are prohibitions against the return of expelled Arabs, while Jews have complete freedom to enter and receive automatic citizenship, there is discrimination in land ownership and use; and, the provisions of social services to Jews has been on a preferential basis achieved by allowing 'national institutions' to carry out some governmental functions. Discrimination is associated too, with persistent inequalities and these inequalities are linked to the ability of Israeli Arabs to participate fully in the polity. In housing, income, governmental support, employment and education the Israeli Arab is faced with a myriad of problems in these areas which the average citizens of Israel does not face.[301]

These aforementioned laws contribute to the exclusive Jewish identity of the State and its goals to institutionalize the preference for Jews. However, these laws do

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[300] Rouhana, 31.
[301] Dean McHenry and Abdel Fattah Madfy, "A Critique of Quantitative Measures of the Degree of Democracy in Israel," Democratization 13, no. 2 (April 2006): 267.

not explicitly exclude non-Jewish citizens from the state's definition Therefore, these laws do not, by themselves, constitute the exclusive meaning of the Jewish state.

3.5. <u>Judicial Contribution to the Exclusive Nature of the Jewish State</u>

The legislation elaborated hereinabove, while emphasizing the Jewish identity of the state, does not explicitly exclude the Arab citizens, but rather institutionalizes the preference for the Jewish religion, culture and ethos.

The constitutional significance of the definition of Israel as a Jewish state has found its expressions in the jurisprudence of the Supreme Court. This is especially true regarding the right to participate in the political process and to run for Knesset elections.

One of the first cases addressing political participation was the groundbreaking precedent of the Al-Ard decision.[302] Al-Ard ('The Land') was a political association asking to register with the District Commissioner in order to run for Knesset elections. The District Commissioner refused to register the party on the grounds that according to its declared aims, it was an unlawful association. The Supreme Court examined the articles of the Association, which defined it aims as *inter alia:*

> (c) finding a just solution to the problem of Palestine – while seeing it as an indivisible unit – according to the wishes of the Palestinian Arab people, which will meet its interests and aspirations, restore its political existence, ensure its full legal rights, and see it as the party with the primary right to determine its own future within the framework of the highest aspirations of the Arab nation.
>
> (d) support for the movement of liberation, unity and socialism in the Arab world, by all lawful means, while seeing that movement s the decisive force in the Arab world which requires Israel to relate

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[302] Al-Ard v. District Commissioner, **(1964) 18 P.D. II** 340.

to it positively."[303]

The court dismissed the case. The three judges gave different legal justifications for the dismissal. Justice Witkon emphasized the refusal of the Al-Ard party to accept the right of the Jews to their own state and that the platform of the movement had no recognition of the establishment of the State of Israel on some part of Palestine. He expressed concern over the identification of the party with the Arab liberation movement, which, at the time, was aimed at the complete destruction of the state.

Justice Landau adopted a different approach. Landau saw in section (d) of the party's platform an identification with the Nasserite movement of Egypt, which at the time promoted the violent struggle with Israel. He argued that the use of force as means of resolving the conflict was considered a delegitimizing political activity, even if there had been no evidence submitted showing that such activity had been taken by the Al-Ard members.

However, in this case, it appears that the court based its ruling on the identification of the Al-Ard movement with forces wishing to destroy the state of Israel more than on the notion that this movement refused to accept the Jewish character of the state and the rights of all Jews to immigrate to the land and settle there. The Court posed a question to the Plaintiffs, whether they recognized the sovereign state of Israel together with the right of return of all Jews, to which they answered in the affirmative; however the court found that answer to be dubious.[304]

In the *Yardor* case, the Arab Socialist List, whose 6 of 10 members belonged

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[303] Ibid. see translation into English in David Kretzmer, 23.
[304] Sabri Jiryis v. District Commissioner, **(1964) 18 P.D.IV 673,** 677-678.

to the earlier Al-Ard movement, was disqualified as an unlawful association since its "members deny the integrity of the State of Israel and its very existence".[305] Three judges wrote separate opinions; however, the leading opinion in favor of rejecting the appeal was that of Judge Agranat, who regarded the issue as primarily a constitutional one:

> There can be no doubt – and the words of the Declaration of Independence state this explicitly – that Israel is not only a sovereign, independent state which strives for freedom and which is characterized by a regime of rule by the people, but that it was established as a 'Jewish State in Eretz YIsrael', that the act of its establishment was based, first and foremost, on 'the natural and historical right of the Jewish people to live , like any other nation, independently in its own sovereign state', and that this act was 'the realization of the yearning of generations for the redemption of Israel.'
>
> …These words express the aspirations of the people and its basic credo and that it is therefore our duty to keep them in mind when we interpret and give meaning to the laws of the land…The Meaning of this basic credo is that Israel is a fundamental constitutional fact, which no authority in the state – be it an administrative, judicial or quasi-judicial authority – may deny when exercising any of its powers."[306]

Since the Jewish aspiration of the state is such an inherent part of this doctrine, any list of candidates who rejects the aforementioned fundamental principle does not have the right to participate in the elections. Therefore, Justice Agranat concluded:

> It is clear that a group of persons whose aim is not merely… to change the internal constitutional regime of the state, but also to undermine its very existence, may not *a priori* hold the right to take part in the process of forming the will of the people, and it may therefore not stand for election in the Knesset elections.[307]

The underlying narrative in this decision is the "fundamental constitutional

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[305] Yardor v. Central Elections Committee for the Sixth Knesset, **(1965) 19 P.D. III 365**, 369. It is important to note that the head of the election committee was none other than Justice Landau who chaired the bench in the Al-Ard case, and found that the Socialist List was unlawful, in the same lines as his previous judgment in the Al-Ard case.

[306] Ibid., 385-386.

[307] Ibid., 387.

fact" of the existence of Israel as a Jewish state, which cannot be challenged. However, it is not clear whether Justice Agranat based his decision solely on the fact that the members of Al-Ard (who were the majority of the Socialist List) rejected the notion of the Jewish state as such. Agranat emphasized the notion that no regime, including a democracy, would recognize a movement aimed at undermining and destroying the regime itself and pointed to the identification of the Al-Ard movement with Israel's declared enemies.[308] Agranat denied the petitioners, basing his decision on the notion that a party owing foreign alliance but acting within a democracy to overthrow that very same system cannot claim to benefit from it.

Similar concepts were recognized in human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR)[309] and the International Covenant on Cultural, Social and Economic Rights (ICCSER)[310]. Both treaties contain an identical provision in Article 5 which states:

> Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the *destruction* [emphasis added] of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

More specifically, Article 22(2) of the ICCPR provides that:

> No restrictions may be placed on the exercise of this right [freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.[311]

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[308] Ibid., 388.

[309] G.A.Res. 2200A(XXI), 21 U.N.GAOR Supp. (No. 16), U.N.Doc. A/6316 (1966), 999 U.N.T.S. 171 entered into force March 23, 1976.

[310] G.A.Res. 2200A(XXI), 21 U.N.GAOR Supp. (No. 16), U.N.Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976.

[311] For similar provision see also articles 15 and 29 of the American Convention on Human Rights, O.A.S. Treaty Series No. 326, at 1, O.A.S. Off. Rec. OEA/Ser.L/V/II23 doc.rev.2, entered into force

Hence, this concept is not foreign to democratic societies and, although not specifically mentioned by Justice Agranat, it has been recognized as a principle of international law.

However, one possible and quite acceptable reading of Agranat's ruling[312], is that the mere rejection of the Jewish nature of the state of Israel will suffice in order to justify rejection of participation in the elections in the interest of "national security"; this is by no means the only plausible interpretation in light of the other aforementioned justifications. However, if this was the intention of the court, it suggests quite a different conclusion, that parties rejecting the exclusive nature of the state as belonging to, and created for, the Jewish population, are excluded form political participation. This interpretation would strengthen the argument that Israel is in fact constitutionally an exclusive ethnic Jewish state.

In a later case[313] (*Neiman I)*, the Supreme Court reversed an earlier decision by the lower courts that disqualified a joint Arab-Jewish party from participating in the election based on the fact that they were perceived as endangering the preservation and distinctiveness of the state as a Jewish state. It would appear that this decision differs from the *Yardor* decision and therefore, denial of the Jewish character of the state would not necessarily result in disqualification. However, a close reading of this case reveals that, in the lower court, the Minister of Defense refused to reveal the evidence on which he based the disqualification of the party. The Supreme Court

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July 18, 1978; article 11 of the African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3/ rev.5, 21 I.L.M. 59 (1982), entered into force Oct. 21, 1986; Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (as amended by Protocols 3,5,8,9, and 10), 213 U.N.T.S. 222, Europ. T.S.No. 5, entered into force Sept. 3, 1953.

[312] Reuben Rubenstein, The Constitutional Law of The State of Israel, 177.

[313] Neiman v. Chairman of the Central Election Committee for the Eleventh Knesset **(1984) 39 P.D. II,** 233.

held that the court could not disqualify a party without evidence to prove the allegations, and since the Minister of Defense refused to produce such evidence, the appeal was accepted. Nevertheless, it seems from the statements of the court that only a list, which sought the physical destruction of Israel, would be disqualified but that the mere challenge of the "fundamental credo" of the state as a Jewish state would not disqualify the list. This was an important step forward in the advancement of the democratic dialogue within the system.

However as a result of the *Neiman I* judgment, the Knesset amended Basic Law: The Knesset and added section 7A[314] which reads as follows:

> A list of candidates shall not participate in the elections for the Knesset if its aims or actions, expressly or by implication, point to one of the following:
>
> denial of the existence of the State of Israel as the state of the Jewish people;
>
> denial of the democratic nature of the state;
>
> incitement to racism

The implications of this section were described eloquently by the Arab Knesset Member Tewfik Toubi, who stated:

> To say in the law that the State of Israel is the state of the Jewish people, means saying to 16% of the citizens of the State of Israel that they have no state and that they are stateless, that the State of Israel is the state only of its Jewish inhabitants, and that the Arab citizens who live in it reside and live in it on sufferance and without rights equal to those of its Jewish citizens…Don't the people who drew up this version realize that by this definition they tarnish the State of Israel as an apartheid state, as a racist state?[315]

However, what seemed to escape the attention of the Israeli legislator is the inherent contradiction between paragraphs (1) and (3) of section 7A of the Basic

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[314] Section 7A, Basic Law: The Knesset, **12 L.S.I. 85**
[315] 42 Divrei HaKnesset 3899-3900 (Hebrew).

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Law: The Knesset. Prohibiting Arab parties, by law, from participating in the political process simply because they wish to promote a bi-national or a-national state, is promoting discrimination based on nationality or religion (depending on ones view of the term "Jewish"), such discrimination may be regarded as a form of racism. If the intention of the Israeli legislator was to prevent racism by the enactment of this paragraph, it seems that this attempt has been undermined by the incorporation of the first paragraph. By incorporating the Jewish character in this basic law, and criminalizing the undermining of this characteristic, the Knesset has successfully ensured that the Arab minority will remain a de facto member of the nation but not a defining member.

The Israeli courts have categorically rejected this argument and contend that there is no inherent contradiction between the definition of the state as the state of the Jewish people and its definition as democracy. In this context the court stated in the *Neiman II* case, the following:

> There is no merit in the argument about the apparent contradiction between the paragraphs of section 7A. The existence of the State of Israel as the state of the Jewish people does not deny its democratic nature, just as the Frenchness of France does not deny its democratic nature.[316]

Conceptually, one could envision a state defined by the ethnic or religious character of the dominant group but at the same time, provide for equal treatment of all citizens. However, the determining variable would be the interpretation allotted to the ethnic or religious element of the definition. Herein lies the problem: it is not the conceptual foundation of the state as Jewish-democratic that challenges Israel's minorities, but rather, the exclusive interpretation allotted to this term by the state's

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[316] Neiman v. Chairman of Central Election Committee, (1988) **P.D. IV 177**, 189.

institutions. When comparing between the 'Jewishness' of Israel, and the 'Frenchness' of France, it is clear that the court regards Judaism not merely as a religion, but rather as a nationality. Even if one views the 'Jewishness' of Israel as the nationality, it is nevertheless a nationality based on religious/ethnic origins, unlike the 'Frenchness' of France, which is based on citizenship. The sense of belonging to the French nation is based on a linguistic and cultural ethos, not a religious one. Therefore, any member of the French state who acquires citizenship can adapt to these cultural nuances and become part of this so-called 'Frenchness'. An Arab-Israeli will never be able to identify and embrace the 'Jewishness' of Israel, despite the 'Israeliness' of it.[317]

The Arab-Israeli citizens have frequently stated that they accept the state on its Israeli (rather than its Jewish), basis. Can one imagine that an Arab could truly embrace such a national identity the way a French born citizen can embrace the French identity? Being a citizen of Israel does not equal being a member of the Jewish nation the way French citizenship entitles becoming a member of the French nation. The importance of a nation-state, as a unifying factor has shifted. Thus, in France an ancient people moved toward attempting to integrate immigrants from eastern and southern Europe as well as North Africa. The nation-state does not have to be pure and ethically monolithic. There is an increasing shift, especially in Europe

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[317] Knesset member Toubi proposed instead of paragraph 7A of the Basic Law: The Knesset, a different version which referred to the "denial of the existence of the State of Israel" as opposed to the denial of the existence of the state as a Jewish state, or that the law refer to the Israeli state as "the state of the Jewish people and its Arab citizens". Both proposals were rejected by the Knesset, 42 Divrei HaKnesset 3906. See also Abd el-Muta'al, "From the Point of View of an Israeli Arab," Herut, February 13, 1964 (Hebrew) in Ori Stendal The Arabs in Israel, (Sussex Academic Press 1996), 192. Abd el-Muta'al speaks of his willingness to serve in the IDF against an external enemy other than the Arab states in order to protect Israel.

(and of course, the United States), towards multiculturalism. Different groups crave the enhancement of their language, cultural traditions and customs. National majorities coexist in a single state with national minorities. The United Kingdom for instance, is composed of the English, the Scots, the Welsh and the People of Northern Ireland, each with their own specific culture, traditions, and history. But the unifying force was the English language and influence, which subsequently molded a cohesive British nation.

For non-Jewish citizens, therefore, the meaning of voting for the Knesset is limited not only by the power to disqualify those parties who attempt to change the ideological basis of the state, but also by requiring them to accept (in a sort of 'take it or leave it' attitude) that the state in which they are voting is not theirs. In order to have the chance to be represented in the parliament, they first must accept that the state belongs to others – the Jews, both in and outside of Israel. This is not equal, as some may have us believe, to asking them to accept the legitimacy of the state, but rather to accept Zionism, which is tantamount to asking them to accept the notion that the state to which they belong is not their own but belongs to another peoples, and exclusively to them.

The adoption of this amendment incorporates into Israeli constitutional law the concept that Israel is *only* the state of the Jews – both those who reside in it, and those who are citizens of other countries. Consequently, since 1985 (after the adoption of the Amendment by the Knesset) Israel has been an *exclusively* ethnic state. This differs from the Western democratic nation-state – which the court alluded to in the *Neiman II* case, which considers itself to be the state of all its citizens and

only them.[318] Unlike nation-states such as France and Germany, Israel considers itself to be the state of a particular group of people – Jews, both within the state and outside it, regardless of their citizenship. Moreover, based on this criterion, nearly a fifth of Israel's citizens, namely, non-Jewish, are constitutionally denied parliamentary representation that makes even implicit attempts to challenge the exclusiveness of the Jewish definition of the state.

In the *Neiman II* case, which was similar in its facts to the first *Neiman* case, the Basic Law: The Knesset had already been amended. The two dissenting justices took the view that any attempt to redefine Israel as a state of all its citizens is tantamount to denial of its Jewish definition and therefore unconstitutional. Any promotion of *full* equality between Arabs and Jews, particularly on a national level, will result in the denial of the character of the state as the state of the Jewish people, and therefore lead to disqualification. The two justices providing the majority opinion tried to avoid ideological definitions but nevertheless held that at a minimum, the definition of the state as a Jewish state results in three principles; a majority of Jews in the country, preference for Jews in immigration through the Law of Return, and a special relationship between the state and the Diaspora Jews.[319] Any list that wishes to challenge these principles would be disqualified.

3.6. Concluding the Debate

It appears that the debate over the exact meaning of the term "Jewish" has yet to be concluded. It is doubtful whether the forefathers of Israel, defining Israel in its

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[318] Rogers Brubakar, Citizenship and Nationhood in France and Germany, (Cambridge; Harvard University Press, 1992).
[319] Neiman case, supra note 30.

declaration of independence had a very clear idea of what the exact meaning of the term entails. Both the legislator and the judiciary have contributed to the possible interpretations of the term, although no consensus had been reached regarding an accepted definition. This chapter has outlined four possible meaning utilizing the framework of Nadim Rouhana who concludes that the only possible interpretation is the exclusive meaning since he found that the statutes reviewed herein "emphasize the exclusive Jewish identity of the state and its goals and also provide legal mechanisms for institutionalizing preference for the Jewish group."[320]

It has been stated that the various laws must be contextualized with the historical events, which frame the underlying objectives of each of the statutes enumerated here. While the laws reviewed do not explicitly exclude non-Jews of the state's definition, the review of the relevant court decision lead to the conclusion that the Jewish character of the state leaves little space for non-Jews to claim the state as their own. Chapter five discusses extensively the majority-minority relations in this context, however it is important to note that a survey of the Israeli legal system clearly presents a picture in which the national identity in Israel extends beyond its physical borders to include the Jewish population as whole.

Elsewhere it is argued in this dissertation that there is no inherent contradiction between the term 'Jewish' and the term 'Democratic', at least not in theory. It is important resolve the apparent internal contradiction in the analysis presented here which subscribes to Rouhana's *constitutionally exclusive ethnic state"* on the one hand but departs with him on the conclusion that Israel cannot be both

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[320] Nadim Rouhana, Palestinian Citizens in an Ethnic Jewish State, 33.

Jewish and democratic at the same time. The problem lays in the interpretation of the term "Jewish" rather than a theoretical or conceptual contradiction in terms.

The problem lies in the content given to the term Jewish. The application of the term Jewish presents a framework in which in Israel and beyond, Jews have received an advantageous status vis-à-vis non-Jews. The state was created to serve the interests of the Jewish population, not the Israeli one, and the national identity of the state is defined, *exclusively,* by the Jewish narrative.

The alienation and discrimination of the Arabs in Israel, has transcended from ideology into all levels of society.[321] On the structural level, Palestinian Arabs are excluded from service in the military. This has an impact on their status both as equal members of a society, defined largely by its militarism, as well as entitlement to benefits resulting from military service, provided only to citizens who serve. Since Arabs are involuntarily excluded from this service, it is unjust; as the argument goes, to prevent them from receiving welfare benefits in this regard. In addition, the lack of military service prevents Arabs from employment in any "security sensitive" jobs or senior governmental positions, which require military service. While Jewish citizens who do not serve may also be barred from these employment opportunities it is assumed that they have a choice when they opt not to serve in the military. This choice is not available to the Arab citizens. Arabs are also excluded from institutions governing land ownership as discussed earlier in this chapter as well as the inferiority of the educational system in the Arab sector and its subordination to the Zionist

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[321] For further and more elaborate debate on the levels of discrimination against Arab Israelis see As'ad Ghanem, Nadim Rouhana and Oren Yiftachel, "Questioning "Ethnic Democracy": A Response to Sammy Smooha", Israel Studies 3, no. 2 (1998): 258-260. See also chapter 5 of this dissertation.

educational system.[322]

On the executive level, and resulting from the discrimination on the structural level, very few Arabs manage to attain any power sharing position in the executive. No Arab party has ever been invited to join a government coalition, and even during the Rabin government (1992-1995) the Arabs supported the government, thereby allowing for it to survive oppositional votes of non-confidence, but was not asked to join the coalition. Therefore, no Arab has ever held a ministerial position in Israel[323], nor have they enjoyed equal sharing in allocation of budgetary resources. The first (and thus far only) Arab Supreme Court Justice was added to the bench in 2004.

On the legislative level, the survey of the various statutes, exhibit how they serve to enhance Israel's exclusionary structure. Beyond the laws mentioned herein, there have been several key legislations, which have reinforced the inferior status of the Arab in Israel. Ghanem, Rouhana and Yiftachel, writing on the status of the Arabs in Israel, eloquently summarized the legislative reality in Israel:

> First and foremost, a series of land laws have facilitated the continuing Judaization of the land…Second, Mandatory Emergency Laws are still in force, being mainly used against the State's Arab population. Third, two Basic Laws enacted in 1992 are prefaced by declaring Israel as "Jewish and Democratic", thereby enshrining the ethnic character in the state's constituion-in-the-making. Fourth, Israel's legal system lacks direct constitutional protection of basic rights such as freedom of religion and speech, as well as legal equality. Fifth, Israel's National Education and Broadcasting Laws also promote the Zionist characteristics of these key public institutions. Finally, recent studies have shown that some twenty Israeli laws continue to discriminate against Arab citizens, and the Israeli law interpretation, enforcement, and sentencing have consistently reproduced structural inequalities between Arabs and

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[322] For additional discussion regarding the inferiority of the Arab educational system see also Ruth Gavinson, Does Equality Require Integration? The Case of the State Educational System in Jaffa (Beit Berl: Institute for Israeli Arab Studies, 1999). [Hebrew]

[323] This has recently changed with the appointment of an Arab as minister without portfolio in January of 2007. For further detail see chapter 9 of this dissertation.

Jews.[324]

These new legislations, new interpretations and their consequences for the security of the state and the majority-minority relations within it are the subject matter of this dissertation and will be discussed hereinafter.

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[324] As'ad Ghanem, Nadim Rouhana and Oren Yiftachel, "Questioning "Ethnic Democracy": A Response to Sammy Smooha", 259.

Chapter 4: Foundation of the Israeli Security Doctrine

4. Security Defined

> The concept of national security deals with safeguarding a nation's existence and defending its vital interests. Existence is the basic objective of security. It means, quite simply, physical survival; it constitutes an objective, primal value, one that all nations hold in common.[325]

In Israel the vital interest not only includes contiguous sovereign existence but also contiguous existence as a *Jewish state.*

A state's national security doctrine is defined by the nature of the threat it faces. The nature of the threat is based on certain assumptions states make about their geostrategic and geopolitical environment. In following chapter discusses the various assumptions made by the Israeli policy makers and security establishment. The foundation of Israel's national security policy is largely based on those assumptions, which also produce its long-term security objectives as well as explain the policy resulting from those objectives. First however, it is important to anchor the analytical discussion in the understanding of the important role the security doctrines plays in defining the structure of national institutions and the policies they produce. Similarly to the previous chapter, the objective of the following discussion is not in broadening the existing academic discourse on the security doctrine of Israel but rather to provide the necessary material to assess Israel's policy with regards to its national minority. The security doctrine of Israel provides for a contextual framework for that assessment.

4.1. Theoretical Framework – Formation of National Security Doctrine in Democracies

There is often a tension between maintaining the democratic principles of a nation, and securing its survival. Democratic principles focus on the individual, his or

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[325] Israel Tal, National Security: The Israeli Experience (Westport: Praeger Publishers, 2000), 3.

her rights, freedoms and liberties, while national security focuses on the nation as a whole, on the collective and its survival. These values are often incompatible and difficult to balance. The tension is exacerbated by the context. Nation with relative peace and a cohesive society, such as Northern European nations, find it fairly easy to maintain their national security while protecting fundamental rights and freedoms of their citizens. Nations such as Israel, characterized by deep societal divisions and conflict, do not share the same luxury. Israel has been in a constant state of emergency since its inception in 1948.[326]

The formation of national security policies and doctrine in democracies can be analyzed as a five-step process:

Assess the environment - Nations design their national security policies in accordance with the threats they face. This requires an assessment of the strategic and political environment. The strategic threats are divided into internal and external threat. Internal threats may derive from the state's natural environment (for example, environmental degradation, which is a non-traditional threat which exceedingly affects nations, particularly developing countries).[327] States may also face internal threats in the form of a dissident group, organized crime and disaffected groups, which seek to undermine the regime.[328] Furthermore, nations assess the regional and international environment when assessing the external threats they face. In their security estimations, states search for solutions to their strategic problems. For

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[326] Avner Yaniv, "Introduction", in National Security and Democracy in Israel ed. Avner Yaniv (Boulder: Lynne Rienner Publishers, 1993), 1.

[327] Terry Terriff, "Environmental Degradation and Security", in Richard H. Shultz, Jr., Roy Godson, and George H. Quester, eds. Security Studies for the 21st Century (Washington, D.C.: Brassey's Publishers, 1997), 253.

[328] Rocklyn Williams, "How Primary is the Primary Functions?: Configuring the SANDF for African Realities," African Security Review no. 6 (1999): 70.

example, Israel's security estimations reflect is strategic problems of quantitative inferiority and lack of strategic depth.[329]

Identify and prioritize interests – Donald Nuechterlein presents an analytical framework for assessing national interests ranging from the survival interest of the state (e.g. defense against politicide), to vital interests (e.g. homeland security), to major interests (e.g. economic prosperity) to peripheral ones (e.g. cultural exchange).[330] The national security policy and doctrine of a state are based on the prioritization of those interests.[331] The security doctrine of the state is largely concerned with the survival of the state, however force is often employed in protecting vital interests as well. Major interests usually relate to political and economic interests whose protection does not require the use of force. Finally peripheral interests involve the state's well being with the nation as a whole not being affected by any particular outcome. As stated, the security doctrine of the state concerns itself with safeguarding the nation's existence and defending its vital interests. In Israel the survival of the state is also understood in ethnic terms as the survival of the Jewish state.

Designing the strategy – policy makers must match their security objectives with the resources they have at their disposal. The "plan of action", must utilize the tools necessary to accomplish the plans, which will serve the goals articulated by the

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[329] Dan Horowitz, The Israeli Concept of National Security, 14.

[330] Donald Nuechterlein, America Recommitted: A Superpower Assesses its Role in a Turbulent World, 2nd ed. (Lexington: University Press of Kentucky, 1991), 13-33.

[331] Dennis Drew and Donald Snow, "Grand Strategy", in Making Strategy: An Introduction to National Security Process and Problems (Maxwell AFB: Air University Press, 1988), Chapter 3.

process of assessing the environment and prioritizing the interests of the state.[332] In this context, the Israeli security establishment had assessed that given Israel's quantitative inferiority and lack of strategic depth, it cannot afford to engage in prolonged battles and must thus aim for a quick and decisive victory against its enemies. It also must have an offensive operational capability to achieve this objective. Through the process of strategy design, states match their capabilities with their military objectives.

Translate doctrine into action – the speed, quality and success of translating the national security doctrine and policy that derives from it into action largely depends on the nature of the political system. The nature of the political system is not only essential in designing the security policy of the state, but it also determines the success of its translation into action.[333] Democracies face different threats as well as different constraints on what they can and cannot do in the name of security, than other types of regimes. The focus of this study is on the formulation of national security policies in democracies as it relates to the state of Israel. Thus, this discussion will focus on national security policies in democracies in general, and Israel in particular. One of the key factors involved in forming national security policy in democracies is civil-military relations, which will be the focus of the following section.

Actors in shaping national security policy – in democracies there are several potential actors that may serve to shape the national security doctrine and policy of a state. The executive branch, which includes the government, military and other

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[332] Ibid.
[333] Ibid.

security agencies such as the intelligence agencies, is delegated the responsibility of forming national security policies. In addition, the legislative branch also plays a role in articulating legal authority and limitations of the processes and actions of the executive. Nongovernmental organization such as the media, public opinion, interest groups and even academics may also serve to influence the government's actions.[334] Lastly, in democracies, the principle of separation of powers subjects government action to judicial review and may serve to limit governmental discretion and freedom of action.[335] The Israeli policy-making process is overly dominated by the presence of the military and security community[336]. This civil-military relations is the subject of the following discussion.

Civilian-military relations in democracies - Democracies employ a system by which the government is elected by the people. The security community is a professional institution in which men and women are appointed by the appropriate authority. Thus, it is essential that the military be subordinate to the civilian leadership in accordance with the rule of law, since only the latter is elected and represents the people. Often however, this matrix is challenged by reality. Since the security community possess the resources and knowledge to formulate security policy it is often not only an advisor to the executive in forming policy, but rather an active partner, thereby blurring the lines of subordination. In addition, the military often posses the monopoly over the armed forces, the technology and weapons and may use it against the civilian regime. Developing nations often face this challenge and

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[334] Amos Jordan, William Taylor and Lawrence Korb, eds., American National Security, 5th ed. (Baltimore: John Hopkins University Press, 1999), 93-233.
[335] Kretzmer, 147.
[336] Maoz, Defending the Holy Land, 501.

regimes are often over-thrown by a coup d'etat.[337] The situation may be exacerbated in nations lacking proper institutionalized civilian oversight, which may provide decision makers with staff-related infrastructure that can compete with that of the security community.[338] Ultimately, democracies must seek to ensure civilian control over the military by subordination to the civil authority. The military should thus be left out of politics.[339] This is often a difficult task because most states regard security as one of the most important interests. This is especially true in states such as Israel, where security trumps all other issues. Thus, the security community is granted a great deal of discretion in these matters, which challenges the rule of law and democratic governance.

4.2. <u>The Nature of Israeli Security Doctrine</u>

Very little scholarly work has been dedicated to the formulation of a systemic security doctrine in Israeli studies. In fact, very little has been written regarding the articulation of a institutionalized security doctrine. The literature has produced some attempts at defining Israel's national security doctrine. Israel Tal has defined Israel national security as "ensuring national survival and defending vital interests."[340] This definition however does not enlighten us in any way on the nature of the Israeli security doctrine as every nation's objective is to provide for its survival and the protection and promotion of its vital interests. Brigadier General Avraham Ayalon defined national security as the "the sum total of the reciprocal ties between the

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[337] Eboe Hutchful, "Demilitarizing the Political Process in Africa: Some Basic Issues," African Security Review, no. 2 (1997); Samuel Huntington, "Reforming Civil-Military Relations," Journal of Democracy, no. 4 (1997): 9-17.

[338] Maoz, 501.

[339] Huntington, 16. See also Richard Kohn, "How Democracies Control the Military", Journal of Democracy, no. 4, (1995): 3-17.

[340] Israel Tal, "National Security and Collective Security," Maarachot, no. 314 (1984): 2 (Hebrew).

means at the state's disposal – and its readiness to employ them – and its immediate and distant environment. These reflect the state's ability to guarantee its preferred interests and promote its national objectives under varying conditions of uncertainty."[341] Major-General (ret.) Harkabi, a former Head of Military Intelligence (AMMAN) in addressing the process of translating policy into practice, noted that: "strategic thought and strategic planning must be multidimensional. They should not be limited to considering war as a military event alone, but rather address preparations for war from the political, military, technological, economic and sociological points of view alike."[342]

While not articulated formally, any security doctrine must be "broad, multidimensional and comprising both military and civilian components."[343]

The Israeli security doctrine must be understood in the historical and geostrategic context. The history of the Jewish people and their persecution, anti-Semitism and the Holocaust resulted in an abnormal state in which the role of the state of Israel, as a safeguard for the Jewish people, preceded its establishment.[344] For this reason, Israel's security doctrine is unique in that it is not only dedicate to the protection of its physical existence but rather, its chief objective is the protection of the state as a Jewish homeland. Thus, the Israeli national security doctrine is characterized as a "basic and permanent plan for preparedness, deployment, and war

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[341] Avraham Ayalon, "National Security," Skira Hodshit (monthly review) (March-April, 1980):7. (Hebrew).

[342] Yehoshafat Harkabi, "The Horizons of Defense Policy," in Studies of Yesterday and Tomorrow (Tel Aviv: The Museum of the IDF and Maarachot, 1967), 13. See also Yehoshafat Harkabi, "Thoughts About National Security Doctrine," Maarachot no. 270 (October 1979): 42. (Hebrew).

[343] Moshe Lissak, "Civilian Components in the National Security Doctrine", in National Security and Democracy in Israel, ed. Avner Yaniv (Boulder: Lynne Rienner Publishers, 1993), 56.

[344] Yisrael Tal, National Security: The Israeli Experience (Westport: Praeger Publishers, 2000), 39.

in the defense of the national existence of the state of Israel as the state of the Jewish people."[345]

As previously discussed, a state's national security policy is defined by the national interests of the state, its objectives and the means (military, political, economic and social) it has at its disposal to protect or promote those interests.[346] The Israeli security doctrine is dominated by the objective of the state of Israel - a Jewish homeland for the entire Jewish population (as opposed to the Jewish population within Israel). The notion that an overwhelming defeat of Israel would not only threaten the physical and political survival of the state, but also the survival and safeguard of the Jewish people as a whole, provides Israeli policy makers with almost a mythical obligation and results in a complete dedication to security related issues as the guideline for all Israeli policy.[347]

> Security policy is derived from the security doctrine and its objectives. The security policy of the state is the translation of that doctrine into day-to-day policies taking into account the political and military developments on the ground. The Israeli policy is largely dominated by a security and military orientation. Thus, "moral principles, ideological polemic, and nonstrategic considerations have been deemed irrelevant to the problem."[348]

As a result, other issues in Israel, economy, foreign relations, agriculture, land, etc., are all geared, and in a sense hijacked, to serve the security policies of the state. "The Matter of security is perceived as a fundamental requirement of Israel's very existence, and it has been the main national consideration ever since the War of

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[345] Ibid., 42.
[346] Stephanie G. Neuman, "Defense Planning in Less Industrialized States: An Organizing Framework," in Planning in Less Industrialized States, ed. S.G. Neuman (Lexington: Lexington Books, 1984), 7-8.
[347] Ibid., 40.
[348] Avner Yaniv, 20.

Independence."[349]

From its inception, Israel's national security doctrine has been dominated by the demographic and geographic imbalance with its Arab neighbors. The need to preserve a demographic majority within its borders naturally has an effect on its policies with regards to its non-Jewish population. A "security oriented" language is employed to address this perceived demographic threat. The relation between the security doctrine and the treatment of the Palestinian minority will be discussed later in this chapter however, it is important to note that the discussion regarding the status of the Palestinian minority in Israel is framed within the domains of the national security doctrine of the state.

The quantitative inferiority led Israeli policy makers to invest all its resources in developing a relative advantage in its military strength by focusing on its military assault power. In the words of YIsrael Tal:

> The IDF is the "Israeli Defense Forces" by appellation but the "Israeli Offensive Forces" in substance. Because of the hairbreadth calculations involved, Israeli national security doctrine can be considered an epitome of military thought, worthy of inclusion among the classics of the war of war.[350]

As previously mentioned, a five-step process of national security policy formulation will be followed in analyzing Israel's national security doctrine and policies. The architects of the Israel security doctrine based the assessment of their environment on a set of geostrategic assumptions in defining the nature of the threat and the constraints the nation faced in combating those threats. The doctrine is dominated by the strategic need for a solution to its two fundamental problems; first,

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[349] Ibid.
[350] Tal, 43.

the disadvantageous posture in quantity of resources, including forces, and second, the lack of strategic depth.[351]

The following sections explore those assumptions and constraints as well as the fundamental principles of the Israeli security doctrine.

4.2.1. Assessing the Environment - Geostrategic Assumptions and Considerations

The doctrinal foundation for Israel's national security policy was developed and articulated by Prime Minister Ben Gurion in the late 1940s and early 1950s.[352] Like any other national security policy, Israel's is based on a set of assumptions about its environment: domestic, regional and international. These assumptions define the perception of the threat the state faces.[353] The following provides a review of the literature regarding those assessments.

In his book, *Defending the Holy Land*[354]*,* Zeev Maoz outlines a set of five assumptions that define the threat Israel faces, which were adopted by Ben Gurion:

Fundamental hostility of the Arabs towards Israel – according to this assumption, given the chance, the Arab nations will attempt to destroy Israel. These nations have never and will never truly accept Israel as a Jewish nation in Palestine and therefore the underlying objective of these nations is the annihilation of the Jewish state. The only calculation preventing these nations from executing their objective is the knowledge that this would be futile or that the price would be too

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[351] Dan Horowitz, "The Israeli Concept of National Security", in National Security and Democracy in Israel, ed. Avner Yaniv (Boulder: Lynne Rienner Publishers, 1993), 14.
[352] Ze'ev Maoz, Defending the Holy land, 7.
[353] Ibid.
[354] Ibid., 7-12.

grave.[355]

Fundamental asymmetry between Israel and the Arab world in territory, population, and resources[356] - this is also known as the *quantitative inferiority,[357]* which also relates to the inferiority not only in general resources but also in military ones. The disparity between Jewish resources and Arab ones was believed to be a permanent posture. In the words of Ben Gurion:

> We are few, and we must confront many, and we are destined to remain few even if immigration grows and increases. …we are few and they are many times more, this disparity will not change. This is the historical and geographical edict.[358]

This disparity between the Jewish state and the Arabs is one which posed a grave threat to the Israeli nation.

The international community as an unreliable ally – the disappointment of Israel by the international community spread over decades. A survey of all the incidents which led to the development of this assumption certainly exceed the scope of this research, however, it is clear that Israel, following the experience of the Holocaust, was hesitant about putting its faith in the hands of other nations. The international community had disappointed Israel on a diplomatic level as well. From the ambiguous and problematic British commitment in the form of the Balfour declaration, to the voluntary withdrawal of the UN troops (UNEF) from the Israeli-Egyptian border on the eve of the 1967 war, through the lack of international response to the closing of the Tiran straits to Israeli shipping; the international community had disappointed Israel time and time again. It was therefore regarded as

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[355] Ibid., 8.
[356] Ibid.
[357] Ariel Levite, Offense and Defense in Israeli Military Doctrine (Boulder: Westview Press, 1990), 33.
[358] Ibid.

political and military suicide to rely on this community for Israel's defense. Israel often views itself as the *"Jew among nations"*[359] referring to Israel's international standing and the double standard that is applied by the international community with regard to Israel.

Economic, social, geographical and international constraints on the ability to fight prolonged wars – not only does Israel lack the resources to sustain a prolonged war, but it also lacks the strategic depth to sustain such a protracted war. Its civilian population centers are within range of missile attacks, Israel's 'narrow waist', and the proximity of its neighbors to vital areas, all lead to the conclusion that *any* loss of territory threatens its very existence.[360]

The "Iron wall" – the *Iron Wall* was a concept developed by Zeev Jabotinsky in 1923 and later adopted by Ben Gurion[361] according to which Israel's long-term prospects were positive. Ultimately, the Arabs will realize the futility in attacking it, because of its successes against them. It will develop a model society that would far exceed the development of the societies surrounding it. It would build a democratic western style society in the Middle East thereby setting an example for the world, leading the Arab nations over time to accept it and make peace with it. As the Arabs reap the benefits of this peace, they will soon reach the conclusion that a peaceful coexistence far outweighs the spoils of war and boycott at which point they will move toward reconciliation with Israel and not just a "cold peace". The concept of the Iron

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[359] Alan Dershowitz, The case For Israel (Hoboken: John Wiley and Sons Inc., 2003). Dershowitz dedicated the book to the exploration of accusation laid against Israel by various sources, namely the international community, the Arab world, various NGOs etc. He attempted to answer those accusations by presenting the evidence that supported the reality he puts forth.
[360] Ze'ev Maoz, 9. See also Ariel Levite, 35.
[361] Avi Shlaim, The Iron Wall (New York: W.W. Norton, 2000), 19.

Wall provided an optimistic future in a time of dire circumstances when the reality on the ground was bleak and at times quite hopeless for the Jewish *Yishuv* who faced an uphill battle in its national endeavor. This long-term concept endowed the *Yishuv* with resilience despite their short-term desolate situation.[362]

Unlike the American system, Israel's national security policy is not published in any organized official format and thus is largely derived from scholarly work on the subject. The national security doctrine, based on the aforementioned set of assumptions, developed to answer the perceived threat exposed by these assumptions. Thus, the validity of the doctrine lies in the accuracy of these assumptions. Zeev Maoz has conducted a substantial study of these assumptions and concluded that they are neither valid as a description of the objective reality nor accurate in describing Israel's behavior de facto. The examination of the validity of these assumptions and the doctrine developed as a result exceed the scope of this research. The examination of Israel's security doctrine is done only to relate it to the perception of the political and military establishment of Israel's security environment and its effects on the majority-minority relations within it.

4.2.2. Identifying Interests – Insecurity Defined

Recall Nuechterlein's matrix of assessing interests ranging from survival, vital, major and peripheral. In Israel, security dominates the entire policy making process. The security policy has overshadowed all other issues in the Israeli context, in fact, one could argue that the security is the only interest, which the system caters to. In Israel, security is not only one of many interests fitting a formulated matrix, but

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[362] Maoz, 12.

rather security is an integral part of the national value system. In this context Asher Arian notes:

> Placing priority on defense has become part of the Israeli way of life; an overwhelming proportion of the population sees it as the central issue facing Israel. The defense issue penetrates the value system of the country; symbols of military strength, self sacrifice, and heroism are given positive recognition in the culture. Complex political issues of international relations are often simplified, and military aspects of problems are often the focus of the debate regarding Israel's future, with issues such as the interest of other nations given lesser roles.[363]

As previously mentioned, the defining interest of the Israeli doctrine is the preservation of the Jewish homeland. Israel's articulation of interests are largely based on a history of insecurity. Thus, the protection of the Jewish people as well as the preservation of the demographic composition of the state with a Jewish majority, are the two vital interests of the state.

The history of the Jewish people is plagued by insecurity. From the days of the destruction of the first and second Temples, the Jews had been expelled from their homeland, forced to live in exile. The Jews have been persecuted, enslaved and left at the mercy of others since their exile culminating with the Holocaust. They have suffered from constant insecurity as a result.

The psychological effects of this particular history will be discussed in the following section. There is no doubt that these events have shaped the Israeli doctrine and strategy as well as its perception of its strategic environment and its place in it.

1. Psychology and History of Insecurity

The slaughter of the Jewish people during World War II and later the attacks of the Arab nations on Israel following its declaration of independence, served to

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[363] Asher Arian, Politics in Israel: The Second Republic, 324-325.

elevate the principle of security almost to mythical proportions. Thus, in Israel, security is not merely a national objective, it is a value all of its own. This posture relates to all nine principles of national security policy enumerated herein above. For example, the inability to establish reliable relations with other nations in the 1950s and 1960s directly relates to the development of the self-reliance principle of Israel's security policy.[364] However, Israel's constant sense of insecurity also led to the development of a position which exclusively focuses on the military dimension of the strategy at the exclusion of diplomatic or political ones. It also caused the "ghetto mentality"[365] which isolated Israel thereby, in a self-fulfilling cycle; emphasizing the need for self –reliance and lack of reliable allies.

The attitudes of the Arab nations and their refusal to recognize the Jewish state further aggravated this sense of insecurity and the deep psychological dimension of its defensive-offensive posture.

The UN was no friend as well. From the mid 1950s onward, the intensive Arab and third world campaign against Israel resulted in a few decisions, which served to enhance the Israeli suspicion of the international organization, namely the branding of Zionism as a form of racism. The alienation Israel felt from the UN enhanced the ghetto mentality as well.[366]

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[364] The experience of the Holocaust taught the Jews an important lesson - their physical survival was too important to be left in the hand of others. This lesson was then translated into direct policy which emphasized military might over foreign relations and diplomacy in achieving Israel's security onbjectives. See Bard O'Neill, "Israel", in The Defense Policies of Nations: A Comparative Study, 3rd ed. Eds., Douglas J. Murray and Paul R. Viotti (Baltimore: John Hopkins University Press, 1994), 497, 499.

[365] Michael I. Handel, "The Evolution of Israeli Strategy: The Psychology of Insecurity and the Quest for Absolute Security", in "The Making of Strategy", eds. William Murray, Macgregor Knox and Alvin Bernstein (Cambridge: Cambridge University Pres,, 1994), 542.

[366] Ibid., 543.

A survey of Jewish Israeli public opinion reveals that even though Israelis have been now born for several generations into a strong independent state, the sense of insecurity permeates.[367] In the Democracy Index of 2004 Jewish Israelis ranked the values of peace and Jewish majority as the top priorities with democracy and greater Israel ranking generally low.[368]

To conclude, any evaluation or analysis of Israeli policy should relate to the historical and psychological factors underlying that policy. The sense of insecurity, which dominates Israeli psyche, cannot be overstated, especially when discussing the majority-minority relations in Israel. The protection of the Jewish identity of the state consistently ranks high among Jewish citizens of Israel and yields particular polices geared towards the protection of that identity.

2. Demography of Insecurity

The second defining element of Israel's sense of insecurity relates to its demography, both within its borders and beyond. The importance of maintaining a Jewish majority in Israel does not merely relate to its Zionist objectives, nor does it stem from the need to maintain a democratic non-apartheid like regime. In fact the need to maintain a Jewish majority relates to the history of the Jewish people. One may recall Pinsker's *Auto-emancipation* pamphlet, which became one of the defining writings of the Zionist movement. Pinsker called for Jews to emancipate themselves from their host nations because they will never become equal or free from persecution as long as they remain a minority among gentiles. The solution, the monograph reads,

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[367] Asher Arian, Ilan Talmud and Tamar Herman, National Security and Public Opinion in Israel, JCSS Study, no. 9 (1988): 80-88.

[368] Asher Arian, Shlomit Barnea and Pazit Ben-Nun, The 2004 Israeli Democracy Index: Auditing Israeli Democracy (Jerusalem: The Guttman Center at the Israel Democracy Institute, 2004).

is in establishing a state in which Jews are a majority. This is the essence of the demographic factor of Israel's security policies. It ties into the history of the Jews and the birth of political Zionism and at the same time, it serves, *inter alia*, as a defining element of Israel's security policy or more precisely, a factor in its sense of insecurity. In addition, the gap in demography between the Arabs and the Jews in the region relates to the quantitative disadvantageous imbalance, referred to here earlier. In this sense, demography is viewed as an additional resource of the state, which allows it to enhance its security. Recall that the translation of strategy into policy requires the matching of objectives to resources. If demography is a resource, its enhancement relates to the ability to achieve security objectives.

Israel's demographic challenge is further exacerbated by the fact that currently a quarter of its population consists of non-Jews, primarily of Palestinian origin. The relationship between the state and this national minority will be discussed extensively in later chapters, however, it is noted that this population is often regarded as a "fifth column", suspected of disloyalty to the country. Even if the issue of allegiance of the non-Jewish population did not affect Israeli policy makers, certainly the numbers do. Regardless of their loyalty, non-Jewish citizens of Israel threaten the very existence of the state as a Jewish-Democracy. The existence of the state as Jewish is synonymous with its physical existence. Thus, for Israeli policy makers, the protection of the Jewish character of the state is as important as its physical survival. Many nations view the protection of the nature of the regime (e.g. protecting the survival of democracy) as important as protecting its physical survival. Israel is unique in that it not only seeks to protect the nature of the regime but rather the

ethnic/religious identity of the state. In sum, the demographic changes, which have occurred within Israel, have created an internal security problem in addition to the external one it faces.[369]

The implications of the quantitative disadvantage in populations extend beyond the Jewish identity of the state. The size of the population of the Arab nations compared to the Jewish one also has implications on the size of the armed forces, and the ability to mobilize the population (in the Israeli case, complete mobilization requires most of the male population to constantly be enlisted in the reserves). In addition, as was evident by the 1973 war, even if Israel managed to mobilize quickly and effectively, the need to do so can have devastating effects on its economy.

The demographic disadvantage led to the development of the principle of qualitative advantage, the emphasis on technology, sophisticated war plans and maneuvers. Moreover, the demographic disadvantage explains Israel's position regarding the need to live by the sword, maintenance of offensive operational initiative and escalation dominance, as well as the need to engage in short, decisive wars.

The demographic factor will only worsen, according to the World Bank predictions as well as Israel's internal census, with the Arab-Palestinian population predicted to consist of 25% of the Israeli population by 2025 and 31% by 2050.[370] This issue will continue to dominate the Israeli security policies for years to come.

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[369] Handel, 545.

[370] Projections of Population in Israel for 2010-2025, Statistical Abstract of Israel. 2.27, (Jerusalem: Central Bureau of Statistics, 2006). See also International Crisis Group, Identity in Crisis: Israel and its Arabs Citizens, ICG Middle East Report no. 25 (March 2004).

4.2.3. Design of Israeli Strategy - The Principles of the Israeli Security Doctrine and Their Translation into Policy

In consideration of the environment assessment presented herein as well as the underlying causes that help form its interests, the security strategy of Israel may be summarized by the following principles:[371]

The Principle of Qualitative Edge – as previously discussed, Israel suffers from quantitative inferiority. In order to overcome this threat, it is widely understood that Israel must develop a qualitative advantage. The strength of the Israeli forces lies in their training, technological advancements, social cohesion and education of the public.[372] While Israel is a fragmented society, all rally around the military and the service in the military is a social experience that most Jewish citizens experience, creating a social bond between them to the exclusion of others (namely, religious Jews who opt not to serve in the military and Palestinian Arabs who are exempt from service).

Living by the Sword – according to this principle, Israel must always be able to quickly and effective mobilize while at the same time continue to provide the welfare, freedoms and rights afforded to citizens in the democratic society. The issue of security and civil liberties will be discussed in subsequent sections of this chapter however the balance between maintaining a nation at arms while preserving its democratic character does play a role in the formulation of national security doctrine.

Strategic Defense and Operational Offense – Israel's political position is one

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[371] Zeev Maoz, 12-17.

[372] Avner Yaniv refers to this as the "Quality Versus Quantity" conundrum; that Israel's quantitative disadvantage forces it to better utilize is resources, to easily mobilize and prepare for an attack. See Avner Yaniv, "The Israeli Concept of National Security" in Avner Yaniv, ed., National Security and Democracy in Israel, 15.

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of territorial status quo. It is for this reason that the Israeli leadership often claims, especially subsequent to wars, that it has no territorial ambitions. Common wisdom among the military leadership however, subscribes to the notion that Israel cannot afford to fight defensive wars given its lack of strategic depth and quantitative inferiority and therefore its operational doctrine is offensive. Zeev Maoz notes that "the preference for an offensive strategy was never due to proactive political ambition; it was an outgrowth of structural constraints."[373] David Ben Gurion concluded that as a result of the lack of strategic depth, Israel could not afford to fight wars on its territory and thus developed the concept of "bringing the war to the enemy"[374] which resulted in Israel assuming an offensive posture in case of an attack.

Short Wars with a Decisive Outcome – since Israel cannot survive a prolonged war due to its strategic, geographical, international and domestic constraints, it must only engage in short term military campaigns with a decisive outcome which will prevent a need for "another round" shortly after the end of the first campaign.

"Autonomy of Action before Alliance"[375] - the psychological and historical factors, which shape Israel's security doctrine, discussed herein above played an important role in shaping Israel's security doctrine and the notion of "never again." Nonetheless, Israeli leaders have pursued various alliances with other nations, namely non-Arab countries in the region (Turkey and Iran before the 1979 revolution). Those alliances never materialized to a collective security agreement and thus Israel never

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[373] Ze'ev Maoz, 13.
[374] David Ben Gurion, As Israel Fought (Tel Aviv: Mapai Publication, 1952), 90.
[375] Maoz, 15.

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faced the dilemma of having to give up some of its autonomy of action. It has been understood however, that Israel would rather maintain informal alliances, which allow it to maintain its autonomous position, than formal ones, which may constrain its freedom of action.

Support (implicit or explicit) of at least one Major Power – while Israel prefers to be autonomous in its actions, real-politik dictates that it must have the support of at least one major power to provide it with financial backing as well as supply it with weapons and ammunition. In addition, Israel needs the support of a major power on the diplomatic scene to fend off any sanctions initiated by the members of the UN Security Council. This support is vital in Israel's strategy and may determine Israel's policies, preventing it from engaging in wars it cannot secure support for.

Cumulative Deterrence – according to this principle, Israel must maintain cumulative deterrence through successive and effective uses of force in military encounters with its enemies to convince them that they cannot hope to destroy it and thus should enter into negotiations with it. A successful demonstration of power, it is believed, would convince the enemy of the futility of attacking Israel in the long run. If cumulative deterrence fails however, Israel must launch a decisive military operation within a short time frame using excessive force to maintain escalation dominance and the strategic initiative.

The Nuclear Option – Israel's nuclear policy has been one of ambiguous

nuclear deterrence in situations of last resort.[376] "Last resort" is defined as a situation in which:

> Conventional deterrence fails and Israel finds itself in a situation where it might be defeated in a major military confrontation, or if the Arabs engage in actions that threaten the very survival of Israel (e.g., use WMDs against population centers of basic infrastructures), Israel threatens to use its nuclear weapons.[377]

The threat is ambiguous however, since Israel has never admitted to possessing nuclear weapons. This is used to deter any massive attack, which may result in the annihilation of the state (politicide).

Linking Security to Settlements - settlements are viewed as a security priority. That is, the settlement of land is not only a political aspiration of Zionism, but it is also seen to have important security ramifications. While this principle was not included in the principal factors of Israel's national security policy, it has been the common understanding that settlements will determine Israel's final borders. The demographic distribution was at the heart of the Partition Plan adopted in UN Resolution 181 in 1947 and the Israeli leadership since then has been operating under the assumption that ultimately, any final settlement with its neighbors will be determined by that distribution. Thus, settlements are key in achieving the desired outcome regarding the boundaries of the Jewish state.

4.2.4.   The Civil-Military Relations in Israel

As previously discussed, the security interest has been injected into the value system of the Israeli society. It is not surprising therefore, that there is very little oversight on the military and security establishments in Israel. Moreover, the security

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[376] Avner Cohen, Israel and The Bomb (New York: Columbia University Press, 1998).
[377] Maoz, 16.

community is an active partner in forming, articulating and indeed executing the security doctrine and policies of the state. "The IDF's important role in the policy process is rooted in the centrality of security in the context of national strategy, the continuous hostility of many Arab states, the constant emphasis on military strength, and the omnipresent fear that a major miscalculation could lead to another catastrophe for the Jewish people."[378] The over-emphasis on security above all other issues naturally elevates the status of the military and the security community vis-à-vis other agencies.

Zeev Maoz discusses some of the reasoning for the lack of military subordination in Israel, identifying five major factors in the dominance of the security community in the policy making process:[379]

Overwhelming prevalence of the security community in policy making due to its strength and effectiveness. The IDF and other security agencies (such as the secret service) dominate the agenda and discourse over other weaker and less effective institutions such as the diplomatic core, resulting in the production of an overwhelming security oriented policy. The latter issue is exacerbated by the institutional deficiencies of other civilian institutions, which lack the ability to offer effective staff related infrastructure to policy makers. Existing civilian institutions include the National Security Council or the Ministry of Foreign Affairs' Department of Policy Research and Planning, both of which fall short of the infrastructure and resources available to the security community, in particular the military.

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[378] Bard O'Neill, 531.
[379] Zeev Maoz, Defending the Holy Land, 501-502.

The policy makers are largely former security officials. The dominance of the security value in Israel society also results in the rewarding of top-level military officers with significant second careers in politics.[380] The path to the position of prime minister in Israel is often paved through the road of Chief of Staff of the IDF, or another top-level position in the military.[381] Thus, the same people who sit one day on the side on the security community, transition the next to the side of the policy making. It is not surprising that there is very little separation between the two.

There is very little legislative oversight on the security community – the legislator in Israel, like all other in the society holds the security community in high regards and consistently fails to issue any substantive oversight over its operations and involvement in policy formulation. Despite attempts to exert some oversight, there is very little constraints posed on the involvement of the security establishment in forming policy in Israel by the Knesset's Committee on Foreign and Security Affairs (CFSA) and its subcommittees. Repeated attempts to allocate more authority to CFSA resulted in complete failure. This is not surprising since top political officials often come from the military establishment and thus are inclined to "protect" the security community from any encroachment in its discretion and freedom of action.

The Judiciary, despite its fairly liberal stance has often refrained from adjudicating security related matters which would require issuing rulings against the

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[380] Asher Arian, Politics in Israel, 324.

[381] This was true of many of Israel's former leaders starting with David Ben Gurion who was the head of the Haganah and formed the IDF, through Yitzhak Rabin, Yitzhak Shamir, Ariel Sharon, and Ehud Barak. Many military leaders often transition directly into politics. The former minister of defense, Shaul Mofaz, immediately assumed a position in the Sharon government after his tenure as Chief of Staff had ended.

security community when it presents a security related justification for its actions.[382]

This is particularly true regarding the IDF's actions in the occupied territories as well

as government policies relating to the establishment of settlements and human rights

violations. This issue will be discussed later in this chapter when addressing security

and the rule of law.

The structural militarization of Israeli society – for the most part, despite the

deficiencies enumerated above, the military has accepted civilian authority without

question. Even in times of crisis, the military commanders fulfill the directions of the

political echelon even when it disagrees with those decisions.[383] It is important to note

however, that the political leadership tends to come from of the security community

and thus share the organization's social and cultural values, making it seldom that the

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[382] Much of the Israeli jurisprudence is filled with cases in which the Supreme Court would not adjudicate a case or would find in favor of the government when there was a security need at the basis of the government action. A comprehensive review of this jurisprudence would exceed the scope of this present discussion. See David Kretzmer, "Judicial Review Over Demolition and Sealing of Houses in the Occupied Territories", in Klinghoffer Book on Public Law (ed. by I. Zamir, Jerusalem, 1993), 305 (Hebrew); "The Supreme Court and the Fourth Geneva Convention: Domestic Enforcement and Interpretation", (1995) 26 Mishpatim 49 (Hebrew); "Democracy in the Jurisprudence of the Supreme Court of Israel" (1997) 26 Israel Yearbook on Human Rights 267; "The Path to Judicial review in Human Rights Cases: From Bergman and Kol Ha'am to Mizrahi Bank" (1997) 28 Mishpatim 359 (Hebrew); "Fifty Years of Supreme Court Jurisprudence in Human Rights" (1999) 5 Mishpat Umimshal 297 (Hebrew); "The ICJ Advisory Opinion: The Light Treatment of International Humanitarian Law" (2005) 99 AJIL 88; "Targeted Killings of Suspected Terrorists: Extra-Judicial Executions or Legitimate Means of Self-Defence?" (2005) 16 EJIL 171; "Human Rights" (2005) 11 Israel Affairs 39. See also Gad Barzilai, "The Argument of "National Security" in Politics and Jurisprudence," in Daniel Bar-Tal, Dan Jacobson, and Aharon Klieman (eds.), Security Concerns: Insights from the Israeli Experience (Greenwich: JAI Press, 1998) pp. 243-265.; "Center Against Periphery: Politics and Law of 'Prevention of Terrorism Acts'." Israel Journal of Criminal Justice no. 8 (1999): 229-249.; "The Deportation Case: The Rule and the Rule of Law" Israel Journal of Criminal Justice no. 4 (1994): 9-16, with Efraim Yuctman-Yaar and Zeev Segal, (Hebrew); "Between the Rule of Law and the Laws of the Ruler: Israeli Legal Culture and the Supreme Court," International Social Science Journal no.152 (June 1997): 193-208.

[383] Very rarely do military commanders object to their superiors in the battle field. The former Chief of Staff, Yaakov (Boggy) Yaalon was very vocal in his objection to the unilateral withdrawal from Gaza in the summer of 2005, he did however, lead the military in evacuating close to 9000 Jewish settlers from those territories. He later paid a professional price for his dissent, when then Prime Minister Sharon and defense minister Mofaz refused to extend Yaalon's term in office and he was forced to retire.

political leadership challenges the IDF. Maoz uses the term "securitize"[384] to describe the political culture of the Israeli leadership. The securitizing of the political echelon results in the preference of military considerations over all others, including diplomatic ones as well as other domestic interests.

In sum, the structure of the Israeli system which allows for the security community to play a dominant role in policy making whether domestic or international, war or peace and in which other institutions tend to be weak (such as the legislator or the judiciary) challenges the concept of military subordination to civilian control. While formally the military in Israel does follow the decisions of the political echelon, it is more of a partner in forming Israel's policies rather than an advisor or executioner of those policies. It is not surprising therefore, that the military also plays a role in forming policies relating to the Palestinian minority in Israel resulting in security oriented policies, which dominate the majority-minority relations.

4.3. <u>Security – Redefined</u>

Since the threat to Israel's survival is perceived not only as acute but also imminent, the top prioritization of its national security at the exclusion of all other interests, is sure to follow. The question remains whether the process of prioritizing interests in Israel is flawed. It is argued here that in the Israeli case, both the assessment of the environment, as well as the prioritization of interests, are marked by substantial misperceptions which result in flawed policies, particularly in the domestic context with regard to the Palestinian national minority.

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[384] Maoz, 538.

4.4. <u>In the Name of Security: Security and the Palestinian-Arab Minority in Israel</u>

4.4.1. <u>Defining the Problem</u>

National security has both external and internal facets. In assessing their environment, states evaluate both the traditional and non-traditional threats they may face. This factor relates to the nature of the enemy and the methods employed. Traditional threats usually relate to threats posed by an external enemy, using conventional warfare. A non-traditional threat may relate to internal or external threats posed by non-state actors, social unrest, internal conflict or complex emergencies relating to the environment, health and economy. Non-state actors may include civil disobedience and violence, rebel groups, dissident groups, insurgents, secessionist movements and ethnic militia to name a few. Thus, the conflict is often characterized by asymmetry of power, which leads these groups to employ non-traditional warfare such as terrorism, civil disobedience, chemical or biological weapons. In sum, the strategy design changes depending on the nature of the threat (internal or external) and the warfare employed (conventional or non-conventional).

Israel's security concern traditionally relate to the threats posed by the Arab nations and their refusal to recognize the Jewish state and acknowledge its right to exist. However, the Palestinian population within Israel has posed an internal threat, which is quite different than the one posed by states using conventional warfare. The external security of Israel relates to its ability to preserve its territorial and political integrity while the internal security relates to its ability to maintain its Jewish-Democratic character. The latter is the subject of the discussion in the following sections.

4.4.2. <u>Internal Security and the Palestinian Minority in Israel</u>

The Palestinian citizens of Israel are an ethnic minority in Israel. Their political and legal status is quite different than their counterparts in the occupied territories. The Palestinian citizens of Israel are a unique group of Palestinians who during the 1948 independence war, which is also known among Palestinians as 'al-Nakba' (the disaster), did not flee or were not expelled from their homes in what became the territory of Israel, or managed to return to their home soon after the war ended and remained there. The Palestinians who found themselves living in the territory of the newly established state, were granted Israeli citizenship and embarked on a new and different path, politically and legally, than their brethren in the West Bank and Gaza Strip. Although the Palestinians in Israel are an integral part of the Palestinian people by virtue of their history, culture, and national consciousness, and although they are citizens in Israel with legal and political rights; nevertheless they are not fully Israelis, and in a sense, not fully Palestinians.

The ethnic and often family kinship the Arab minority in Israel shares with the Palestinians, and their inability to share in the national narrative and ethos of the Jewish state, results in a "vicious cycle" in which "the authorities have treated their Palestinian citizens as a potential fifth column, and there were elements in the attitude and behavior of the Arabs themselves towards the Jewish state that have seemingly confirmed this suspicion."[385]

Consequently, the question remains – does the Arab minority in Israel pose a threat as a disloyal fifth column, as most Jews perceive them to be, or are they, in the

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[385] Sammy Smooha, "Part of the Problem or Part of the Solution: National Security and the Arab Minority", in National Security and Democracy in Israel, ed. Avner Yaniv (Boulder: Lynne Rienner Publishers, 1993), 105.

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www.manaraa.com

words of Sammy Smooha "the innocent victims of a hypersensitive, perhaps paranoid and xenophobic Jewish attitude?"[386]

In addressing this question, Sammy Smooha employs six factors in his analysis. First, he examines in general terms the majority-minority relations in Israel and the approach adopted by the Israeli state. Second, he explores the factors that either enhance or impede the attachment of the Arabs to the state, which fuels the perception of the threat they pose. Third, he looks at the security policies adopted to respond to this perceived threat. He then proceeds to evaluate issues of national security, how the threat posed by the Arab minority could be influenced by other developments, and finally, he examines the expected changed in the attitudes and treatment of Arab Israelis in the event of peace.

Chapter six of this dissertation is dedicated to a broader and more encompassing discussion of the majority-minority relations in Israel and how they relate to the policies adopted with regard to the Arab minority and their status. The following discussion is thus limited to these issues only as they relate to the issue of national security policy.

4.5. Majority-Minority Relations and the Security Policy

Ethnicity plays a key role in Israel's national security policy. As previously discussed, the national security doctrine of states is formulated to address the perception of the threat (both external and internal) as well as to address the survival and vital interests of the state. In Israel, the physical survival of the state is fused with the ethnic/religious survival of its Jewish character.

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[386] Ibid.,106.

Two schools of thought dominate the issue of ethnicity and national security; the traditional approach, led by Janowitz[387] emphasizes the integrative role security forces play in ethnically divided societies. This approach regards the modern institutions developed in the era of modernism as encompassing the spirit of the era that is based on professionalism and universalism, which in turn provides an opportunity for ethnic minorities to integrate into the modern societies and become part of the mainstream.

Cynthia Enloe[388] and Warren Young[389] presented an alternative perspective which referred to here as the conflictual school of thought which rebuts the assumptions made by the traditional approach regarding modernism and integration. According to Enloe, there is no necessary connection between modernization and ethnicity and that there is an interdependent relationship between ethnic relations and state security, that is, state security policies not only reflect, but also shape ethnic relations in the state. Thus, the security forces cannot ignore the ethnic divisions within a society when molding the security institutions as they must decide who may be considered loyal and who may potentially be hostile to the nation and thus excluded from enlisting in the military or other security forces; who may assume high ranking positions in those institutions and the responsibility for vital functions and who may not. In forming these decisions, the policy makers must articulate an "ethnic state security map." At the heart of this approach is the understanding that ethnic

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[387] Maurice Janowitz, The Military in the Political Development of New Nations (Chicago: Chicago University Press, 1964).
[388] Cynthia Enloe, Ethnic Soldiers: State Security in Divided Societies (Athens: University of Georgia Press, 1980).
[389] Warren Young, Minorities and the Military: A Cross-National Study in World Perspective (Westport: Greenwood Press, 1982).

relations and state-ethnic relations affect national security and thus ethnic groups are classified in the security map according to their possible contribution or threat to national security.[390] In this context there is a distinct difference between the dominant group, which is (for the most part) perceived as most loyal, and the minority, which is feared to have the potential to mobilize and organize in order to undermine the political system. If this ethnic minority has ties to an external threat, such as in the case of the Arab minority in Israel, the threat is obviously enhanced. Therefore, according to this school of thought, ethnicity is employed in assessing levels of loyalty and the availability of the various groups to serve the national security of the state. Enloe explains why ethnicity is a natural criterion in forming national security policies.[391] First, ethnicity is an easy variable to base security on, rather than focusing on individuals. Second, ethnic groups have a distinct value orientation making loyalty and capability assessment fairly simple. Third, attitudes towards the state are easily determined. In addition, ethnic ties often extend beyond the geographical borders of the state, this in turn can affect the minorities' orientation and behavior regarding a foreign nation or group. Finally minorities tend to concentrate in a territorial base, and this in turn has direct ramification for security in those area. Young's comparative study of minorities in Belgium, the United Kingdom, Canada and the US revealed that the military did not serve in most cases, as an integrating force. In fact, in those cases the military preserved and in some cases reinforced the ethnic divisions in the society.[392]

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[390] Enloe, 15.
[391] Ibid.
[392] Young, 5.

The finding of Enloe and Young hold true for the State of Israel as well. It is for this reason that Arab Israelis are excluded from serving in the military. In Israel, the military service is a socially defining experience since all adults, men and women, are required to serve. There are two exceptions to this, the first, the *Haredi* Jews – ultra-orthodox Jews - and the Arab Israelis. It is important to note in this context that not all non-Jews are excluded from military service.[393] In fact, the Druze and non-Palestinian Bedouins serve in the IDF. Therefore, most of the Israeli population serves in the military, resulting in a socially defining experience and drawing clear lines between those who serve and those who do not. The military service not only acts as a social architect of the society, it also results in social and economic benefits for those who serve, such as tax breaks, education subsidies, housing subsidies and grants. Arab Israelis are not only excluded from these benefits, they are also denied employment opportunities, which require military service. This includes many of the public sector positions, as well as any security-oriented position, even serving as a security guard in public places. It is true that all those who do not serve, including Jews, do not enjoy the benefits of service, both in terms of government benefits and employment opportunities, however, unlike the Arabs, Jews who wish to serve may do so. In fact, that IDF has created ultra-Orthodox units to allow for this group to serve while taking into consideration their special needs (e.g. not serving with women, not working on Shabbat and holidays, etc).

The exemption of Arabs from service has been explained in humanitarian

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[393] Some Bedouins are taken into the army as paid soldiers and in a few cases non-Bedouin Muslims and Christina Arabs are admitted to the army but not enlisted. See Smooha, National Security and the Arab Minority, 125.

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terms, that the state does not want to place the Arabs in a moral dilemma of having to fight against their brethren or other Arab nations. However the true rationale for this policy relates to the deep, unequivocal mistrust the Jewish establishment has for the Arab minority. It simply will not place its national security in the hand of a minority, which is viewed as a fifth column. Training and arming Arabs also may not coincide with the Zionist ideology of empowering the Jew.

The application of the conflictual school of thought in the Israeli case is thus made clear. The military may serve as a socially integrative institution only for the Jews however, it serves to draw a clear line between the Jewish majority and the Arab minority. Furthermore, it prevents the minority from enjoying social and economic benefits granted to other citizens belonging to the majority thereby reinforcing the deep divide between the two communities. Moreover, the data relating to the social-economic standing of non-Jews in Israel, pitting them at the lower end of the social-economic ladder suggests that despite their service, Druze and Bedouins have not enjoyed equal benefits and investments in their population as their Jewish counterparts.

4.5.1. <u>Attachment of Arab Israelis to the society</u>

The treatment of Arab Israelis as a security threat can be explained, *inter alia,* by two central factors. First, the Arab Israeli conflict and second, the Israeli state as an Ethnic Democracy.

The connection between the Arab-Israeli conflict and the treatment of Arab Israelis is evident. Not only has Israel been in a state of war with the Arab nations for most of its existence, but it is currently engaged in a prolonged, protracted internal

conflict with the Palestinians, often characterized by the use of non-conventional warfare, namely terrorism, against the civilians population. This situation is further exacerbated by the fact that the Arab minority within Israel is the national brethren of the enemy. It is thus not surprising that the Arab-Israeli conflict is the most decisive issue between the Jews and the Arabs in Israel, and it is clear why the state would treat this national minority as a potential security threat.

Israel's ethnic character also positions the Arab minority at a disadvantage. Sammy Smooha has defined Israel as a democratic state in which the Jewish majority has established institutionalized dominance.[394] As a result, and in contrast to other Western democracies, in Israel no civil national identity has developed and the national identity is one of the Jewish population, to the exclusion of the Arab minority. The state, its institutions and structures are all governed by its Jewish, not Israeli, identity. Arab Israelis are granted full citizenship and enjoy civil right and liberties but they cannot enjoy full equality to the same extent as Jews. They cannot identify fully with the state, it purpose (homeland for the Jewish people), narrative (that of the Jewish people) or symbolism (of the Jewish religion). The structural ethnic dimension of the state results in the alienation of the Arab minority. Sammy Smooha summarizes the problem:

> Discriminatory policies, widespread Jewish ethnocentrism, persistent Arab-Jewish socioeconomic inequalities, a virtual exclusion of Arabs from the national power structure, and systemic denial of Arab institutional autonomy all act to discourage Arab loyalty. These phenomena are no doubt reinforced by genuine security concerns. But the pronounced ethnic nature of Israeli democracy is a prime source of alienation from the state for the Arabs, making them less willing to serve it actively.

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[394] Sammy Smooha, "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel," Ethnic and Radical Studies 13, no. 3 (1990): 389-413.

As long as the Arab-Israeli conflict remains salient, and as long as the state is defined by its Jewish character, Arab Israelis will remain largely excluded from sharing in the effort to secure the state or any participation the defining the national agenda, making them a disaffected group with questionable loyalty and thus a potential security threat.

4.5.2. <u>Israeli national security policy and the Arab minority</u>

At the end of the 1948 war, 160,000 Palestinian Arabs stayed in what became the territory of the state of Israel. This national minority was viewed by the Israeli authorities as part of the Palestinian enemy, and was therefore subjected to policies, which sought to repress any subversive activity. The Arab minority was placed under military government until 1966. This policy assumed that the Arabs were potentially disloyal and therefore their control should be institutionalized in the form of a military government.[395]

As previously discussed, the national security of Israel was understood by the military and the security community as synonymous with the security of the Jewish majority.[396] Consequently, the promotion of the Jewish collective is seen as a direct contribution to Israel's overarching security. Conversely, acts, which promote the Arab national identity, are equally viewed as a threat, thereby adding a political element to the security doctrine. David Kretzmer argued that Israel has two models of

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[395] The 1945 Defense (Emergency) Regulation provide the legal authority for the military rule over the Arabs. Originally enacted by the British mandate to quell Jewish resistance (and opposed by the Yishuv as repressive), the Israeli government adopted this legal measure. The regulations do not distinguish between Jews and non-Jews however their primary use has been to impose restrictions on the Arabs. See David Kretzmer, 141. The regulations enable the authorities to issue military injunctions on a regular basis, not just during a time of war, to detain and restrict movement and activities, outlaw publications or organizations and confiscate land.

[396] David Kretzmer, 136.

security. One strictly security model concerned with the sovereignty and territorial integrity of the state, while the other, which he refers to as the "conflict-management model" in which the political element described above plays a significant role.[397] The conflict management model yielded several policies towards the Arabs in Israel. They were subjected to various policies aimed at discouraging any nationalist aspiration or collective activity of that population.

To this effect, the government employed surveillance, dissident groups were harassed and punished, monitoring by the GSS (General Security Service – SHABAK), the police force has units designed specifically to deal with the potential threat posed by Arab citizens MALDAV (Department for Intelligence and Detection) and YASAM (Unit for Regional Order), which was founded in 1988 to control disobedience and riots. The ministry of Agriculture employs the Sayeret Yeruka (the Green Patrol) to monitor and stop any Arab or Bedouin encroachment into Jewish fields or land. The office of the Prime Minister hold a special post for an advisor on Arab affairs, in charge of monitoring and reporting trends, attitudes and activities of the Arab minority. Finally, the intelligence community, is part of its integral threat assessment reports, issues assessments regarding the Arab minority, the threat it poses and warns of any activities it may be engaging in which are perceived as a threat to national security.

Three main justifications were given to support this policy. First, according to the **security** factor; the Arab minority was considered a 'security threat' since they were part of the Palestinian nation and would likely join the Arab nations in case of

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[397] Ibid., 137.

an attack by the latter on the state of Israel.[398] As aforementioned, the Arab minority in Israel was considered an enemy within, and therefore was held under tight military control. Second, according to the **Jewish-Zionist justification**, the Israeli authorities perceived Israel first and foremost as a "Jewish-Zionist" state. The state was established as a Jewish national home to solve the problem of the Jewish people. Therefore, it could not have been expected that the problems of the Arabs or their interests would receive consideration by the newly established state. Following this raison d'etre, discrimination, land expropriation and military regime were all considered legitimate if they intended to serve the goals of the Jewish-Zionist state.[399] Moreover, the effects of the Holocaust created a vast influx of immigrants fleeing from Europe, and their pressing needs took precedence over those of the Arab citizens towards whom, as mentioned, there was a sense of hostility and resentment following the 1948 war and the creation of the Jewish state. It is important to note that the leadership of the *Yishuv* (the pre-statehood Zionist settlements), which led the battles against the Arabs preceding the declaration of independence, became the leadership of the Israeli state upon independence. Policies of the Zionist movement became the policies of the state. The Zionist leadership had monopoly over those policies and over the law-making process and used this monopoly in order to control the movement, land ownership and political mobilization of the Arab minority[400]. Finally, the Israeli authorities had to take into consideration the **democratic-liberal character**

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[398] Uzi Benziman and Atallah Mansour, Sub-Tenants, the Arabs of Israel: Their Status and The Policies Towards Them, (Jerusalem: Keter, 1992), 11-32.

[399] Ian Lustick, "Stability in Deeply Divided Societies: Consociationalism v. Control", 31 World Politics, (1979), 329.

[400] David Kretzmer, 3.

of the state. As a democratic state, Israel must treat all its citizens equally without discrimination, including its Arab citizens. This consideration took a back step during the first period of the existence of the state of Israel since, as aforementioned, the Arabs were considered a security liability and therefore, the state found that there was justification for the discrimination against them.

4.5.3.   Perception and Reality – the Record of Arab Participation in Acts Against the State

Perception is often fed by some reality. It is thus important to examine in a historical context the Arab contribution to the perception of threat. While as a whole the Arab minority has been loyal to the state, there have been some infringements, which enhanced the Jewish suspicion and fear.

During the 1950s some Arab Israelis provided shelter for Palestinian infiltrators (although these infiltrators were largely Palestinian refugees returning to visit their relatives and former property).[401] Between 1967-1970 there were approximately 400 Arabs convicted of security related violations including membership in terror organizations and collaboration with Palestinians from the territories.[402] These convictions also included cases in which defendants participated in criminal activities of terror organizations, namely the smuggling of illegal material (drugs, arms, etc). The motivation for the participation in these activities was largely criminal not national, but they were nonetheless convicted of security violations since the terror organizations were involved. In the 70s and 80s the Arab participation in acts against the security of the states were quite infrequent but when they occurred

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[401] Smooha, 116.
[402] Ibid.

they receive wide attention.

During the first intifada this frequency was significantly enhanced. Smooha notes:

> Acts of Sabotage increased from 69 in 1987 to 238 in 1988, but dropped to 211 in 1989. The 187 severe acts, carried out form January 1 through November 15, 1989, consisted of incidents involving 91 arsons, 28 petrol bombs, 26 assaults against property, 17 uses of explosives, 8 stabbings, 8 violent assaults, 6 shootings, and 3 hand grenade attacks. more frequent but less grave were nationalist subversive acts, which rose from 101 in 1987 to 507 in 1988, but declined to 353 in 1989. In 1989 they included 119 stone-throwing attacks, 104 incidents of anti-Israeli or pro-PLO slogans being shouted or written, 92 cases of hoisting the Palestine flag, 15 roadblocks, 14 desecrations of state emblems, 4 cases of bringing false charges, and 5 unclassified incidents. In addition, the number of subversive or terrorist cells detected by the GSS rose from 2 in 1987 to 15 in 1988, and 20 in 1989. These cells were composed of scored of youth who used to planned to use terrorism.[403]

This must be understood against the backdrop of the intifada and the complete solidarity the Arabs in Israel felt with the Palestinian uprising. While the Arabs in Israel did not join the intifada, and the infractions were quite infrequent and did not affect day-to-day life in Israel, they were enough to feed into the Jewish over-sensitivity and feelings of mistrust, thereby sustaining those perceptions of threat. This reflects a cyclical pattern in which there is a pre-existing sense of apprehension and mistrust of the Arab minority, which in turn results in their alienation and disaffection, which leads few to commit acts against the states, which in turn reinforces the perception of threat and legitimizes it.

4.6. Security and the Rule of Law

The principle of the rule of law requires that official authorities act pursuant to an expressed provision of a written law. Any authority of the executive branch must receive an expressed and specific authority by law in order to execute its functions.

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[403] Ibid.

Thus, the government cannot infringe on human rights or civil liberties of individuals without legal authorization to do so.[404]

The following discussion will focus on the examination of the security legislation of Israel, which seeks to authorize government action in national security matters. The analysis is focused on the security policies as they relate to the Arab minority, specifically examining the emergency regulations, which authorize and expand government action relating to security. In addition, the analysis examines the legal practices of the courts when adjudicating these issues and concludes with the implication of this review.

4.6.1. <u>Security Legislation</u>
Defense (Emergency) Regulations, 1945
The Defense (Emergency) Regulations (herein: defense regulations) were established in 1937 by the British High Commissioner in Palestine to authorize military rule over the mandatory Palestine.[405] The regulations, which applied both to the Jews and the Arabs, were in effect at the creation of the State of Israel, and were absorbed into the Israeli legal system. The defense regulations provided the legal basis for the military rule established over the areas inhabited by the Arab population within Israel.[406] The military rule was established during the war of independence but it was not revoked until 1966.

The defense regulations allocate the discretion to restrict or limit civil liberties

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[404] Mordechai Kremnitzer, "National Security and the Rule of Law", in National Security and Democracy in Israel, ed. Avner Yaniv (Boulder: Lynne Rienner, 1993), 153, 157.

[405] Alina Korn, "Political Control and Crime", Adalah Review no. 4 (Spring 2004):23. See also David Kretzmer, 141.

[406] Ibid.

of individuals to the administrative bodies rather than the judicial ones.[407] The regulations do no afford a hearing to individuals prior to the administrative decision to restrict rights nor do they provide for ex post facto judicial review. The Supreme Court however can review the decisions in its capacity as High Court of Justice. Furthermore, the regulations allocate the power to restrict civil liberties and individual rights to the military commander, appointed by the Chief of Staff and with the approval of the minister of defense.[408]

The emergency regulations authorize the military commander to restrict movement. Regulation 110 affords the administration the ability to restrict individuals to specific living areas and not to leave those areas without direct permission and the administration of curfews from sundown to sunrise. Many of the arrests relating to security violations were related to the violation of this regulation in cases in which Arab residents violated the orders and left their houses after sundown or left the confinements of their villages to seek work or food without the permission of the authority.[409] The regulations also allow for the military commander to issue a closure order in any area of his jurisdiction, which results in the inability of anyone entering or leaving the closure area without direct authorization from the military authority. [410] However during the military government (1948-1966) these orders were only applied to Arabs, while Jews were allowed to move freely within the declared "closed" areas.[411] In addition, regulation 84 authorizes the minister of the defense to declare

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[407] Regulation 2.
[408] Regulation 6.
[409] Kretzmer 142, see also Amnesty International, Town, Arrest Orders in Israel and the Occupied Territories (2 October, 1984).
[410] Regulation 125.
[411] Ibid.

anyone, person, incorporated or unincorporated as an unlawful association. Once such as declaration is made, anyone joining that organization may be in violation of the regulation. This regulation had been used to outlaw Arab organizations. As previously mentioned, the organization, mobilization and socialization of the Arab population were seen as a direct threat to the Jewish entity. Since the principle of security is underscored by an ethnic/religious element of securitizing the Jewish character of the state, it is not surprising that the administration would view Arab association and organization as threatening that principle. It was understood that that the communal mobilization of the Arabs as a group could eventually compete with the Jewish entities for political domination, a consequence which the state could not afford. Other regulations relate to the licensing of newspapers, which gave the military authority far-reaching jurisdiction to control the Arab press.

Administrative Detention

Regulation 111 originally authorized administrative detention but in 1979 the Emergency Powers (Detention) Law was passed which in effect restricted the authority of the government in this regard and subjected the power to strict judicial review. The law required a declaration of a state of emergency for it to take effect. A state of emergency had been declared in Israel on May 19, 1948[412] and has not been lifted since, with the Knesset renewing the declaration annually.

In the first few years after the law was passed there were very few cases in which administrative detention in Israel proper (as opposed to the occupied

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[412] Kretzmer, 158, fn. 32.

territories) was used. Some of those cases involved Jewish extremists.[413]

The new law restricts the use of administrative detention only to cases in which the minister of defense "has reasonable cause to believe that reasons of state security or public security require that a particular person be detained."[414] The law requires that the detainee be brought before a reviewing judge within 48 hours however that judge may disregard the rules of evidence and even hear evidence without the detainee or counsel present if he or she finds that by disclosing the evidence the court may impair state or public security. The Supreme Court has found that the authorities must establish that the danger to state or public security is so grave that it would justify this departure from due process, however the courts have often been willing to accept the authority's evidence without diving into their credibility.[415]

4.6.2. Judicial Review

The administrative detention law provides for a built-in system of judicial review. The onus is on the government to bring the detainee before a judge who must determine whether to confirm the detention order. While there is still some disagreement whether the task of the judge is merely to check that the grounds for the order were indeed connected to state or public security or to examine the necessity for the extreme measure of detention, in practice the judges do in fact go into the intricacies of the matter and examine the justification for detention. The most serious problem of due process in this system of review is the problem of evidence that is not made available to the detainee or his counsel.

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[413] Kahane v. Minister of Defense (1980) **35 P.D.II** 253; Ben-Yoseph (Green) v. Minister of Defense (1980) **35 P.D. III** 474; Agabaria v. state of Israel (1988) **35 P.D. I** 840
[414] Section 2, Emergency Powers (Detention) Law, **S.H. 5739 (1979).**
[415] See Kahane, Agabaria.

As opposed to the Administrative detention law, the defense Regulations and other legislative provision relating to national security do not themselves provide for judicial review. However, the Supreme Court exercises its general jurisdiction as a HCJ to hear petitions challenging the use of the various security powers.

The Supreme Court originally clearly distinguished between the jurisdictional issue and the merits issue often finding that its would not approach matters of merit but rather limit itself to questions of jurisdiction. The current position of the courts is quite removed from this approach. Since the tenure of Justice Aharon Barak, (1978-May 2006) the Court has exhibited judicial activism, especially in the years in which Barak served as the President of the Supreme Court, between 1995-2006. While it still takes a strict stand on procedural issues, it is far less reluctant to adjudicate on merit issues and as a matter of course it examines the reasons and justifications for the government's actions and decisions. The current court is of the opinion that substantial judicial review is an essential part of the rule of law.

The development in the judicial review has had its mark on cases dealing with security powers.[416] In the early years the Supreme Court adopted a strict approach on the jurisdictional issue, this meant that failure to comply with all the formal requirements of the Defense Regulations or other security legislation led to invalidation of administrative restrictions placed on individuals.[417] However, the Supreme Court was not inclined to interfere with administrative restriction orders on the merits or even to examine the justification for those orders. Its approach was that

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[416] Shalom Shitreet, "The Scope of Judicial Review of National Security Considerations in Free Speech and Other Areas: Israeli Perspective," Israeli Yearbook on Human Rights 18 (1989): 47.

[417] Al-Karbuti v. Minister of Defense (1948) **2 P.D.** 5; Al-Khouri v. Chief of Staff (1949) **4 P.D**. 34.

the only non-procedural grounds for interference were bad faith.[418] Over the years the court was less reluctant to examine the nature of the security considerations offered as grounds for administrative action.[419] This did not necessarily translate into interference in the discretion of the administration. The court still showed special deference to the security services and stated that the scope of its interference in security considerations must necessarily be **extremely limited.**[420] The result was that until recently there were no cases in which the court invalidated a decision of a security authority in a security matter because of a fault in discretion.[421]

The attitude of the court is not surprising given the extreme importance allocated to national security. As indicated throughout this chapter, national security has achieved the status of a value in the Israeli political culture and thus it is not surprising that the Supreme Court, even with its activist approach, would not intervene in security related matters to overturn the discretion of the security forces, indicating once again the enormous amount of discretion and power these institutions exhibit in the Israeli system. Ian Zamir, discussing human rights and national security states the following:

> The duty of protecting security has by law been entrusted to the security authorities. The court does not want to make it difficult for them to carry out their duty. The consequences of their decisions may be critical. The court does not wish to be a partner in the responsibility for those consequences. One may generalize by saying that the court tends to show special consideration, and to act with high degree of restraint, towards the security authorities because of the heavy responsibility, the seriousness of the consequence and the public sensitivity that accompanies security

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[418] See Alyubi v. Minister of Defense (1950**) 4 P.D**. 220; Sabri Jiryis v. District Commissioner (1964) **18 P.D. IV** 673; al-Asmar v. Officer Commanding Central Region (1971) **25 P.D. II** 197.

[419] Ian Zamir, "Human Right and National Security" Mishpatim 19 (1989): 17 (Hebrew).

[420] Ibid., 36-38

[421] Ibid.

matters.[422]

Commenting on the ability of the courts to review security considerations of the administration, Aharon Barak finds that there is nothing limiting the ability of the court to exercise its authority.

> In the past the security nature of administrative discretion deterred judicial review, Judges are not security personnel, and they should not interfere in security considerations. Over the years it has become clear that when it comes to judicial review there is nothing special about security considerations. Judges are not administrators, but the principle of separation of powers requires them to supervise the legality of decisions taken by administrators. In this security considerations have no special status…. Just as judges are capable and obligated to examine the reasonableness of professional discretion in every field, they are capable and obligated to examine the reasonableness of discretion in security matters.[423]

This opinion notwithstanding, the Supreme Court, has not always translated it into actual readiness to interfere in government actions. In this regard professor Zamir notes:

> The court placed security authorities and other authorities on the same level only in the strict legal sense, that is to say on the level of legal rules and tests. When it comes to applying the law to a given case, they are not on the same level. In actual practice, there is a great difference, in favor of security matters, between such matters and other matters. The difference exists not on the theoretical level, but in practice.[424]

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[422] Ibid. 37.

[423] Schnitzer v. Chief Military Censor (1988) **42 P.D. IV** 617, 639-640.

[424] Zamir, 33. It should be notes that recent adjudication of cases involving the separation barrier as well as the policy of targeted killings signal a sharp change in the legal practices of the Supreme Court led by Aharon Barak to in fact adjudicate and examine all cases involving security matters and this is certainly a move in a positive direction to enhance democratic practices. See HCJ 769/02 The Israeli Committee Against Torture v. State of Israel; HCJ 2056/04 Beit Sourik Village Council v. The Government of Israel. for a summary of judgments of the Israeli Supreme Court regarding the "war on Terror" and the rule of law see Aharon Barak, "The Supreme Court and the Problem of Terrorism", Judgments of the Israel Supreme Court: Fighting Terrorism Within the Law (2007) (accessed on March 26, 2007), available at: http://www.mfa.gov.il/NR/rdonlyres/599F2190-F81C-4389-B978-7A6D4598AD8F/0/terrorirm_law.pdf. Aharon Barak argued that the Israeli Supreme Court has in fact been extremely active in recent decades (since the 1990s) in exerting its jurisdiction over security matters and reviewing state action and often intervening in the protection of human rights. These cases largely relate to state authorities' activities in the occupied territories vis-à-vis the Palestinian population in those areas and not to the status of the Palestinian citizens of Israel.

4.6.3.   Security and Civil Liberties

The Supreme Court of Israel has refused to accept that "state security" is an absolute value and threat to which may justify restrictions on the liberties of the individual. If there is a clash between the two interests, which leaves no possible way of protecting the states security without restricting the individual interest, state security is to be preferred.[425] However in cases where the two interests may be balanced without sacrificing the duty to protect state security a proper balance must be found between the two.

The balancing test applied by the court was the "probable danger" test according to which the authorities had to show that allowing for the individual right, for example freedom of speech, would "likely endanger the public peace".[426] When this test is applied however, the courts are quick to note that the authorities have met it. The Supreme Court has held that a connection between a newspaper and one of the outlawed Palestinian organizations is a good enough reason for withdrawing the license to publish, even if the military censor has no objection to the contents of the paper.[427] "There is an overall attempt here to control and manage the Israeli-Palestinian conflict on a level in which the borders between security in its narrow sense and political aims become blurred."[428]

Restrictions on political activities without need to show the harm, or probable danger of harm, that such activities cause to state security is manifested in Knesset legislation that criminalizes acts of identification with outlawed organizations.

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[425] Schnitzer, 630.

[426] Kol Haam v. The Minister of Interior (1953) **7 P.D**. 871.

[427] Asali v. District Commissioner (1983**) 37 P.D. IV** 837.

[428] Kretzmer, 140.

According to a 1980 amendment to section 4 of the Prevention of Terrorism Ordinance, 1948 an act is an offense if it:

> Reveals identification or sympathy with a terrorist organization, by raising a flag, presenting a symbol or slogan or causing an anthem or slogan to be heard, or any other similar overt act which clearly shows identification or sympathy, provided these are carried out in a public place or in a manner that people present in a public place can see or hear the said expression of identification or sympathy.[429]

The implication of this law is that any identification with the PLO, regardless of any actual activity is criminal. There is no need to prove that the act of expression in fact poses a "probable danger" to state security. This type of legislation is based on a wide conflict management approach, discussed earlier in this chapter, and must be understood in the context of the Israeli-Palestinian conflict. However its consequences for the Arab minority are extreme. Any show of sympathy or support for the cause of their brethren may be deemed criminal and thus any legitimate political protest within this context is severely limited.

4.6.4. Legal Practice

It is hard to assess whether the use of the security regulations in limiting or violating Arab rights is strictly for security purposes as is often stated by the government. In this context David Kretzmer notes:

> While there is no doubt that the conflict-management model of security has had a profound effect on decision-making in the field of security-control, it is impossible to gauge the *extent* of that effect on specific decisions to restrict liberties of Arab citizens. Israel has never been free of pure security problems, such as internal acts of terror, and as the reasons for a specific decision are usually privileges on grounds of state security, it is rare for one outside the decision-making framework to have the knowledge necessary to assess whether a given decision was based on the strict security model or the "conflict-management model.

Kretzmer concludes that while it is clear that many of the government's

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[429] Prevention of Terrorism Ordinance, 1948.

activities are not confined to the strict security model, it is unclear whether they do not fall under the "conflict-management" model either and therefore confined to issues threatening the Jewish character of the state.

The policies adopted towards the Arab minority, even if not clearly formulated, were justified in the need for securing the state. Yet a review of the use of these laws suggests that the concept of security was extended far beyond the strict model.

> Examining the content of the convictions for offenses against the Defense regulations revealed that only a small number of Arabs were convicted of subversive or hostile activities that endangered state security according to the narrow definition. In contrast to this, according to the expanded concept of security, the entire Arab population was acting, by definition, within the security sphere: their movements were suspect, and the whole domain of their links to the land were portrayed as a threat to national security and were handled by the military government and law enforcement agencies.[430]

While thousands of Arabs were convicted of "security offenses" under these regulations, a closer look reveals that many of those cases did not relate to subversive acts against the state but rather convictions relating to incidents in which Arab citizens entered "closed areas" as defined by the military government, or exited the areas in which they resided without the proper permit, issued by the military authority. These offenses resulted in a trial in military courts and convictions of "security offenses".[431]

4.7. Conclusion: The Value of Security or the Security of Values?

Judges are individuals who sit within their own people. While the judiciary is

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[430] Korn, 29.

[431] Alina Korn who surveyed the criminal convictions of Arabs during the military government rule (1948-1966) reveals that 95% of all convictions of the defense regulations related to administrative offenses such as failure to posses the proper permits and licenses or for exceeding travel restrictions. See Alina Korn, Ibid., 23.

expected to oversee the administration's activities, review their legality and protect civil liberties, they are also influenced by the attitudes, culture and values of their respective societies. Thus, it is not surprising that the Supreme Court in Israel, exercising its judicial review functions, has been reluctant to invalidate government activities, especially relating to limitations placed on the Arab communities within Israel. The lack of dominant adjudication in such cases is clear. It is very difficult to assess the discretion yielded behind closed doors and to prove that this discretion results from an attempt to exercise security or political control over the Arab minority, although the implications of the policies result in such control. While the courts have been active in setting theoretical limitations on security related activities of the government, in practice, they have been reluctant to apply those limitations in specific cases to invalidate government action in security matters.

From its inception, the young Israeli state viewed the Arab population within it as hostile and posing a potential threat to its security. Thus, the policies adopted with regards to this population were justified by the need to defend the security of the nation. Yet, as discussed herein above, the use of the principle security went far beyond "any accepted notion of prevention of actions harmful to national security such as espionage, sabotage and contact with the enemy, or even the prevention of politically seditious activity."[432] It is contended here that at the heart of the Israeli policy was the equation of the security principle with the extension of the Jewish character of the state. The examination of the cases in which Arabs have been convicted of violations of the defense regulations reveals that only a small number of

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[432] Korn, 29.

them related to security offenses while most convictions (95%) were related to violations of travel restrictions and permits.[433] Such an analysis leads one to conclude that the threat is not in the actions of the Arab population, but in its very existence. The existence of a well defined, mobilized, Arab minority poses a serious threat to the Jewish character of Israel. The use of security legislations to limit the ability to mobilize the Arab minority relates to this interpretation of national security rather than the more limited one which views security as relating to defense of the territorial and political integrity of the state.

The emergency regulations and other legal tools mentioned here have been used repeatedly to limit the individual and communal rights of the Arab population in Israel. The following chapter examines the foundation of the legal status of the Arabs in Israel and the implication of the security policies and legislation on that status.

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[433] Korn, 29.

Chapter 5: The Foundations of The Majority-Minority Relations in Israel

5. <u>Problem Defined</u>

The following chapter relates the problem of the majority-minority relations in Israel to the disconnect between myth and reality in Israeli polity. The disconnect between the "liberal democracy myth" and the ethnic divergence reality, in which minorities suffer from alienation and discrimination, is at the root of the problem challenging the majority-minority relations in Israel between the Jews and the Arabs.

In describing the relations between the Jewish majority and the Arab minority in Israel, Sammy Smooha contends that:

> Israel does not qualify as a liberal democracy. It proclaims itself and actually is the state of and for the Jews, not of and for its citizens. In addition to civil rights, it grants some collective rights to Arabs. It retains two official languages, fails to forge its citizens into a united civic nation, and favors Jews in its policies and practices.[434]

The relationship between Jews and Arabs in Israel has been marked by mutual suspicion and animosity. Modern nationalism has often been challenged by the existence of a national minority within the borders of the nation state. As Jews knew all too often, the minority who does not share in the national identity of the state may be perceived as a threat and thus suffer from persecution and discrimination. While successfully establishing democratic institutions, Israel has constantly been challenged by the existence of a well-defined ethnic minority within its borders.

These relations are exacerbated by the linkages between the Palestinians

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[434] Sammy Smooha, "Arab-Jewish Relations in Israel: A Deeply Divided Society", in Israeli Identity in Transition, ed. Anita Shapira (Westport, CT: Praeger Publishers, 2004), 58.

within Israel, and those outside of it. Both however, are perceived as a threat to the state, albeit for different reasons. As a result, Israel has not developed institutions that transcend ethnic identities. The context of the external conflict between Israel and the Palestinians, alongside the ethnic identity of the state, provide a framework for the majority-minority relations in Israel. The latter is the subject matter of the following section.

Israel's policy toward the Arab minority throughout its history is characterized by a lack of coherency and consistency. In the early 1950s Israel's policy largely ignored the existence of an Arab minority in the Jewish state. At the end of 1948 David Ben Gurion famously stated that Israel "was virtually emptied of its former owners," even though 19% of the population at the time was Arab.[435]

Its democratic character, its Jewish identity and the prominence of security considerations, with the latter overriding the former in cases of conflict between the two, determine the policy towards the Palestinian Arab minority in Israel.

In addition, Israeli policy toward the Palestinian minority has been characterized by its recognition of individual rights, following the liberal model, rather than communal rights of the minority.[436] This affects policy especially in areas of education and cultural control.[437]

The disconnect occurs when there is a lack of recognition, at least by official policy, of the multicultural nature of the Israeli society. Both Al-Haj and Barzilai

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[435] Alan Dowty, The Jewish State: A Century Later (LA: University of California Press, 1998), 189.
[436] Gad Barzilai, Communities and Law.
[437] Majid Al-Haj, "The Status of Palestinians in Israel: A Double Periphery in an Ethno-National State", in *Critical Issues in Israeli Society*, ed. Alan Dowty, (Westport, CT: Praeger Publishers, 2004),

have recognized this disconnect. Al Haj examines the "impact of the contradiction between the multicultural social structure and the lack of multicultural conception in Israel."[438] Barzilai criticizes the liberal model asserted by the Israeli jurisprudence and the lack of recognition of communal rights in a state, which is divided along ethnic/national/religious lines.[439] To put it simply, the solutions provided by the system to alleviate the tensions between the majorities and the minorities, simply to do not match the ailments of the society.

5.1. <u>Theoretical Framework of Majority-Minority Relations in Israel</u>

When discussing the cleavages between ethnic groups along identity lines, societies may be categorized according to those internal divisions. Sammy Smooha identifies two criteria for measuring those divisions: "the nature of the minority and the depth of the divide."[440] The nature of the minority relates to its size, cohesiveness and mobilization of the groups. A large, mobilized minority would pose a much greater threat to the state than a disorganized smaller one.[441]

In the Israeli context these cleavages are deep since the majority and the minority divide on issues of culture, identity and ideology. They do not share in narratives, symbols, and institutions. They have separate languages, ideals and national goals. And thus Smooha concludes that Israel is a "deeply divided

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[438] Al-Haj., Ibid.

[439] Barzilai, Communties and Law.

[440] Sammy Smooha, "Arab-Jewish Relations in Israel," 31.

[441] In this context it would be interesting to explore whether a small but mobilized minority poses a greater threat than a larger but much more disorganized minority does. Smooha does not address this question, however evidence in the Israeli context suggests this may be the case as indicated by Israel's initial policy of placing restrictions on movement and association of the Arab population through military government.

society."[442] This description of Israeli society appears to be accurate. Israel has a deeply fragmented society, not only between the Jewish majority and the Arab minority but internal divides within each group. The analysis of the societal division within each group exceed the scope of this study and relate both to history and the nature of the political system, which promotes coalition politics, and thus maintains party politics rather than a unified government in service of the population as a whole.[443]

The Palestinian minority in Israel is both numerically significant (~19%) and politically mobilized, thereby categorizing Israel as a deeply divided society according to the Smooha criteria. [444]

The general theory of majority-minority relations in deeply divided societies should be related to the case study of the Israeli society. There is a debate in the scholarship regarding the Israeli Jewish-Democratic framework. The debate revolves around the question of whether a state can be both Jewish and democratic at the same time. Several propositions have been suggested to address this issue. Some authors

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[442] Ibid.

[443] Israel has a proportional representation electoral system in which parties are required to receive only 2% of the vote in order to get at least one seat in Knesset. The system is conducive to the proliferation of small parties which results in the need to build a coalition government with at least 2 parties but more often than not, more than three to four parties seat together in government. No party in Israel's history has ever received more than 51% of the vote. This includes the first 3 decades of Israeli history, in which the Mapai party (the predecessor of Labor) dominated the political map. This results in the impotence of governments to formulate long-term cohesive policies since they must answer to many masters. On the other hand, the political system represents the multi-cultural, multi-ethnic, multi-religious nature of the society in which it operates. For more on the structure of the political system and coalition politics see Asher Arian, The Second Republic: Politics in Israel; Don Peretz and Gideon Doron, The Government and Politics of Israel.

[444] Smooha. Israel is often classified as a "special case" or "extreme case" in comparative politics studies and thus left outside the framework of analysis precisely because of the deep cleavages and unique classification of the ethnic state. See Joel Migdal, "The Crystallization of the State and the Struggle Over Rulemaking: Israel in Comparative Perspective" in The Israeli State and Society: Boundaries and Frontiers, ed. Baruch Kimmerling (Albany, NY: State University of New York Press, 1989), 1-27.

regards Israel as an ethnic democracy; a democracy dominated by one ethnic group. Others have challenges the democratic component of this definition to argue that Israel is not a democracy but rather an *ethnocracy*, a state which is democratic only in process not in structure. There are those who have taken a more pragmatic approach, arguing that there is no inherent contradiction between a state being Jewish and it being democratic but that the problem lies the policies adopted by the various Israeli government, not in the system itself, which may provide for the protection of rights. Finally the discussion will conclude with the examination of the nature of the Israeli democracy taking a comparative perspective with other democratic nations and a historical perspective, comparing Israel to itself in previous years. Alternative perspectives to those existing in the literature regarding the structure of the state will be offered.

The following sections describe the nature of the democracy, its strengths and weaknesses as they relate to the status of minorities.

5.1.1. <u>Ethnic Democracy</u>

The analysis of the Israeli framework has been dominated by theory of "ethnic democracy," first proposed by Sammy Smooha in 1992. According to this model, the state does not belong to the entire civic society but rather to the ethnic majority of the state. The minority is seen as a threat but allowed to pursue advancement in their individual rights and status within the democratic framework. Smooha argues that:

> Ethnic democracy is a system that combines the extension of civil and political rights to individuals and some collective rights to minorities, with institutionalization of majority control over the state. Driven by ethnic nationalism, the state is identified with a "core ethnic nation" not with its citizens. The state practices a policy of creating a homogenous nation-state, a state for a particular ethnic nation, and acts to promote the language, culture, numerical

> majority, economic well-being, and political interests of this group. Although enjoying citizenship and voting rights, the minorities are treated as second-class citizens, feared as a threat, excluded from the national power structure, and placed under some control. At the same time, the minorities are allowed to conduct a democratic and peaceful struggle that yields incremental improvement in their status.[445]

Smooha limits his analysis to "Israel proper" that is, Israel in the pre-1967 existing borders within the Green Line, thereby excluding the occupied territories from his analysis.

This framework has been criticized on several levels. First in its accurate description of the Israeli framework (as democratic) and second, in accurately describing the Arab-Jewish relations within that framework. The discussion here first will focus on the alternative frameworks. It will then proceed to examine the practical nature of the Israeli democracy, relying on empirical data to examine whether Israel may or may not qualify as a democracy and if so, what is the nature of that democracy. Finally, the theories relating to the Arab Jewish relations within this framework will be discussed and a conclusion regarding the nature of the system and the majority-minority relations within it will be presented.

5.1.2. <u>Ethnocracy</u>

In their article "Questioning "Ethnic Democracy": A Response to Sammy Smooha"[446], As'ad Ghanem, Nadim Rouhana and Oren Yiftachel lay a detailed

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[445] Sammy Smooha, "Ethnic Democracy: Israel as an Archetype," 199-200.

[446] As'ad Ghanem, Nadim Rouhana and Oren Yiftachel, "Questioning "Ethnic Democracy": A Response to Sammy Smooha", 253-67. This article is a culmination of several scholarly products emerging in the Israeli academic circle in the 1990s, all challenging the democratic classification of Israel. For more on this topic see As'ad Ghanem, "State and Minority in Israel" The Case of Ethnic State and the Predicament of its Minority," Ethnic and Racial Studies, 21 no. 3 (1998): 428-48; Nadim Rouhana, Palestinian Citizens in an Ethnic Jewish State, 48-56; Nadim Rouhana, "Accentual Identity in a Protracted Conflict: The Collective Identity of the Palestinian Citizens of Israel," Asian and African Studies, 27, (1993): 97-127; Oren Yiftachel, "The Ethnic Democracy Model and its Applicability to the Case of Israel," Ethnic and Racial Studies, 15 no.1 (1992): 125-36; Oren Yiftachel,

criticism of Smooha's model. The authors challenge the "democratic" component of "ethnic democracy" and argue that one cannot establish an "ethnic democracy" in a bi-national state since a state cannot, on the one hand, structurally discriminate against a minority, and at the same time contend to be democratic. The authors make a distinction between the procedural elements of democracy, which are available in the Israel system and the structural ones, which are not. Moreover, the authors criticize Smooha's limited framework to "Israel proper". They argue that any analysis of Israel must relate to its entirety both the physical and metaphysical boundaries of the Israeli discourse. And since the Arab-Jewish relations are affected by the Israeli-Palestinian conflict, the occupied territories cannot be left out of the analysis. In addition, the special relationship Israel has with its Jewish Diaspora cannot be under-estimated in its relations to the internal majority-minority dichotomy. Therefore, any analysis that does not address these factors is flawed. Furthermore, Ghanem et al argue that Smooha's analysis ignores the process of "Judaization" of the country which subjects the Arabs to a "tyranny of the majority" and structurally prevents them from mobilizing effectively within the political system by preventing their access to key political positions and resources.[447]

According to this thesis, Israel does not classify as a democracy because it is

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"Israeli Society and Jewish-Palestinian Reconciliation: 'Ethnocracy' and its Territorial Contradictions," Middle East Journal, 51 no. 4 (1997): 505-19. Kimmerling also challenges the 'democratic' components of "Jewish Democracy" although for different reasons than the aforementioned authors. Kimmerling argues that Israel's structure is inconsistent with democratic ones because of the religious authority over religious matters who execute this authority according to religious, not secular laws. See Baruch Kimmerling, "Religion, Nationalism, and Democracy in Israel," Zmanim 50 (1994): 116-31 [Hebrew]; Baruch Kimmerling, "Between the Primordial and the Civil Definitions of the Collective Identity: Erez Israel or the State of Israel?" in Comparative Social Dynamics, Erik Cohen, Moshe Lissak and Uri Almagor (eds). (Boulder, CO: Westview Press, 1985), 262-283

[447] Ibid., 254.

deficient in many of the fundamental principles of democratic regimes. It is characterized by civil inequality and lack of minority consent, ethnic exclusion and the state's boundaries, both physical (the occupied territories) and spiritual (the relationship with the Diaspora) are undefined. "Together, these deficiencies cast doubt on the model's empirical and theoretical validity."[448]

Because Israel may not be classified as a democracy, the authors suggest a different category, that of *"ethnocracy";* an ethnic state, which denies minorities full equality and membership in the polity and is constituted on the principle of the "tyranny of the majority."[449] It is therefore essential that the state maintain its Jewish majority in order to secure the dominance of that group while maintaining a democratic façade. In this context, some of the Israeli policies geared towards the protection and promotion of the Jewish majority discussed in chapters three and four become clearer. The Law of Return, under this proposition, is not merely an immigration policy geared toward the implementation of the principle of Jewish homeland. Rather, it is argued that the Law of Return is a tool by which the state may maintain its tyranny and the continuation of the exclusion of the Arab minority. With equality and consent (of the minority to the exclusive structure of the system) absent from the Israeli system, it cannot legitimately qualify as a democracy. According to this thesis, membership in the Jewish people, not citizenship, is the criterion upon which individuals may claim ownership of the state. In this regard, Jewish non-citizens in the United States, France or elsewhere have more claims to the state than

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[448] Ibid., 255.
[449] Ibid.

its native born Arab citizens.[450]

According to the ethnocracy model, equality for Arabs is not possible both in theory and in practice in a state defined by its Jewish character. While Arabs have enjoyed some of the privileges of the Israeli democracy and have used those privileges to advance their interests, the model suggested by Smooha is nonetheless invalid as "the fact remains that *full* equality and *full* democracy have been rendered *constitutionally* impossible [in Israel]."[451] The point is not whether the state can secure equality in some aspects for some Arabs, but rather, whether the state can secure or at the very minimum promote, equality for all non-Jews in all aspects, which is the essence of a democratic system, and to which the answer is in the negative.

The manifestations of the exclusive character of the state have been discussed elsewhere. In chapter four it has been demonstrated that the exclusion of Arabs from equal participation permeates the system and exists on the structural level, in the executive, the judiciary, legislative branches. The proponents of the ethnocracy thesis argue that the exclusion and discrimination on all these levels results in the inability of Israel to declare itself a democracy.

To summarize, the ethnocracy model suggests Israel may not be regarded as an "ethnic democracy" both in theory and in practice. Ethnic democracy denies the ability for those not belonging to the dominant ethnic group from achieving equality and thus is impossible in a bi-national state.

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[450] Ibid., 256. See also Nadim Rouhana, Palestinian Citizens in an Ethnic Jewish State., 44.
[451] Rouhana, Ibid., 45.

5.1.3. The Normative/Political Approach

In the theoretical debate regarding Israel's classification among the democratic states in the world, another approach has emerged, one that focuses on the normative and political implications of the debate rather than its theoretical ones.

Heading this thesis is the leading Israeli Jurist, Ruth Gavinson. While siding with Smooha on the debate between "ethnic democracy" and "ethnocracy", Gavinson moves away from the theoretical conceptual debate to the normative and political ones. She concludes that there is no inherent contradiction between a state being Jewish and it being democratic but that there are serious flaws within the normative and political system, resulting in the discrimination of minorities and specifically, the status of the Palestinians in Israel as "second class citizens". [452]

Gavinson is left unconvinced by the critical argument against the democratic component of State. She finds the distinction between the democratic features which Israel has, such as free elections, freedom of press, civil and political rights for all, and the democratic structures which it lacks, not very convincing. Thus, not defining Israel as a democracy is more egregious to the political reality in Israel than defining it as such. In other words, Gavinson concludes, much like Smooha, that we may lose in theory if we deny that Israel has more features of a democracy than not and while faulty, no democracy is a perfect regime.[453] She implicitly criticizes Ghanem et al for not systematically defining their concept of democracy, but then does the same and leaves a clear definition of what constitutes a "democracy" out of her analysis.

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[452] Ruth Gavinson, "Jewish and Democratic? A Rejoinder to the "Ethnic Democracy" Debate, Israeli Studies 4, no. 1 (1999): 44-72.
[453] Ibid., 48.

The problem with the conceptual argumentation, Gavinson notes, is that it is often void of the political realities and that "it is impossible to claim conceptual detachment when an acute conflict is taking place."[454]

Gavinson seems to search for a common ground between the two competing approaches. She maintains that the analysis cannot be solely limited to the pre-1967 borders without taking into account the occupation and its affect on the Palestinians within Israel. However she rejects the alternative proposition of looking at the debate solely through the lens of "Greater Israel" and that question of whether Israel is democratic or not should also apply to the measures applied in the occupied territories. To this extent, that analytical framework is adopted here. The discussion is thus limited to the majority-minority relations *within* the Green Line, taking into account the geo-political events taking place outside it.

Gavinson asks three normative questions. First, can the existence of a Jewish state be justified in principle? Second, is the present status quo (prior to 2000) justifiable? And finally, do those who live in Israel have a moral obligation to obey the Israeli law? To all she answers in the affirmative (making the distinction between non-citizens under Israeli law, i.e. those in the occupied territories and citizens who have a moral obligation to obey the law). [455]

She concludes that there is no inherent contradiction between a state being Jewish and it being a democracy.

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[454] Ibid., 50. Gavinson explains that those who attack the status quo have more of an interest to argue that the debate is theoretical, not political but that this is not necessarily the case. Thus, the determination depends on one's position and whether one wishes to change the status quo, whether one has the access to public forum to do so.
[455] Ibid., 53-59.

> While there is a minimum of political equality that is indeed crucial to democracy, democracy can exist despite the fact that not all groups feel that they "belong" in the same sense and intensity. In fact, in all societies there are distinctions between centers and peripheries, and those closer to the center feel more identified with the country than those further away. This, too, is one of the senses in which Israel is much more democratic today than it has ever been. ... [D]emocarcy can exist with a board array of attitudes to religious and religious establishments, as is exemplified by the different arrangements enacted in various Western democracies.[456]

Under this proposition, the strength of Israel's democratic institutions tips the scale in favor of viewing it as such. Gavinson challenges the critics by arguing that those who want to view Israel as a non-democracy are those who want to change the status quo. However it would seem that the same critique could be levied against Gavinson's framework – that those who want to maintain the status quo would see Israel as democratic so that the framework cannot be legitimately challenged.

5.1.4. Israel's Democracy and the Status of the Palestinian Minority

Gavinson's analysis that in Israel, the majority-minority relations is similar in context to the center-periphery dichotomy in other democracies is not convincing. While it true that the center often identifies with the country and the "civic" identity more than the periphery, both the center and the periphery, at least in theory, have the same opportunities to exercise their citizenship equally. This is not the case in Israel, in which the structure, the institutions and the system as a whole is geared toward the protection and promotion of one group at the expense of the other. Because of the security context, this is a zero-sum game, in which the Jewish authorities view the advancement of one as threatening the other.[457] The Arabs in Israel are actively excluded from many realms of the society, namely power-sharing positions in the

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[456] Ibid., 61.

[457] See discussion in chapter 4 relating to the assessment of the environment by the security community, according to which, an advancement of the Arab population threatens the Jewish one.

military and political echelon. Thus, it is misleading to compare the center-periphery dichotomy, suffered by many states, both democratic and non-democratic[458], and the Arab-Jewish dichotomy in Israel. However, the alternative view presented by Ghanem et al suffers from a few critical shortcomings as well. It does not account for the institutional aspect of Israel's democracy, not only its procedural one. In this aspect the role of the Supreme Court, especially since the 1990s with the enactment of the two Basic Laws addressing civil liberties, is important. In addition, the threshold, which the authors present, is one that many western states may fail to pass and would also be deemed undemocratic. Thus, it is unconstructive to frame the debate around such a standard.

As a starting point however, it crucial to define the realm of the discourse, mainly the subject matter of the controversy – can a state be both Jewish and democratic at the same time while allowing minorities to enjoy equality and prosperity within it?

The discussion is framed around the definition of *democracy*. It is important to define what we mean by democracy in order to then measure whether Israel qualifies as one. Perhaps the cleavages in the opinions presented here are not associated with the nature of the regime in Israel, but rather with the definition of the term democracy.

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[458] For example, while the Malay speaking Thais in southern Thailand suffer from inequality in allocation of resources and in a larger context of a religious conflict between the Buddhist majority and the Muslim Malay minority, in principal, no Thai of Malay origin is excluded from serving in the highest public office, this includes several foreign ministers of Muslim faith, as well as the commander of the army which recently overthrew the Thaksin government in September 2006. For more on this issue see Surin Pitsuwana, "Islam and Malay Nationalism: A Case Study of the Malay-Muslims of Southern Thailand" (PhD diss., Harvard University, 1982); Erik Cohen, "Citizenship, Nationality, and Religion in Israel and Thailand," in The Israeli State and Society, ed. Baruch Kimmerling (Albany: State University of new York Press, 1989).

As a premise for the discussion, it is important to note that despite the disagreement, all participants in the debate over the status of the Palestinian minority are in agreement that Arabs in Israel are both *de jure* and *de facto* second-class citizens who do not enjoy full and equal rights. All recognize that as a minority, Palestinians are systematically excluded from power sharing and other important areas of social life such as military, civil service and government employment. Moreover, their status is exacerbated by the lack of clear borders of citizenship in Israel, evidence by the nature of the relationship with the Jewish Diaspora, which due to the Law of Return have often more entitlement to citizenship than non-Jewish Israeli born Arabs within Israel. In addition, Israel extends citizenship to Jewish residents of the occupied territories, complicating the delicate relationship the state has with those territories.

The question remains, does this status of the minority, *necessarily* classify Israel as a non-democratic regime? The answer to this question lies in the definition of democracy.

5.2. Democracy – defined
Despite Gavinson's critic, Ghanem et al do provide a definition of democracy in their analysis, according to which:

> Without entering the debate about the nature of modern democracy, we perceive it as a system of government based on several key principles: (a) equal and inclusive citizenship and civil rights; (b) popular sovereignty and universal suffrage; (c) protection of minorities; and (d) periodic, universal, and free elections.[459]

Later in the article they add another criterion, that of clear borders – that democracies must have a clear border and that Israel, due to its special relationship

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[459] Ghanem et al, 255.

with the Jewish Diaspora Jews and the Jews in the occupied territories, does not possess those clear borders.

However, the standards enumerated herein deviate from conventional political science literature and the authors fail to make this deviation explicit in their analysis. In their words, they do not enter the debate "about the nature of modern democracy" and yet by defining their framework for democracy, they seek to expand that debate presenting a higher threshold for states to meet in order to be classified as democratic.

It seems that Ghanem et al are suggesting a framework of analysis, which includes the occupied territories in determining whether Israel is a democracy or not. While occupation has severe implication both internationally and domestically, there is no inherent contradiction between internal democracy and external occupation. For example, one may argue that the American occupation in Iraq is illegal, that the war was illegal and that the political leadership had misled the public. These all have serious consequences but they do not necessarily refute the democratic regime within the US. Similarly, while the Israeli policies and practices in the occupation severely challenge its international standing as well as it internal politics, it does not necessarily lead to the conclusion that as long as occupation persist, Israelis may not enjoy the freedoms provided by a domestic regime. It is possible, at least in theory, for Israel to maintain a democratic regime within its uncontested territory (the Green Line) providing for the equal treatment of minorities, and at the same time continue to pursue discriminatory policies in the territories, which affect the Palestinians, but not Israeli citizens. Thus, the subject matter of the analysis presented herein relates to the situation existing *within* Israel (read: Green Line), particularly when addressing the

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rights of the minority, and excluding the Palestinians in the occupied territories.

Scholars studying democracies empirically have often engaged in the exercise of identifying the minimal criteria for the classification of a regime as democratic. Dankwart Rustow identified four such criteria:

> ➢ Free flow of information and freedom of expression
>
> ➢ Political competition between parties and candidates for electoral approval
>
> ➢ The governance by elected representatives
>
> ➢ Periodic changes in the composition of the ruling majority or representation of all electoral trends within the ruling majority

In applying these criteria, Rustow identified 31 democracies in 1967, Israel included among them.[460] Since Rustow's study was conducted prior to the Israeli occupation of the Palestinian territories, the classification of Israel as democratic may not be relevant to the post-1967 reality and does not assist in determining the debate between the authors regarding the extent to which Israel may be regarded as a democracy.

Expanding on these four criteria, Robert Dahl distinguished between the "ideal" of democracy and the institutional arrangements that allow for a system to come close to the ideal. In 1971 he identified eight factors:

> ➢ Freedom of association
>
> ➢ Freedom of expression
>
> ➢ Right to vote

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[460] Dankwart Rustow, A World of National: Problems of Political Modernization (Washington DC: Brookings Institute, 1967), 94, 290.

➢ Eligibility for public office

➢ Rights of political leaders to compete for support and votes

➢ Alternative sources of information

➢ Free and fair elections

➢ Institutions for making government policies depend on votes and other expressions of preference.

Dahl identified 27 such nations, Israel included.[461] In 1984 and again in 1994 Arend Lijhart, one of the leading scholars on this subject, used Dahl's criteria to identify 23 nations that had been continuously democratic since WWII. Here it is important to note that Israel was included among those nations.[462]

In 1982, Bingham Powell identified five criteria for democracy:

➢ Legitimacy of government depends on a claim to represent the desires of the people

➢ Competitive political election

➢ Most adults can participate in elections (vote and be elected)

➢ Votes a free and secret

➢ System provides for basic freedom of speech, press, assembly and organization

Under this classification, Powell identified 20 democratic nations, including Israel.[463]

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[461] Robert Dahl, Polyarchy, Participation, and Observation (New Haven: Yale University Press, 1971), 9, 248.
[462] Arend Lijphart, Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries (New Haven: Yale University Press, 1984), 2, 38; Arend Lijphart, "Democracies: Forms, Performance, and Constitutional Engineering," European Journal of Political Research no 25 (January 1994): 2.
[463] G. Bigham Powell, Contemporary Democracies: Participation, Stability, and Violence (Cambridge, MA: Harvard University Pres,, 1982), 3,5.

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It should be noted that none of these criteria include the treatment of minorities or the issue of defined borders, included in the Ghanem et al framework. These studies indicate that no state can live up to the "ideal" of democracy. Rather, most regimes strive to reach that ideal, underscoring the assumption that full adherence to these principals is difficult to achieved, especially in ethnically divided societies exacerbated by an external conflict, such as Israel. The question remains, what is the current state of Israel's democracy and has it (and if so, how) changed in the time period discussed in this study (2000-2005). The following section will survey the state of Israel's democracy especially with relations to the treatment of the Arab minority within it.

5.3. The State of Israeli Democracy

As previously discussed, most scholars include Israel in their analysis of democratic regimes. Nonetheless the following section presents the argument that while Israel may still qualify as a democratic regime, the quality of its democracy has been eroded over the years, particularly after the eruption of al-Aqsa intifada in 2000. The analysis presented here relies on empirical data presented in the annual Democracy Index produced since 2003 by the Israeli Democracy Institute (IDI).[464] In addition other reports, namely the annual Country Report on Human Rights Practices produced by the State Department and data sets collected from the Minority At Risk project,[465] will be presented.

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[464] Israel Democracy Institute, Democracy Index, Accessed October 12, 2006); available from http://idi.org.il
[465] Bureau of Democracy, Human Rights, and Labor, U.S. Department of State, Country Report on Human Rights (Israel), (accessed October 12, 2006); available from http://www.state.gov/g/drl/hr/c1470.htm; Ted Gurr, Monty G. Marshall and Christian Davenport, Minorities at Risk Dataset, University of Maryland, 2002 (accessed November 12, 2005); available

The IDI has been studying the quality of the Israeli democracy and how it functions since 1992. In 2003 it started presenting its findings as part of the Democracy Index Project with the objective of producing a "reliable and comprehensive picture of the quality and functioning of Israel's democracy and the way it is perceived by the Israeli public."[466]

The IDI measures the quality of democracy based on quantitative indicators accepted in the literature and on public opinion surveys to examine the perception of the public regarding democracy in Israel. The indicators are divided into three aspects of democracy: the **Institutional Aspect** (includes five variables: accountability, representativeness, participation, checks and balances, and governmental integrity (corruption). The **Rights Aspect** (includes six variables: civil rights, political rights, social rights, economic (property) rights, gender equality and equality for minorities). **The Stability Aspect** (includes three variables: stability of government, the absence of political conflict and the absence of social rift.)[467] Each of these variables is measured using 31 quantitative indicators and public opinion surveys that determine public perception of the degree to which these variables are realized in Israel.[468] On both level of analysis (variables and public opinion) the study was conducted with a dual perspective: comparative and historical. First the study compares Israel with 35 other democratic nations; and second, the study compares the status of the Israeli

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from http://www.cidcm.umd.edu/inscr/mar/data.htm.

[466] Asher Arian, David Nachmias, Doron Navot and Danielle Shani, Auditing Israel Democracy, (Jerusalem: Israeli Democracy Institute, 2003), 12.

[467] Stability is employed not because it is necessarily an indicator of democracy, but it does present an indicator to the strength of the regime and to its quality. In addition, the stability aspect relates to the perception of the public of the status of democracy and the extent to which democratic culture has taken root in society. In addition, the stability aspect affects the ability to function and govern. 2004 Democracy Index, 12.

[468] 2004 Democracy Index, 13.

democracy to its status in previous decades.[469]

Figure 5.1: Framework For Analysis of Democracy**[470]**
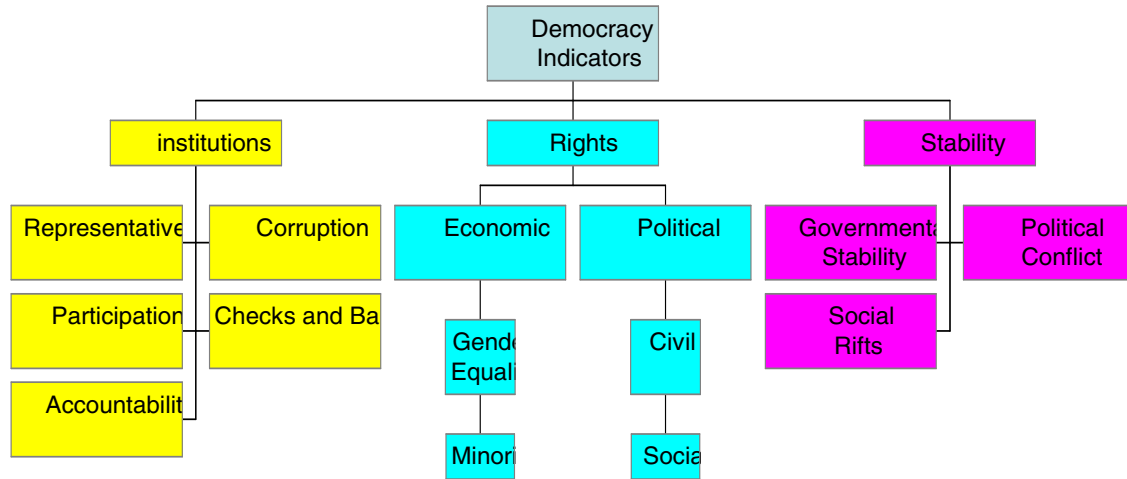
Not all indicators are included in each year, the use of the indictors depends on the availability of the information. Criteria of validity, reliability, differentiation, transparency, clarity, specificity, availability of information and currency of data guided the choice of the variables.[471] Various research institutions such as Minorities at Risk, The United National Human Development Project, the International Country Risk Guide, Freedom House, Transparency International, the Heritage Foundation, and Researchers Arthur Banks, Michael Gallagher and Arend Lijhart developed the quantitative indicators. In addition, data on public opinion was taken from the World International Social Science Project.[472]

The same analytical framework had been used for each annual index starting with the 2003 index, which surveyed the quality of Israeli democracy from the

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[469] 2004 Democracy Index, 12.
[470] Ibid., 13.
[471] Ibid., 13.
[472] Ibid.

previous decade (1992) until 2003, through 2006.

Democracy Index: Major Findings

In general, each annual report paint a similar picture regarding the quality of the Israeli democracy. Figure 5.2 presents Israel's relative ranking among other democratic nations in the sample regarding protection of political rights. It is clear that Israel's democratic strength is in its institutional aspect of the democracy, while its stability aspect is weak. With regards to the rights aspect, Israel ranks in or around the medium. For example, in 2003, relative to the 35 countries included in the study, Israel ranked relatively well in the institutional aspect, coming in at number 6 and 8 with regards to restrictions on executive branch and representativeness, respectively. However, with regard to the involvement of the military in politics, Israel ranked last, strengthening the analysis presented in chapter four regarding the role of the military and the lack of clear subordination to civil authority. In addition, in 2004 it ranked last among democracies in the realms of national/ethnic tension as well as religious tension – contributing to the weakness of the stability aspect of the democracy.

While all three aspects of Israel's democracy are relevant, this study takes particular interest in the rights aspect of the Israel democracy. The researchers chose two variables to measure the quality of political rights in Israel: freedom of press and equality for minorities. In measuring the freedom of press, the IDI relied on the data published in the Annual Survey of Press Freedom, collected and produced by Freedom House.[473] The review of the freedom of press variable in the 2003

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[473] Leonard R. Sussman and Karin Deutsch Karlekar, The Annual Survey of Press Freedom (Freedom House, 2002). The indictor of Press Freedom developed by Freedom House relates to both written and broadcast media. The variable has three sub-categories, each receiving a separate score for a total of 100 points. First category addresses the legal system – whether there are laws limiting the freedom of

democracy index reveals that Israel ranked 28-31 out of 36 countries included in the study (coming in with 70 points out of 100). Thailand, South Korea and Greece all received 70 points as well, with only Romania, South Africa, Argentina, Mexico and India receiving or worse ranking.[474] Figure 5.2 present a summary of this analysis.[475]

Figure 5.2: Political Rights (International) – Freedom House

countries
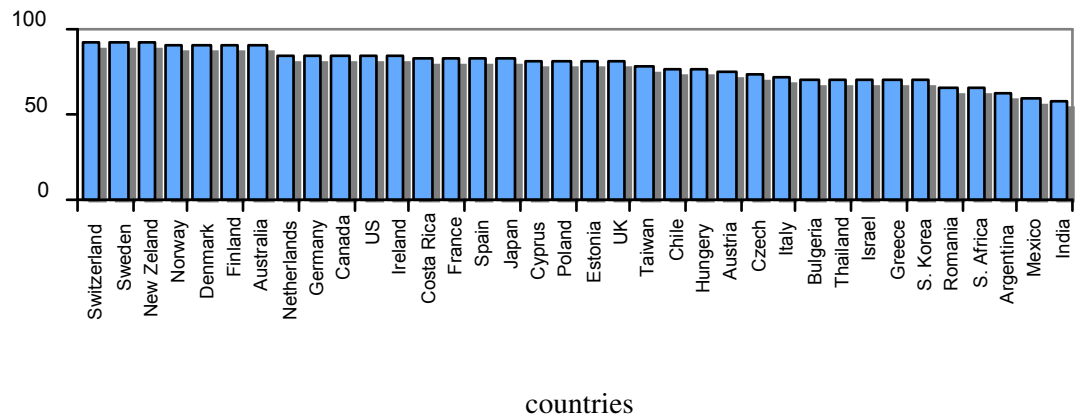
Israel's score of 70 has been consistent in the past decade, however between the years 1997-2000 the score had been upgraded to 72, indicating an improvement in the state of its democracy, at least the realm of political freedoms. In 2004, it improved its score back to 72 where it remains at present.

The second category measured for the evaluation of political rights is equality for minorities. Here the index relies on the data collected by the Minorities at Risk

the press or protecting it and the extent to which these laws are enforced (30 point in total). The second sub-category addresses political influences and pressures on the media (40 points). The last category addresses the financial influences and pressures on the media (40 points). The scale reflects a score between 0-100, o bring the worse and 100 the best. States raking between 70-100 are considered to have freedom of press, states between 40-69 are considered to be semi or quasi-free and finally those ranking at the bottom of the scale with 39 points or less are do not have freedom of the press. For more on the methodology used see ibid., 17-18.

[474] The data collected from Freedom House

[475] Data taken from the Annual Survey of Press Freedom and relate to the situation existing in 2001. Figure 5.2 reflects chart presented in the democracy index for 2003, 12.

project, created by Robert Ted Gurr in 1986 to assess the status of minorities all around the world. Minorities at Risk is considered the most substantial database, as of present, for the evaluation of the status of minorities. The researchers of IDI chose three indicators of the database to evaluate this variable in their index: political discrimination of the minority, economic discrimination of the minority and cultural limitations placed on the minority. The scope of this dissertation is limited to the political discrimination of the minority in Israel and thus data presented here is limited to that indicator.

The variable of political discrimination of minorities is constructed of sub-categories relating to the public policy and practice of discrimination of the minority or the promotion of equality. The results are presented on a scale from 0-4, 0 representing lack of discrimination, and 4 representing a policy of discriminatory and oppressive treatment of the minority, indicating the presence of severe limitations on political participation. The minorities at risk database present information about several minority groups in each nation, the democracy index chose to represent the minority, which is at the worse status in each state, operating under the assumption that the most effective method of assessing a democracy is to review the cases at the margins of the society.[476] With regards to Israel, the minority reviewed is the Palestinian minority within Israel, not the treatment of Palestinian in the Occupied Territories as the status of the latter is extremely different than the former. Israeli Palestinians are citizens of Israel and thus formally are entitled to equality and

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[476] 2003 Democracy Index, 13. For further justification for this policy see Joe Foweraker and Roman Krznaric, "How to Construct a Database of Liberal Democratic Performance", Democratization 8, no. 3 (Fall, 2001): 17.

political participation in the Israeli polity. Their brethren in the territories are not and thus are excluded from the analysis. It has been argued earlier that this study does not subscribe to the framework presented by Ghanem, Rouhana and Yiftachel, who expand their analysis of the Israeli polity beyond the Green Line. The separation between the territory of Israel and the Palestinian territories is not regarded as artificial, in fact this distinction is recognized by law, and the status of both the territory and its peoples is legally different than that of those residing within the Green Line. Since the subject matter of this dissertation is limited to the examination of the Palestinian minority within Israel, the data presented with regards to the Israeli democracy relates solely to this minority.

Review of the data reveals that there has been no improvement in Israel's scoring (and thus in the status of discrimination against Palestinians in Israel) between the years 1992-2002, and Israel's score remains at category 3 (only one score above the lowest score available, with only Japan, France, and Switzerland ranking lower). This score represents the continuation of the practice of discrimination, which alienates minorities, alongside a formal "neutral" policy or at best merely a declaratory policy of affirmative action without any real implications. In 2000 Israel ranked in the bottom third of its category (of score 3) with only Mexico, Czech Republic and Romania scoring worse.[477] Figure 5.3 presents the findings of the 2002 Minorities at Risk report. [478]

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[477] Data collected from Ted Gurr, Monty G. Marshall and Christian Davenport, Minorities at Risk Dataset, University of Maryland, 2002 (accessed November 12, 2005); available from http://www.cidcm.umd.edu/inscr/mar/data.htm
[478] As represented in the 2003 Democracy index, 13.

Figure 5.3: Equal Treatment of Minorities (International) Political Discrimination
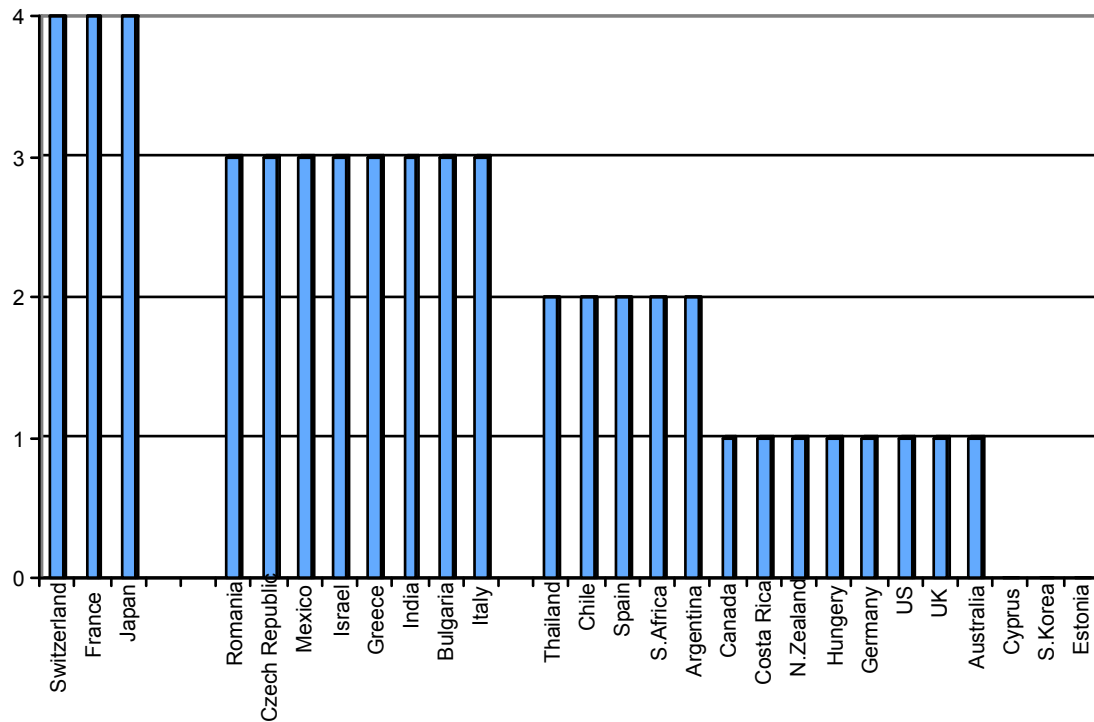
Israel usually ranks in the lower half of the scale in the rights aspect. In 2003 and 2004 Israel received a score of 17 for the indicator regarding lack of discrimination (on a scale from 1 to 36, 1 representing the highest score possible and 36 the lowest).). For the indicator of protection of human rights, which reflects an indication of the protection of political rights, Israel ranks low, coming in at 17 out of 19 nations.[479] With regard to the discrimination of minorities Israel does not fair very well here as well. The economic discrimination level is high (ranks 17-28 out of 28 nations in 2003, 20 in 2004, 21 in 2006). With regard to the level of political

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[479] It is important to note that Israel' ranking is not always compared to all participating nations in the study, which complicates the ability to conduct a comparison along the lines of different indicators since each indicator represents a different size of the sample. The size of the sample (i.e. the number of nations included in the comparison) depends on the availability of information about that indicator. The human rights indicator reflects a comparison between 19 nations with Israel ranked 17. This ranking however includes Israel's human rights record in the occupied territories.

discrimination, Israel ranked in 17-25 out of 28 nations in 2003 and 2004 (this criteria was not measured in 2005 and 2006).

As previously mentioned the review of the indexes indicates that the strongest aspect of Israel's democracy is the institutional aspect. It does not do as well in the rights aspect as discussed herein above, nor in the stability aspect, which examines, *inter alia*, the religious and national tensions within the society.

In the stability aspect Israel ranks at the bottom of the list. The turnover in government is more frequent compared to other nations with a total of 7 governments between 1992-2006 (elections are supposed to be held every 4 years in Israel, however since 1984, no government had survived a full term in office). In 2004 Israel ranked 35 out of 36 in religious/ethnic/national tensions with only India raking lower.[480] A similar trend was indicated in 2003 and 2006. In 2006, Israel had significantly improved it ranking with regard to government changes but still came in at 17. Nonetheless it still ranked 35 in both religious and ethnic/national tensions within the society, resulting in the conclusion regarding the weakness of the stability aspect.

Democracy Survey

The second element of the index refers to public opinion surveys. The results of those surveys reveal that there has been a decline over the years in the Jewish population's support for democratic norms and culture, support for the democratic system, support for particular democratic values (specifically when those values contradict a strategic interest of the state) and support for equal rights for the Arab

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[480] Democracy Index 2004.

minority. For example, in the 2003 survey only 77% of the population supported the statement that democracy was the best form of government. This was the lowest percentage in 20 years.[481] In 1999 for example, this support for democracy was 90%. In 2006 the number has dropped to a record low of 76%. Figure 5.4 demonstrates the decline in support for democracy in a historical perspective.

Figure 5.4: Decline in Support for Democracy

Support for Democracy in Israel 1981-2006 "Democracy is the best form of government" agree and definitely agree (Jewish sample only)
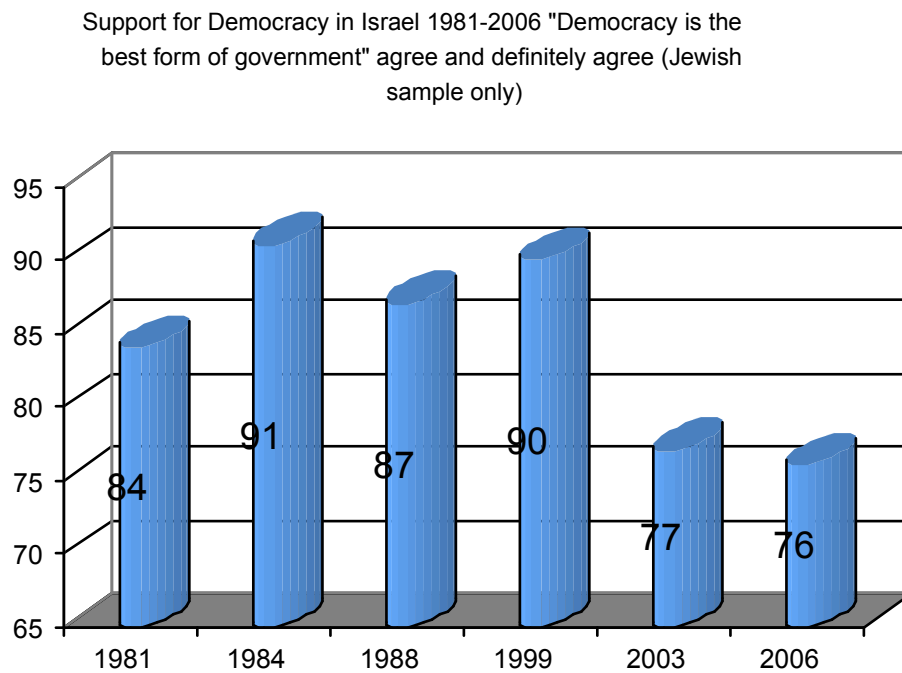
A review of Jewish population public opinion surveys reveals that there has been a sharp decline in the support for equal rights for all (Figure 5.5). For example, between 1999-2001 Israeli population expressed the highest support for equality (94%-96%) while in 2003 there had been a sharp decline with only 81% of support (tentative data for 2006 indicates this figure has risen to 86%).

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[481] 2003 Democracy Index.

Figure 5.5: Support for Equal Rights

When the Jewish participants were asked whether Arab citizens were

Rights for All, 1980-2006
"All must have the same rights before the law, regardless of political outlook"
definitely agree and agree (Jeiwsh populationonly)
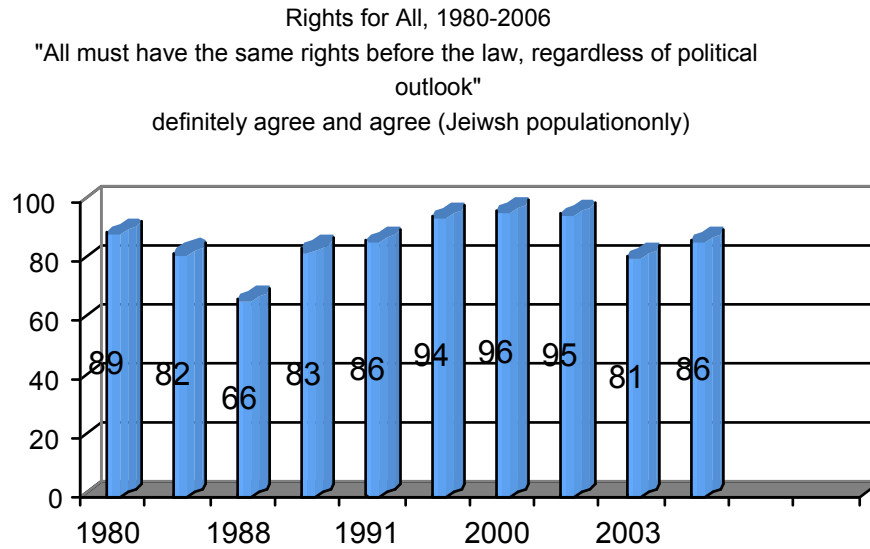
discriminated against 60% supported this assertion in 2001, an alarming low 49% in 2002, 51% in 2003 and back to 60% in 2004. It would seem that the support for Arab equality stabilized in recent years to the degree it was prior to the intifada, but still represent a relatively low degree of support.

Arab-Jewish relations survey indicates that in 2003, 86% of the Israeli population (Arabs and Jews) thought that the relations were not good and not good at all, with this percentage growing in 2006 to 89%.

In sum, the review of the democracy indexes indicates Israel's strength is in its institutions, however democratic values, characteristics and substance have not yet taken root in the Israeli society. It often ranks last among nations in matters of social cohesion, intervention of military in politics, and the protection of human rights, particularly of minorities. Of particular importance to the hypothesis suggested in this dissertation is the stability aspect in which the Israeli democracy is most challenged.

The picture emerging from both the comparative analysis and public opinion surveys suggests that the social tensions, particularly between Arabs in Jews, are at a high level (in 2003 Israel ranked 29 out of 36 in level of political conflict.) Even though Israel does well in the institutional aspect, its status should raise some reasons for concern.

Clearly the state of Israel's democracy is fragile and while it is categorized in comparative studies as a democracy, all three aspects of the system: the institutional aspect, the rights aspect, and the stability aspect are challenged by the high level of societal tension and division as well as the lack of rooted democratic values within society. It is the disconnect between institutionalized democracy, i.e. respect for democratic values within the institutions, namely the executive branch, and the lack of rooted substance of democracy within the society, that is the challenges the Israeli system. There is often a disconnect between perception and reality. Israelis often rate the state of the democracy much better than it actually is.

5.4. Implications of the State Structure vis-à-vis Jewish-Arab Relations

The nature of the Israeli society, which is highly divided, affects the nature of its democracy, which is equally challenged by social/ethnic/national and religious tensions. These two factors; the nature of the society and the democracy; serve to shape the Arab-Jewish relations in Israel. There are three possible theses regarding this matter.

The following discussion will review these theses and indicate their deficiencies in providing an accurate analysis of the majority-minority relations in Israel. The discussion will then presented an alternative thesis named here "the

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disconnect thesis," which, it is argued, provides a better framework of analysis of the majority-minority relations in Israel.

5.4.1. <u>Mutual Rejection Thesis</u>

The dominant thesis in the literature regarding Jewish-Arab relations is that of mutual rejection. According to this thesis, Arab and Jews are constantly becoming more radical and estranged from each other leading to an inevitable confrontation.[482] The supporters of this theory largely rest the responsibility for this radicalization in the hands of the Arab population. Eli Rekhess describes the process of the "Palestinization" of the Arab Israelis.

> [T]he peace process led to a significant reinforcement of the Israeli Arabs' Palestinian identity. … An ideological crisis followed in its wake, leading to a re-examination of the national status of the Arabs in Israel in relation to the Palestinian Diaspora and to Israel itself. …The traditional reciprocity between Israelization and Palestinization was reversed….The result was that a distinctive synthesis was gradually coalescing between certain components of the Israelization process and other components of the Palestinization process. The Israeliness of the Arabs in Israel acquired national Palestinian content, while their Palestinian-ness, in parallel, acquired Israeli content.[483]

As a result of the process of Palestinization, Arabs identify more with Palestinian causes, than Israeli ones. In addition, the growth in Islamization among the Palestinians creates a fundamentalist politicized group who rejects the Israeli state as being illegitimate and repressive. This rejection creates a circular reaction, in

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[482] Smooha, "Arab-Jewish Relations in Israel," 35. For more support for the mutual rejection thesis see Rafael Israeli, Muslim Fundamentalism in Israel (Lanham, MD: University Press of America; Jerusalem: Jerusalem Center for Public Affairs, 1993); Arab In Israel: Friends or Foes? (Jerusalem: Eliyahu Gabbai Publisher, 2003); "The Islamic Movement in Israel, Jerusalem Letter, no. 416 (October 1999): 1-22; Nachman Tal, "The Islamic Movement in Israel," Strategic Assessment 2, no. 4 (February 2000): 1-10.; Elie Rekhess, "The Arabs in Israel After Oslo: Localization of the National Struggle," Israeli Studies 7, no. 3 (fall 2002): 8-23; Jacob Landau, The Arab Minority in Israel, 1967-1991: Political Aspects (Oxford: Clarendon Press, 1993); Dan Schueftan, "Arab-Jewish Relations in Israel: From the Illusion of 'Solution' to Damage Control," Iyunim Bebitahon Leumi 1, no. 1 (June 2001): 128-63. (Hebrew). Arnon Sofer, "Full Equality of Rights to Arabs – Is it Possible?" Nativ 31, no. 2: 50-53 (1993(. (Hebrew).

[483] Elie Rekhess, 9.

which the Arabs alienate the Jews, who in turn reject the Arabs, causing them to become more and more radical – resulting in a self-defeating cycle of reinforcement of hostility between the two groups.[484]

Uri Horowitz had surveyed the trends and attitudes of the Arabs towards the state of Israel in the wake of the October 2000 events, at the highlight of the tension between the Jews and Arabs. He describes the development in the attitudes towards the two political streams; the pro-integration movements and the pro-Isolation movement, led by the Islamic movement.[485] He concludes that while there has been a growing support for the isolationist stream this must be understood in the atmosphere existing at the height of al-Aqsa intifada. Despite the tension between Arabs and Jews, "the current that seek continued integration and the "silent majority", which would be content with improvement in the overall status quo, still comprises a majority."[486]

The trends and attitudes of the Arab Israelis are related to the attitudes among the Jewish society and government. This correlation will be explored in detail in chapter seven, however Horowitz is correct in that any analysis of the Islamization of the Arabs in Israel must be understood in the context of the tensions between the Jews and the Arabs. For example, in 2002 75% of Jews believed the Arab Israelis were disloyal to Israel, compared to 62% in 2000, prior to the outbreak of al-Aqsa intifada.[487] In addition, support for the forced transfer of Arab Israelis to a Palestinian

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[484] Smooha, 35.

[485] Uri Horowitz, "Arab-Israelis and the Events of October 2000: Trends and Attitudes toward the State of Israel," Strategic Assessment 4, no. 2 (August 2001): 1-7, 6.

[486] Ibid., 6.

[487] Asher Arian, "A Further Turn to the Right: Israeli Public Opinion on National Security – 2002,

state if and when it is established, has grown from 24% in 1991 to 31% in 2002.[488] In the 2006 election, the "Israel Beitenu" party (Translated: "Israel is Our Home") running on a platform which promoted, *inter alia* the transfer of Arab citizens, went to win 11 seats in the Knesset and became the 4th largest party. It is not surprising therefore, that in a recent poll, 40% of the Jewish population agreed that the state should encourage Arabs to emigrate from Israel.[489] In comparison, the Likud Party received only one mandate more, with 12 seats in Knesset and the 3 Arab parties combined received only 9 mandates. Israel Beitenu has recently joined the coalition government led by Ehud Olmert.[490]

In another recent survey 68% of the Jewish public stated that they would not agree to live in the same apartment with Arabs, while only 26% would. 46% of Jews said they would refuse to allow an Arab to visit their home, while 50% would welcome an Arab visitor. 63% agreed with the statement that "Arabs are a security and demographic threat to the state", while only 13% disagreed. 34% agreed that "'Arab culture is inferior to Israeli culture".[491]

Bakar Awada, from the Center Against Racism was quoted saying: "Racism is becoming mainstream. When people talk about transfer or about Arabs as a demographic time bomb, no one raises his voice against such statements, this is a

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Strategic Assessment 5, no. 1 (June 2002): 11.

[488] Ibid., 10.

[489] Eli Ashkenazi, "Most Jews Would Refuse to Live in a Building with Arabs," Haaretz, March 23, 2006.

[490] Israeli Arab leaders, along with the liberal left, regard Lieberman, the leader of YIsrael Beitenu, a leader of a Fascist party. Recently the Chairman of the Israeli Arab Committee, Shuweiki Hatib dubbed the party a "fascist party" stating that "the existence of political figures calling for transfer [of Arabs from Israel], must light a red light for Israeli society." Yoav Peled, "Israeli Arab Leader: Avigdor Lieberman Leads a Fascist Party," Haaretz, October 22, 2006.

[491] Eli Ashkenazi, *Haaretz.*

worrisome phenomenon."[492]

In summation, it is hard to distinguish between the chicken and the egg in this matter. Whether it is the radicalization of the Arab public that leads to the growth in racism among the Jewish population and the growth in the perception of the threat posed by the Arab Israelis, or whether the opposite is true – the growing radicalization of the Jewish society, with the growing support for transfer that is alienating the Arabs and leading them to support pro-isolationist movements such as the Islamic movement. In any case, it is difficult to understand the assertion of the 'mutual rejection theorist' regarding the blame placed on the Arab minority for radicalization and a growing wedge between the Jews and the Arabs although it would seem that the description of a growing mutual animosity between the two communities is accurate.

5.4.2. Mutual Resistance Thesis

The mutual resistance thesis developed by scholars such as Ghanem, Rouhana, Yiftachel, Lustick and Rabinowitz, ascribes to the notion that Arabs are becoming increasingly resistant to the exclusionary nature of the Jewish state and thus violence and conflict are to be expected.[493] These scholars argue that the fault for the increasingly tenuous relations between the Jews and the Arabs is the Jewish state's,

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[492] Ibid.

[493] As'ad Ghanem, "The Palestinian Minority in Israel: The 'Challenge' of the Jewish State and its Implications," Third World Quarterly 21, no. 1 (2000): 87-104; Nadim Rouhana and As'ad Ghanem, "The Crisis of Minorities in Ethnic States: The Case of the Palestinian Citizens of Israel," International Journal of Middle East Studies 30 (1998): 321-46; Oren Yiftachel, "Ethnocracy and its Discontents: Minorities, Protests and the Israeli Polity," Critical Inquiry 26, no. 4 (2000): 725-56; "The Shrinking Space of Citizenship: Ehtnocratic Politics in Israel," Middle East Report 223 (Summer 2002); Ian Lustick, Arabs in the Jewish State; Dan Rabinowitz "The Palestinian Citizens of Israel, The Concept of Trapped Minority and the Discourse of Transnationalism in Anthropology," Ethnic and Racial Studies 24, no. 1 (January 2001): 64-85.

"despite the misleading façade of democratic procedures."[494] These arguments range from describing Israel as a "colonial society in which Arabs are an internal colony,"[495] to viewing Israel as state which promote anti-Arab policies of discrimination and control[496]; and finally the assertion discussed earlier in this chapter, that Israel may not qualify as a democracy at all but rather an ethnocracy.[497]

It has been previously argued here that Israel does in fact qualify as a democracy in most acceptable comparative political scholarship, albeit a flawed one. The same critique levied against the mutual rejection thesis can apply to the rejectionist; that is, it is hard to determine whether it is the structure of the system and the discriminatory policies that lead to the Arab rejectionist attitudes or vise versa. In any case, the theoretical discussion is futile in that it distracts from the core issue, i.e. the *de facto* status of the Palestinians in Israel. These scholars stress the importance of the oppressive nature of the Israeli occupation to the stimulation of Arab Israeli resistance. The hypothesis of this dissertation does relate the treatment and discrimination of the Arabs in Israel to the Israeli-Palestinian conflict, however, it is argued that to view the status of the Arab Israelis in the larger context of the status of the Palestinian Israelis is misleading since the two communities, while linked by ethnic and national connections, distinctly differ in their legal status. Furthermore, an improvement in the status of the Arabs in Israel *without* a correlating policy in the occupied territories, would still result in a change in attitudes of the Palestinians in Israel and move towards integration.

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[494] Smooha, 35-36.
[495] Elia T. Zureik, The Palestinians in Israel: A Study in International Colonialism (London: Rutledge and Kegan Paul Publishers, 1979).
[496] Lustick.
[497] Ghanem, Yiftachel and Rouhana.

5.4.3. **Mutual Rapprochement Thesis**

Smooha had rejected the two aforementioned approaches and formulated a third thesis, which he names the "mutual rapprochement thesis" according to which the overall trend in Arab-Jewish relations is one of accommodation. He states:

> This trend is not linear and straightforward but rather laden with ups and downs. The Arabs are enduring a process of Israelization that makes them bilingual and bicultural and installs an Israeli component into their ways of living and thinking. Arabs appreciate Israel as a modern, welfare, and democratic state and realize that they do not have any better option. The growing Arab pragmatism is matched by a parallel Jewish realization that Arabs are here to stay and that fair treatment and integration are more effective means to handle them.[498]

Growing trends supporting state encouragement of Arab emigration, along with the rise in political power of such parties as YIsrael Beitenu refute this thesis. In addition, it is the proposition of this dissertation that in fact, since the eruption of al Aqsa intifada the state has moved toward alienation, rather than accommodation of its Arab citizens. While there have been some policies which seek to accommodate Arabs, especially in recent months, this is not indicative of the trend in recent years which has been to introduce discriminatory policies which will be discussed in further detail in the following chapter.[499] Smooha asserts that while "violent clashes between minorities and majorities are frequent in deeply divided societies, the moderating

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[498] Smooha, 36.

[499] Recent accommodating policies include the allocation of 500,000 NIS to Israeli Arab entrepreneurs as part of a plan to rebuild the Galilee after the war in Lebanon. See Yoav Stern, "Galilee Arab towns to Receive Special Budget Allotment for the First Time," Haaretz, October 8, 2006. In contrast the director of the Entrepreneurship Development Center, MATI, in Western Galilee, Henri Biton stated that he had no problem with allotting aid from MATI to small business owned by Jews only, in compliance with the demands of Jewish donors from abroad. See Shuli Dichter, "Money not Only for Jews," Haaretz, September 19, 2006. Dichter describes that the giving of "designated funds" exclusively to Jews has always been the practice of many infrastructure and social initiatives in Israel. the government has promised a third of the northern aid to go to Arab Sector, but as of yet, that aid has not been received in full. See Sharon Roffee-ofir, "Promise: Third of Northern Aid to go to Arab Sector, NRG News, September 19, 2006.

conditions prevalent in Israel make Arab-Jewish confrontation less likely."[500] This dissertation seeks to contradict this assertion, the hypothesis presented in this study argues that violent confrontation between the Jewish majority and the Arab minority is in fact *more likely* due to the rise in legal discrimination of the minority and that the forces of accommodation are artificial at best.

5.5. <u>Conclusion: "The Disconnect Thesis": Between Myth and Reality</u>

This chapter presented the scholarship relating to the nature of the majority-minority relations in Israel and the affects of the structure of the system on those relations. This study does not subscribe to any of the three theses presented herein in their entirety. Both the rejection theory and the resistance theory present an analysis that void of the "other" context. The rejectionist largely seek to lay the blame for the radicalization of the Arab minority in Israel on the Arab leadership itself, while the proponents of the resistance thesis refuse to acknowledge Israel as a democracy and include the occupation in their analysis of the status of the Arabs in Israel. The flaws of both theories have been discussed and they both lack additional context. Finally, this study seeks to refute Smooha's evaluation of mutual accommodation to describe the nature of the relationship between the Jews and the Arabs in Israel. In fact it is argued, that the recent trends indicate a move towards violence, not away from it.

The nature of the majority-minority relations in Israel are determined largely by the disconnect between myth and reality. The Israeli public, indeed the political echelon, operate under an assumption that the democratic values are rooted within the system and that Israel is a strong democracy both in structure and substance. But the

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[500] Smooha, 36.

data presented here leads to the conclusion that this is not the case. While the Israeli

system invokes many of the characteristics of a democracy, it is weak in many others,

especially in the realms of human rights and societal tensions that result in a

destabilizing effect. This framework will be applied in later chapters to explain the

existence of conditions for the eruption of political violence within the society. A lack

of respect for human rights within a deeply divided society, in which national and

ethnic tensions are high, coupled with an external conflict, creates ripe conditions for

internal violence.[501]

> There are more instances of non-correlation than correlation
> between the way the public perceives the conditions of Israeli
> democracy and the relevant indicators. When there is a gap, we
> tend to mostly gloss over reality. For example: there is correlation
> on the issue of the stability of the political system and the social
> rifts; on the issue of political participation and protection of human
> rights, we rate our situation better than it is in reality.[502]

But it is not just the nature of the democracy in Israel that strains the majority-

minority relations. Rather it is this gap between what is perceived to be reality, and

what actually is. If Israeli policy-makers are operating under the assumption that the

Israeli democracy is stronger than it actually is, they may be more frivolous in their

actions. Recent statements by Knesset Members (MKs) indicate that this may be the

case. For example, Avigdor Lieberman's proposal that Arab Israelis be stripped of

their citizenship as part of the territorial exchange agreement with the PA, is cause for

concern. In another case, while discussing the proposed bill which banned family

unification between Arab Israelis and their spouses from the Palestinian territories

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[501] Michael Hudson, "Conditions of Political Violence and Instability: A Preliminary Test of Three Hypothesis," in Sage Professional Papers in Comparative Politics, eds., Harry Eckstein and Ted Gurr (LA: Sage Publications, INC. 1970), 243-293. See also Paul Wilkinson, Terrorism and The Liberal State (New York: John Wiley& Sons, 1977).

[502] Democracy Index, Major Findings (accessed October 17, 2006); available from http://idi.org.il

(resulting in the inability of residents from the territories who marry Arabs in Israel to live together in Israel), the chair of the Knesset's Internal Affairs and Environment Committee, MK Yuri Stern stated that:

> To be sure, in a normal situation, the State of Israel would not be involved in proposed bills of this kind, but our situation is not normal.[503]

These statements suggest that the MKs believe in the strength of the democratic system to sustain such violations of its underlying principles in the name of "security", but this is not the case. In addition, the Jewish public, perceiving the state of the democracy to be better than it actually is, at least with regard to political participation and the protection of human rights, cannot acknowledge the true status of the Palestinians in Israel and the level of discrimination they are subjected to.

The status of the Palestinians in Israel as second-class citizens is not inherent to the system; however for real equality to happen, honest dialogue must precede. If successful and productive dialogue is to take place both sides must acknowledge the reality of the other. At present, the state's interest is in strengthening the status of the Jewish majority. Only unemotional, honest dialogue between Jews and Arabs in Israel regarding the collective status of the latter will likely bring about a formula which will be accepted by both parties and would facilitate decrease in the aforementioned societal tensions which hinder the rooting of democratic principles within the society. It would be possible to find a more flexible model for creating a state that is both Jewish and democratic at the same time. In this context it is feasible that some concessions could be made in the realms of institutional autonomy for the

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[503] Protocol No. 47 of the meeting of the Knesset's Internal Affairs and Environment Committee, 14 July , 2003.

Arabs, recognition of their history and narrative, especially in the educational system, and an exercise of an affirmative action policy especially within the public sector. If the government fails to take these steps, it expected that both communities will radicalize and shift away from each other. Part III of the dissertation examines the consequences of that shift.

PART III: APPLICATION OF THEORY TO PRACTICE

Chapter 6: Change in Status of the Palestinians in Israel

6. <u>Introduction</u>

The objective of this dissertation is to establish the following hypotheses:

1. There has been a rise in the level of legal discrimination of Palestinian Israelis since the eruption of the al-Aqsa intifada;

2. This rise is linked to the growing sense of insecurity within Israel which leads the government to view its minority population with increased suspicion and threat.

3. This growing sense of insecurity translates into an increased emphasis on "security" of the majority (Jewish) at the expense of the minority (Arab) which results in the adoption of discriminatory policies, viewed by the Palestinian minority as unjust and a loss in legal status.

4. Finally, this perceived loss may be linked to the readiness of the Palestinian minority to engage in risk seeking behavior, which makes the use of political violence against the state more likely.

The following chapter seeks to establish the first and second elements of this hypothesis: since the eruption of al Aqsa intifada Israel has adopted new legislation and policies that seek to further discriminate for the purpose of marginalizing the Palestinian minority, which subsequently, is linked to the level of perceived threat

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posed by the minority.

The status of the Palestinian citizens of Israel derives from the constitutional definition of the state as "Jewish". Israel is not a state for all its citizens but rather a state for the Jewish people. The previous chapter had examined the degree to which Israel may be categorized as a democracy. Some contend that Israel is a Western democracy whose strength can be quantitatively measured,[504] while others suggest that democracy in Israel exists, but only formally.[505] Some contend that Israel presents a unique case for analysis since it includes an ethnic component to its character and thus may not be compared with other democracies.[506] Others argue that Israel is not a democracy at all but rather an "ethnocracy" or Jewish domination regime.[507]

Although the critiques vary, a common thread runs through: all agree that the treatment of Palestinian citizens and the discrimination of minorities in Israel challenge the democratic character of the state. In this context there are two significant questions. First, to what degree are Palestinian citizens excluded from democratic participation and to what extent are they discriminated against. And second, how does this exclusion affect the democratic character of the state.

The following chapter addresses the first question. This dissertation focuses on the security implications of discrimination rather than the implications for Israel's

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[504] For example the reports from Freedom House, include Israel among the democratic nations of the world even though it often receives lower grades than other democratic nations in its category.

[505] See Democracy Index and the International Crisis Group report discussed in the previous chapter, suggesting that the strength of the Israeli democracy lies in its institutions but that it falls short on stability indicators and the protection of rights.

[506] See Smooha and Gavinson.

[507] See Ghanem, Rouhana and Yiftachel; see also Lustick; Al-Haj.

democracy, although those are not excluded from the analysis entirely. The effects of discrimination on the quality of democracy in Israel will only be examined to the extent it influences the status of the minority in Israel.[508]

The discussion focuses on the legal status of Arabs in Israel and the manifestation of discrimination against them, seeking to establish that in Israel, the Palestinian minority is treated as second-class citizens, excluded from large elements of public life and deprived of the ability to exist as equal citizens within society. The exclusion of the Arabs in Israel has been discussed extensively in chapter 4,5 and 6. In addition to the laws enumerated in those chapter and the judicial decisions which enhance the Jewish character of the state at the expense of the equal treatment of the minority, there is a very large body of literature which has concluded that Arabs face institutionalized and systemic discrimination (in political participation, citizenship, education, allocation of resources, use and entitlement to land, service in the military forces and employment opportunities). All have concluded that the status of the Palestinian minority in Israel is that of second-class citizens.[509]

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[508] For more discussion regarding the conceptual debate on whether exclusion and discrimination significantly influence the level of democracy in Israel, see Dean McHenry Jr. and Abdel Fattah Mady, "A Critique of Quantitative Measures of the Degree of Democracy in Israel," Democratization 13, no. 2 (April 2006): 256-282.

[509] Body of literature on second class status of Palestinian Israelis includes, Nadim Rouhana, *Palestinian Citizens in an Ethnic Jewish State*; David Kretzmer, The Legal Status of the Arabs in Israel; Ian Lustick, *Arabs in the Jewish State;* As'ad Ghanem, *The Palestinian Minority in Israel,. 1948-2000;* Yiftachel, Oren. "Ethnocracy and its Discontents: Minorities, Protests and the Israeli Polity"; Yiftachel, Oren. "Israeli Society and Jewish-Palestinian Reconciliation: 'Ethnocracy' and its Territorial Contradictions"; Yiftachel, Oren. "The Ethnic Democracy Model and its Applicability to the Case of Israel"; Yiftachel, Oren. "The Shrinking Space of Citizenship: Ehtnocratic Politics in Israel"; Smooha, Sammy. "Minority Status in an Ethnic Democracy: The Status of the Arab Minority in Israel"; Rouhana, Nadim and As'ad Ghanem, "The Crisis of Minorities in Ethnic States: The Case of the Palestinian Citizens of Israel"; Rouhana, Nadim and Nimer Sultany. "Rewarding the Boundaries of Citizenship: Israel's New Hegemony"; Nimer Sultany, "Rewarding the Boundaries of Citizenship: Israel's New Hegemony"; Rouhana, Nadim. "Accentual Identity in a Protracted Conflict: The Collective Identity of the Palestinian Citizens of Israel"; Rouhana, Nadim. "Outsiders' Identity: Are

6.1. The Status of Palestinian Citizens of Israel

In September 2000 the second intifada, which came to be known as "al Aqsa intifada", erupted in the Palestinian territories. Unlike its predecessor, this intifada has had profound consequences for the Palestinian citizens of Israel. The status quo between Israel and its Palestinian citizens has been changing through the adoption of new legal instruments, which have resulted in further discrimination.

While the Palestinian minority constitutes close to 20% of the population, it has largely been excluded from fully enjoying equal status within Israel. The following section examines the various restrictions and limitations placed on the minority, resulting in its status as "second class citizens". The analysis is divided into 4 clusters. First, the use of the legal system as an instrument of limitation of minority rights and the examination of the underlying reasons for these measures, namely the "security" principle. Second, a summation of recent government policies, aimed at placing additional restrictions on the minority will be presented. Third, a summary of

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the Realities of "Inside Palestinians" Reconcilable?"; Rouhana, Nadim. "The Political Transformation of the Palestinians in Israel: From Acquiescence to Challenge"; Rouhana, Nadim and As'ad Ghanem. "The Crisis of Minorities in an Ethnic State: The Case of the Palestinian Citizens in Israel"; McHenry, Dean Jr. and Abdel Fattah Mady. "A Critique of Quantitative Measures of the Degree of Democracy in Israel"; Ghanem As'ad, Nadim Rouhana and Oren Yiftachel. "Questioning "Ethnic Democracy": A Response to Sammy Smooha"; Ghanem, As'ad. "State and Minority in Israel" The Case of Ethnic State and the Predicament of its Minority"; Ghanem, As'ad. "The Palestinian Minority in Israel: The 'Challenge' of the Jewish State and its Implications"; Al-Hal, Majid, "The Status of Palestinians in Israel: A Double Periphery in an Ethno-National State"; Alan Dowty, "Is Israel Democratic? Substance and Semantics in the "Ethnic Democracy" Debate. See also International Crisis Group, Identity in Crisis: Israel and its Arabs Citizens, *ICG Middle East Report* no. 25. March 2004; U.S. Department of State, Bureau of Democracy, Human Rights and Labor. *2005 Country Report on Human Rights Practices: Israel and the Occupied Territories;* The Association for Civil Rights in Israel, "A Status Report – Equality for Arab Citizens of Israel," (Accessed September 12, 2006); available from www.acri.org.il; Adalah (The Legal Center for Arab Minority Rights in Israel), "Institutionalized Discrimination, " Adalah Report to the World Conference Against Discrimination (August/September, 2001); Adalah, Legal Violation of Minority Rights of Arabs in Israel (March 1998); Human Rights Watch, Second Class: Discrimination Against Palestinian Arab Children in Israel's Schools (accessed November 5, 2003); available from http://www.hrw.org/reports/2001/Israel2/.

data from a the *Justice for All* study conducted in Haifa University is presented demonstrating the discrimination of Arabs in the criminal justice system and finally, public opinion surveys will be presented to indicate public attitude toward the Palestinian in Israel. The hypothesis presented seeks to establish that the change in the state's policies, resulting in the rise in discrimination of the minority, is linked to the perceived threat posed by the latter. Public opinion surveys demonstrate the attitudes and stereotypes exhibited by the Jewish population, establishing the element of threat perception at the heart of the argument. While the discussion includes data from Israel's independence onwards, the analysis is framed in such a way to contextualize the debate in the period of examination of this study – between 2000-2005. The objective of the discussion is two fold: first, it seeks to demonstrate the instruments by which the Israeli system limits the rights of the Palestinian citizens resulting in their inability to fully exist as equal member of the polity. Second, the analysis takes a comparative approach, emphasizing the adverse changes made in the Israeli system with regards to the treatment of the minority since the eruption of al-Aqsa intifada.

In their report on the status of the Arabs citizens of Israel, the International Crisis Group concludes that:

> Israel's Palestinian citizens perceive a state that for the most part is unwilling either to respect their individual rights or to recognize their collective identity and seeks instead to limit their political weight and demographic presence. Increased tolerance within the Israeli polity for extremist rhetoric, combined with hostile legislation and participation in the government of parties openly advocating the transfer of Arab citizens beyond Israel's borders has further heightened tensions,[510]

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[510] International Crisis Group, "Identity Crisis: Israel and its Arab Citizens," ICG Middle East Report no. 25 (March 2004): 1-2.

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The following chapter examines the ways in which Israel has sought to deprive Palestinians of equal power-sharing, while limiting their rights and at the same time enhancing the "Jewishness" of the state, resulting in an increase in public perception of the threat posed by the minority as well as the use of racist rhetoric, preventing the minority from achieving full equal status within the society.

6.2. <u>The Use of Legislation and Resolutions to Limit the Rights of the Minority</u>

6.2.1. <u>Rewriting the Boundaries of Citizenship</u>

The legal basis for citizenship in Israel is found in two founding documents: the first, the Law of Return, defines the criteria according to which Jews may establish citizenship. The second, the Nationality Law establishes the legal basis for naturalization for those who do not qualify under the requirements of the Law of Return for immediate citizenship. The legal basis for the citizenship of Arab in Israel is found in article 4b of the Nationality Law, which reads as follows:

> 3(a) A person who, immediately before the establishment of the State, was a Palestinian citizen and who does not become a Israel national under section 2, shall become an Israel national with effect from the day of the establishment of the State if -
>
> (1) he was registered on the 4th Adar, 5712 (1st March 1952) as an inhabitant under the Registration of Inhabitants Ordinance, 5709-1949(2); and
>
> (2) he is an inhabitant of Israel on the day of the coming into force of this Law; and
>
> (3) he was in Israel, or in an area which became Israel territory after the establishment of the State, from the day of the establishment of the State to the day of the coming into force of this Law, or entered Israel legally during that period.[511]

The background for this legislation has been discussed elsewhere. As a compromise, the Jews had decided (after adopting a policy that encouraged Arabs to

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[511] The Nationality Law, **S.H. 95 (1952),** 146.

leave their land during the 1948 war, as well as actively expelling them) to grant citizenship to the small minority, who remained in the territory after the war in 1948.

As a result, approximately 150,000 Arabs became citizens of Israel. This number has grown to 1.3 million and the non-Jewish population is expected to comprise 30% of the entire population by 2050.[512]

The legal basis for establishing citizenship in Israel had remained fairly constant since 1948 until an amendment was introduced in 2003.

On July 31 2003, the Israeli government approved on second and third readings the Citizenship and Entry into Israel Law (Temporary Order) – 2003, (hereinafter: Citizenship Law) which prohibits the granting of any residency or citizenship status to Palestinians from the Occupied Territories who are married to Israeli citizens, thereby banning family unification. The law was enacted by the Knesset, as a temporary order but has since been extended every year. According to article 2 of the new Citizenship law "the minister of interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him a license to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant, a permit to stay in Israel on the basis with the security legislation in the area."[513]

According to the new legislation, the Minister of Interior may not issue citizenship or permanent residency *only* to Palestinian residents of the territories. The Minister of Interior may only issue special residency visas to Palestinian petitioners

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[512] Projections of Population in Israel for 2010-2025, Statistical Abstract of Israel. 2.27.
[513] Full text of law may be found in Appendix A of this dissertation.

from the Territories, who have children in Israel younger than 14 years or if the petitioner has cooperated with the security forces and he or she "identifies with the State of Israel and its objectives." The provision were relaxed in 2005 to enable family unification in cases where the husband is over 35 years of age and the wife is at least 25 years old.

This new legislation seems to contradict an earlier ruling in the *Stamka case* of May 1999[514] in which the court decided that every Israeli had a right to choose a spouse and to reside in Israel regardless of the spouse's nationality. In addition, the statute addresses Palestinians *specifically* and does not prevent residence or citizenship from non-Palestinians who marry Israelis. Furthermore, as aforementioned, this law results in discrimination on racial grounds despite the Law of Return guaranteeing citizenship even to non-Jewish spouses of Jewish citizens of Israel.

During the Knesset deliberations, the Knesset Members (MKs) indicated that the purpose of the new law was to prevent Palestinians from obtaining Israeli residence or citizenship by marrying Arab Israelis for security purposes. During the recent deliberation over the extension of the temporary order, the GSS had indicated that Palestinians carrying Israeli Identification Cards committed 14% of all suicide attacks.[515] It was argued that the new citizenship law would make it increasingly difficult for Palestinians to obtain those ID cards through legal marriage with Palestinian Israelis.

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[514] HC3648/97 *Stamka et al v. Minister of Interior et al* **53(2) P.D. 728**.
[515] Gideon Alon, Shin Bet: 14% of Suicide Bombers had Israeli ID Cards.," Haaretz, January 9, 2007

Therefore, the MKs invoked the principle of national security to justify the new legislation. The Chair of the Knesset's Internal Affairs and Environment Committee, MK Yuri Stern stated in a committee meeting on 14 July 2003 that:

> To be sure, in a normal situation, the State of Israel would not be involved in proposed bills of this kind, but our situation is not normal.[516]

In August of 2003 the United Nations Human Rights Committee (UNHRC) submitted its Concluding Observations after reviewing Israel's Second Periodic Report on its implementation of the International Covenant for Civil and Political Rights ("ICCPR") which Israel signed and Ratified.[517] The Committee urged Israel to "revoke" the new law banning family unification for Palestinian spouses of Israeli citizens, as it raises serious issues under article 17 (right to privacy, family, home or correspondence), article 23 (right of marriage) and article 26 (right to equality and equal protection of the law) of the ICCPR.[518] The Israel Supreme Court, in its ruling regarding the legality of the citizenship law, split on the question of whether the right to marriage and family life was a constitutional right. The minority opinion, written by the President of the Court, Aharon Barak, contended that these rights were part of human dignity and thus constitutionally protected under Basic Law: Human Dignity and Freedom.[519] The Majority opinion, led by Justice Michel Cheshin concluded that these rights were not protected by the Basic Law and thus could be limited by a

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[516] Protocol No. 47 of the meeting of the Knesset's Internal Affairs and Environment Committee, 14 July, 2003.
[517] Summary Record of the 2118th meeting: Israel 06/08/2003. CCPR/C/SR.2118 (Summary Record).
[518] International Covenant on Civil and Political Rights, GA Res. 2200(a)(XXI), 21 U.N.GAOR Supp. (No. 16) 52 U.N.Doc. A/6316 (1967).
[519] H.C. 7052/03, Adalah et al v. Minister of Interior and the Attorney General, (not yet published), Para. 25-40.

regular law (as opposed to a Basic Law) for the sake of national security.[520]

While these rights are not included in those that may not be derogated from under article 4 of the ICCPR, the citizenship law nevertheless is in violation of Israel's international obligation. Article 4 of the ICCRP allows state to derogate from their obligation under the Covenant in "time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" but measures taken by states which derogate from their obligations must be "strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and ***do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.***(emphasis added, r.o)"[521]

In 1984 the UN Economic and Social Council and the Sub-Commission on Prevention of Discrimination and Protection of Minorities developed the Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR.[522] (herein after: Siracusa Principles). The principles provide further interpretation to the conditions under which states may derogate from their international obligations under the ICCPR. According to the Siracusa principles 'national security' may not justify that measures taken by the Israeli government since:

> 29. National Security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the national or its territorial integrity or political independence against force or threat of force.

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[520] Article 4, ICCPR.
[521] Ibid.
[522] UN Economic and Social Council and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984).

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be used as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exists adequate safeguards and effective remedies against abuse.

32. The systemic violation of human rights undermines true national security and may jeopardize international peace and security. A state responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practices against its population.

The citizenship law cannot hope to meet these standards. While the threat of suicide attacks is grave, it does threaten the existence of the state. Its territorial integrity, or its political independence. Despite the reports of 38 (out of 272) suicide bombers holding Israeli ID cards obtained through marriage to Israeli citizens, this number is still relatively low compared with the number of those seeking family unification through marriage.

With regard to derogation in cases of public emergency, stated in article 4 of the ICCRP, the Siracusa principles state:

39. A state party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights pursuant to Article 4 (hereinafter called "derogation measures") only when faced with a situation of exceptional and actual or imminent danger which threatens the life of the nation. A threat to life of the nation is one that:

(a) Affects the whole of the population and either the whole or part of the territory of the State, and

(b) Threatens the physical integrity of the population, the political independence or the territorial integrity of the State or the existence or basic functioning of institutions indispensable to ensure and project the rights recognized in the Covenant

40. Internal conflict and unrest that do not constitute a grave and imminent threat to the life of the nation cannot justify derogation under Article 4.

Economic difficulties per se cannot justify derogation measures.

The citizenship law does not meet these standards. The threat of potential terrorists marrying Israelis citizens could be mitigated by an examination on a case-

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by-case basis of each application of family unification. Instead, the Israeli lawmaker established the prohibition as the rule, with a case-by-case examination as the exception, thereby violating the principles of necessity and proportionality accept as customary international law. The threat is one, which does not threatens the physical integrity of the state, its population, or its physical or political existence. Thus, Israel's derogation from its international obligations may not be justified.

In 2003 Adalah (The Legal Center For Arab Minority Rights in Israel) had submitted a petition to the Supreme Court, challenging the constitutionality of the Citizenship law. The petitioners claim the new law is unconstitutional since it prevents only Palestinians from receiving citizenship through marriage to Israelis. It selectively specifies the Palestinians as those not entitled to rights that are afforded to any other nationality. Furthermore, the law is directed only at Palestinians residents of the territories and does not apply to Jewish settlers. Jewish residents of the territories, are granted automatic citizenship even if not born in Israel. Hasan Joubrin and Orna Kohn of Adalah write in their petition:

> This is the first law since the enactment of the Basic Laws which deprives citizens their rights solely and directly on the basis of ethnicity, and thus is tainted with racism." [523]

Israel has argued that its security needs require the prevention of entry of Palestinians from the territories into Israel. According to the Israeli government, by obtaining Israeli citizenship, the Palestinians would be free to enter and move within the borders of Israel and this could jeopardize the safety and well being of Israeli citizens. The Al Aqsa intifada is at the heart of Israel's raison d'etat. It has been argued that "the Palestinian-Israeli conflict has changed its character in September

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[523] H.C. 7052/03, *Adalah et al v. Minister of Interior and the Attorney General*, (not yet published).

2000, and has morphed into a vicious terrorist attack with the support of the Palestinian society".[524]

The government, utilizing the security principle, argued that it could not allow nationals of a state it is currently at war with to become Israeli citizens as this might jeopardize Israel's overall security. This line of argument indicates that this legislation is part of a larger context of Israel's overall counter-terrorism strategy. Thus, the legal system has been incorporated into the counter-terrorism policy of the state in combating the rise in the level of violence since Al Aqsa intifada.[525] In November 2003 the Supreme Court issued an injunction forcing the government to explain why this law should not be overruled by the court as unconstitutional. The Court, suggested that it regarded the new legislation as unconstitutional and unless the government could explain its actions, it would be ruled as void.[526]

Last May by a narrow vote of 6-5 the Court rejected the petitions to overturn the law passed by the Knesset in 2002 (at the height of the intifada).[527] The state prosecution, which was satisfied with the decision, argued that "the decision was made in order to protect Israel's security during a time of war".[528] The majority opinion held that the rights to marriage and family life are not constitutionally recognized rights in Israel and thus the law does not harm constitutional rights and even if it does to some extent cause harm, this harm was "measured"[529] (against the security benefits it provides). In the minority opinion Chief Justice Aharon Barak

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[524] Ibid.
[525] The use of the legal system as part of the counter terrorism strategy of the state is discussed extensively in chapter 8 of this dissertation.
[526] H.C. 7052/03.
[527] Ibid.
[528] Yuval Yoaz, "Court Narrowly Upholds 'Family Reunification' Ban, *Haaretz*, May 14, 2006.
[529] Ibid.

ascertained that: "democracy cedes a certain amount of security in order to obtain an immeasurably greater amount of family life and equality."[530] He noted that: "the appropriate goal of increasing security cannot justify severe harm to many thousands of Israeli citizens."[531] The Majority opinion did not agree with Barak and found the citizenship law constitutional. Moreover, with regard to the right to equality the majority opinion concluded that the citizenship law did not violate the right to equality since it is based on permissible distinction. Barak contended that the law should have met the principles of the derogation clause included in Basic Law: Human Dignity and Freedom, which reads:

> Violation of rights
>
> 8. There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required[532]

Since the law did not conform to these principles, Barak was of the opinion that the distinction between Israelis who marry Palestinians and those who marry foreigners of any other nationality was based on impermissible distinction resulting in unlawful discrimination between citizens, and thus, unconstitutional. The Majority held that the public interest of the state to determine its character and identity should guide the decision in determining the parameters of individual rights. In Barak's, opinion, the public interest cannot justify the violation of the individual rights of the citizens. Moreover, the minority opinion found that the violation of the rights did not adhere to the standards set in Article 8 of Basic Law: Human Dignity and Liberty since it lacked proportionality and that the security benefits that they law may provide

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[530] "Supreme Disgrace", *Haaretz*, May 15, 2006.
[531] H.C. 7052/03.
[532] Basic Law Human Dignity and Liberty.

may not justify the overall harm to the right to equality and family life. On the other hand, Cheshin, writing the majority opinion argued that the issue is of life or death, the right of the in individuals to live their life in security ultimately determines the balance in favor of the majority, even at the expense of the harm to individuals.

This case represents the problematic situation in which the Arab Israelis find themselves since the outbreak of Al-Aqsa intifada. According to Adalah only 26 Palestinians (out of thousands which had previously received status in Israel) have been suspected of being directly or indirectly involved in terrorist activities.[533] The GSS has indicated that 14%, or 38 out of 272 suicide bombers obtained Israeli ID cards through marriage to Arab citizens.[534] Nonetheless, this law attempts to prevent *all* Palestinians from obtaining status in Israel and constitutes collective punishment. The law does not provide for a case-by-case examination of individuals seeking legal status in Israel but rather seeks to prevent all Palestinians from becoming Israeli residents, thereby lacking discretion and proportionality. All states limit immigration and set priorities according to the needs at any given time. No western democracy however, so boldly discriminates against some of its citizens by passing laws that solely apply to them.

Despite the criticism levied by the Supreme Court against the Citizenship Law, and the split among the justices on the validity of the law, with a narrow majority of six to five ruling in favor of the law, the Israeli government is nevertheless moving to renew the law (which in its current form is a temporary order

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[533] Data available at http://www.adalah.org
[534] Gideon Alon, "Shin Bet: 14 Percent of Suicide Bombers had Israeli Citizenship," Haaretz, January 8, 2006.

which expires in January 2007 and must be extended or replaced before that date) by two years until 2008. In addition the government seeks to expand the law to include several "threat states" namely, Arab and Muslim. The bill gives Israel the right to reject an application for residency "if in the applicant's country of residency or if within his vicinity of residence activities liable to endanger the security of the State of Israel or its citizens take place."[535] The bill grants Israel the ability to reject any application from members of Arab or Muslim states. The Court's decision notwithstanding, the new bill, if passes, will likely be challenged again, returning the issue back to the Court's doorstep. It remains to be seen how the Court approaches the new provisions, however, given the narrow vote of 6-5 in the previous case, it is expected to be a contentious debate.

In addition to the citizenship law, in August 2002 the Minister of Interior moved to revoke the citizenship of two Palestinian citizens of Israel and to nullify the residency of another from East Jerusalem based on the allegations against them that they aided and abetted a suicide attack in Israel and were members of a terror organization. The citizenship of only one was eventually revoked, rendering him stateless in September of 2002,[536] however the unprecedented event symbolizes an alarming trend in Israel. While Jews have been convicted of severe security violations, (for example the Jewish assassin of the late Yitzhak Rabin), no Jew has ever been stripped of his or her citizenship in Israel. It is unclear what security advantages are achieved by revoking citizenship in cases of security violations. Why

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[535] Shahar Ilan, "Government Extends Citizenship Law by Two Years and Expand it to Cover "Risk States," Haaretz, November 29, 2006.
[536] Maariv, 10 September 2002.

isn't criminal punishment adequate? Moreover, it is unlikely that citizenship revocation will serve as a deterrent in cases where criminal punishment does not. These examples illustrate the attempt to "redraw the boundaries of citizenship"[537] to exclude the Palestinians to a greater extent, rather than enhance the national security of the state.

6.2.2. Limitations on the Political Participation

3. Basic Law: The Knesset (Amendment No. 35) – 2002

In earlier chapters the issue of Arab representation had been discussed. It was argued that for non-Jewish citizens, the meaning of voting for the Knesset is limited not only by the power to disqualify those parties who attempt to change the ideological basis of the state, but also by requiring them to accept (in a sort of 'take it or leave it' attitude) that the state in which they are voting is not theirs. The legitimate space for dissent was further limited on May 15, 2002 when 15th Knesset passed several laws relating to political participation and elections.

The first, was an amendment to Basic Law: The Knesset (herein: the amendment) which came to be known as "Bishara Law", named after Azmi Bishara, leader of the Balad party (National Democratic Assembly). The amendment was introduced following a visit to Lebanon by MK Bishara in which he participated in a rally, suspected to be organized by Hezbollah, in support of the Palestinian uprising against Israel. The Knesset sought to limit these kinds of activities through the introduction of an amendment to section 7a of the law, which prior to the amendment read as follows:

A list of candidates shall not participate in elections for the Knesset

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[537] Rouhana and Sultany, "Redrawing the Boundaries of Citizenship", 14.

if its aims or actions, explicit or implicit, include one of the following:

1. rejection of the existence of the State of Israel as the state of the Jewish people;

2. rejection of the democratic nature of the state;

3. incitement to racism.[538]

The new section amended in 2002 now reads:

> 7a. (a) A candidate's list shall not participate in election to the Knesset and a person shall not be a candidate in elections to the Knesset if the aims or actions of the list or the person, as the case may be, explicitly or implicitly, include one of the following:
>
> 1. rejection of the existence of the State of Israel as a Jewish and democratic state.
>
> 2. incitement to racism.
>
> 3. Support for an armed struggle of an enemy state or of a terrorist organization against the State of Israel.
>
> (b) A decision of the Central Elections Committee that a candidate is disqualified from running in elections requires the approval of the Supreme Court.
>
> (c) A candidate shall make a declaration in the matter of this section.
>
> (d) Details regarding the hearing in the Central Elections Committee, in the Supreme Court, and in the matter of the declaration pursuant to Subsection (c) shall be established by statute. [539]

The amendment made some obvious changes to the pervious version. First, it grants the Central Election Committee (herein: election committee) additional discretion it did not previously enjoy. The election committee not only has the power to prevent a party or list of candidates from participation in the election, but rather it now may prevent an *individual* from running for Knesset elections (subject to Supreme Court review). The election committee, a purely political body, constructed of MKs dedicated to their own political objective, wields tremendous discretion. Second, whereas the previous statute referred to the rejection of the existence of the country as the state of the Jewish people, the new amendment now prohibits the

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[538] Basic Law: The Knesset, **S.H. 244 (1958).**

[539] Basic Law: The Knesset (Amendment No. 35) – 2002, **S.H.1845 (2002)**, 410.

rejection of the state as a "Jewish and Democratic state". The implication of this change is that it combines the two elements of Israel's identity; Jewish and democratic, into one. Parties or individuals will now be disqualified not for rejecting Israel's identity as a Jewish state and/or a democratic state (as was the case previously), but rather for rejecting the identity of the state as a "Jewish and democratic state." This of course means that parties and/or individuals must subscribe to the notion that Israel is a Jewish-democracy wholesale, without the ability to separate the two identities as was the case prior to the amendment. Third, the amendment stipulates that an individual or party will be disqualified if they support, *implicitly or explicitly*, an armed struggle of an enemy state or of a terrorist organization thereby prohibiting protest and support for the Palestinian struggle against Israel. While the demand for parties participating in elections not to support an armed struggle of an enemy state or terrorist organization is legitimate, by adding the stipulation that such support may be implicit, the law opens a door for the election committee to disqualify Arab parties on political grounds.[540] Indeed, such an attempt was made in 2001 discussed here shortly. Finally, the amendment requires candidates to make a declaration to this effect. The text of this declaration was set in an additional amendment discussed herein after.

4. The Political Parties (Amendment No. 13) Law- 2002[541]

This law changed the party registration rules and procedures. Section 5 of the previous law (Political Parties Law- 1992)[542] had prevented a list of candidates from registering on similar grounds as the Basic Law: The Knesset. However the

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[540] David Kretzmer, "Human Rights", Israel Affairs 11, no.1 (January 2006): 47.
[541] **S.H. 1845**, 410.
[542] **S.H. 1992**, 190.

amendment introduced in 2002 added section 5(2A), which reads as follows:

> 5 (2A) Support for an armed struggle of an enemy or of a terrorist organization against the State of Israel is grounds for prohibiting registration of the list as a party pursuant to the Law.[543]

The purpose of this amendment was to create uniformity between section 5 and section 7A of Basic Law: The Knesset, discussed herein above. Thus, the same criterion now applied for the disqualification of a list from registering as those disqualifying parties or individuals from running for Knesset elections.[544] From 2002 *any* support for the armed struggle of the Palestinians, whether direct or indirect, explicit or implicit, is deemed sufficient grounds for disqualification.

5. <u>The Knesset and Prime Minister Election Law (Amendment No. 46) - 2002</u>[545]

This law stipulates that all MKs must state a declaration of allegiance to the state upon their election to the Knesset. It reads as follows: "I pledge allegiance to the State of Israel and refrain from acting contrary to the principles of section 7A of the Basic Law: The Knesset."

This amendment requires Palestinian representatives to subscribe to a platform, anchored in law, which restricts their ability to act "in contrary to" policies often viewed as discriminatory and racist. This declaration obligates Arab MKs from ceasing to act, pursuant to article 7A of Basic Law: The Knesset, to change the identity of the state within the accepted political competition of the system. Arabs are explicitly prohibited from pursuing policies, which may change the identity of the state as "Jewish and democratic," and MKs are required to stipulate this in a legally

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[543] Ibid.

[544] The purpose of the law is indicated in the explanatory notes of the bill. See Hatz'aot Hok (proposed bills), 3048, (5 November 2001), 121.

[545] **S.H. 1845** (2002), 411.

binding statement. The obvious implication of this law, coupled with the previous two mentioned herein is in curtailing the legitimate political activity of Arab MKs to attempt to bring about change to the system which may result in elevating their status from second class citizen to equal member of the society. By anchoring the identity of the state in a constitutional law, and then prohibiting any change to that identity or any political activity geared towards that change, the Knesset in effect has solidified the status of the Arabs as second-class citizens, unable to equally compete for political capital.

The comprehensive reading of these laws together results in the undeniable conclusion that the objective of these laws and indeed their consequence is in reducing the political participation of Palestinians in the Israeli political system and maintaining the dominance of the Jewish parties. These laws restrict the ability of Arab MKs to influence the decision making process and change the political order.[546]

6.2.3. <u>Restriction on the Freedom of Speech</u>

6. `Azmi Bishara case`
Following the amendments discussed herein, on 19 December 2002, Attorney General Elyakim Rubenstein submitted a motion to the Central Elections Committee (CEC) asking it to disqualify the National Democratic Assembly (NDA) party from running in the upcoming Israeli elections. The Attorney General's submission to the CEC relies almost exclusively on previously "secret" General Security Service (GSS) materials about the activities of MK Dr. Azmi Bishara, the head of NDA. [547] The

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[546] For further criticism of these three laws see Rouhana and Sultany, "Redrawing the Boundaries of Citizenship." See also Nimer Sultany, Citizens Without Citizenship.
[547] Since the memo is classified the researcher was unable to determine its contents. However, the

CEC has also been presented with motions filed by other right-wing MKs seeking to disqualify three Arab Members of Knesset (MKs) and three political parties from running in the 28 January 2003 elections in Israel. Challenges against all of the Arab candidates and political parties were submitted pursuant to Section 7(A) of the Basic Law: The Knesset. These motions claim that the goals and activities of the Arab candidates and political parties deny "the existence of the State of Israel as a Jewish and democratic state" and lend "support of armed struggle, of an enemy state or of a terrorist organization against the State of Israel."

The CEC disqualified both members of the NDA, MK Bishara and MK Tibi, and the party itself. These decisions ran counter to the recommendations of CEC Chairman, Supreme Court Justice Mishael Cheshin, who voted against the disqualifications. Significantly, in voting against the disqualification of the NDA, Justice Cheshin rejected Attorney General Elyakim Rubenstein's motion to ban the list from participating in the elections. Justice Cheshin found "no evidence" to substantiate the allegations contained in the Attorney General's submission, which were based almost exclusively on evidence compiled by anonymous GSS agents. A motion challenging this decision was brought before the Supreme Court.

The Likud Party claimed that MK Tibi's actions are an indication of his support of an armed struggle by Palestinian terror organizations, headed by Yassir Arafat, against the State of Israel. The motion also alleged that MK Tibi is the public relations agent of Yassir Arafat; that he solicits support for the Intifada and Yassir

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SHABAK by the very nature of the organization, is called to produce intelligence reports concerning the involvement of individuals or groups in acts, which may pose an internal security threat to the state.

Arafat among Arab Israelis; and that he is responsible for the sharp increase in the involvement of Arab Israelis in terror activities. In addition, the Likud claimed that MK Tibi used his position as an MK to advance the interests of Yassir Arafat and the Palestinians and that "his entire tenure as an MK is full of anti-Israeli actions, which included various expressions of solidarity and support with and support to enemies of the state." Further, the motion alleged that MK Tibi interfered with the efforts of the Israeli army by giving interviews to the media in which he spoke out against the occupation.

MK Tibi and MK Bishara refuted all of the claims of the Likud, arguing that the accusations against MK Tibi are false and unrepresentative of his views, arguing that there is no evidentiary basis for the claim that MK Tibi provided support to terror organizations. They further stated that the allegations are based solely on quotations and excerpts from newspaper articles, which were presented partially and out of context. Such reliance on media reports conflicts with Supreme Court precedent, which requires that evidence relate directly to the activities and officially stated goals of the candidate in question. In his affidavit, MK Tibi stressed that throughout his term as MK, he utilized all of his contacts in an effort to achieve a just peace between Palestinians and Israelis. He also emphasized his belief that open dialogue between the Israeli and Palestinian leadership is essential to achieving such peace. Further, MK Tibi made clear that although he believes that occupied peoples, including the Palestinians, have the right to resist occupation, he opposes the killing of innocent people on both sides.

The counsel for MK Tibi and Bishara also raised legal challenges to Section

7A(a)(3) of the Basic Law: The Knesset, which relates to "support of terror." They argued that the new amendment is unconstitutional as it imposes severe restrictions on protected rights including the right of freedom of expression, and should be declared void on two grounds. First, the Knesset did not provide a definition in the text of the legislation or a separate set of criteria to determine what constitutes a "terror organization." In Israel, it is the executive branch and not the Knesset, which classifies and designates certain groups as terrorist organizations. This situation violates the principle of separation of powers, as the executive branch can determine, as it sees fits, which groups are terrorist organizations. In this way, the executive branch can also determine which political parties can and cannot participate in the Knesset. Second, the term "support" is vague and overbroad. A statement relating to a principled position, namely, that all peoples have the right to resist occupation, can be interpreted as "supporting an armed struggle against the State." Maintaining that a neighboring country has the right to protect itself against an Israeli military attack can also be interpreted as supporting an enemy state against the State of Israel.

Alternatively, it was argued that if it is not declared void, Section 7A(a)(3) of the Basic Law: The Knesset must be strictly interpreted. Read in light of the Basic Law: Human Dignity and Freedom, the provision must be interpreted to include only actual support given to a specific terror organization, which helps its armed struggle; a specific call to join a specific terror organization to aid its fight; or a specific call to a particular terror organization to continue its armed struggle may be prohibited.

The appeal raises an additional legal argument, regarding the fact that none of the evidence or quotations provided by the petitioner date from after the May 2002

amendment of Section 7A(a)(3). Accordingly, the CEC decision to disqualify MK Tibi and Bishara pursuant to this provision was a retroactive application of the law, and therefore, inadmissible. Numerous statutes and Supreme Court decisions provided that they may not be applied retroactively, unless specifically stated in the statute itself.

On January 9, 2003, the Supreme Court of Israel, by a vote of 7:4, ruled to reject three disqualification decisions issued by the CEC. Notwithstanding the court's majority opinion, the disagreement between the Justices indicated a change in the Israeli political system in general, and the legal system in particular, towards the exclusion of opposition voices to Israel's "war on terror" as well as its continuation in the Judaization process which will be discussed later in this chapter.

The Court approved the participation of NDA and reinstated the candidacies of MKs Azmi Bishara and Ahmad Tibi, for the upcoming Israeli elections. The Court decided to accept the appeal of the NDA and to cancel the decision of the CEC. The Court also decided to reject the decision of the CEC to bar MK Bishara and Tibi from participating in the January 2003 elections. The court stated that it would issue its reasons for these rulings at a later date.[548]

The recent amendment of Basic Law: The Knesset reflects a concerning development since, although not expressly stated, the underlying objective is to allow the CEC to disqualify, in particular, the Arab parties from participating in the elections. This conclusion is further augmented by the use of vague terms such as

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[548] Available from http://62.90.71.124/mishpat/html/verdict/index_23.html (accessed January 16, 2003).

"terror" and "support", which allow the CEC to easily disqualify parties without a true understanding of the meaning of "support" for such "terrorist" activity.

The attempt to disqualify Bishara and the NDA party was preceded by an attempt to criminally indict MK Bishara in 2001, prior to the amendment to Basic Law: The Knesset. The amendment was a direct result of the criminal case against Bishara and thus has come to be known as the "Bishara Law." In 2001 Attorney General Rubenstein had asked the Knesset to revoke MK Bishara's parliamentary immunity so that he could stand trial for charges against him in connection with political statements he had made in June of 2001 during a rally in Syria in which he participated.[549] This was the first time in Israel's history in which an MK was to stand trial for political statements he had made during a political demonstration.[550] Bishara was charged with organizing an illegal delegation to visit Syria – an enemy state – and for calling on other Arab countries to give "wider support" for the Palestinians' ongoing resistance to Israeli occupation.[551] Bishara was charged under emergency regulations with two counts of "supporting a terrorist organization" based on those public speeches he had made in Syria, along with earlier statements he had made in Umm el-Fahm (Israel) in June of 2000. The charges were brought under the

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[549] All MKs in Israel enjoy immunity pursuant to article 17 of Basic Law: The Knesset. The Central Committee of the Knesset may revoke this immunity. The Knesset approved the AG request by a vote of 61 to 30, with 2 abstentions. See Gideon Alon and Ori Nir, "Lifting Bishara's Immunity," Haaretz, January 28, 2005.

[550] See Gad Barzilai, "The Case of Azmi Bishara: Political Immunity and Freedom in Israel," MERIP Press Information, Note 80 (January 9, 2001), (accessed July 7, 2005), available from http://www.merip.org/pins/pin80.html. The purpose of MK immunity is to protect MKs from criminal charges, which may be tainted with political motivations. It is argued that the Bishara case was the epitome of this reasoning for immunity, a fact that was lost on the Knesset, which nevertheless approved the revocation of Bishara's immunity, paving the way for the AG to indict him.

[551] C.C 5196/01 The State of Israel vs. Azmi Bishara and Others (Nazareth Magistrate Court).

Prevention of Terrorism Ordinance – 1948 (herein: terrorism ordinance).[552] In addition, Bishara was charged with assisting others to violate Israeli law by assisting several Palestinian Israelis to travel with him to Syria in order to unify with refugee relatives living in Syria since 1948.[553] In Umm el-Fahm, Bishara described Hezbollah's insurgency against Israel, which prompted Israel to withdraw from Lebanon in May of that year, as "sweet taste of victory."[554]

According to article 4 of the Terrorism Ordinance, a supporter of a terrorist organization is:

> 4. A person who -
>
> (a) publishes, in writing or orally, words of praise, sympathy or encouragement for acts of violence calculated to cause death or injury to a person or for threats of such acts of violence; or
>
> (b) publishes, in writing or orally, words of praise or sympathy for or an appeal for aid or support of a terrorist organization; or
>
> (c) has propaganda material in his possession on behalf of a terrorist organization; or
>
> (d) gives money or money's worth for the benefit of a terrorist organization; or
>
> (e) puts a place at the disposal of anyone in order that that place may serve a terrorist organization or its members, regularly or one particular occasion, as a place of action, meeting, propaganda or storage; or
>
> (f) puts an article at the disposal of anyone in order that that article may serve a terrorist organization or a member of a terrorist organization in carrying out an act on behalf of the terrorist organization,
>
> (g) does any act manifesting identification or sympathy with a terrorist organization in a public place or in such manner that persons in a public place can see or hear such manifestation of identification or sympathy, either by flying a flag or displaying a symbol or slogan or by causing an anthem or slogan to be heard, or any other similar overt act clearly manifesting such identification

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[552] Article 4, Prevention of Terrorism Ordinance – 1948. Republished in **S.H. 988 (1980),** 187.

[553] Bishara was charged with aiding and abetting illegal trips to an enemy state for Israeli Palestinians. Although it is legal for Bishara to travel to Syria on his diplomatic passport, it is illegal for ordinary citizens to visit an enemy state without special permit, which Bishara did not obtain for them. His immunity regarding this charge was lifted with a vote of 65 to 24 with 2 abstentions.

[554] C.C. 5196/01.

> or sympathy as aforesaid".
>
> shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one thousand pounds or to both such penalties.[555]

Recall that Azmi Bishara is a formidable critic of Israel's identity as a "Jewish-Democracy". His party, NDA advocates for cultural autonomy and civil rights of Palestinian citizens of Israel and a bi-national state for "all its citizens."[556] There are those who argue that the trial reflected the deep political division within the Israeli society vis-à-vis the identity of the state as a "Jewish Democracy" or "a state of all its citizens" as represented by Azmi Bishara's school of thought. The clash between these two theories on the distribution of political capital was at the heart of the case.[557] Bishara argued that the indictment against him was an attempt to redraw the boundaries of democracy and limitation on freedom of speech of MKs. There was a difference between killing of innocents and opposition to occupation, he argued.[558]

The use of the security principle, and particularly the Prevention of Terrorism Ordinance as a vehicle for limitation of political rights and protest of Palestinian Israelis will be discussed in the following chapter. However it is important to note that the Bishara case represented the first time in Israeli jurisprudence, in which the terrorism ordinance was employed in a case involving political statements made by an acting Knesset Member in accordance with his political duties.[559] MK Bishara,

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[555] Ibid.

[556] Azmi Bishara, "On The Question of the Palestinian Minority in Israel," Theory and Critique, no. 3 (1993): 203-221. [Hebrew].

[557] Nimer Sultany and Arig Sabah-Huri, Resisting the Hegemony: The Trial of Azmi Bishara, (Haifa: Mada – The Arab Center For Applied Social Research, 2003).

[558] Gideon Alon and Ori Nir, "Lifting Bishara's Immunity."

[559] For in-depth analysis of the use of the Prevention of Terrorism Ordinance and other legal measures for the prevention of terrorism in Israeli jurisprudence see Gad Barzilai, "The Center vs. The Periphery: The Jurisprudence of "Prevention of Terrorism" as Politics, Plilim no. 8 (December 1999): 229-249.

represented by Adalah (The Legal Center for Arab Minority Rights in Israel) petitioned the Supreme Court against the Knesset and the Nazareth Magistrate Court following the indictment, demanded that the Knesset's decision to lift Bishara's immunity be overturned and that the Nazareth Magistrate stop all criminal proceedings against him. Adalah argued that there was no legal basis for lifting MK Bishara's immunity since in both speeches he had analyzed the factors, which led to the end of Israeli occupation in Southern Lebanon and the realities of the continued occupation in the Palestinian Territories. These speeches, it was argued, were both within the parameters of the parliamentary immunity as they were *par excellence* political speeches, which enjoy full legal protection. In addition, Adalah referred to other similar speeches Bishara had made in the Knesset for which he was not indicted. Bishara also argued that the visits he organized between family members were purely for humanitarian purposes.

In February of 2006 the Supreme Court had unanimously accepted the petition, thereby revoking the Knesset's vote regarding revocation of immunity and dismissed all charges against him.[560] Following this decision, the Nazareth Magistrate court dropped the charges against Bishara ruling he could not be charged due to his parliamentary immunity.[561]

The case nevertheless represents a watershed event in Israeli politics. It was the first time a Knesset Member's immunity was lifted, not for his deeds but rather

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[560] H.C. 11225/03 MK Azmi Bishara, et al vs. Attorney General et al [Hebrew]. Available at http://elyon1.court.gov.il/eng/home/index.html

[561] CC. 5196/01. The court did keep the indictments against Bishara's parliamentary aids, Mr. Diab and Mr. Qurtam pending as they did not enjoy immunity but had assisted Israelis in crossing to Syria for family unification.

his speeches - which directly relate to his parliamentary activity and the political platform on the basis of which he was elected to the Knesset in the first place. Moreover, it crystallizes the connection made in the hypothesis presented in this dissertation, that Israel's legal policies are influenced by the status of the conflict with the Palestinians, resulting a rise in the level of discrimination of Palestinian Israelis since the eruption of the al-Aqsa intifada. The Azmi Bishara case, coupled with the previous two amendments to the laws, mentioned herein above, reveal this alarming trend. The basis for these legal changes was in enhancing security measures as indicated by the use of the terrorism ordinance as the vehicle through which the AG hoped to convict Bishara. The change in Article 7 of Basic Law: The Knesset further demonstrates this point by banning support for the armed struggle of the Palestinians against the state. Joseph Algazy summarized the predicament in which the Palestinian Israelis have found themselves:

> It appears that politicians… expect Israeli Arabs and their MKs to win a seal of approval by joining the chorus of ministers from the Right who want to fight to the death with the Palestinians. It is time to accept the fact that Arab MKs are in their jobs by right, not by privilege. They are not emissaries of the enemy, but they also are not representatives of the establishment and Israeli consensus. They are expressing the concerns of their constituents, Arab citizens, who feel the pain of their brethren over the border and identify with their wish to be free of the Israeli occupation.[562]

Legal scholars have argued that revoking Bishara's immunity was illegal and extraordinary. It undermines the very fabric of the democratic society in which freedom of expression should be protected with exceptions made only in rare cases in which there is a "tangible danger that [the speech] constitute to state security is

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[562] Joseph Algazy, "MKs by Right Not by Privilege," Haaretz (January 28, 2005).

immediate and indubitable."[563] Just as Jewish leaders in France are not regarded traitors for criticizing their government's policy towards Israel, or similarly just as criticism of the war in Iraq, Afghanistan, indeed the "war on terror" as a whole is accepted as legitimate political protest in the US, there is no reason to turn the political protest of the Arabs into a criminal offense, by doing so, the state is substituting the public political debate with a legal one. Moreover, this case presents a dangerous precedent in which political actors are subjected to criminal prosecution for expressing their opinion and thus presents a grave danger to the democratic fabric of the Israeli society. The space for legitimate protest and dissent, in which questioning state ideology and policy is acceptable, is increasingly becoming limited. This kind of political incitement campaign, may contribute to the alienation of the minority and the de-legitimization of acceptable means of protest leading the minority to adopt more extreme means of protest.[564]

7. <u>Knesset Members (Immunity, Rights and Duties)(Amendment No. 29) Law – 2002 (herein Knesset Members law) ("Bishara Law")</u>

In addition to revoking Bishara's immunity, the Knesset extended the restrictions imposed in article 7A of Basic Law: The Knesset to candidates who had already been elected prior to the amendment. The Knesset members law now stipulates that lifting of MKs' immunity be allowed in cases where the MK "(a) commits an act or expresses an opinion rejecting the State of Israel as the state of the Jewish people; (b) rejects the democratic nature of the state; (c) incites to racism; or (d) supports the armed struggle of an enemy state or acts of terror against the State of

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[563] Gad Barzilai, "The Case of Azmi Bishara.
[564] See element 4 of dissertation hypothesis – discuss extensively in chapters 8 and 9 of this dissertation.

Israel."[565]

During the second and third readings of the bill in the Knesset on July 22, 2002 MK Talab El-Sana (United Arab League) questioned the implication of the law to the sense of belonging that non-Jews may feel toward the Israeli state. Prime Minister Ariel Sharon responded:

> I want to answer you. So as not to get confused, I want to tell you what my parents told me when I was a child. They said, so as not to confuse you, that I should know the following: all the rights over the Land of Israel are Jewish rights. In the Land of Israel, all the rights must be given to the people who live here. That is the difference between rights over the Land and rights in the Land.[566]

Sharon later explained that "All the rights in the Land are for all the citizens. All the rights over the Land are Jewish rights."[567]

In summarizing the effects of this law, Rouhana and Sultany argue:

> This amendment effectively curtails the political rights of Israel's Palestinian citizens by limiting the free speech of their elected representatives and prohibiting them from publicly challenging the definition of the state or attempting to change that definition by lawful means."[568]

8. <u>The Penal Law (Amendment No. 66) – 2002[569] (herein the penal law amendment)</u>

In addition to the aforementioned laws and cases, the Knesset introduced further limitation to the freedom of speech in the form of an amendment to the Penal Law, which stated:

> 144D2. (a) A person who publishes a call to commit an act of violence or terror, or words in praise, support, or encouragement of

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[565] Knesset Members (Immunity, Rights and Duties)(Amendment No. 29) Law – 2002.
[566] Ariel Sharon, The 333rd sitting of the 15th Knesset, 22 July 2002.
[567] Ibid.
[568] Nadim Rouhana and Nimer Sultany, "Rewarding the Boundaries of Citizenship."
[569] **S.H. 1845** (2002), 411.

an act of violence or terror, support, or identifies with in (in this section – inciting publication), and according to the plan of the publication of the incitement and the circumstances in which they are published, entail a substantial possibility that it will bring about an act of violence or terror, shall be subject to imprisonment for five years.

(b) In this section, "act of violence or terror" means an offense that causes bodily injury to a person or places in life-threatening danger or in danger of serious injury.

(c) Publication of an accurate and fair report on a publication that is prohibited by the provisions of subsections (a) and (b) shall not be an offense pursuant to this section.

144d3. a person who possesses, for purposes of distribution, a publication that is prohibited by Section 144d2 is subject to imprisonment for one year, and the publication shall be forfeited.[570]

In place of this restrictive measure MK Zahava Gal-On of the Meretz party (liberal left party) suggested the introduction of the legal standard of 'near certainty" that the publication would lead to an act of violence or terror, thereby requiring a higher legal standard for conviction.[571] This proposal, however, was rejected in favor of the lower standard of "substantial possibility" [that the publication would lead to an act of violence or terror].

This law was enacted in response to the protest expressed by the Arab Israelis and their leadership in the Knesset following the eruption of al-Aqsa intifada. The Israeli government accused the leadership and Arab journalist for inciting the Arab community in Israel to engage in violent protest against the state.

The standard of "substantial possibility" is broad and it remains to be seen how the courts interpret this legal phrase. The amendment was in response to the HCJ's rejection of the government's attempt to prosecute an Arab journalist for supporting a terrorist organization.[572] The court found that article 4 of the Prevention

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[570] Ibid.
[571] Proposed Bill No. 2202, 14 January 2002.
[572] Crim. Add, Hear. 8613/96 Muhammad Yusef Jabarin v. State of Israel, S.C. Rpt 54(5) 193.

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of Terrorism Ordinance, 1948 did not prohibit incitement by individuals but rather prohibited incitement by terrorist organizations and thus could not be the basis for conviction of an individual journalist. The amendment now allows for the prosecution of individuals as well as organizations.

6.3. Government Policy

The examination of government policy in the period under review (2000-2005) reveals once again, as in the case of Knesset legislation, the prevalence of the security principle in forming state policy. The review of such policies indicates the heavy involvement of the General Security Services (GSS) in policy formation, often dictating central policy in matters relating to the Palestinians in Israel. The underlining element of these policies is one, which views the minority population as a security threat, thereby justifying the discriminatory policy under the security principle.

The analysis of government policy is divided into four clusters. The review is not all encompassing and does not involve all policies adopted during the review period (2000-2005). Instead, this study takes the approach of focusing the discussion around the prevailing policies which most relate to the variable examined – i.e. policies resulting in direct discrimination of Arab citizens. The first cluster concerns policies relating to demography. The second reviews the role of the GSS in Arab education. The third cluster examines government policy relating to Arab housing and land and finally government policy towards political movements. The following analysis presents a thesis that the prevalence of the security concerns of the government serves to enhance Israel's "Jewishness" at the expense of its Arab

minority resulting in further discrimination of the latter. While government policy is justified by invoking security concerns, a close analysis reveals different objectives, which may not be explained by the security concerns of the state.

6.3.1. <u>Demography</u>

In September 2002 the Ministry of Labor and Social Affairs decided, after a 4 year hiatus, to revive the Public Council for Demography (herein: Demography Council) which was created in 1967 for the purpose of systematically developing and implementing demography policy which will result in the encouragement of childbearing of the Jewish population which is essential for the preservation of a Jewish majority in Israel, allowing for the domination of the Jewish character of the state.[573] The Demography Council is an advisory board to the Ministry. Its objectives are to monitor the activities of the ministry's Demography Center. The demography Center was created under the auspices of the Ministry of Labor and Social Affairs (herein: the Ministry) to promote the following:

> Formulation of comprehensive government demographic policy meant to maintain a suitable level of Jewish population growth, and acts systematically to implement this policy. Most Center activities take place under the auspices of the Ministries of Construction and Housing, Education and Culture, and Health. Policy is formulated through field surveys and research, demographic conferences, experimental projects, and information activities.[574]

As a result of a growing number of non-Jewish immigrants to Israel, foreign workers and intermarriages, the Jewish population in Israel declined from 77.8% in 2000 to 77.2% in 2001.[575] The Ministry decided to revive the Demography Council to encourage the growth in Jewish birthrates. In the words of a council member:

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[573] Nimer Sultany, Citizens without Citizenship, 100.
[574] Ministry of Labour and Social Affairs, accessed November 17, 2006; available from http://www.jewishvirtuallibrary.org/jsource/Politics/mlsa.html.
[575] Central Bureau of Statistics report, available from CBS website.

> Why did we establish a state if in the end it will be democratic but not Jewish? What do they want – that I should encourage Arabs to have more children, to have 15 children instead of 10? The Jewish people must survive and do everything it can to ensure that it does.[576]

The use of the quasi-scientific term of "demography" does not exclude the underlying discriminatory preference of one ethnic group over the other. Aside from the theoretical challenges this institution poses to the nature of the Israeli democracy, the policies adopted resulted in further discrimination of the Arab population.

Following the recommendations of the Council, the Israeli government decided to provide financial benefits for the birth of the 3rd and 4th child while canceling them for the subsequent children. Since Jews tend to have 2 or 3 children while Arabs tend to have larger families with 5 or more children, the incentive is clearly directed at the Jewish household while attempting to discourage Arabs from producing large families.[577]

In addition, in 2003 the National Security Council (herein: NSC) addressed the "demographic problem" in its annual assessment of the security situation in Israel. In its assessment of the threat posed by the Arab community the NSC included the "high natural growth rate" of the Arabs.[578]

In another example of a demographically motivated policy the government entrusted the World Zionist Organization (WZO) to establish 14 new Jewish villages in the Negev, which is predominantly settled by non-Jewish Bedouins. While the Bedouin community is excluded from the analysis of this dissertation this policy

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[576] Merav Sarig, "Birth of a Nation," Haaretz, (1 November 2002).
[577] Rouhana and Sultany, Redrawing Boundaries of Citizenship, 13.
[578] Iliail Schachar, "National Security Council: The Bedouins – Explosive," Maariv Online (6 January 2004).

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nonetheless reveals the government's plan to establish a Jewish majority in the areas where there is none in an effort to break Arab population hegemony in certain areas of the country.[579]

6.3.2. GSS in Arab Education

As discussed in previous chapters, the Israeli education system is, for the most part, segregated. The Arab schools are subjected to the authority of the Israeli education ministry, governed by a Zionist curriculum, which adopts a Zionist narrative, teaching the history of the Jewish people, the Zionist movement and largely ignoring the history and culture of the Arab population. In 2003 the extent of the GSS involvement in appointment of teachers, principals and supervisors in all Arabs schools was revealed in the Israeli media.[580] It was reported that the GSS had assigned a permanent appointment of its members to the ministry of education to supervise over the hiring of all personnel involved in Arab schools and that this GSS agent must approve those appointments. All teacher, principals and supervisors in the Arab sector are subject to a security background check. No similar practice exists in the Jewish school. In August of 2004 ministry's director general confirmed that the Arab education system was subject to GSS supervision and that the deputy director of the Arab education department was not an educator but rather a GSS agent. The deputy director of the ministry, Ronit Tirosh noted that "the GSS only gives the OK. I don't see any problem with that."[581] While Tirosh may have not seen a problem with GSS supervision of the Arab education system, the "Dovrat Commission", appointed

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[579] Rouhana and Sultany, 14.

[580] Or Casheti, "Revealing incitement of hostile elements within the Education System," Israeli Channel 10, 13 August 2003.

[581] Yair Ettinger, "Tirosh Admits: The GSS Checks Arab Principals," Haaretz, 25 August 2004.

by the Knesset Committee of to review and suggest reforms to the ministry found that the position held by a representative of the GSS who serves as a deputy supervisor of the Arab education department was discriminatory and called for its complete cancellation. In 2005 the government decided to repeal the GSS position in the ministry of education citing the Dovrat Commission report.[582]

It is unclear how long this practice had been in effect prior to its revelation in the media. It can be suspected that this policy intiated early in Israel's formation and continued until 2005. The policy itself reveals the inherent suspicion and involvement of security concerns in all matters of social life in Israel. The appointment of educators should not be confused with the role of the GSS and yet even in matters completely remote from the security policy of the state, the security principle plays a significant role.

6.3.3. Housing and Land Policy

No other issue presents so boldly the discrimination of Arab citizens than the issue of land distribution. The discriminatory laws, which seek to enhance the Jewish character of the state, have been discussed extensively in chapter 4. These laws seek to exclude the Arabs from the national ethos thereby resulting in their status as second-class citizens.

In the early period of the *Yishuv* (pre-state Israel), the Israeli policy makers initiated a land policy specifically dedicated to the settlement of Palestine with Jewish immigrants. In order to achieve this objective the Jews developed a land regime that transferred land ownership and control into Jewish and Israeli hands. There were two

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[582] "As a Result of Adalah's Petition, AG Informs Supreme Court of Cancellation of GSS Position in Education Ministry's Arab Education Division," Adalah News Update, 28 June 2005.

elements to this policy; the first was the nationalization of public and Palestinian land. The Israelis state initiated a national-collectivist regime by which land would be collectively owned. Land nationalization was achieved through two major channels. The first was through military rule, which was established over Arab villages at the end of the 1948 war. Through the military rule the military governor could nationalize land for "security purposes". Thus Palestinian land was transferred to public Jewish ownership. In addition, the state confiscated Arab owned land through the Absentee Property Law of 1950 and the Land Acquisition Law of 1953 discussed herein chapter 4.[583]

The second means for land control was the selective allocation of land possession rights within the Jewish population. At present 93% of land in Israel is publicly owned, with the government owning 80% and the Jewish National Fund (JNF) holding approximately 13% of the land.[584]

In 2000, in a landmark decision, often referred to as the "Israeli Brown v. Board of Education"[585] the Supreme Court outlawed discrimination between Jews and Arabs in state land allocation. [586] In order to exclude Palestinian citizens from community settlements, a complex system developed whereby only Jews could receive land to establish settlements. The State of Israel allocated land to the Jewish Agency for the establishment of the Jewish community settlement *Katzir* in 1982. In

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[583] For more on Israeli land regime see Oren Yiftachel and Alexander Kedar, "Landed Power: The Making of Israeli Land Regime" Theory and Criticism 16 (2000): 67-100; Alexander Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967," 33(4) NYU J. Of International Law and Politics, 923-1000.

[584] The Jewish National Fund was created in 1901 as a Zionist organization aimed at purchasing land in Palestine for Jewish settlement and thus JNF land is allocated for the Jewish population only.

[585] Steven V. Mazie, Israel's Higher Law: Religion and Liberal Democracy in the Jewish State, 235-6.

[586] HCJ 6698/95 Qaadan v. The Jewish Agency, **P.D. 44(1) (2000).**

1995, a Palestinian Israeli family by the name of Qaadan attempted to acquire land in Katzir but was prohibited from doing so. The Jewish Agency argued that it was established for the promotion of settlement of Jews and *Jews only* in Israel and thus the Qaadans could not purchase a lot in Katzir on land allocated by the state to the Jewish Agency. After 5 years of the adjudication, the Court ruled by a majority of 4-1 in favor of the Qaadans and found that the state could not allocate State land to the Jewish agency for the establishment of the Katzir community settlements because this would result in discrimination in land allocation between Jews and non Jews (the Jewish Agency is a Zionist organization dedicated to the settlement of land by Jews only).[587] Justice Barak, who wrote the majority opinion, tried for many years to evade the need to rule on this matter and called on the parties to resolve the matter out of court. When the parties could not reach an agreement, the Court was left with no option but to issue a judgment. The court held that the principle of equality was "one of the fundamental values of the State of Israel"[588] as substantiated by the declaration of independence as well as prior court decisions and thus concluded that the Israeli Land Administration was not permitted, by law, to allocate State land to the Jewish Agency if the latter would establish a communal settlement on the basis of discriminatory policy.[589] In reaching it decision, Justice Barak invokes Brown v. Board of Education arguing that "separate but equal is inherently unequal."[590] Invoking almost the exact language used by Chief Justice Earl Warren, Barak continues: "separation sends an insulting message to the minority group, makes it

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[587] While the land remains owned by the state it is allocated to the Jewish Agency in a renewable lease.
[588] Qaadan, 272.
[589] Ibid. 278-279.
[590] Ibid.

stand out from the general [public], emphasizes the difference between the minority and the others, and exacerbates feelings of social inferiority."[591]

While the findings of the Court are significant, the pragmatic implications of the decision were quite limited. The Court, in its majority opinion had limited the judgment to the circumstances of the case, arguing that the ruling is not a general decision on the legality of the land regime of the state, nor is it a judgment against the activities of the Jewish Agency. Rather the judgment is limited to the case at hand regarding the specific community settlement of Katzir. It also applied only to future cases of land allocation and only in cases involving communal settlements such as Katzir and not all types of settlements, such as *Kibutzim* or *Moshavim* (which are two other different types of communal settlements in Israel). In addition, the court made no mention of the fact that the state owns 93% of the land but only allocated 2% of its housing funds Arab towns, even though the Arabs consist of close to 20% of the population.[592]

While the ruling was limited in nature, it was hoped that it may serve as the foundation for the equal treatment of Arabs in the future. The rationale for the *Brown* decision was integration; however subsequent policies in this regard reveal that this was not the case in Israel. While the Qaadan ruling is an important and historic move toward the equal treatment of Palestinians in Israel, it has not translated into different government policy in land use. Unremitting, the Israeli government continued with its

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[591] Ibid. Chief Justice Earl Warren explained that "to separate them [black children in grade and high school] from others of similar age and qualifications solely because of their race generates a felling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
[592] Adalah, Legal Violation of Arab Minority Rights in Israel: A Report on Israel's Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination (Shfaraam, Israel: Adalah, 1998), 49.

discriminatory land allocation policy. In 2004 in three different cases the Israel Land Administration (ILA – which is a government entity controlling and administering all public land in Israel) published a tender seeking bids for lots for individual self-construction in neighborhoods in Karmiel (a town in northern Israel). Six bidders were Arabs Israelis, a fact which angered the other Jewish residents and resulted in the tender being frozen by the ILA. The Arabs, threatening to petition the Court argued that the freeze violated the Qaadan case which forbade the government from discriminating between Arabs and Jews in land allocation. The ILA however, contented that the land involved in the tender was owned by the Jewish National Fund (JNF) not the ILA which was only administering the bid and thus was not government owned land and was not subject to the court's former ruling.

The JNF was created in the fifth Zionist Congress in Basle in 1901 to "redeem the land of Israel from foreigners in order to turn it into a national acquisition that would not be for sale but would rather be for leasehold only."[593] In 1907 the JNF was established in England as an instrument of the WZO to acquire land in Palestine for Jewish settlement. With the enactment of the Israeli JNF Law (1953)[594], which states in clause 6 that it is permitted to set up an incorporated body in Israel for the continuation of the activities of the existing company that was founded and incorporated in Europe, JNF was registered as an Israeli company and the English company's assets were transferred to it. Thus, while a corporation, the JNF is often

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[593] Ephraim and Menachem Talmi, Zionist Lexicon, (Tel Aviv: Ma'ariv Library, 1978), 340-342 [Hebrew].
[594] Jewish National Fund Law, **S.H. 138 (1953)** 34.

regarded as a tool used by the government to Judaize the land.[595] Since the stated objective of the JNF was Jewish settlement, the ILA had no option but to freeze the tender. As a compromise the ILA offered to substitute the JNF land, which the Arabs bid on and won, with other public land, not owned by the JNF and in a different area. In the meantime however the Arab families had not received their substitute land.

In a later tender published by the ILA it made clear that the land offered was owned by JNF suggesting that Arabs should not bid on those lots.[596] In October 13, 2004 Adalah, on behalf of the families involved in the biddings, petitioned the Supreme Court against the ILA and the JNF, citing its discriminatory policies regarding bidding on JNF land in violation of the Qaadan ruling of 2000.[597] In its response the JNF argued that:

> The JNF, as a private owner and trustee of the Jewish people, is not required to treat all citizens of the state equally when it allocates land. The JNF has a duty to the Jewish people, generation after generation, forever, to continue to use its lands, which were purchased with money of Jews, on behalf of the Jews.[598]

This argument is inaccurate as most of the land owned by the JNF (~13% of all land in Israel) was not purchased with money of Jews but rather transferred by the state which seized these land after the 1948 war as described earlier in this section.[599]

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[595] Walter Lehn and Uri Davis, *The Jewish National Fund* (London and New York: Kegan Paul International, 1988), 24.

[596] The ILA later cancelled this tender after several Arab families petitioned the Haifa District Court against the discriminatory tender to avoid a principle ruling on the matter which could prevent the continuation of its policies regarding JNF land. See Adm Pes. (Haifa Dist. Ct.) 2282/04, Arab Center for Alternative Planning et al v. Israel Land Administration et al, accessed November 22, 2006; available at www.acri.org.il

[597] H.C. 9010/04 Arab Center for Alternative Planning et al v. Israel Land Administration et al, accessed November 22, 2006; available at www.acri.org.il; and H.C. 9205/04 Adalah v. Israel Land Administration et al, accessed November 22, 2006; available at adalah.org.il.

[598] Ibid.

[599] Yuval Yoaz, "Adalah: JNF did not Purchase Most of its Land with Money of the 'Jewish People'", Haaretz, 17 December 2004.

The cases are still pending and a ruling is not expected before 2007. If the court continues down the path initiated with the Qaadan case, this would further restrict the government's ability to continue with its discriminatory policies, however the court may find the distinction between public land own by the state and land owned by the JNF and only administered by ILA as valid and thus reject the petition. If one were to follow the logic at the basis of the Qaadan ruling, that Israel may not distinguish in land allocation between Jews and non-Jews, it would follow that this would apply to all land administered by the ILA which is a government entity, whether owned by the government or by the JNF.

In 2002, and as a direct response to the Qaadan ruling, 22 MKs from the right submitted a bill - The Israel Land (Amendment – Allocation of Land for Jewish Settlement) Law-2002[600] that was subsequently supported by the government. The bill proposed amending Basic Law: Israel Lands, which reads as follows:

> 1. The ownership of Israel lands, being the lands in Israel of the State, the Development Authority or the Keren Kayemet Le-Israel (JNF – r.o.), shall not be transferred either by sale or in any other manner.
>
> 2. Section 1 shall not apply to classes of lands and classes of transactions determined for that purpose by Law.
>
> 3. In this Law, "lands" means land, houses, buildings and anything permanently fixed to land.[601]

The proposed bill suggested an amendment, which would include a clause stating that:

> Allocation of land included within Israel lands, or transfer of rights therein in any manner whatsoever, to the Jewish Agency, for its purposes in accordance with the Status of the World Zionist Organization and the Jewish Agency for Eretz YIsrael Law-1953, provided that the allocation of land for Jewish settlement only will

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[600] Proposed Bill No. 3485, accessed 2 October 2003; available at www.knesset.gov.il
[601] Basic Law: Israel Lands, **S.H.312 (1960)**, 56.

> be done if the Ministry of Defense confirmed that the action is necessary for security reasons, or if the minister in charge of implementation of the law confirmed that the action is necessary to preserve the nature of the communities that are based on an ideological way of life or a uniform community framework, dependent on cooperation of the community's resident.

Here again, there is an attempt to invoke "security reasons" in issues of demography. In addition, the suggested clause would allow for Jewish land allocation for "ideological way of life", i.e. Zionism, thereby excluding Arabs and resulting in their discrimination. The intended purpose of the bill is to prevent the ability of allocation of state land for Arab residents in direct contradiction to the Qaadan case. In the explanatory notes to the bill the MKs who purposed it argued that:

> The nature of the Jewish Agency, now and in the past, is to encourage and assist the return of the Jewish people to its homeland and to its land and to settle it anew. To do this, it serves as a bridge between the Jewish people in Israel and the Diaspora, and enables, with the assistance of Diaspora Jewry, the existence of Jewish settlement in the Land of Israel.

> In its ruling, the Supreme Court effectively disqualified the Jewish Agency from operating to attain its purpose and goal, and undermined the basis of its activity on behalf of Jewish settlement of Israel. The Court preferred the principle of equality, of a state of all its citizens, over its value as a Jewish state. …

> The Purpose of this bill is to enshrine in statute the subjects involved in the Supreme Court's judgment, the components that enable the state to allocate land to the Jewish Agency to meet the needs of Jewish Settlement throughout the country, thus recognizing the proper and necessary purpose within the meaning of Basic Law: Human Dignity and Liberty.

> It should be mentioned that the principle of giving preference to Jewish settlement conforms to the policy of governments of Israel to recognize the need to Judaize various areas throughout the state.

The MKs, citing Basic Law: Human Dignity and Liberty were referring to article 1 of the law which enshrines in law the definition of the state as Jewish and Democratic. They viewed this law as necessary to provide for the Jewishness of the state and therefore in accordance with the aforementioned definition.

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Despite the initial support for the bill by the coalition government, it was eventually removed from the agenda following harsh criticism against it from the media, academia and other MKs. The removal of this bill notwithstanding, it represents a serious trend, one which rejects the notion that equality for all is an underlying principle of the system, even in cases where security concerns are not involved (although invoked). It is therefore not surprising that the Palestinian Minority in Israel suffers from severe inequality in land allocation and ownership.

In November of 2003 it was revealed that Karta, a municipal-governmental company was conditioning housing sales of property in a luxurious housing project in Jerusalem (built on land expropriated by the state from the Palestinian territories to create a contiguous territory between the old city and East Jerusalem) on the potential buyers pledging an allegiance to the state that he or she was "not hostile to the State of Israel" and "not a citizen of a country that is an enemy of the State of Israel."[602] Azmi Bishara, articulated the criticism best when he stated "Is there another country in the world that links a right to housing to a pledge of allegiance and ethnic background?"[603] This question effectively summarizes the state in which the Palestinian citizens find themselves with regard to housing and land. The conditioning of land ownership with a pledge of allegiance to the state crystallizes the abnormal nature of Israel's land policy, which is based on ethnic components, tied to the security principle in justifying gross violation of the principle of equality.

6.3.4. <u>Political Movements</u>

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[602] Lili Galili, "Condition to Purchase of Apartment: Declaration of Allegiance to the State," *Haaretz*, 12 November 2003.
[603] Ibid.

The government and the security services have also been active in targeting political activists, members of Arab political parties in the Knesset and members of the Islamic movement. In 2000 the GSS detained a member of the Central Committee of NDA party for allegedly throwing stones at security forces during the October 2000 riots. The security services also claimed that he possessed illegal weapons and suspected him of illegal association. An administrative detention order was signed by the minister of defense pursuant to the authority given to him under the Emergency Powers (Detention) Law – 1979. Subsequently, the NDA member, Mr. Athamlah, was detained for six months. He was never charged with a crime, he was denied meeting with an attorney initially and any publication of the detention was forbidden. Administrative detention is often used against Palestinians from the territories, however this case marked the first time in three years in which administrative detention was used against a Palestinian Israeli citizen.[604]

In 2004 the GSS arrested three leaders of the "Sons of The Country" Movement (*"Abnaa al-Balad"*). It was reported that during their arrest the police used excessive force, causing a great deal of property damage to their homes. Reports claim that the detainees were not permitted to meet with their attorneys, were deprived of sleep for days, their place of detention was not revealed and a gag order was issued on their detention.[605] The GSS contended that the three were suspected of activity on behalf of Hezbollah but no such allegations were included in the indictment filed against them. Nevertheless, in a plea agreement one member pleaded

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[604] Sultany, Citizens without Citizenship, 99. See also Jamil Dakwar and Jake Wadland, "Administrative Detention: A Lawyer's Testimony," 3 Adalah Review (2002): 53.
[605] Sultany, Israel and the Palestinian Minority (2004), 60.

guilty to maintaining contact with a foreign agent (a member of Mosa faction in Jordan). Another was charged with the same crime in addition to assisting the enemy in a time of war and was sentenced to 10 and a half years imprisonment and 4 years suspended term.[606] The court documents involving these cases are sealed and thus it is difficult to assess the evidence against them. The Arab leadership has maintained that these prosecutions were intended to silence political dissent and thus, politically, not criminally, motivated.[607]

No attack on political activities has been as forceful as the one on the Islamic movement in Israel, particularly the non-parliamentary faction, known as the 'Northern faction', considered most extreme and headed by Sheikh Ra'ad Salah, mayor of Umm el-Fahm (discussed in the previous chapters). This faction, adopting a pro-isolationalist approach, refuses to participate in parliamentary election but is most active in the Arab localities. In May 2003 it was published in all major Israeli newspapers that the Northern faction maintained connections with Palestinian terrorist organizations. Relying on information leaked from the GSS, the papers reported that the Islamic movement in Israel was becoming increasingly extreme and had ties with Hamas in an effort to assist with terror attacks.[608]

The security forces, utilizing 1000 policemen, Special Patrol Unit officers, Special Forces Unit and GSS agents, initiated operation "Painstaking Work", entered Umm el-Fahm in the middle of the night, arrested 15 members of the Islamic

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[606] Ibid.

[607] Yair Ettinger, "Thirty Months Imprisonment for Contact with Foreign Agent Imposed on Secretary-General of the 'Sons of The Land' Movement," Haaretz, 15 October 2004.

[608] Ami Ben-David, Ben Caspit and Amir Gilat, "The Target – The Islamic Movement," Maariv, 13 May, 2003; Amos Harel, "The Fear: Donations Transferred to Terrorism," Haaretz, 13 May, 2004; Yair Ettinger, "GSS Fears Movement Assists Families of Suicide-Bombers," Haaretz, 13 May 2004.

movement. The operation was directed by GSS director Avi Dichter and Police commissioner Shlomo Aharonisky, indicating the level of severity and seriousness of the threat believed to have been involved in the operation.[609] The operation was filmed by TV crew who were invited to join the raid. It was reported that the police and GSS had been monitoring and wiretapping the Islamic Movement for approximately two years and that indictments had been prepared. On May 18 the current mayor of Umm el-Fahm, Suleiman Aghbariyyah, was arrested for money laundering and transferring donations from organizations aboard, to organizations in the Palestinian Territories, identified with Hamas. The allegations against the movement involved humanitarian aid raised and transferred by the movement to the territories, and suspected of masking terrorism funding. The GSS contended that the donations went to terrorist's families but admitted they had no evidence to suggest that the money was used to purchase weapons, or explosives to use in attacks against Israel.[610] Thus, despite the employment of mass amount of security forces, the offenses were economic in nature.[611] Despite the fact the ultimately the offenses levied against the Islamic movement's members were non-violent, the initial response of the security forces was one which employed mass amount of forces to combat the "threat" posed by these individuals.

The threat posed by the Islamic Movement is not new. As discussed in previous chapters, the political activity of the movement is viewed with great

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[609] Yair Ettinger and Roni Singer, "Some 1000 Police in Arrest Operation in Umm el-Fahm," Haaretz, May 14, 2004.

[610] Oron Meiri, Israel Moskovitz, and Itamar Eicher, "Terrorists: We Relied on the Islamic Movement," Yidiot Aharonot, 15 May 2003. See also Ami Ben David, "Police: No Evidence that Islamic Movement Funded Terrorist Acts," Ma'ariv, 15 May 2003.

[611] Yair Ettinger, "Police: Economic Crimes – The Masses Sang: We'll Ransom You Ra'ed'", Haaretz, 15 May 2003.

suspicion and concern by the Israeli establishment. With the "Global War on Terror," following the attacks of September 11, 2001, Israel found a new justification for the targeting of the Islamic movement. Indeed Ariel Sharon grounded his policies in the "War on Terror," leading senior analysts such as Amos Harel to conclude that Sharon and other senior officials understood that "the time has come to directly confront the Islamic Movement."[612] The events of September 11 created fertile ground for Israel's hostile policy towards the Islamic movement as a global trend against Islamic radicalism.[613] Criminal charged were eventually brought against only 5 of those arrested in the operation with only 3 resulting in convictions. All cases are in the appeal process.[614]

6.4. Discrimination in the Criminal Justice System

Several studies have been conducted examining the disparity between Jews and Arabs in the criminal justice system. However the most elaborate and methodologically rigorous study on this issue was conducted by Arye Rattner and Gideon Fishman of Haifa University known as the *"Justice for All"* project.[615] The objective of the study was to examine "whether important rulings regarding issues such as legal rights and guilt/innocence are based on social categories like nationality and socioeconomic status and the stereotypes associated with them, or whether decisions of such crucial significance are based mainly on legal factors."[616]

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[612]Amos Harel, "Top Defense Officials Decided that the Time for Direct Confrontation has Come," Haaretz, 14 May 2003.

[613]Sultany, Israel and its Palestinian Minority, 47.

[614]Misc. Appl. 3275/03 (Crim. Comp. 272/03), State of Israel v. Mahmud Mahajneh et al (not published).

[615]Arye Rattner and Gideon Fishman, Justice for All? Jews and Arabs in the Israeli Criminal Justice System,(Westport: Praeger, 1998).

[616]Arye Rattner and Gideon Fishman, Justice for All? Jews and Arabs in the Israeli Criminal Justice

Since the late 1980s several studies have been conducted, examining public perceptions and stereotypes attributed to Arabs. Most have concluded that the public perception of Arabs is negative and may affect law enforcement policy as well as sentencing. A study conducted by Fishman, Rattner and Weinman[617] examining the effect of ethnicity on crime attribution found that excluding fraud, subjects were more likely to attribute serious offenses to portraits of Arabs than Jews. 49% of Arabs were associated with the crime of rape, compared with only 26% of the Jews. 40% of Arabs were associated with murder (25% Jews) and 32% with robbery (27% Jews). Similar finding were produced in another study by Zureik and Mougrabi in which 605 Jewish subjects indicated that they perceived serious crimes to be more likely committed by Arabs than Jews. 77% believed Arabs were more likely to commit security offenses than Jews, 43% believed Arabs more likely to commit murder than Jews and 33% believed Arabs were more likely to commit rape.[618] Ethnic origin, although only implied (by showing subjects portraits) was the most powerful variable in determining the attribution of the offense. The stereotypes were so powerful that they were even found in members of the ethnic group labeled. Thus, Arabs were more likely to attribute serious offenses to Arabs than they did to Jews, indicating the powerful impact stereotypes have on people.[619]

6.4.1. **Data and Methodology**

System, Paper presented at the 1999 Research Workshop on: Empirical Research and Legal Realism (1999).

[617]Gideon Fishman, Arye Rattner and Gideon Weinman, "The Effect of Ethnicity on Crime Attribution," Criminology 25, no. 3 (1987): 507-523.

[618] Elia Zureik and Fouad Mougrabi, Different Scales of Justice: Arabs and Jews in Israel – Results of a National Survey, eds., (Near East Cultural and Educational Foundation of Canada and International Center for Research and Public Policy, 1988).

[619] Rattner Fishman Weimann.

The data used in the study was collective from the Israeli Policy Headquarters' data base. The sample used consisted of 3657 subjects and an entire criminal history of each sample subject was retrieved from the data base. the study focused on serious offenses, defined as felonies and misdemeanors. The files collected included information about type of offense committed, file closure decisions and description of the judicial process that took place in each case (trial, conviction and sentencing). This yielded a database of 97,001 files in total. The sampling procedure was completely random and all files relate to cases handled by the Israeli criminal justice system alone (and not any other courts civil or military).[620]

In the first stage of the analysis the study examined the distribution of the main independent variables (nationality, type of offense and gender). The second stage involved a multivariable examination using a logical regression analysis (a mathematical modeling approach that can be used to describe the relationship between several independent variables to a dichotomous dependent variable) in order to examine "the likelihood of the occurrence of the event (file closure, conviction, etc.)."[621]

At each decision stage of the criminal procedure (file closure, trial and its result, and sentencing), the study examined the general model for the entire sample and then examined the effect of the independent variables within several specific crimes (offenses against life, bodily harm, fraud, and economic offenses).[622]

At the second stage the study sought to determine how Arabs in Israel relate to

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[620] Justice for All, 33.
[621] Ibid., 34.
[622] Ibid., 36.

the law and the criminal justice system and whether their attitudes and perception were different than their Jewish counterparts.[623] Two random samples were collected (using a list of telephone numbers), one consisting of 965 Arabs and the other consisting of 901 Jews for a total of 1866 subjects. Interviews were conducted by phone in Hebrew or Arabic, lasting 15-20 minutes. All questionnaires had a response scale of 1 to 5 (1 absolutely disagree and 5 absolutely agree) and covering issues relating to law and the legal system.[624] Section 7.3 of the following chapter provides additional information regarding data and methods used in this stage study.

6.4.2. **Findings**

The Justice For All project produced an impressive data set and made some interesting findings. It was found that while the Palestinian minority constitutes approximately 18% of the Israeli population, it nevertheless represented 22% of the study sample. Assuming that the sample was random (and judging by the methods of sampling of cases there is no reason to suspect otherwise) it is concluded that Arabs are overrepresented in criminal cases involving serious offenses (defined as misdemeanors and felonies). Arab males account of the majority of the criminal files, in fact Arab women only constitute 8.2% of the total number of files involving women offenders.

The study demonstrates that Arabs are severely overrepresented in the most serious offenses with 59% in security offenses and 67% in offense against human life but underrepresented in sex, vice, fraud and economic offenses.[625] At the onset, these

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[623] Ibid., 99.
[624] Ibid., 101.
[625] Ibid., 75-98.

findings may not necessarily result from discrimination between Arabs and Jews but rather from the involvement of Arabs in more violent crimes. The researcher therefore set out to examine the decisions made with regard to these specific cases. The researchers examined the legal decisions made in these cases relating to file closure (the decision by the prosecution on whether or not to indict), convictions (the rate of Arabs convicted for the offenses compared to Jews), and sentences (the length of sentences issued for Arab defendants versus Jewish ones convicted for the same crimes). These decisions should not, *a priori,* be affected by the level of representation of either Arabs or Jews in the crimes examined.

Had the decision on file closure been completely random, it would have been expected that the data would show a 22% in file closure (comparable to the total share of Arabs in files opened). This however was not the case. The data shows an overrepresentation of file closures among Arabs (39% out of the 22% share in the total number of files opened). In summarizing their findings Rattner and Fishman note the following:

> The fact that the file closure rate is much higher (by more than 17%) shows that the system tends to close Arab files beyond randomness. This trend holds true across all crime categories. However, no conclusion regarding discrimination or lack of it can be made from this finding without conducting a more detailed analysis of the data. Comparison between Arabs and Jews (in the multivariate analysis) produced inconclusive results, thus excluding the possibility of arriving at any conclusion regarding discriminatory practices.[626]

This however, is not the case regarding conviction rate. Here the disparity between Arabs and Jews increases. Across all offenses the probability of an Arab defendant, with no prior criminal record to be convicted is 1.6 times higher than that

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[626] Ibid. 28.

of a Jewish defendant with the same profile and same circumstances (of the crime). "The magnitude of this discrepancy is maintained consistently throughout the analysis, across specific crime categories such as violent, public order, and property offenses."[627] Moreover, the study found that there is in increase in the conviction rate in the 1990s compared to the early 1980s. Recent reports issued by the Justice for All project indicates that this trend is continuing in the new millennium although final data analysis has not been published yet.[628]

Finally, the researchers found that nationality also plays a role in sentencing. Controlling for all other variables, the estimated probability of an Arab defendant receiving a prison sentence is 1.6 times higher than that of a Jewish defendant. This discrepancy is even higher in violent offenses.[629] Summarizing the findings Rattner and Fishman note:

> Out study has documented, perhaps for the first time, the existence of discrimination against Arabs in the criminal justice system. The findings of the aggregates data leave no room for doubt that the decision made at each stage of the criminal procedure discriminates against Arabs (both Israeli Arabs and Palestinians). The fact that this conclusion is based on the findings of a multivariate analysis of more than sixty thousand cases over a period of more than a decade clearly puts paid to any argument that the discrepancies are a consequence of the whims of individual criminal justice officials. It is conceivable that differential treatment of Jews and Arabs in other public areas such as budgetary allocations, housing, and land appropriation can be attributed to governmental policy and legislation.

To summarize, the findings of the study clearly show that Arabs, more than any other group in the society, are perceived as criminals, more likely to commit violent crimes than Jews. In addition, the existing stereotypes reinforce the notion of

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[627] Ibid.
[628] Ibid.
[629] Ibid.

the "fifth column", and this is not surprising. The findings of this study give context to the policies enumerated earlier in this chapter. Arabs are perceived to be a "high risk" group by large parts of the population. It is therefore not surprising, that as a result, policies grounded in "security concerns" aimed at limiting the rights and privileges of this minority, are produced. After all, public officials, prosecutors, judges, police forces are all members of the Israeli society and subject to the same biases and stereotypes as those presented herein. While it is difficult to assess whether the public opinion reflect public policy or whether public policy mirrors the national consensus, that such perceptions and beliefs of threat may affect the decision making process is to be expected.

6.5. <u>The Perception of Threat: Public Opinion and Surveys</u>

Public opinion has played a crucial role in the transitions from perceptions of war to peace in Israel since 1967 Six Day war. In his book, *Security Threatened*[630], Asher Arian presents the first major analysis of the connections between public opinion, politics and policy in Israel between the years 1962-1994 based on opinion surveys of thousands of adult Jews. Subsequent research conducted by Arian, the Israeli Democracy Institute (IDI)[631] and Sammy Smooha provided more current data on this matter. In addition, data was collected from several pools conducted by private companies on behalf of media outlets.

The objective of the following discussion is two fold; first to examine public opinion surveys of Jews in Israel, particularly as it relates to the perception of threat

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[630] Asher Arian, Security Threatened: Surveying Israeli Opinion on Peace and War, (Tel Aviv: Jaffe Center for Strategic Studies, Tel Aviv University, 1995).
[631] See Democracy Index.

posed by the Palestinian minority. It is argued that at source of much of the Israeli policy discussed herein above, is the perception of threat posed by the minority both to the physical well being of the state, as well as to its Jewish character, resulting in discriminatory policies. The rise in the perception of threat in recent years, since the eruption of al-Aqsa intifada, would help explain some of the policies adopted during this time period. The second objective is in examining the perception of the Palestinian minority regarding its status and the ability to achieve equality in Israel. While the argument made here is that the public opinion of Jews translates into discriminatory policies of the state, it is nevertheless important to examine the role Arabs play in this dichotomy. It is difficult, indeed perhaps impossible to separate the two elements. A rise in public perception of Arabs as incapable of integrating into Israeli society held by the Jews may result in the rise of the support for the Islamic movement discussed in previous chapters, which in turn, translates to an increase in suspicion and fear from the Jewish community. All however, provide context to the legal analysis discussed previously.

6.6. <u>Democratic Culture</u>

An examination of the recent Israeli public opinion, in particular Jewish public opinion, reveals that there has been a severe decrease in the support for democratic values in Israel. Historically, among the four defining values in the Israeli society – Jewish majority, Peace, Democracy and Greater Israel, the latter two have consistently ranked lower in public opinion surveys than the former. For example, in 1988 and 1990 about 70% of the Jewish population ranked Jewish majority as either the first or second most important value; 52% in 1998 and 60% in 1999 ranked peace

as first or second most important.[632] Despite the fact that the issue of the occupied territories has been a divisive issue in Israel since 1967, it consistently does not rank high in the public's value system. In 2004 peace was mentioned first by 41% of the sample, with Jewish majority mentioned first by 37%, both still ranking before democracy and greater Israel although to a lesser degree (democracy and greater Israel were mentioned first 14% and 8%, respectively).[633]

Surveys also indicate that support for democracy as the "best form of government" is on the wane. While in 1981 84% of respondents agreed or strongly agreed, only 77% did in 2003.[634] With regard to support for equality before the law regardless of political opinion - the end of the 1990s (at the height of the Oslo peace process 1999-2000) proved to be a period in which Israeli public opinion and support for equality was at its highest, with 94% of Jewish respondents agreeing or strongly agreeing in 1999, 96% in 2000 and 95% in 2001. This figure dropped drastically in 2003 to 81%. Figure 6.1 demonstrates these results (in 2005 only 79% supported equality for all).[635]

Moreover, in 2005, only 67% of the Jewish population sampled agreed that minority groups or individuals should be allowed to garner support for their views

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[632] Arian, Security Threatened, 214. Respondents were asked the following question: "In thinking about paths along which Israel can develop, there seems to be four important values which clash to some extent, and which are important to different degrees to various people: Israel with a Jewish majority, Greater Israel, a democratic state (with equal political rights for all), and peace (that is, a low probability of war). Among these four values, which is most important to you?" It is important to note that the values were predetermined and did not result from the subjects' own identification process. There is a problem with this method since it may lead to the injection of biases into the results. The bias notwithstanding, the results do reflect the ranking process of subjects.

[633] Democracy Index, 2004. See also Asher Arian, The Second Republic, 428.

[634] Democracy index 2003.

[635] Democracy Index 2005.

from the majority population. In contrast, this number was 84% in 2000.[636]

Figure 6.1: Equality Before the Law Regardless of Political Opinion[637]

Equality before the law regardless of political opinion"
Agree and strongly agree (Jewish sample only)
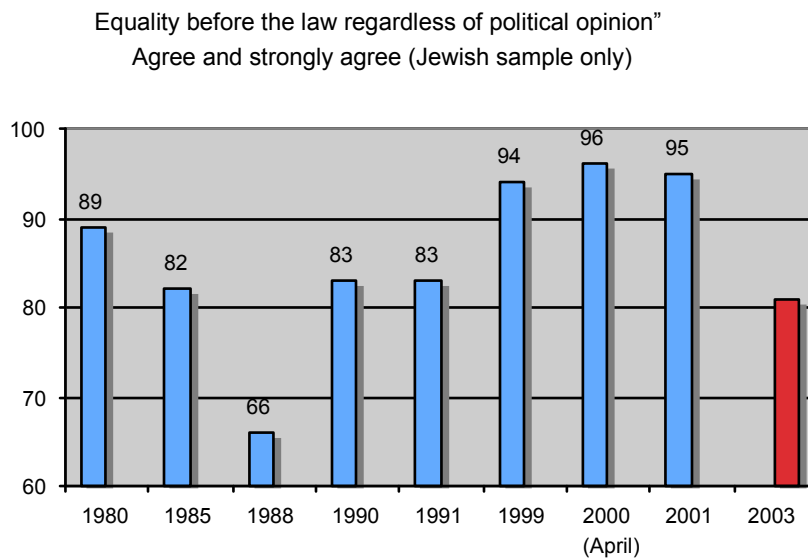
Another democratic norm, which seems to be on the wane is that of freedom of expression. I discussed extensively the limits placed by the legal system in recent years on the freedom of expression of Arab MKs, this trend is echoed in public opinion surveys. While in 1999, 90% of the Jews supported freedom of expression for individuals regardless of their views, this number shrinks to only 75% in 2003. Moreover in 2004, 51% of the Jewish population agreed that speakers should be prohibited (by law) from expressing harsh criticism of the State of Israel.

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[636] Ibid., 21.
[637] Democracy Index 2003, 22.

Despite the expression of opinions, which challenge the democratic character of the state, there is a growing recognition among Israeli Jews that Israel is not democratic enough. While only 14% of the Jewish population agreed that Israeli was not democratic enough in 1990 this number grew to its highest point in 2004 with 39%. Figure 6.2 presents the satisfaction with democracy from 1990 through 2004.

Figure 6.2: Satisfaction with Democracy[638]

Is the State of Israel currently democractic to a suitable degree?
Not democratic enough or strongly not democratic enough
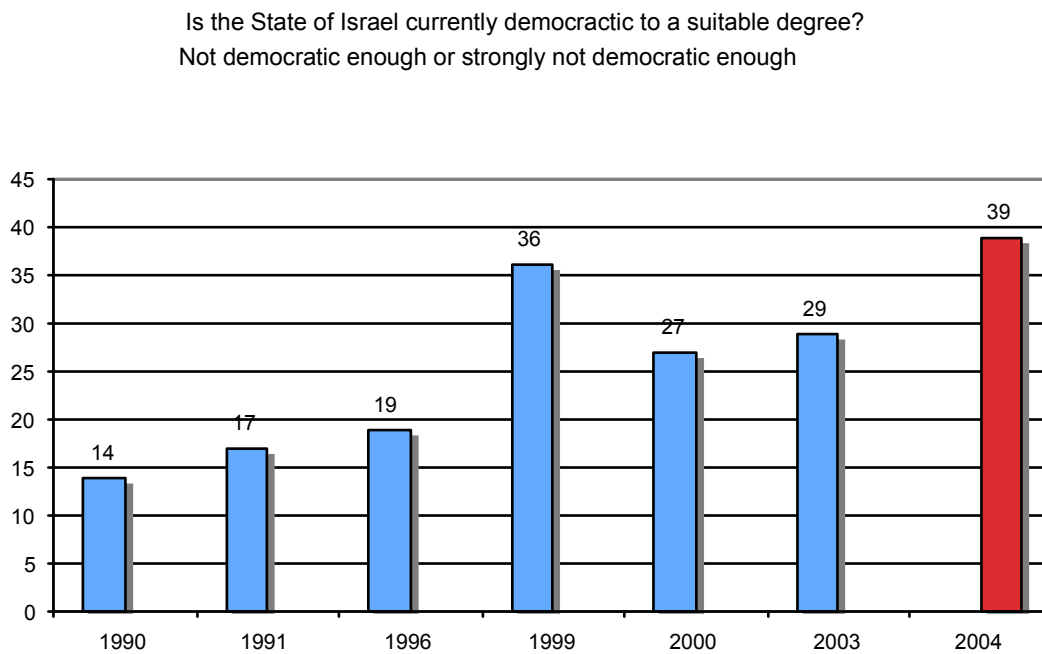
Despite the fact that democracy usually does not rank first or second in the Jewish public's value system, the findings clearly reveal that there has been a deterioration in the level of support for democratic values on all levels. "In the majority of cases", Asher Arian notes, "the positive change that occurred in the 1990s has been completely eroded, and in specific cases it has even fallen to previously

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[638] Democracy Index, 2004, 28.

unknown depth."[639] This conclusion is reinforced when comparing Israeli support (Jews and Arabs) for democracy to other democratic countries. Israel ranks at the bottom of the list with Poland, expressing only 84% support for the notion that democracy is a desirable form of government (compared with Denmark and Greece heading the list with 98%). Mexico, Hungary, Estonia, Chile all expressed higher support for democracy.[640]

6.6.1. <u>Support for Minority Rights</u>

While support for equality is on the wane, the percentage of the Jewish public supporting the right to equality is still fairly high even with the sharp decline in recent years. When asked specifically about equality for Arabs, Jewish respondents reveal a much lower level of support. In 2003 only 53% of the population supported equality for Arabs (this number grew slightly in 2005 to 59%).[641] When asked whether a Jewish majority on critical national decision such as returning the territories was required only 60% agreed in 1996, in January 1999 this number decreased to only 52% by September 1999. However by 2003, 87% of the Jewish population agreed that there needed to be Jewish majority (as opposed to just a "majority") for crucial political decisions in Israel.[642]

60% of the Jewish public agreed that Israeli Arabs are discriminated against in 2001 and 2004 (in 2002 and 2003 these figures decreased to 49% and 51%, respectively). In 2003 53% of the population (including Arabs) supported the institution of full equality for Arabs, this percentage grew in 2004 to 64%. This trend

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[639] Democracy Index, 2003, 24.
[640] Ibid.
[641] Democracy Index, 2005.
[642] Democracy Index 2003.

is also revealed with regard to the notion of Arab parties joining the coalition government in Israel (no Arab party has ever been invited to join the government in Israel). In 2003, 38% of the public supported the inclusion of Arab parties in government, this number grew to 45% in 2004.

In 2004 Sammy Smooha, under the auspices of the Forum for Civic Consensus at Haifa University, conducted an extensive survey of Jewish and Arab opinion regarding Jewish-Arab relations. Surprisingly, the survey revealed that a solid 70% majority of Arabs in Israel accept the definition of the state as a Jewish democracy but object to its definition as a Zionist state (that is – the homeland for the Jewish people, ***and only them***).[643] Smooha explains that Arab participants in the survey expressed the opinion that a Zionist definition of the state meant that the state belonged not only to its Jewish citizens but also to the Jewish people all around the world, a proposition, which is unacceptable to them (the Arabs in Israel). However for the Jewish subjects, those who deny the Zionist character of the state is an objector to the state as a whole and while the Jewish public recognizes the Arab minority as citizens of the state, it does not recognize it as a national minority. 72% of Arab respondents agreed that Israel as a Zionist state in which both Jews and Arabs reside is a racist state.

In addition, Rattner and Fishman's study of Arab attitudes towards the criminal justice system reveals that Arabs perceive themselves as suffering injustice to a much larger extent than Jews (and this relates to the third element of the hypothesis which argued that the discrimination is perceived as unjust by members of

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[643] Yoav Stern, "Jewish-Arab Relations Index in Israel 2004," *Haaretz*, 20 June 2005.

the minority group).[644]

A majority of 80% of Jews believes that an Arab, defining his/her self as a "Palestinian Arab in Israel" cannot be loyal to the State of Israel. Smooha explains that from the Jewish perspective, a condition for Arabs to exist as equal members of the society is in them renouncing their Palestinian national identity (and thus their claims to be recognized as a national minority) and in recognizing the exclusive Jewish national claims over the state. The Jews believe that the Arab minority may exercise its national self-determination in a future Palestinian state but not within the State of Israel. It is therefore not surprising, that while in 1991 only 24% of the Jewish population supported the transfer of Arab Israelis, by 2002 this number increased to 31%.[645] By 2004 59% of the Jewish population supported the idea that the government must encourage the emigration of Arabs. In addition, there is extreme alienation to the Islamic movement with 74.7% of the Jewish sample agreeing that the Islamic movement should be outlawed[646] while 72% stated in 2001 that Arab MKs who openly support Syria and the Palestinians should be removed from the Knesset.[647]

6.6.2. Perception of Threat

Israel has often justified its policy with regard to the Palestinian citizens by invoking the principle of security. The prominence of security as a value in Israeli society has been discussed extensively here in chapter four. Recall that Israel has been in a state of emergency since its independence in 1948, no other nation in the

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[644] Rattner and Fishman, Justice for All, 121.
[645] Asher Arian, A Further Turn to the Right: Israeli Public Opinion on National Security – 2002, Strategic Assessment 5, no. 1 (June 2002): 10.
[646] Yoav Stern.
[647] Hami Shalev, "Battle Shock," Maariv October 6, 2000.

world has remained under a declared state of emergency for 59 years. General public support for the rule of law, when it contradicts security interests, is low. Thus, in cases of contradiction between the rule of law and security needs in 2003 only 21% preferred the rule of law, this number declined to 19% in 2004 but in 2005 was at 25%. This result is not surprising given the supremacy of the security principle in Israeli society but it does relate to the status of the Palestinian citizens. The examination of public perception of the security issue and the threat posed by the Palestinian minority is crucial in evaluating the status of the minority within Israel. Studies conducted by Asher Arian regarding public opinion on national security have led him to conclude that: "threat perception was found to be more closely associated with attitudinal change than with political groupings. This suggests that the key to political change rests, in the long run, in alleviating perceptions on threat."[648] As previously demonstrated, stereotypes of Arabs play a key role in their conviction rate and sentencing. It is the interaction between opinion, perceptions and politics that results in the discriminatory policies.

Since 2000 there is a growing sense among Jews in Israel that the Arab population is disloyal, meaning that there allegiance lies not with the Israeli state but rather elsewhere (either to their own community or with the Palestinians in the occupied territories). In a survey conducted by Asher Arian regarding public opinion on national security 62% of Jewish respondents believed Arab citizens were disloyal. This number increased to 73% in 2001 and to 75% in 2002, decreasing only in 2003

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[648] Asher Arian, "Public Opinion and National Security," in National Security and Democracy in Israel, ed. Avner Yaniv (Boulder: Lynne Rienner Publishers, 1993), 148.

when 67% of Jews believed Arabs were disloyal to the state.[649] The perception of disloyalty results in the attempt to alienate and block Arab access to power sharing. Thus, in 2003, 79% opposed allowing the Arabs to participate in determining vital national decisions such as the future borders of the state (compared to 80% in 2002 and 75% in 2001). [650] In 2005 most Jews identified the Islamic movement as the group they most oppose and 70% of those identifying that group perceived it to endanger the security of the country.[651] In 2001 in a Gallup poll, 67% of the Jewish population stated that that they believed Arabs in Israel are not in favor of Israel being an independent state and the remaining 33% stated that they believed the Arab citizens of Israel would rather be Palestinian citizens if and when the state is established.[652] In 2002, 60% of the Jewish population was in favor of encouraging Arab emigration, 31% supported the transfer of Arab citizens.[653]

Finally, in 2004 in a survey conducted by the National Research Institute, 55.3% of the Jewish respondents stated that the Arabs in Israel posed a security threat.[654] This number is down from 64% in 2001. While confidence in the ability of the State to thwart an Israeli Arabs' revolt remains high, this number had been consistent in the 1990s but diminished by approximately 5% in 2000 (from 90% to

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[649] Asher Arian, "Israeli Public Opinion in the Wake of the 2000-2001 Intifada," Strategic Assessment 4 no. 2 (August 2001); Asher Arian, Security Opinion 2002 (Jaffe Center for Strategic Studies, 2002); Asher Arian, Israeli Public Opinion on national Security – 2003 (Jaffe Center for Strategic Studies, 2003).

[650] Arian, Israeli Public Opinion on National Security.

[651] Democracy Index 2005. 66% believed the Islamic Movement endangered Israeli democracy and the character of the state as Jewish.

[652] Hami Shalev, "Quiet – No Matter What the Cost, Maariv, 25 May 2001.

[653] Arian, Israeli Public Opinion on National Security.

[654] Sultany, Israel and the Palestinian Minority, 2004, 67.

85% which is the lowest it has been in the last 10 years.)[655]

6.7. Conclusion

The objective of this discussion has been to examine the degree to which Palestinian citizens are excluded from democratic participation and to what extent are they discriminated against.

Despite the unequivocal statement by the Supreme Court in the Qaadan case that discrimination on the basis of religion, race or nationality is illegal, the discussion herein clearly demonstrates that not only has discrimination of Arabs in Israel persisted, it has in fact increased.

The survey of legislation, government policies, the criminal justice system and public opinions reveals that since the eruption of al Aqsa intifada Israel has adopted new legislation and policies, which seek to further discrimination and marginalize the Palestinian minority, resulting in an increase in discrimination of the minority. This conclusion establishes the first element of the dissertation hypothesis. The status quo between Israel and its Palestinian citizens has been changing through the adoption of these new legal instruments, resulting in further discrimination

There is an overall emphasis on the use of "national security" by government, Knesset and security community to justify discriminatory policies against the Palestinian minority. In many of these cases however, the security concern is minimal at best. The following analysis results in the conclusion that other, more nuanced objectives, namely the preservation of the Jewish character of the state and the

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[655] Asher Arian, Israeli Public Opinion on National Security 2000 (Jaffe Center for Strategic Studies, 2000), 32.

attempt to thwart a *perceived* threat by the minority, are at the heart of these policies. The examination of public opinion surveys, as well as statements of government officials and proposed bills and policies suggests that change in policies is linked to the level of violence in the Israeli-Palestinian conflict which translate into increased suspicion and threat posed by the minority. This conclusion establishes the second element of the dissertation hypothesis.

In understanding the legal changes in the status of the minority, exacerbating its "second class status" and resulting in an the rise of its discrimination, one must explore the use of the security principle, as discussed here in chapter four, in forming all Israeli policy, particularly when the level of violence in the Israeli-Palestinian conflict is elevated, as was the case in the period under review. The following chapter seeks to explain the results of the analysis presented herein above in the context of the security principle and the status of the Israeli-Palestinian conflict.

Chapter 7: The Use of Legal Discrimination as a Counter-Terrorism Tool

7. <u>Introduction</u>

The objective of the following chapter is in establishing the third element of the hypothesis linking the sense of insecurity and rise in perception of threat to an emphasis on the security of the majority, resulting in an adverse affect on the status of the minority. The previous chapter had established the foundation for this study. It has been argued and demonstrated, that there has been a rise in the legal discrimination of Palestinian Israelis since the eruption of al-Aqsa intifada. While national security is invoked as the basis for these discriminatory policies, it will be asserted here that often, no security reasoning may be found to justify such an infringement of rights.

Having examined many of the cases in which the discriminatory policy has not, in reality, related to national security or enhanced the security of Israel, it is worth exploring the cases in which, at least in principle, security was at the heart of the matter.

It is argued that the security principle, invoked in many of the policies discussed herein, is used for political purposes, to further alienate and discriminate the Palestinian minority. This is because of a false sense of insecurity and increased perception of threat, rather than a legitimate means of enhancing state security. Israeli authorities falsely identify establishing national security with curbing Arab rights, resulting in a policy of discrimination grounded in security reasoning.

> The connection between the Arab citizen and the state runs through the security services. This connection affects everything - all state affairs. An illegal construction of a house becomes a

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security threat to the state. In order to exercise sovereignty the state must see Jews in every area of the country – in the Galilee, in the Negev, the Jewish settlement is a prime interest and therefore, when talking about security, we are also talking about these issues, **we are talking about politics** [emphasis added, r.o.][656]

This discussion differs from those presented in the previous chapter in that it examined cases in which security concerns have been involved to present the argument that despite the apparent existence of such concerns, the Palestinian minority is subjected to extraordinary treatment outside the realms of law and in some cases, with the use of physical brutality. The government has argued in these instances, that when balancing the security of the state with the rights of the individuals, the latter must take precedence. The cases examined herein present an analytical challenge for the researcher, as they *do* actually involve security concerns unlike the previous chapter in which it was argued that there were none.

The objective of the following discussion is two fold: first, it seeks to demonstrate that even in instances where legitimate security concerns may be found, the methods and devices employed by the Israeli authorities establish the assertion that the driving force behind these policies is not the security principle but rather the limitation of the rights of the Palestinian minority under the justification of the security blanket. Second, it examines the reaction of the Palestinian minority to such use of security measures against it. It is expected that the minority would view this use of the security policy as unjust since it is employed as means for political domination by the majority, and not for legitimate national security concerns. The perceived injustice may translate into a readiness to disobey or disregard the rule of

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[656] Interview by Ronnie Olesker with Nimer Sultany, Mada Al-Carmel, Arab Center for Applied Social Research, Haifa, Israel, 27 June 2005.

law, sever loyal ties with the state and adopt more violent means of protest against what is perceived as illegitimate policies. These consequences will be discussed in the following chapter.

7.1. <u>Security Emphasized: The Use of Counter-Terrorism Tools to Restrict Rights</u>

In all the legal amendments discussed in the previous chapter, the Israeli lawmaker had invoked the security principle as the underlying cause for the change. Certainly, the renewed violence in the conflict between Israel and the Palestinians has complicated the situation of the Arabs in Israel. The increase in the level of violence has resulted in a growth in the perception of the threat posed by the Arabs in Israel, especially in the context of mass demonstration in solidarity with the Palestinians in the occupied territories. However the pervasive use of legal tools such as the Terrorism Ordinance to justify political disqualification of Arab members of Knesset is a cause for concern. Recall that the amendment to the citizenship law, according to which Palestinian residents of the occupied territories married to Arab Israelis may not be granted residency or Israeli citizenship. This amendment was also grounded in "security reasoning."[657] In many of the cases examined, despite the evocation of the security principle to justify such violation of rights, none could be found or the blanket violation of rights was disproportionate. No act however, has been so egregious to the rule of law than the employment of counter terrorism measures as

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[657] On January 8, 2006 a GSS representative appearing before the Knesset Interior Committee presented a report according to which 14% (38 our of 272) of those who carried suicide bombings in Israel had Israeli identity cards obtained though marriage to Israeli citizens. The committee was debating the extension of the Citizenship law, prohibiting residency for Palestinians marrying Israeli citizens, which expires January 16th, 2006 unless extended. It is expected that the Knesset will extend the law for another period of one to two years. See Gideon Alon, "Sin Beit: 14% of Suicide Bombers had Israeli Identity Cards," Haaretz, January 8, 2006.

means for discrimination.

In his article "Center Against Periphery: Politics and Law of 'Prevention of Terrorism Acts',"[658] Gad Barzilai argues that Israel has utilized its Prevention of Terrorism Acts as a tool to serve political objectives under the justification of "national security" concerns. Law and security are often perceived by the populace to be public policies standing above the particular interests of the individual or the group. Thus, Barzilai argues, law and security have become public political institutions and therefore control over them provides for great power and discretion in defining public discourse on the realms of legality and security.[659]

Law and security have also become social myths, symbolizing absolute objectivity so that when they are employed, there is a sense that this employment is free of subjectivity. The public views the institutions of "law" and "security" as often absent of any political biases. They are perceived as neutral and therefore a parameter for transparency.[660] This however, is not always the case as the law reflects the values and norms of the society. In Israel the society is one, which prefers the Jewish population over the non-Jewish one, this transcends into the legal process as well as the security doctrine as discussed here in chapters three and four.

The security principle in general, and in Israel in particular, often invokes the collective support of the society in a phenomenon known as the "rally around the flag" - a means for creating societal consensus. Evoking the security needs of the state allows for governments to de-legitimize those who oppose the policy as

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[658] Gad Barzilai, "Center Against Periphery: Politics and Law of 'Prevention of Terrorism Acts'," Israel Journal of Criminal Justice 8 (1999): 229-249.
[659] Ibid., 230.
[660] Ibid. 231.

opposing the well being of the state. This is often demonstrated in public opinion surveys in which Arab Knesset Members, who oppose Israel's security policy in the occupied territories, are often perceived by the Jewish public and the administration as traitors, seeking the destruction of the state.[661] State law enjoys similar public confidence and the belief that ultimately the law operates for the greater benefit of the society. Thus, those opposing it are often viewed as trying to undermine the very fabric of the political order.[662] In deeply divided societies, such as Israel, the danger lies in the use of Prevention of Terrorism Acts to de-legitimize the political adversary in a way that justifies the extra-ordinary application of the law to allow for violation of otherwise acceptable legal norms. In this context Barzilai notes that "the state may define as a terror threat different social and political challenges to the status quo that it is interested in preserving, and therefore there is danger of a manipulative use of the term "terror" for internal political needs."[663]

The "terrorists" thus become illegitimate actors in the system, not necessarily because they threaten the security of the state, but rather because they pose social and political challenges to the state and its institutions. The term "terror" has tremendous power in creating realities where there are none. By classifying those who challenge the status quo as "terrorist" or those who threaten the state's security, the state may simultaneously de-legitimize their otherwise acceptable protest, exclude them from the society and violate their rights. This is evident in the language used to describe some of the Arab MKs in various political discussions in the Knesset.

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[661] Democracy Index, 2003, 2004. See also discussion chapter 6.
[662] Ibid. 232.
[663] Ibid. 235.

Former Prime Minister Ehud Barak (of the center-left Labor party) was quoted saying: "if the conflict with the Palestinians continues, Israel's Arabs will serve as [the Palestinians] "spearpoint" in their struggle, and this may necessitate changes in the rules of the democratic game… in order to assure Israel's Jewish character."[664] In an interview Binyamin Netanyahu, former Prime Minister and the minister of foreign affairs and later minister of finance in the Sharon government (2003-2006), stated that the Arabs in Israel were a "demographic threat" and that he supported a solution of "exchange of populations by consent."[665]

The most alarmingly outspoken MK in this regard has been Avigdor Lieberman of *YIsrael Beitenu* ("Israel is our home") party (referred to in previous chapters). Running on a platform of transfer of the Arab population from Israel to a future Palestinian state, Lieberman stated:

> I do not reject the transfer option. We don't have to escape reality. If you ask me, Israel's number one problem is not the Palestinian problem; it is first of all [the problem of] Arab citizens of the State of Israel. Those who identify as Palestinians will have to move to Palestine… We see the process unfolding in Umm el-Fahm, including identifying with Bin Laden and Hizbollah and with all of Israel's enemies. Do I consider them citizens of the State of Israel? No! Do we have to settle the score with them? Yes! They have to find a place where they will feel comfortable.[666]

Lieberman has adopted "voluntary expulsion" as a political platform. The incitement however is not limited to demography. When some Arab MKs went to The Hague to observe the discussions on the legality of the separation barrier erected along and within the territories, deputy defense minister MK Ze'ev Boim of the Likud

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[664] Benny Morris, "Camp David and After: An Exchange," The New York Review Of Books, June 13, 2002.

[665] Tom Segev, "Transfer Now," Haaretz, 5 April 2002.

[666] Avigdor Lieberman, Yediot Aharonot, 22 December 2001. This attitudes is echoed by the public. While in 1991 only 24% of the population supported transfer of Arab Israelis this number has grown to 33% in 2003. See Asher Arian, Israeli public Opinion on National Security, 2003 (Jaffe Center for Strategic Studies, 2003), 31.

party referred to them as "Trojan horses of Palestinian Terrorism." He stated:

> Members of Knesset Issam Makhoul, you call for straightening out the Knesset because democracy is being harmed, you know what needs to be straightened out in the Knesset? The appearance of Knesset members in The Hague. That is what needs correction… Do you understand? This is part of the problem. Here Arab Knesset members are supporting Palestinian terrorism, and sometimes even Jewish Knesset members [support terrorism], but you [plural] are the ones leading it, you are its Trojan horses here.[667]

Moreover, MK Moshe Kahalon, also from the Likud and a member of the Knesset's Ethics Committee, demanded that the immunity of MK Barakah, Makhoul and MK Tibi be removed in light of their stated intention to go to The Hague.

This example crystallize the argument – while the Arab MKs were perfectly within their legal right to observe the proceedings in The Hague, and were entitled to protest a policy of the Israeli government which they viewed as illegal (and was subsequently deemed as such of the International Court), they were nonetheless categorized as "supporting Palestinian terrorism."

In another example, MK Michael Ratson (Likud), attacking another Arab MK stated the following:

> If things are so bad for your [Arab MKs], why are you here? If it is so bad for you, why are you sitting here? I don't understand. What are you doing here?... I am here almost two years, and day after day, when you stand at this podium I hear you identifying with Palestinian terrorism, how you attack the army, the soldiers who are protecting innocent citizens. You are here daily dancing on the blood. If you want equal rights, be loyal citizens of this state. This state is primarily Jewish and democratic state, but first and foremost Jewish. You should internalize that fact.[668]

Here again, the criticism of the army and its actions is equated with "identifying with Palestinian terrorism." The need to critically examine the substance

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[667] Session 117 of the 16th Knesset, 10 March 2004.
[668] Session 171 of the 16th Knesset, 20 October 2004.

of the critique is offset by the labeling of the criticizer as "supporter of terrorist." By doing so, the Knesset and government alleviate the need to examine the legitimate political protest against its actions while simultaneously de-legitimizing the objector. Ratson conditions equality with "loyalty to the state" and loyalty means getting "in line" with state policy, not criticizing it.

According to the Terrorism Ordinance, a "terrorist" is defined as "a person who is a member of a terrorist organization."[669] A member in a terrorist organization is defined as "a person belonging to it and includes a person participating in its activities, publishing propaganda in favor of a terrorist organization or its activities or aims, or collecting moneys or articles for the benefit of a terrorist organization or activities."[670]

None of the Arab MKs' activities described herein above can qualify within the realms of this definition. The political protest against government activity within the territories cannot be regarded as activity, which would deem those articulating said protest as "members of a terrorist organization" in accordance with the letter of the law. And yet, such statements by high-ranking government and Knesset officials, deem them as such. Moreover, as discussed in previous chapters, the activity of Arab MKs and activists does not fall within the realms of "supporting a terrorist organization" as defined by article 4 of the Terrorism Ordinance.[671] More recently the Knesset enacted the Prohibition on Terrorism Financing Law, 5765-2004 which defines a terrorist activist as "a person who is active in perpetrating an act of

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[669] Prevention of Terrorism Ordinance No. 33 of 1948, Article 3.
[670] Article 1, Ibid.
[671] Ibid. For additional discussion see chapter 6.

terrorism or aids or solicits the perpetrators of an act of terrorism or a person who takes an active role in a terrorist organization that has been declared as such pursuant to paragraph (1) of the definition of a declared terrorist organization." Again, none of the activities of the Arab MKs described in this study may amount to a terrorist activity pursuant to these definitions.

For the most part, the courts in many countries, specifically those combating terrorism have been reluctant to substitute their discretion with that of the security forces in matters pertaining to national security as defined by the latter and the Israeli Supreme Court is no exception. When the Terror Ordinance is invoked, the Court tends to not intervene in the matter.[672] In examining Israel's use of the Terror Ordinance Barzilai concludes that the state has often used this legal measure as a way to limit political protest and for political rather than security interests.[673]

The previous chapter discusses the disparity between prosecuting Arabs and Jews for driving would-be suicide bombers from the territories into Israel. While the Jewish defendant was charged with violating the Israeli penal code, the Arab defendants were subject to a different legal standard all together. Although committing the same act, the Jewish cab driver was seen as negligent while the Arabs were charged, for the most part, with aiding and abetting murder and aiding and abetting injury with aggravated intent. Nimer Sultany, the coordinator of the Political Monitoring Project at Mada and author of Mada's annual political monitoring reports,

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[672] Gad Barzilai, Ephraim Yaar-Yochtman, Zeev Segal, The Supreme Court and Israeli society (Tel Aviv: Tel Aviv University Press, 1994). See also David Kretzmer, The Supreme Court of Israel and the Occupied Territories (SUNY Press, 2002), and David Kretzmer, The Legal Status of Arabs in Israel.
[673] Gad Barzilai, Ibid. 248.

had indicated in interview conducted in 2005 that the "Arab" by definition, is a threat to the state. The security services regard the political mobilization, the development of Arab political parties and organizations seeking to advance the status of the minority in Israel, as a threat and thus attempt to thwart that process.[674] The evidence presented in this study suggests therefore, that the use of 'national security' is political in nature, attempting to prevent the political development of the minority described here, rather than grounded in any material threat to the state.

In summarizing the state of the Arabs in Israel, the journalist Gideon Levy concludes that: "Being an Arab in Israel, a citizens of the state, or a resident of the Occupied Territories is hard today. Every Arab is considered a suspicious object, unless he proves otherwise."[675] The Arabs in Israel are "guilty by association," assumed to be "terrorist" despite the lack of any evidence to substantiate such claims. The following section will examine the cases in which security concerns have been involved to present the argument that despite the apparent existence of security concerns, the Palestinian minority is subjected to extraordinary treatment outside the realms of the law and often subjected to physical assault.

7.2. <u>Abuse of Police Powers – October Riots and Police Brutality</u>

The October 2000 riots, following the eruption of the al-Aqsa intifada in the territories serve as a watershed event in the relationship between the Jewish majority and the Arab minority, examined in this study. It is argued, that these events served to change the status quo between the state and the minority. The status quo is an important element of the theory used in this study, since the determination of whether

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[674] Nimer Sultany, interviewed by Ronnie Olesker, Haifa, Israel, 25 June 2005.
[675] Gideon Levy, "Under every Suspicion," Haaretz, 25 May 2003.

actors are operating in a loss or gains domain (to assess the likelihood of them assuming risk) largely depends on a reference point, usually referred to as the status quo. If the status quo has changed, the reference point may also change, resulting in a change in the decision making process of minorities (regarding the use of political violence). This issue will be further analyzed in the next chapter.

Violent Clashes Between the Israeli Authorities and Arab Minority

The events of October 2000 have served as the third installment in the "extremely traumatic moment in the Arab minority's history, moments either when the system has been tested by the collective protest of Arab citizens or when the system has feared it may be threatened by collective action."[676] The first occurred on October 29, 1956 (the first day of the Sinai campaign) when the government administered sweeping curfews in Arab areas in Israel. In one of these villages, Kfar Qasem, the curfew was declared at very short notice. As a result, many of the village's residents, returning from work in the field were unaware of the curfew. Border patrol troops received an order to shoot anyone who violated the curfew. Three soldiers shot and killed 49 people in Kfar Qasem, including women and children. The court found that the command was "blatantly illegal" and as such, the soldiers should not have obeyed it. The soldiers involved in the massacre were sentenced to lengthy prison terms, but received pardons. The brigade commander was sentenced to pay the symbolic fine of 10 pruta (old Israeli cents).[677] While most

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[676] Arab Association for Human Rights, Four Years On: Cases of Police Brutality against Palestinian Arab Citizens of Israel during the Year Following the Or Commission Report on the October 2000 Events (Nazareth: HRA, September 2004).

[677] Recently the minister of Education has instructed schools to mark the anniversary of the Kfar Qasem massacre (but only after an advocacy group threatened to apply to the Court to force such recognition in schools in Israel). The minister stated that "The massacre and the trial that followed it have become milestones in the national psyche of Israeli society and have instilled in generations of

Jewish researchers view this as a shocking yet localized event in which soldiers misinterpreted an order, the Arab public, according to Dr, Mustafa Kabha, a professor of history and communication at Ben Gurion University, this massacre was "the first in a series of violent events in which the Arab citizens were killed by security forces."[678] According to Kabha, Arab researchers tend to question whether the massacre was an isolated event or part of a larger context of the Jewish-Arab relations. "The Arab public concludes that because these kind of events keep occurring, the proper conclusions were never drawn."[679]

The second event relating to this matter occurred in 30 March 1976, which has since come to be known as "Land Day." During a protest against land confiscation by the state, six unarmed Palestinian citizens were shot dead by the police and hundreds were wounded. The prime minister at the time, Yitzhak Rabin refused to order any investigation into the matter and no one was held accountable for these deaths. Since that time, Land Day has become a day marking the continued discrimination and domination of the Jews over the Arabs. Each year on March 30th Arab Israelis take out to the street of Israel in demonstration against the political, economic, social and cultural discrimination they continue to suffer from in Israel. In march 2006 these demonstrations, marking the 30th anniversary of Land Day were exceptionally poignant.

The following section addresses the law and politics of the October events as

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commanders and soldiers a moral border one should abide by." See Yuli Kromchenko and Yoav Stern, "Education minister instructs schools to mark Kfar Qasem massacre anniversary," Haaretz, 23 October, 2006.
[678] Yoav Stern, "50 Years After Massacre, Kfar Qasem Wants Answers," Haaretz, October 29, 2006.
[679] Ibid.

they relate to the status of the Palestinian minority in Israel and the results of the Orr Commission of Inquiry, established to investigate those events.

October Riots and the Creation of the Orr Commission

On September 28, 2000 the second Palestinian intifada erupted in the Occupied Territories. Several days later, in the first days of October (October 1-9), the Palestinian citizens of Israel stages mass protests all around the country in solidarity with their Palestinian brethren and against what was perceived as the oppressive measures employed against the uprising by the military.

> The events of October 2000 shook the earth. The riots in the Arab sector inside the State of Israel in early October were unprecedented. The events were extremely unusual from several perspectives. Thousands participated, at many locations, at the same time. The intensity of the violence and aggression expressed in the events was extremely powerful. Against security forces, and even against civilians, use was made of a variety of means of attack, including a small number of live fire incidents, Molotov cocktails, ball bearings in slingshots, various methods of stone throwing and the rolling of burning tires. Jews were attacked on the roads for being Jewish and their property was destroyed. In a number of incidences, they were just inches from death at the hands of an unrestrained mob.[680]

During these demonstrations, the Israeli police and special police sniper units shot and killed 13 Palestinian citizens and injured hundreds of more using lethal live ammunition and rubber-coated steel bullets, in violation of Israeli law and police regulation (herein: rubber bullets); as well as tear gas. Close to 700 Palestinian Israelis were arrested during these events and hundreds were indicted.[681]

> In a number of instances, attempts were made to enter Jewish towns in order to attack them. Major traffic arteries were blocked for long periods of time and traffic to various Jewish towns was seriously disrupted, sometimes even severed, for long periods of time. In a large number of instances, the aggression and violence was characterized by great determination and continued for long

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[680] Para.1, "The Official Summation of the Orr Commission Report," Haaretz, 2 September 2003.
[681] Rina Rosenberg, "On the Collective Criminalization of Political Protestors," 3 *Adalah Review* 9 (2002).

> periods. The police acted to restore order and used a variety of
> means to disperse the crowd. As a result of the use of some of
> these means, which included firing rubber bullets and a few
> instances of live fire, Arab citizens were killed and many more
> injured. In the second wave of events, some places saw retaliatory
> Jewish riots against Arabs.[682]

Following these incidents an official Commission of inquiry was established

to investigate these events.

7.2.1.   Stage 1: Commission Investigation

As a result of the violent clashes between the civilians and the police forces,

the Israeli government decided, pursuant to The Commission of Inquiry Law – 1968,

to appoint an official Commission of Inquiry led by Supreme Court Justice Theodor

Orr. Other members included Professor Shimon Shamir of Tel Aviv University (a

former ambassador to Jordan and Egypt) and deputy President of the Nazareth

District Court – Judge Sahel Jarah who was later replaced by Judge Hashim Khatib

due to health issues (Herein after: the Orr Commission or the Commission). The

Commission of Inquiry Law grants the Commission a wide range of powers to

conduct its investigations, including subpoena powers.

The hearings of the Orr Commission commenced on February 19, 2001 and

concluded in January of 2002. 349 witnesses testified before the Commission

including political leaders, police commanders and officers, journalists, experts and

ordinary citizens who had witnessed or were involved in the events. The families of

the victims and their legal representation had no legal standing before the

Commission and thus were not allowed to call or cross-examine any of the witnesses

during the investigative stage of the Commission's activities. Yet the hearings were

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[682] Para.1, The Official Summation of the Orr Commission Report.

public and the victims' families and their legal representation, headed by Adalah organization, attended these hearing and submitted numerous legal motions challenging the procedures and evidence presented.[683]

7.2.2. Stage 2: Warning Letters and Hearings

On February 27 2002, the Commission issued 14 letters of warning.[684] The letters were produced to the following individuals: Ehud Barak (Prime Minister during the October riots), Professor Shlomo Ben-Ami (former Minister of Internal Security), Sheikah Ra'ed Salah (former mayor of Umm el-Fahm and head of the Northern faction of the Islamic movement, considered to be the more radical faction), Dr. Azmi Bishara (head of NDA party in Knesset), Mr. Abd al-Malik Dahamshe (Head of United Arab List and member of Knesset), Mr. Yehuda Vilk (former police commissioner), Mr. Alexander (Alik) Ron (police Major General and commander of the Northern Police District, Mr. Moshe Waldman (commander of the Amakim Region police), Mr. Benzy Sau (Northern District Commander of the Border Police), Mr. Yaron Meir (police operations officer for the Galilee Region and commander of the Misgav area), Mr. Shmuel Mermelstein (commander of Nazareth police station), Mr. Guy Raif (commander of the Misgav police station), Mr. N.Y. (a policeman in

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[683] However since the Orr Commission found that they lacked any legal standing in the investigative stage, these motions were denied.

[684] Section 15 of the Commission of Inquiry Law – 1968, requires a commission of inquiry to inform a person who may be harmed by the inquiry in what respect he or she may be adversely affected. A person who receives a warning may attend the hearings, present a statement, examine witnesses and may be permitted to present evidence. Individuals who receive letters of warning are under investigation and their actions will be examined by the Commission and recommendation may be made in their cases regarding their future activities. While the recommendations are non binding, they have political significance and may result in public demand for the resignation or removal of public officials found to hold responsibility for the events. In the past, the recommendations of the Agranat Commission of Inquiry established to investigate the failures of the Yom Kippur war in 1973 resulted in the resignation of Prime Minister Golda Meir and Chief of Staff David Elazar retired. More recently, Chief of Staff Dan Haluz resigned following public pressure over the failures of the military during the Lebanon war in the summer of 2006, and prior to the completion of the investigation by the Winograd Commission, established to investigate those failures.

the anti-terrorist unit) and Mr. Murshad Rashed (policeman in the Border Police).[685]

The Arab leaders were singled out for allegedly "conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel." [686] The warning letter issued to Ra'ed Salah included the allegation that between 1998-2000 he "was responsible for conveying repeated messages denying the legitimacy of the existence of Israel and portrayed the state as an enemy."[687]

7.2.3. <u>Stage 3: Findings of the Commission</u>

The Commission made a procedural determination, limiting its mandate only to the events occurring between September 29, 2000 and October 8, 2000. Procedure often determines substantive outcomes. Consequently, the commission took a very narrow and often a-historical approach, ignoring the societal and historical contexts affecting the status of the Palestinian minority within Israel. In this regard, the commission did not investigate the social, economic and legal discrimination of Arabs in Israel nor did it address the institutionalized dominance of the Jews, especially within the security forces. Instead, the commission stated, in general terms that:

> Government handling of the Arab sector has been primarily
> neglectful and discriminatory. The establishment did not show
> sufficient sensitivity to the needs of the Arab population, and did
> not take enough action in order to allocate state resources in an
> equal manner. The state did not do enough or try hard enough to
> create equality for its Arab citizens or to uproot discriminatory or
> unjust phenomenon. Meanwhile, not enough was done to enforce
> the law in the Arab sector, and the illegal and undesirable
> phenomena that took root there.[688]

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[685] Decision of the Official Commission of Inquiry Regarding the Warning Letters, 27 February 2002.
[686] Ibid.
[687] Ibid.
[688] Ibid. Para. 3.

While acknowledging that the treatment of the Arab minority in Israel had been "neglectful and discriminatory" and that the state did not "try hard enough" to advance the equal treatment of Arabs in Israel, the commission did not thoroughly investigate the root causes of those policies or their implications for the relationship between the Jews and Arabs in Israel, arguing that this exceeded its mandate. The recognition of the discrimination of the Palestinian Israelis is an important one, but it not sufficient in truly attempting to institute change. The courts and indeed policy makers have long recognized the status of the Palestinians in Israel as "second class citizens," this has had little effect on improving that status, and the Orr commission missed an opportunity to critically examine the nature of the relationship between the state and the minority.

Despite this limited mandate, the Commission nevertheless issued warning letters to the Arab representatives charging them with incitement to violence in the two years prior to the events (and before September 29, 2000), thereby violating its own stated mandate. In contrast, the commission did not investigate whether the September 28 visit of Ariel Sharon to Temple Mount, *al-Haram al-Sharif*, which sparked the violence in the occupied territories, incited the violence in Israel, since the visit took place a day prior to the time period covered by the mandate. The commission did not deem it necessary to call Ariel Sharon to testify about his decision to visit such a sensitive location, which was the focus of the failed negotiations between the Israelis and Palestinians in Camp David only two months earlier.

Nevertheless, the commission found the Arab representatives to have incited

the Arab community prior to the riots, which contributed to the violence.

> The behavior of the Arab sector leadership contributed to the depth of the events and their force. The leadership did not succeed in directing the demands of an Arab minority into solely legitimate democratic channels. It did not succeed in understanding that the violent riots, obstruction of traffic arteries and identification with armed activity against the state and its citizens, constitute a threat against the state's Jewish citizens and substantially damaged the delicate fabric of Jewish-Arab relations in Israel. This created the mold for the threat of serious violence and the use of violence to achieve various goals, as evident in house destructions and land expropriation, and concerning negotiations regarding Jerusalem and the status of the Temple Mount. In various mosques, messages were transmitted delegitimizing the state and its security forces, and serious hostility and antagonism toward its symbols were expressed. Various circles raised demands to grant autonomy in some areas to the Arab minority, and to abolish the definition of the state as a Jewish state and make it "a state for all its citizens." This blurred more than once the line between the Palestinians in Judea and Samaria and the Arab citizens of the state.[689]

This was in contrast to the opinion of several leading scholars on Arab-Jewish relations in Israel, many of whom are mentioned in this study,[690] who concluded that the Arab leadership conducted itself responsibly and within the acceptable realms of the democratic political process.

Recall the argument made by Gad Barzilai regarding the "rally around the flag" phenomenon as a means for creating societal consensus.[691] By evoking the security principle the Commission effectively de-legitimized the political activities of the Arab Parties in Knesset. Calls for demands to "grant autonomy in some areas to the Arab minority" or to change the "definition of the state as a Jewish state and make it "a state for all its citizens" are presented as constituting a "threat against the state's Jewish citizens and substantially damaged the delicate fabric of Jewish-Arab relations

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[689] Official Summation of the Orr Commission Report, Para. 4.
[690] Including Nadim Rouhana of MADA, Danny Rabinowitz, and Yoav Peled,
[691] Gad Barzilai, "Center Against Periphery, 231.

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in Israel." Thus those who oppose the policy are regarded as opposing the well being of the state. It is not surprising therefore that the Commission found that "the behavior of the Arab sector leadership contributed to the depth of the events and their force." Thus, the Commission is of the opinion that the political activities of the Arabs, such as challenging the Jewish definition of the state, which they see as securing their status as second class citizens, is tantamount to posing a threat against the state and its Jewish citizens. Their opposition to Israel's security policy in the occupied territories is perceived by Commission as contributing to the violence during the October riots. Implicitly, the Commission laid some of the blame for the violent and deadly consequences of the riots, on the political activity of the Arab parties to fight against institutionalized discrimination. The fight against the Jewish character of the state, as discussed in previous chapters and evident from the Commission's findings, is outside the realms of what is defines as "legitimate struggle for rights."

When discussing the "deeds and omissions" of the Police force before and during the riots, the Commission nonetheless found the Arab leadership a culprit stating:

> As a result, the riots began with no response at all, and in other places, police forces were unable to handle the riots properly. By the time the police came to its senses, the events had built up momentum and begun to cause bodily injury, which added to the flames. Even at this stage, the Monitoring Committee[692] and the government could have prevented further escalation by preventing a general strike on the one hand, and resolute action to restrain security force response in order to prevent further injury, on the other. Only after the bloody Oct. 2, 2000, did the government and other entities in the Arab sector leadership take action to moderate

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[692] The Higher Israeli Arab Monitoring Committee is an internal Arab sector organization of elected Arab officials aiming to consolidate the sector's activities and policies with regard to its status in Israel.

> events and stop them. Even after this point, the serious events did not cease immediately, and five citizens were killed in riots that took place after October 2. Nonetheless, the exceptional nature of the events did moderate and order returned gradually.[693]

As previously discussed, the commission found that the Arab MKs in the period between 1998-2000 and during the riots had inflamed the Arab sector to use violence in achieving its goals, which resulted in the creation of a dangerous atmosphere on the eve of the riots and the escalation of the violence during the events. The commission nevertheless did not make any recommendations regarding the two Arab elected officials who were sent letters of warning, MK Azmi Bishara and MK Abdulmalik Dehamshe as they were elected officials, representing their parties in Knesset and thus enjoying immunity.[694]

The commission found the Police Commander of the Northern District, Alik Ron, responsible for ordering snipers to open fire in the Umm el-Fahm area on October 2nd, 2000. The commission found that the opening of fire was carried out without justification, creating unnecessary risk to life and health and leading to the injury of at least seven people and the death of one person. This order breached binding orders of the police regarding the use of live ammunition. Before the snipers opened fire, they did not warn of the intention to use live fire in violation of police directive and failed to ensure that the opening of fire was documented which is necessary under those circumstances and in accordance with police internal regulations.

> With regard to the events themselves, the committee found that Maj. Gen. Ron did not properly prepare personnel under his command for the fact that riots might break out on Oct. 1, 2000, although he should have predicted the possibility that riots might

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[693] Official Summation of Orr Commission Report, Para. 6.
[694] Ibid. Para. 11-12.

break out on this date. On October 1 and 2, he did not give adequate consideration to the need to receive information that was as updated, complete, and detailed as possible under the circumstances, regarding events in the district under his command. He did not operate a front-line command position, as required by police regulations. The committee found that, as a result, Maj. Gen. Ron's ability to direct police operations in the numerous events that took place in the district was compromised.

The committee also found that Maj. Gen. Ron was responsible for live fire by sharpshooters that was directed at rioters in Umm al-Fahm. It determined that this firing was unjustified, and resulted in injuries to at least seven people and the death of one of them. The committee found that he personally ordered the sharpshooters to open fire, in direct contravention of police orders in the matter of live fire. It was determined that Maj. Gen. Ron was also responsible for the use of live fire in Nazareth.

The committee also determined that Maj. Gen. Ron did not ensure that priority would be given to nonlethal means during control of the riots. He did not properly supervise the use of rubber-coated cylinders, and allowed their widespread use, which the committee determined was unjustified, although he knew, or should have known, of the dangers, including loss of life, involved in the use of this ammunition. The committee also determined that Maj. Gen. Ron did not ensure the proper investigation of the events in his district, especially of the events that brought about the use of live ammunition or rubber-coated bullets, and the events in which there were casualties.[695]

At the time of the report, Alik Ron had retired from service. The Committee recommended that he not fulfill any command or administrative position in public security in the future.[696]

With regard to other police officials investigated - they too were found to have violated police protocol in ordering snipers to use live fire which resulted in the injury of many and the death of some. The opening of fire was found to be lacking justification, violating police regulation and creating unnecessary risks to life and health.

Former Prime Minister Ehud Barak was found to have not taken adequate steps to prevent or restrict the use of lethal means by the police and had not demanded

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[695] Ibid., Para. 14.
[696] Ibid.

information from the police on the killing of Arab citizens. However since Barak was no longer in public office at the time of the report, the commission made no operative recommendation in his case. Furthermore, it decided not to make any recommendation on the ramifications of its findings on his ability to serve as Prime Minister again in the future.[697]

7.2.4. <u>Perception of the Threat</u>

In deciding on matters relating to the Arab leaders, the Commission relied on classified documents provided by the Police Commissioner's advisor on Arab Affairs, the GSS, and army intelligence. The presentation of this evidence was done behind closed doors and was not open to the public or Adalah (which represented the victim's families and the Arab officials under investigation.)

As discussed in previous chapters, the security community tends to view the Arab leadership as posing a threat by their very existence. The security community's role and testimonies during the proceedings served to strengthen that perception. The evidence provided by these intelligence agencies only concerned the Arab representative. No similar data was brought with regard to the Jewish representatives or police officials. When discussing the production of intelligence about the Palestinian minority in Israel, Professor Danny Rabinowitz, an academic expert invited to testify before the commission on the status of the Arabs in Israel, indicated that the security services used militeralistic terminology to describe the community and that they viewed the Arabs as a "permanent threat of one million citizens which

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[697] Para. 8.

have to be dealt with and made to surrender."[698] During the questioning phase of the commission's procedures it was revealed that the GSS collects information on the minority through the paradigm of "know thy enemy" and that in fact certain police orders also include the term "enemy" in relating to the Palestinian citizens of Israel.[699] In an interview conducted with a former member of the intelligence unit of the police force this paradigm was confirmed.[700]

In the previous chapter the control of the GSS and the security services over the Palestinian minority had been discussed. In this context Adalah notes that:

> The GSS is the main state institution through which the Israeli government controls the Arab society. Therefore, it is not surprising that the GSS focuses its analysis on the political leadership, and described any attempt to break the control of the Israeli government over the community through the practice of politics in terms such as "dangerous" and "extreme."[701]

After the warnings were issued against the Arab representatives, they demanded to review the evidence upon which the decision in their cases was made. The commission refused to reveal a detailed list of the specific documents upon which it based its decision but revealed that the decision was made exclusively on the basis of disclosed material. However since a detailed list was never provided, it is impossible to substantiate this assertion.[702] The commission later released parts of the testimonies given by Avi Dichter, the former head of GSS, and testimony of the GSS officer in charge of the Northern district as well as a few pages of GSS political analysis on the Arab minority in Israel. The release of these testimonies indicated that

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[698] Adalah, October 2000: Law and Politics Before the Or Commission of Inquiry (Adalah, The Legal Center for Arab Minority Rights in Israel, 2003), 38.
[699] Ibid.
[700] Interview conducted by Ronnie Olesker with R.L., Washington DC, December 2006.
[701] Ibid., 39.
[702] See decision of the Commission, 25 March 2002.

in fact some of the evidence presented by GSS was relevant to the decision to issue warnings to the Arab representatives. The same Avi Dichter was quoted in 2000 blaming the outbreak of the second intifada (al-Aqsa) on the Arab Israeli leadership, even though he provided no evidence to substantiate such claims.[703]

When interviewed in 2005 MK Azmi Bishara indicated that based on the questions posed by the Commission, it appeared that the Commission "clearly relied on "secret" and "mysterious" information provided by the GSS or police intelligence."[704]

Moreover, Bishara through his representation by Adalah, argued that the statements made by the Arab representatives, referred to as "incitement" by the commission were legitimate political speech, protected by the right to free speech recognized by the Supreme Court as a constitutional right.[705] Nevertheless, the commission found that MK Bishara was responsible for "conveying messages supporting violence as a means to attain the goals of the Arab sector in Israel, thus significantly inflaming passions and aggravating the violence that took place in the Arab sector in October 2000."[706]

> The committee added that those who initiate protest have the responsibility to end it without endangering public safety. The committee determined that the norm of unlicensed protests is unacceptable. It noted that this norm radiates lack of respect for the rule of law. Other, proper norms are to be expected of the leaders of the Arab community, many of whom are local or national leaders. ...
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> The committee determined that, while most of Israel's Arab

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[703] Joseph Algazy, "MKs by Right, Not by Privilege, Haaretz, 28 January 2005.

[704] Interview Conducted by Ronnie Olesker, Jerusalem, 2 July 2005.

[705] See chapter 4 H.C. 73/53 Kol Ha'am Co. v. Minister of Interior, **P.D. 7(2) 871**; H.C. 2/84 Neiman v. Chairperson of the Central Election Committee, **P.D. 39(2) 225**, H.C. 14/86 Yizhak Laor v. Council of Movies and Plays Monitoring, **P.D. 41(1) 421.**

[706] Or Commission report.

> citizens are loyal to the state, the messages transmitted during the October disturbances blurred and sometimes erased the distinction between the state's Arab citizens and their legitimate struggle for rights, and the armed struggle against the state being conducted by organizations and individuals in the West Bank and Gaza. More than once, the two struggles are presented by leaders of the Arab community as one struggle against one adversary, often an enemy. The committee emphasized that the concept of citizenship is incompatible with the presentation of the state as the enemy ... The committee emphasized the obligation of the Arab leadership not to blur the boundary between the emotional complexities that Israel's Arabs experience and the fact that they see themselves as the brothers of the Palestinians in the territories and taking action and transmitting messages that are incompatible with the loyalty that every citizen of every nation must show.[707]

Despite theses findings, the Orr Commission recommended that the police refrain from treating the Palestinian minority as an enemy. The Commission found that "feelings of hostility" [towards the Palestinian minority] were found among police personnel[708] and that:

> It is important to act in order to uproot phenomena of negative prejudice that have been found regarding the Arab sector, even among veteran and esteemed police officers. The police must inculcate among its personnel the understanding that the Arab public as a whole is not their enemy, and that it is not to be treated as the enemy.[709]

Moreover, the Committee noted that during the events of October 2000, the Police Special Anti-Terror Unit's special forces were used to protect the policemen engaged in confrontation. The use of this operational capability indicates that the police did not regard itself as dealing with civilian disturbance to the peace, but rather engaged in anti-terror activity. This is significant since the expertise of the unit is in rescuing hostages and handling terror threats, which entail the use of live ammunition. It is not surprising that in a number of incidents, police responses escalated to the point of using "lethal ammunition, as an almost immediate reaction

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[707] Official Summation Report, Para. 31-32.
[708] Orr Commission report, chapter 1, Section A, Para. 137.
[709] Ibid., Chapter 6, Paras. 14-15.

after one of the policemen or commanders was injured by stones thrown at them from the unruly crowd."[710] The committee noted that these responses were excessive since there was no real threat, which required the use of lethal force. The perception of the Arabs as a terror threat best explains the use of lethal force against a "threat" amounting to an "unruly crowd," as defined by the Commission.

Thus, even in cases directly involving security concerns and the security community, and even when Arabs are found to have incited violence (even though the finding itself violates the mandate of the determining authority), prejudice was nonetheless found to be involved in the actions of the security personnel and feelings of hostility guided their decision to use force. This is important since it establishes the argument that even when accounting for the variable of security, the Commission nevertheless found the security forces' activities were tainted with attitudes of prejudice and hostility towards the minority population. This is not surprising given the findings presented in the previous chapters. The security forces are members of the Israeli society and represent the attitudes and prejudices that society holds. Since most Jews view Arabs as a security threat, more prone to criminal violent acts than Jews, it is not surprising that when engaging in violent political protest, these Arabs were met with lethal force employed by the Jewish security forces.

7.2.5. Implications of the Findings

The October riots served as a watershed event for many reasons discussed herein. The Commission noted that: "such riots could have developed – heaven forbid – into a serious conflict between sectors of the population, such as the interracial

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[710] Para. 47, Summation of Orr Commission Report.

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conflicts with their attendant results that we have seen in distant locales."[711]

The October events and their aftermath are extremely important to the hypotheses presented in this study for several reasons. First, unlike previous violent confrontation between the Israeli security forces and the Palestinian minority, the October riots were the first time in which violence had erupted not as a result of the frustration felt by Arab Israelis regarding their treatment by the State of Israel, but rather in connection with the Israeli-Palestinian conflict and as an act of solidarity with their Palestinian brethren. In this regard, the Arab-Jewish relations in Israel were directly infused into the larger context and the Israeli-Palestinian conflict. Although the Jewish-Arab relations within Israel always related to the conflict between the Israelis and Palestinians, the October riots served to crystallize this relationship in a violent manner. The riots proved that not only feelings of discrimination drive the attitudes of the Arabs towards the state but also the events in the territories.[712] This connection between the Arabs in Israel and the Palestinians in the territories is the ultimate fear of the Jews in Israel. This fear explains the violent reaction to those riots by the security forces, thereby linking the sense of insecurity and the rise in perception of threat to the emphasis on the security of the majority, resulting in an adverse affect on the status of the minority, thereby establishing elements included in the third hypothesis of this dissertation. Moreover, the political realities of 2000 were extremely different than those existing in the previous periods of violent clashes between the Israeli authorities and the Palestinian minority. In 1956, during the Kfar

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[711] Ibid.

[712] Whose Country: The Journey to Drafting as Jewish-Arab covenant in Israel, ed. Uzi Benziman, (Jerusalem: the Israeli Democracy Institute, 2006), 230.

Qasem massacre, the Arab population was disorganized, living under military rule, unable to communicate with the Palestinians outside the Green Line or form their own political parties - resulting in their inability to mobilize. In 1976, while some political mobilization in the Arab sector did exist, it was still in its early stages. The Arab parties in the Knesset came to prominence in the early 1990s and it was then that the political, social and cultural mobilization of the minority resulted in an increase demand for equality. Thus, during the events of October 2000, the Israeli forces found themselves confronted with a different minority. It had an articulate, well-organized leadership, able to express its demands and articulate strategy and action. The minority was well informed about its status and the status of its brethren in the Occupied Territories, and had access to the media and other sources of information. All of these factors contribute to the differences in response and outcome of these events compared with previous violent episodes in the relationship between the state and the minority as discussed herein above.

Second, by selectively applying its mandate, to allow for the review of the actions and rhetoric of the Arab leadership in the period preceding the October 2000 riots, but refraining from doing so when reviewing the actions of the Israeli authority, the Commission had demonstrated the inequality in application of legal standards between the Jewish majority and the Arab minority. The selective choice of examination, while addressing the institutionalized discrimination of Arabs in Israel only in general terms, at the same time diving into the particularities of actions and statements made by Arab MKs prior to the events of October, suggests that the Orr Commission embodied the same prejudices it attempted to contest. The committee

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asserted that the violent rhetoric and incitement of the Arab leadership prior to October 2000 contributed to the escalation of violence during the riots, and yet at the same time, there had been no critical examination of the Israeli policy of institutionalized discrimination and marginalization of the minority from every sector of public life (examined in previous chapters of this dissertation) to provide for similar context and possible explanation for the actions of the minority's leadership in this regard.

The violent clashes between the authorities and the Palestinian minority and the establishment of an official commission of inquiry could have presented an opportunity for critical examination of Israeli policy and the status of the Arab minority in an attempt to reach national reconciliation. Instead, the Commission's report served to enhance the sense of injustice felt by the Arab sector as evident by the reports cited herein and discussed in the following section.[713]

Third, by relying on undisclosed evidence and analyses present by the GSS regarding the activities of the Arab sector, the Commission confirmed the assertion that the authorities in Israel, both political and legal, attribute great importance to the security officials and rarely contest their findings. The commission expressed concern over the perception, held by the security establishment, of viewing the minority as an "enemy" but at the same time, it relied in its findings, on testimony presented by that establishment and prevented the Arab leadership from accessing the information. In doing so, the Commission gave credence to the same attitudes and perceptions it warned about in its recommendations.

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[713] See ICG report, the report of Adalah and the Arab Association for Human Rights.

Finally, the use of live ammunition and the police Anti-Terror Unit in response to civil disturbance indicates the mind-set of the security authorities in Israel. When confronted with such disobedience, the police forces reacted with excessive use of force even when there was no danger that required a lethal response.[714] The police, feeling threatened by the Arab rioters escalated their response. This use of tactic indicates the attitudes and perceptions held by the security authorities with regard to the Palestinian minority (as "terrorists") crystallizing the argument made herein that the perception of threat contributes to the emphasis on the security of the Jewish majority at the expense of the rights (and in this case the lives) of the minority, resulting in discriminatory policies and practices.

In sum, the discussion here establishes the first element of the third hypothesis of the dissertation. The analysis indicates that the response of the security forces to the increase sense of insecurity (posed by the rioters) during the events of October 2000 translated into an increased emphasis on "security" of the majority (by use of live ammunition and Anti-Terror unit) at the expense of the minority (suffering from the use of lethal force against it).

While the Commission recognized the plight of the minority, it did so only in general terms with little affect on future policy. The Commission noted that as a result of the discriminatory policies adopted by the government and police forces, "serious distress prevailed in the Arab sector in various areas. Evidence of the distress included poverty, unemployment, a shortage of land, serious problems in the education system and substantially defective infrastructure. These all contributed to

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[714] Para. 47 of Official Summation of Orr Commission Report.

ongoing ferment that increased leading up to October 2000 and constituted a fundamental contribution to the outbreak of the events."[715] By limiting its mandate to review only the events in question, the commission avoided the need to make more specific factual determinations regarding the discriminatory policies of the state, thereby diluting the possible positive affect such findings could have had on future policies regarding the Palestinians in Israel, as evident by the subsequent developments.

Subsequent developments

Despite these recommendations, subsequent events indicate that little has change. Since October 2000, 18 Arab Israelis have been killed by the security forces under circumstances unrelated to national security. During this same time period, only one Jews was shot by police trying to prevent him form stabbing his parents.[716]

In their report *Four Years On,*[717] the Arab Association for Human Rights (herein: HRA) has documented 10 cases of police brutality in the first year after the Orr Commission report indicating that the recommendations have not been internalized by the police forces. Indeed, the report suggests that not only did the attitudes and actions of the police fail to improve, but rather that things are getting worse and that actions are more "racist, hostile, and aggressive".[718] Relying on information obtained by the deputy administrative official for the internal investigation unit of the police, HRA determined that:

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[715] Ibid. Para. 3.

[716] Jonathan Lis, "Are Security Forces Trigger-Happy When it Come to Arabs?" Haaretz, October 5, 2006.

[717] Arab Association for Human Rights, Four Years On: Cases of Police Brutality against Palestinian Arab Citizens of Israel during the Year Following the Or Commission Report on the October 2000 Events (Nazareth: HRA, September 2004).

[718] Ibid., 7. The report includes direct testimonies from the victims and witnesses of police brutality and the circumstances surrounding the events.

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www.manaraa.com

> The police received 6000 complaints of police brutality in 2003; of these, 1531 were investigated, only 58 criminal indictments were served, and 119 police officers underwent disciplinary action. … Furthermore, since the Events of 2000 there have been an additional 16 instances of Palestinian Arab citizens of Israel being shot dead by the police in disputed circumstances.[719]

Most recently, in one of these cases, the Justice Ministry's Police Investigation Department decided to indict for manslaughter one of the policemen who shot a suspect outside his own house in January 2006 for carrying an illegal firearm. In the other cases there have been no similar indictments.[720] While each individual case is investigated by an internal probe, there has never been a study within the police force, comparing the prevailing thinking among policemen who deal with the Arab populace and the Jewish one. The Senior officials in the police and Public Ministry have rejected the option of conducting such an examination, arguing that trust had developed between the police and the Arab community since October 2000.[721] Moreover, the police do not keep track of these cases because they classify cases by offense, not by ethnicity.

The law permits security forces, which include the police, to use live ammunition only in cases where there is an immediate and tangible danger to life, and only if less grave measures are insufficient in order to achieve said result.[722] The Supreme Court has ruled that in order for the use of extreme force by members of the security forces to be reasonable, an immediate physical danger must exist.[723] The Orr Commission also addressed this issue finding that:

> In many cases during the October events, such means [liable to

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[719] Ibid. The number of deaths has grown since to 18.

[720] Jonathan Lis.

[721] Ibid.

[722] Article 34J, 34P and 34M of the Penal Law - 1977 **S.H. 5761**, 168.

[723] CA 486/88 Anconinca vs. Chief Military Prosecutor, (1992) **P.D. 44(2),** 353.

> have lethal outcome] were used without there being objective justification in terms of grave danger facing the police persons. In many cases, it is possible to identify a tendency, which the police must act vigorously to uproot, to respond with potentially lethal force to provocations that are not of a threatening character.[724]

This latter finding is of significance. It suggests, as is asserted here, that the security forces react violently and with excessive use of force to a *perceived* lethal threat where none exists. As indicated, this is a pattern, which has not been broken since the issuing of these findings by the commission. Police brutality with the use of lethal force is still a reality.[725]

7.3. Perception of Injustice

It is argued that the Arab minority views the policies adopted by the government and the security forces as unjust, translating into a loss in its legal status, making the adoption of political violence more likely.

A key element in assessing the possible outcome of the Israeli policy is the reaction of the Arab population to it. The next chapter will examine in great detail the outcomes of these perceptions, however it is first important to identify what those are.

In the previous chapter, the attitudes and perceptions of the Jews in Israel were examined. The following section examines the consequences of the policies discussed herein on the attitudes of the Arab minority in Israel.

Despite the grave infringements to their rights, most Arab Israelis have indicated that they would remain in Israel in after the establishment of a Palestinian state. In an interview conducted by the researcher among several Arab Israelis A.A[726],

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[724] Or Commission Report, Chapter 6, para. 34.

[725] For full elaboration of cases involving police brutality see HRA report available at www.arabhra.org (Accessed November 26, 2006).

[726] Interviewee asked to remain anonymous.

observed:

> To ask this question [would you voluntarily move to and become a citizen of the future Palestinian state] is like asking Jews whether they would move back to Poland or Russia if those countries offered them citizenship. I am an Israeli, I was born here, my parents were born here and their parents too. Remaining here [Israel] should not compete with my Palestinian identity. Just as Russian Jews were not suspected by communism during the Cold War, my identity as a Palestinian should not provide the excuse for questioning my loyalty to the State.[727]

And elsewhere, in an interview conducted by the International Crisis Group (ICG), in almost identical terms one respondent observed that: "[M]y identification with the Palestinian people should not be the pretext to question my loyalty to the Israeli state. It is the Israeli state that ought to question its loyalty to its citizens."[728]

In other interviews conducted by the ICG others have indicted that they do not object to the existence of the state, but rather to its discriminatory policies.[729]

In the previous chapter data pertaining to some of the Arab perceptions was presented. According to Smooha's study, 70% of Arabs in Israel accept the definition of the state as a Jewish democracy but object to its definition as a Zionist state.[730] This finding is aligned with the attitudes presented herein whereby the majority of the Palestinian minority does not object to the constitutional structure of the state so much as to the practical policies resulting from that structure. This affirms the assertion made in chapter four that the problem lies not in the debate over the constitutional character of the state (although this definition certainly exacerbates the situation) but rather in the actual policies adopted by the government and security

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[727] A.A., Interview conducted by Ronnie Olesker, Jaffa, July 5 2006.
[728] ICG Interview with Arab Israelis, Nazareth, January 2004; see Identity in Crisis: Israel and its Arab Citizens, ICG Report, No. 25 (2004): 21.
[729] ICG interview with Siham Fahoum, member of the Nazareth local Council, Nazareth, 9 July 2003.
[730] Yoav Stern, "Jewish-Arab Relations Index in Israel 2004," Haaretz, 20 June 2005.

services. Smooha explains that Arab participants in the survey expressed the opinion that a Zionist definition of the state meant that the state belonged not only to its Jewish citizens but the world Jewish population as a whole. 72% of Arab respondents agreed that Israel as a Zionist state in which both Jews and Arabs reside is a racist one.

Recall that 80% of Jews believe that an Arab, defining his/her self as a "Palestinian Arab in Israel" cannot be loyal to the State of Israel. This means that from a Jewish perspective, a precondition to the inclusion of Arabs as equal members of the Israeli society is their renunciation of their ethnic identity. "They are asking me to choose between my Palestinian identity and my Israeli one – that is an impossibility."[731]

In addition, Rattner and Fishman's study of Arab attitudes towards the criminal justice system reveals that Arabs perceive themselves as suffering injustice to a much larger extent than Jews.[732] Rattner and Fishman sought to determine whether the discriminatory treatment of Arab in the criminal justice system "left its mark on the attitudes and perceptions of Israeli Arabs towards the criminal justice system."[733] The study suggested that the Israeli criminal justice system, operating in such hostile environment (in the context of the Israeli-Palestinian conflict) is willing to tolerate some discrimination against members of the minority group.[734]

To test their hypothesis, Rattner and Fishman constructed a random sample consisting of 1866 subjects split into two groups, 901 Jews and 965 Arabs. The Arab

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[731] Interview by Ronnie Olesker with A.A., July 5, 2006.
[732] Rattner and Fishman, Justice for All, 121.
[733] Ibid., 99.
[734] Ibid., 121.

sample, which is of concern here, consisted of 52% male and 48% female. The median age was 30. The educational level of the Arab respondents was as follows: 23% higher (post-secondary), 29% full secondary school education, and 48% less than full high school education. The questionnaire used a list of 20 questions and used a response scale from 1 to 5 (1 representing agree and 5 disagree). A series of questions dealing with the perceived discrimination by the law and its agencies (police, court etc) was presented. Other items related to the obligation to obey the law and the remainder dealt with general issues relating to the criminal justice system (but are not relevant to the discussion here.)

The results were analyzed in a two-stage process. First, in the descriptive stage, the frequency distribution of the answers, both from the Jewish and Arab respondents were mapped out. Second, a multivariate analysis was conducted. Readiness to violate the law or take it into one's own hands was defined as the dependent variable. The multivariate analysis examined how each of the clusters identified affected the dependent variable (readiness to disobey or disregard the system). The clusters were socioeconomic status and measures of perceived injustice.

The results indicate that 64% of Arab (compared with 45% of Jews) agreed that the laws in Israel are unjust and discriminatory. It is important to note that the question asked referred to "laws in Israel" and not any specific law, indicating that there is a general dissatisfaction with the legal system, not particularly the criminal justice system. Moreover, 48% of Arabs (29% of Jews) did not agree that the laws in Israel serve all citizens equally. 54% of Arabs felt that the courts discriminate against them, while only 17% of Jews felt that they [Jews] suffered from discrimination.

58% of Arabs found the police conduct discriminatory while only 35% of Jews felt the same. This perception was echoed by the recommendations of the Orr Commission, which stated that:

> The police is aware that it is often perceived in the Arab sector not as the provider of service, but as a hostile agency that serves an insensitive regime… It is important to inculcate, at all levels of the police, the importance of considered and moderated behavior in relations with the Arab Sector.[735]

As indicated herein above, this recommendation was not internalized by the police force.

Only 16% of Jews felt they had the right to take the law into their own hands while more than 50% of Arabs agreed that they did have such a right. 26% of Arabs (only 15% of Jews) felt they had a right to violate the law if it conflicted with their own interests. 33% of Arabs justified this opinion on ideological grounds (defined by such terms as freedom, equality and national independence), while only 17% of Jews felt the same. 80% of the 33% Arabs who justified their willingness to violate the law on ideological grounds, were willing to accept the consequences of their actions. If applied to the political realm – this attitude is extremely dangerous as it may indicate that the minority population may be willing to engage in political violence despite the known reaction of the state to such threats. Thus, translated into the political realm, the ramifications of this survey are disturbing.

The findings go beyond merely how the Arabs and Jews perceive the criminal justice system. The multivariate analysis indicated that there is a positive relationship between the willingness to violate the law and the perception that the law is unjust.

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[735] Orr Commission Report, Chapter 6, para. 14.

This positive relationship existed in both the Jewish and Arab sample but was significantly stronger in the Arab sample. When asked in general terms whether one should obey the law, both groups indicated with a majority of 80% that they agreed with this statement. However 59% of the Arab sample (28% Jewish) indicated that they felt obligated to obey only those laws, which they agreed with. Moreover, 48% of Arabs compared to 29% of Jews feel that the laws do not serve all citizens equally and this contributed to their sense of injustice.

Rattner and Fishman conclude that: "Arabs, as members of a minority group, would have to confront unjust legal situation (laws, court decisions, etc.) more frequently than Jews and, hence, their much stronger feelings regarding the right to disobey the law."[736]

Indeed the findings of their analysis affirm the hypothesis that Arabs are more likely to suffer injustice in the criminal justice system and thus more likely to feel they have the right to violate it, or take the law into their own hands. It is not implausible that the same attitudes would carry on to other realms of the legal and political systems. Thus, the results of the extensive survey conducted by Rattner and Fishman, while limited to the criminal justice system, are generalizable. The discussion in chapter 7 and 8 clearly indicate that the discriminatory policies are pervasive and are not limited to one aspect of the law. Most importantly, the perception of injustice indicated in the surveys is linked to compliance with the laws. Thus, Arab Israelis are more willing to violate the law when they perceive those laws to be unjust. "This model applies to the entire population, but even more so to Arabs,

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[736] Ibid., 110.

whose sense of perceived injustice is much stronger; hence, their greater readiness to take the law into their own hands, and their tendency to justify such action on ideological grounds."[737] This finding is extremely important in the context of this dissertation. If Arab Israelis view the criminal justice system as unjust because of its discriminatory practices, leading them to disobey or disregard that system, it is unlikely that the same attitude would not apply in the political context. If Arab Israelis view the political system as discriminatory and the practices adopted to limit their political rights as illegitimate, they may be increasingly ready to disobey or disregard that system, making the adoption of political violence more likely. It is unlikely that the minority population in Israel would be more willing to disobey the criminal justice system following its perception that said system is unjust, and that the same will not occur in the political system. If such a system is regarded as unjust by the minority population (which surveys and data presented here and in previous chapters indicates is the case) it is likely that this population will violate the rule of law and adopt political violence to voice their frustration. The previous two chapters have carefully examined the ways in which legitimate and legal forms of protest have been either limited or blocked from the Arab community. The following chapter will examine the implication of these findings.

7.4. <u>Conclusion</u>

This chapter has demonstrated the importance of the October riots as a watershed event in the history of the relations between the Jewish majority and the Arab minority in Israel. The events of October 2000 serve as the third and perhaps

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[737] Ibid., 122.

most illuminating episode in which the Israeli system has been challenged by the collective protest of its Arab citizens. The fears ingrained in the system were brought to the forefront. Arabs in Israel participating in mass demonstrations to voice their frustration over the abusive treatment of their brethren in the occupied territories. In this regard, the October riots served as a new phenomenon in which Arab Israelis participating in protest with their national brethren, thereby representing all that the Jewish establishment fears – the cooperation between the two groups in an attempt to threaten the security and survival of the Jewish state.

The Orr Commission report reflects the Israeli policy of recognizing some elements of discrimination while at the same time legitimizing the continued domination of the majority over the minority. While recommending that some changes be made to police actions, the Commission nevertheless laid some of the blame for the riots at the doorstep of the Arab leadership.

The discussion in the last two chapters reveals a policy of de-legitimizing the Arab political leadership since the eruption of al-Aqsa intifada, commencing with the October riots, through the trials of Azmi Bishara, culminating in the report of the Orr Commission and the changes to the legal system resulting in the rise in the discrimination of the Palestinian minority. The events of October 2000 crystallized for the Jewish majority the *Palestinization* of the Arab minority in Israel and thus a direct threat to state security.[738]

In this chapter the use of counter-terrorism tools such as the Anti-Terrorism Act as well as the employment of counter-terrorism unit during the October riots,

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[738] Gad Barzilai, "The Case of Azmi Bishara: Political Immunity and Freedom in Israel."

indicate the use of these measures in contesting the perceived threat posed by the minority. If this somewhat limited protest, taking place over a week of demonstrations, was met with such hostile violent reaction and fear - what would be the consequences of a mass political movement to protest the political domination of the Jewish population over the Arabs? And if Arabs were to conclude that they cannot continue to live under extreme circumstances of discrimination and decide to adopt such a political protest, viewed by the Jewish establishment as "acts of terror" invoking the most extreme measures of "counter-terrorism", what could be the consequences of such policies?

These questions are the subject of the following chapter examining the ramifications of the findings for this study regarding the rise in discrimination, the perception of threat by the Jewish population and the adoption of security oriented tools to combat that threat, which in turn, is perceived the minority population as unjust.

In summarizing the situation facing the Israeli state, Joseph Algazy notes:

> Arab leaders do not hide the fact that along with the outburst of Jewish nationalism that has characterized the mood in Israel over the past year, Arab nationalist feelings have come to the surface. They warn that the atmosphere between Jews and Arabs is now poisoned and dangerous. Organizations and individuals, both Jewish and Arab, have reiterated their hope that the negative influence of October 2000 on relations between the two people will pass.[739]

Six years later, there is no evidence that this is the case. In fact the gap between the communities has grown, laying the foundation for the eruption of political violence.

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[739] Joseph Algazy, "MK by Right, not Privilege."

PART IV – ASSESSMENT, CONCLUSIONS AND POLICY RECOMMENDATIONS

Chapter 8: Prospect for Violence: Application of Theory to Practice

8. <u>Introduction</u>

The objective of this chapter is to examine the implications of the Israeli policy of increased discrimination. As previously discussed, this rise is perceived by the minority as unjust and may result in the minority disregarding the rule of law. It is argued that there would be a link between the perceived injustice and the readiness of the Palestinian minority to disregard or disobey the legal system, making the adoption of political violence against the state more likely.

The discussion in this chapter focuses on the application of prospect theory to explain the implication of a rise in the legal discrimination of the Palestinian minority. As established in previous chapters, there has been a rise in the legal discrimination of the Palestinians in Israel since the eruption of al-Aqsa intifada. As a result, most Palestinian Israelis view the legal system with increased suspicion resulting in the de-legitimization of that system. Public polling surveys discussed in previews chapters also indicate that Palestinians are now more willing to disobey or disregard the legal system. Moreover, recent reports indicate that there has been a rise in the participation of Palestinian Israelis in acts against the state and this rise will be discussed later in the chapter. Finally, the perception of the threat (held by the Jewish population and leadership) posed by the minority community in Israel has increased. All of these conditions, it is argued, create an environment in which prospect theory predicts that the minority group will be more likely to adopt political violence as a tool to voice their frustration and as a means to make up for perceived losses. By

examining the cases in which violence has been used by Palestinian Israelis as well as relaying on data collected through a survey conducted among a sample of 59 subjects (Palestinian Israelis) the following chapter will establish the final element of the hypothesis; that the perceived loss in legal status of the Palestinian minority makes them more susceptible to engage in risk seeking behavior and the use of political violence against the state more likely.

8.1. <u>Prospect Theory</u>

Prospect theory suggests that when making decisions under risk the decision maker chooses between prospects and gambles. The actor overvalues losses relative to gains because of human tendency to hate to lose more than enjoy winning. Actors frame their domain (whether they see themselves as losing or gaining) relative to some reference point. The reference point determines the framing of the domain. When choosing between negative prospects individuals are risk seeking and when choosing between positive prospects individuals are risk averse. The same risk propensity has been demonstrated to exist within groups although certainly more research is needed in this regard. The objective of this study is not in mathematically or empirically representing the application of prospect theory to group settings, this would be a complex endeavor and far exceeds the scope of this study. However, as a model for human behavior, prospect theory concentrates on the importance and impact of the environment on the person or group in the decision-making process. As a model, it "sheds light on the interaction between the person and the situation in decision making environments."[740] In this case the environment consists of an adverse

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[740] Rose McDermott, "Prospect Theory in Political Science: Gains and Losses From the First Decade,

change in the legal status of the minority, leading it to perceive itself operating in a domain of loss. In this domain, actors become more risk seeking - adopting the riskier option, which may include great cost. By using prospect theory, this study seeks to connect the social-psychological analysis of individual and group actors, with the macro-structural analysis of the Israeli system. Prospect theory consists of heuristic approaches taking into account the research of cognitive psychologists, which runs counter to many of the assumptions made by rational choice theorists. By taking into account both the individual psychological level of analysis as well as the structural level of the Israeli political and legal systems, this study provides for a contextual examination of the status of the Palestinian minority in Israel and insights into some of the guiding principle in their decision making process regarding the adoption of political violence and their relationship with the state.

It is expected that a minority groups experiencing an averse change in their legal status will not adjust to that change and thus be more willing to participate in risk seeking actions such as rebellion and political violence in order to restore their status to the earlier reference point, rather than adjusting their reference point to the new situation. Alternatively, if the minority group is successful at readjusting to their new status, this may explain the lack of use of violence.

In the Israeli case, a well defined ethnic minority which is subject to unequal treatment with a deterioration in its conditions compared to a reference point of the Oslo Peace process period (1993-2000), or with a disappointment in *expectation* for improved change in their conditions, would perceive this as a loss in their status,

Political Psychology, Vol. 25, No. 2 (2004), 289, 293.

making the employment of political violence against the state more likely. In this study the data is limited to the assessment of *individual* rather than group collective action, however as previously mentioned, some of the findings may be applicable to group behavior, although more research is needed in this regard.

The survey conducted among 59 Palestinian Israelis indicates how they, as individuals, frame their status and how that relates to their support or non-support for political violence. However, it is argued that the treatment of these individuals as part of a collective cannot be separated from the decision making process. The role of the leadership in mobilizing the minority into action also plays a role in assessing the support for political violence as do the policies adopted by the government which result in the alienation and marginalization of the Palestinian minority. As described in the literature review, previous studies indicate that small group dynamic serves to exacerbate the proponents of prospect theory making actors escalate their commitment to sunk costs. However the data presented herein does not seek to empirically establish the application of prospect theory to group settings in general or to the Palestinian minority in particular.

8.2. Application of Theory to Study

Prospect theory is designed to explain common trends in choice and thus is descriptive and empirical in nature. The concern of this study is not in empirically demonstrating the decision making process of the Palestinian minority in Israel. Rather, the research seeks to provide for an analysis of common trends which may provide insights into the decision making process of this minority and to provide for a description of the possible effect of the discriminatory environment on the choices

made with regard to the use of political violence by members of the minority group.

Prospect theory evaluates two phases of the decision making process, the *editing phase* in which the way options are framed affects the decisions made and the *evaluation phase* in which people chose among options once those are identified in the editing phase. The decision between options in turn is defined by two processes; the *value function process*, in which subjective value is attached to options and the second, the *weighting function* in which the perceptual probability of options are weighed.[741] These processes are represented in Figure 8.1. The following sections discuss in brief the editing and evaluation phases of prospect theory and the data collected is then presented to establish some of the trends observed among Palestinian Israeli subjects participating in the survey.

Figure 8.1: Prospect Theory Analysis

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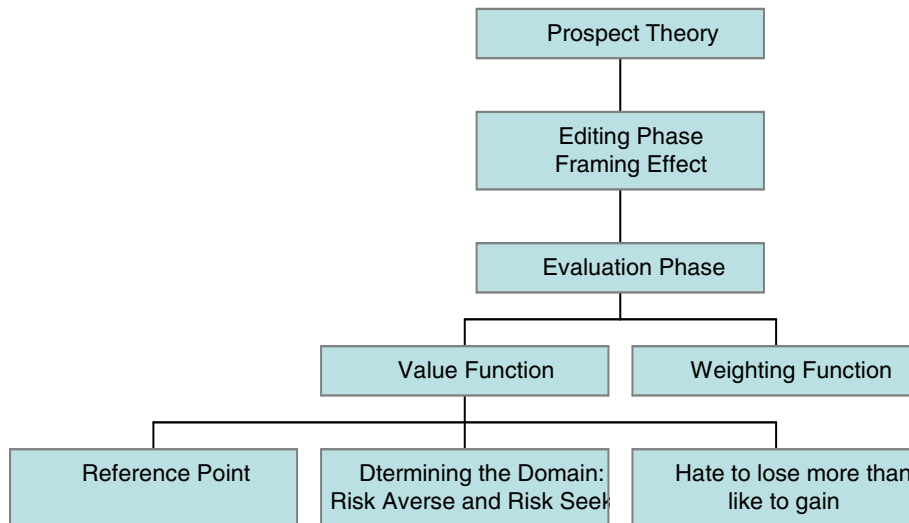
[741] Rose McDermott, Risk Taking in International Politics, 20.

8.2.1.   <u>The Editing Phase: The Framing Effect</u>

The framing or editing phase is the first phase of prospect theory. The *framing effect* is a crucial concept of prospect theory because the manner and order in which options are presented affects the choices that are made, often in direct contrast to the normative assumptions made by rational choice theory regarding the choices people should make in order to maximize their utility.[742] The determination of available options is inherent to the decision making process and those choices can be affected by the way they are presented. For example, in an experiment conducted by Tversky and Kahneman, people were asked to decide on a policy regarding a major flu epidemic that was expected to kill 600 people. The first group was presented with 2 choices, the first policy would save 200 people, the second had a 1/3 chance of saving 600 people and 2/3 chance that no one would be saved. 72% chose the first option. The second group was presented with the following options; the first policy would result in 400 dead while the second policy had a 1/3 chance that no one would die and 2/3 chance that 600 would die. In this case 78% chose the second option.[743] While the two options have the exact same outcome, the way in which they are presented (one in terms of gains and the other in terms of losses) influenced the choice of options. Because people are risk averse when making a choice between competing gains they would more likely chose a "sure" gain even if its "net" outcome is less than the competing option while demonstrating a reverse trend when choosing between completing losses. Framing is important because the process itself "creates the very choices that are understood to be available to a decision maker at a given

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[742] Ibid., 20-21, 25.
[743] Amos Tversky and Daniel Kahneman, "The Framing of Decisions and the Psychology of Choice," Science 211 (1981): 453-458.

time."[744] Framing can become an important vehicle for manipulation of policy. For example, powerful advisors may influence decision-making processes of political actors by manipulating the order or presentation of options so that one is more likely to be chosen than the other, even without changing the substantive information.[745] In sum, the order and fashion in which a question is framed may result in different choices made.[746]

In this case study, a survey was conducted among only those who have not (thus far) chosen to adopt political violence as a strategy or tactic for achieving political goals of equality and thus the examination of the framing effect is difficult in these cases. Access to supporters of political violence was unavailable and therefore the following study does not account for the framing effect. Nevertheless, in any analysis relating to the application of prospect theory, one must take into account the way in which options are presented to people. For example, the choice of rhetoric employed by members of the political leadership of the Palestinian Israelis may affect the choices of policy the group adopts to achieve their goals. In this regard, recall that as a direct result of MK Azmi Bishara's visit to Syria and a speech given during a demonstration there, Section 7a of Basic Law: The Knesset was amended. The section now exclude from Knesset elections a candidate's list and a person if the aims or actions of the list or the person, as the case may be, explicitly or implicitly, include support for an armed struggle of an enemy state or of a terrorist organization against the State of Israel. Azmi Bishara, during his speech supported the struggle of the

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[744] McDermott, 24.

[745] Daniel Kahneman and Amos Tversky, Choices, Values and Frames, (Cambridge: Cambridge University Press, 2000), 346.

[746] Tversky and Kahneman, "The Framing of Decisions and the Psychology of Choice," 457.

Palestinian people. Moreover, the Islamic movement, discussed in previous chapters has also adopted a more aggressive rhetoric in recent year, prompting legal actions against it, in support of the "armed struggle" of the Palestinian people. For example, in October of 2006, during a gathering to mark the fifty year anniversary of the Kfar Qasem killings of 47 residents of the village, Sheikh Abdullah Nimer Darwish, the founder of the Islamic Movement in Israel warned that the Israeli Arab movement would "not take kindly to any sorts of 'tests'".[747] Moreover Darwish, addressing Avigdor Lieberman (of the far right party "Israel is Our Home") said:

> We want to remind you before taking your seat [in government] that we are one and a half million Palestinians. I advise you not to test us. We will stay here dead or alive. But in such an event [that we die] we will not be buried alone.[748]

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Implicit in this statement, Darwish indicates that the Palestinian Israelis will violently resist any attempt to "transfer" them from Israel in either a population or territorial exchange with the Palestinian Authority. The framing of options in such a manner, even prior to any adoption of policy relating to such a transfer, sets the stage for the kind of actions that may later be adopted by the Islamic movement.

Since October 2000, the Arab leadership is going through a transitional phase in which it is assessing the significance of those events to the future of their relationship with the state. This process is largely affected by the relationship between the majority and the minority in Israel as well as the developments in the Palestinian-Israeli conflict. Following the October events and as a result of the subsequent Israeli policies, "it is clear that the isolationist stream [of the Islamic

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[747] Yuli Kromchenko and Yoav Stern, "Islamic Movement Head: We're Staying in Israel, Dead or Alive," Haaretz, October 26, 2006.
[748] Ibid.

movement] is gaining support, and that the current atmosphere in Israel only strengthens this process."[749] Nadim Rouhana defined this as the transformation from acquiescence to challenge.[750]

In sum, the framing of the options presented to the Arabs in Israel will determine the choice of action. If the more radical leadership receives a greater amount of support, it is more likely that it will manipulate the framing to articulate options as "life or death" scenarios, an assault on the future of the minority within Israel, as a "struggle" and thus affect the choices made by the population, including support for the use of political violence. It is clear even now that the environment is such that this framing is already taking effect.

In a recent interview on the war in Lebanon in the summer of 2006, MK Tibi (of the Arab party Ra'ad-Taal) stated that:

> The overwhelming Arab view in Israel was against the war. The Arabs perceived Israel as the aggressive side and all of Lebanon as the victim of this huge military machine destroying infrastructure and killing hundreds of civilians--women, children and the aged. It was just natural that we would express empathy for the victim, saying at the same time that we are against targeting civilians, whether in Beirut, Haifa or Gaza.[751]

More specifically, when asked about whether he supports Hizbollah and its ideology Tibi responded:

> Obviously, from a socio-religious point of view we differ with Hizballah, but this is not the point at all. We are talking about supporting the war in Lebanon or not, supporting the destruction of Lebanon or not.
>
> When [Iranian leader Mahmoud] Ahmadinejad said some months

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[749] Uri Horowitz, "Arab-Israelis and the Events of October 2000: Trends and Attitudes toward the State of Israel," Strategic Assessment 4 no. 2 (2001): 6.

[750] Nadim Rouhana, "The Political Transformation of the Palestinians in Israel: From Acquiescence to Challenge," Journal of Palestine Studies 18 no 3 (1989): 38-59.

[751] "Israel Was the Aggressor," an interview of Ahmed Tibi, (Accessed on January 31, 2006), available from http://www.bitterlemons.org/previous/bl140806ed32.html.

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> ago that Israel should be destroyed, I criticized this statement. The two-state solution is the best. We are in an era of constructing a state, not destroying a state.[752]

While other Arab MKs express similar sentiments, the Jewish media translates this into a different discourse. Writing shortly after the war ended, Uzi Benziman, a prominent writer and one who is considered to belong to the liberal left camp wrote:

> During the recent war, a line was crossed: Arab Israelis did not hesitate to openly express their support for the enemy and preferred their bonds with the enemy over their obligations to the state of which they are citizens.[753]

This cleavage may contribute to the articulation of options in absolute terms, leaving people little room to negotiate their options and contributing to a setting in which the adoption of violence may seem the preferred option despite the risks involved.

8.2.2. The Evaluation Phase

The second phase of prospect theory is the evaluation phase where actors assess the options and make a choice between them (after having identified what their options are in the editing phase). The evaluation phase is comprised by two stages – the *value function* and the *weighting function*. The value function is determined by three terms. First, gains and losses are defined relative to some reference point and not in absolute terms, as expected utility theory would suggest. Thus it is important to determine the reference point in order to assess the choices actors will make. Second, people tend to be risk averse in a gains domain and risk seeking in a domain of losses as the S shaped value curve presented here in figure 8.2 suggests. Thus, it is important to determine the domain (which in turn is defined relative to the reference point).

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[752] Ibid.

[753] Uzi Benziman, "Arab Israelis are Crossing a Line," Haaretz, September 20, 2006.

Moreover, as Tversky and Kahneman's research exemplified, the difference between $10 and $20 had more psychological impact than the comparable increase between $1110 and $1120.[754] Finally, the value curve is asymmetric; it is steeper in the domain of losses than in the domain of gains suggesting that people hate to lose more than the enjoy gains (losing $100 dollars hurts more than finding the same amount gratifies).

Figure 8.2: Hypothetical Value Function
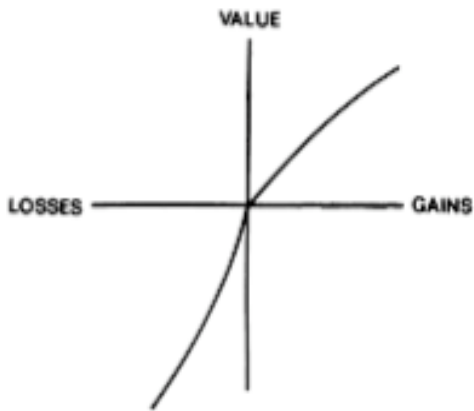
The weighing function is determined by multiplying the value of each option by its decision weight. Rose McDermott explains that:

> [D]ecision weights represent an empirically derived assessment of how people actually arrive at their sense of likelihood, rather than a normative standard about how they should derive probability. … However, decision weights can be affected by factors, such as ambiguity that impact probability assessments in rational choice theories as well.[755]

Since the objective of this study is not in empirical representation of the decision to adopt political violence but rather a use of prospect theory in a qualitative manner to describe the environment in which such decisions are made, the discussion

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[754] Tversky and Kahneman, "Choices, Values and Frames."
[755] McDermott, Risk Taking in international Politics, 29-30.

regarding the weighing function is excluded from this analysis. For the purpose of the discussion here, it is important to note that the chance to avoid or restore losses is overweighed so that when an option is framed as a way to avoid losses it is preferred by most actors (as explained herein with the choices regarding the flu epidemic.) The following sections assess the reference point and the assessment of the Palestinian Israelis' domain. When assessing their status, subject refer to the period of the Oslo Peace process between the Israelis and Palestinians, when they experienced a rise in the status resulting from the Israeli government's policies of inclusion. The adverse effect the eruption of al-Aqsa intifada, of increased discrimination, results in the loss in the legal status of the Palestinian Israelis. Prospect theory suggest that in this domain of loss, people will be more risk seeking, resulting in an environment in which the decision to use political violence is more likely.

8.2.3. Data Collection

The analysis in the following sections relies on data collected in a survey administered in the summer of 2006 (June-July, and prior to the war in Lebanon). The sample originally included 89 participants however due to the war in Lebanon the survey was completed by only 59 respondents. Data was collected by face-to-face interviews with the average time to of one hour. In addition, after administering the survey, debriefing on the answers was only conducted among seven participants, all from the city of Jaffa.[756] The survey questionnaire (Appendix B) was divided into four sections: Demography, identifying goals, status and losses frame; and finally levels of support or non-support for political violence. Subjects were asked a series of

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[756] The realities on the ground during the war in the summer of 2006 were such that access to the Northern towns of Shfaraam and Nazareth was unavailable from July 12th and thus the access to respondents was limited to those available and residing in the center of the country (Jaffa).

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30 questions relating to the four aforementioned sections. Not all questions were answered by subjects, some were not relevant or did not apply to the individual or the individual chose not to answer some of the questions. All survey participants were declared non-supporters of the use of violence or were not actively involved in violent activity against the state. For the purpose of this research access to individuals who did support active struggle against the state was denied by security and police forces and thus the data represents only the attitudes of non-supporters of violent action. The data nevertheless represents some insights into how the Palestinian Israelis define their reference point, their legal status, and whether or not they view political violence as a risky option in the pursuit of their group's goals. The Survey questionnaire in Appendix B includes questions designed to be answered by supporters of violent struggle (questions 15-22) none of the participants answered these questions.

Demographic Distribution

The survey was conducted among 59 subjects, ages ranging from 24-59; 38 males and 21 females; annual income ranging from 48,000NIS – 156,000NIS. Religious affiliation break down consisted of 12 Christians and 47 Muslims. Subjects were residents of three cities in Israel: Jaffa (mixed Jewish-Arab city), Nazareth (Arab city adjacent to the Jewish town of Upper-Nazareth) and Shfaraam (Arab city). Figure 8.3 represents demographic distributions of the survey sample.

Figure 8.3: Demographic Distribution

Sample size	Gender	Age Range	Average Income	Religious Affiliation	Regional Distribution
59	38 Male 21 Female	22-59	48,000-156,000	12 Christian 47 Muslim	10 – Jaffa (4 Christian, 6 Muslim) 8 Nazareth (6 Christian, 2

					Muslim) 41 Shfaraam (Muslim)

Identity

Subjects were asked to describe their national background (Arab, Palestinian Arab, Arab Israeli, Palestinian Israeli, Arab Muslim, Arab Christian, Israeli, other). They were asked which factors would place another person in their identity group, for example linguistic criterion, religion, ethnicity and so forth. Finally subjects were asked which factors would exclude persons from their identity group. The findings are represented in Figure 8.4. Most subjects identified themselves as Arab-Muslim or Arab Christian (represented in figure 8.4 as Arab-religion). Subjects who identified either as Palestinian citizens of Israel or Palestinian Israelis represent ~19% of the sample and are represented as Palestinian citizens of Israel in figured 8.4 and 8.5. None of the subjects defined themselves as Israeli first and only two defined themselves as Arab Palestinian while only one defined himself as Palestinian Arab.

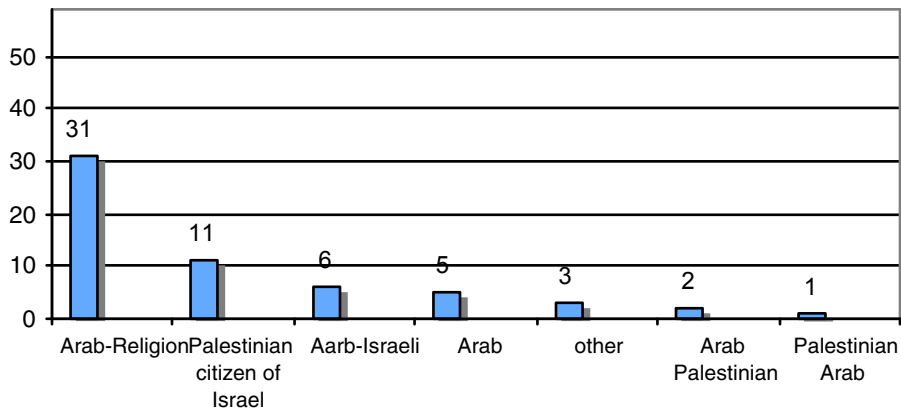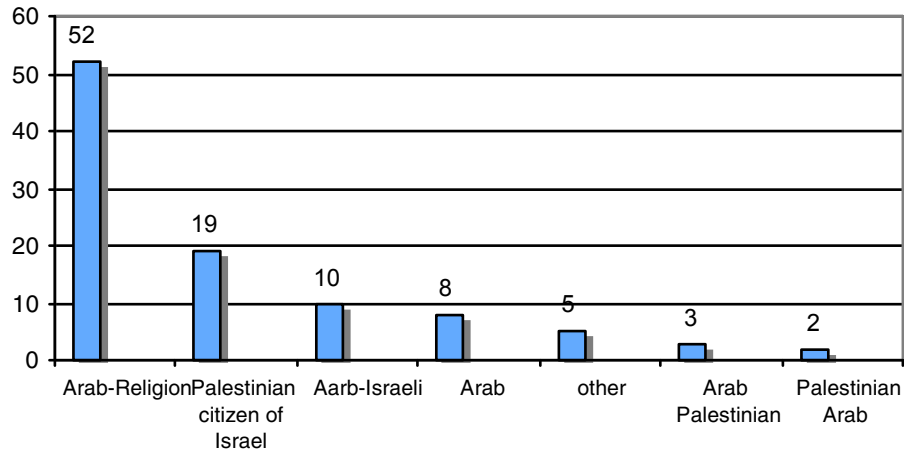Figure 8.4: Identity (displayed in actual numbers)

Figure 8.5: National Identity (displayed in percentage)

These results indicate that over half of the subjects identified themselves with an ethnic-religious identity. This is not surprising in a state that is defined by an ethnic-religious criterion. The minority is excluded from that definition. Individuals often define themselves by what they are not, rather than what they are. Since the minority is discriminated against based on an ethnic religious criterion, it is not surprising that people define their national identity in similar terms.

While the results of the survey may not be generalized to the entire population, interestingly they do correspond to other public polling surveys include the B.I. Lucille Cohen Institute for Public Polling Research st Tel Aviv University's[757] survey of national identity in Israel in 2004. The survey presents polls conducted within the "Arab Sector"[758] indicate that 62% of respondents define themselves as first and foremost Arab. 20% indicated their religion as the first identity and 16% indicated that they were Palestinian first and foremost. However

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[757]The B.I. and Lucille Cohen Institute for Public Opinion Research, "National Identity in Israel," Opinions in the Nation, 10 (August 2005), 4-5 [Hebrew].
[758] Term used by the B.I. Lucille Cohen institute.

when asked to combine their identities (first and second identity) a more comprehensive picture emerged represented here in figure 8.6.

Figure 8.6: National Identities within the Arab Sector[759] (presented in percentages)
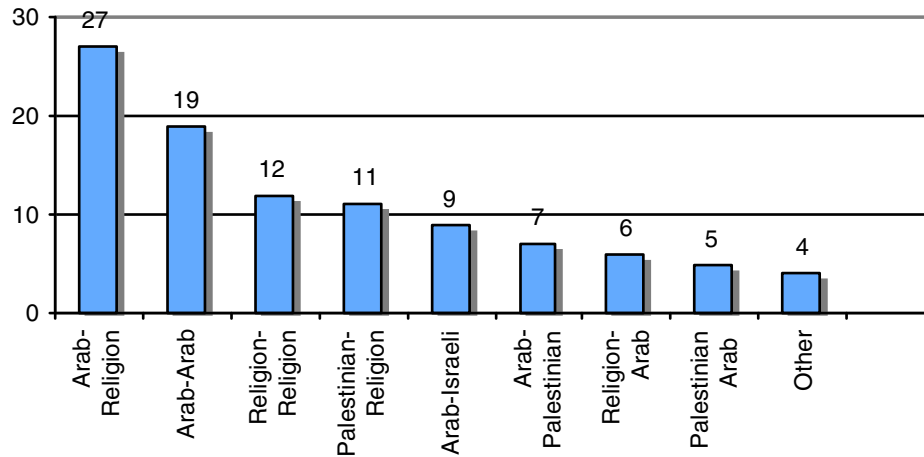
Similar to the results displayed in this research, most of the subjects defined themselves as Arab-Religious before any other combination of identities. The small size of the sample in this research may account for the disparities in numbers but a similar picture emerges in which, for example, more subjects in both surveys defined themselves as Arab first and Palestinian second, indicating that ethnicity plays a role in their national identity more than their national affiliation with the Palestinians. In both surveys approximately 10% of the respondents replied that they viewed themselves as Arab Israeli while in the Cohen institute survey the identity of Palestinian-Israeli was not included while this study's survey found that 19% of respondents defined themselves as such Palestinian Israelis.

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[759] Ibid. Sample size included 152 respondents.

8.2.4. <u>Determining the Reference Point</u>

The application of prospect theory in this study is concentrated on the security environment where decisions are often made under risk. The objective is to explain how decisions made under risk result in the adoption of risk seeking options when operating in a domain of loss while actors remain risk averse when operating in a domain of gains. Recall that individuals are more sensitive to changes in gains or losses than to actual net asset level. Thus they think in relative terms and not in absolute states.[760] The domain is determined relative to some reference point and thus it is crucial to first establish what Palestinian Israelis may refer to as their reference point.

Identifying Goals, Status and Losses

The following section of the survey included 12 questions, which related to the goals of the group, its status, and perceived losses. Subjects where asked to identify the political group they supported and the goals of the group. In response to the question on whether these goals included equality and/or end to discrimination, 89% (53 respondents) answered in the affirmative. The data should be qualified since the respondents were identified by the researcher through prior connections to organizations working for the advancement of equal treatment of Palestinians in Israel and thus the number may represent an inherent bias in the sample chosen. However, the sample did include six respondents who did not define their goals in terms of achieving equality. Four of those six indicated in the debriefing process that they did not include equality or end to discrimination as their goal because they operated under the assumption that there could never be equality for their group in

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[760] Levy, "Introduction to Prospect Theory" and Levy, "Prospect Theory, Rational Choice, and International Relations."

Israel and therefore it was futile to allocate resources and energy for this purpose. For example, Amin Andraus a Christian Palestinian Israeli from Jaffa indicated that he operates under the assumption that there is no equality and that there will be no equality.

> What equality? This state is not here for me. It is a state for the Jews and I live here. I have to focus on my life and what I have and not on what I deserve because I won't get what I deserve. This is understood.[761]

In another interview a respondent states that:

> There is no equality and there will be no equality, I don't expect things to change.[762]

The respondents who did include the achievement of equality in their goals used it to define the reference point. When asked whether they felt more or less equal than before 2000, 55 respondents, representing 93% of the sample, answered that they felt less equal. Interestingly, only 42% felt that the eruption of al-Aqsa intifada had a negative impact on the attainment of equality. The disparity between the answers to these two questions may indicate that the respondents do not associate the deterioration in their status with the al-Aqsa intifada but rather more with the policies of the Israeli government towards them, particularly with the response to the October riots. 68% (40 respondents) indicated that they were closer to achieving their group's goals during 1993-2000 - prior to al-Aqsa intifada - than they were at present.

The reference to the Oslo period (defined by the researcher as the period between 1993-2000) indicates that this is regarded as the previous status quo, which changed after October 2000, indicating a presence of a loss domain. This is also

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[761] Interview with Amin Andraus, conducted by Ronnie Olesker, in Tel Aviv, July 2006.
[762] Interview with M.L conducted by Ronnie Olesker, in Tel Aviv, July 2006.

evident from the response to the question regarding whether subjects felt less equal at present to which an overwhelming 93% of respondents answered in the affirmative. Moreover, in response to the question whether respondents felt they were more or less able to express dissent at present compared to the period before October 2000, 63% (37 respondents) answered that they felt less able to express dissent. These findings are not surprising considering the evidence discussed in chapter six and seven regarding the support for democratic norms among the Jewish population in Israel. Recall that in 1999, 90% of Jews supported the notion that democracy was the best form of government while only 76% felt the same in 2006. Support for the idea that all must have equal right before the law regardless of political outlook dropped from 96% in 2000 to 86% in 2006 (among Jewish population only). Moreover, support for minority rights has been fairly low - in 2003 only 53% of the Jewish population supported equality for Arabs (this number grew slightly in 2005 to 59%).[763] The results of these attitudes among the Jewish population in Israel are apparent in the subjects' responses to the survey questions. It is not surprising that when support for equality for Arabs is around 50%, the minority population feels less equal than periods in the 1990s when the support for the advancement of equality was higher.

Moreover in a survey conducted in 2004 by Mada – the Arab Center for Applied Social Research led by Dr. Nadim Rouhana, using a sample of 845 Arabs (including Druze) from 50 localities within Israel, similar results were concluded. Approximately 63% of respondents considered the status of the Arabs in Israel to be worse today (2004) than it was ten years ago. Moreover, 67% envisioned

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[763] Democracy Index, 2005.

deteriorating status over the coming ten years. When analyzing in detail the responses, a more alarming picture is revealed: 63% expect amplified racism against Arabs in Israel, the same percentage believes that the social economic gap between the Jews and the Arabs will widen. 62% expect one of the Arab parties to be banned from political participation, while 45% expect Israel to transform itself into an apartheid state. Only 47% expected the status quo to continue. Under these circumstances, it is clear that the Palestinians are not only operating in a loss domain, but they expect to continue losing in status, making the adoption of political violence, despite its tremendous possible risks, more appealing and perhaps the option of last resort.

These findings are also substantiated in the literature. As previously mentioned, there is a growing support for the pro-isolationalist movement within the Palestinian Israeli political leadership. In addition, there has been a rise in the support for the more radical arm of the Islamic movement led by Sheikh Ra'ad Salah (mayor of Umm al-Fahm), which supports Palestinian Israeli autonomy in matters of education, culture religion and politics while not advocating for complete secession.[764] More recently, Sheikh Ra'ad Salah was quoted saying that the "day will soon come when Jerusalem will be the capital of a resurgent Caliphate."[765]

In his study on the Arabs of Israel after Oslo, Elie Rekhess, a prominent Israeli scholar on the issue of Arabs and Jews in Israel, demonstrated the change in the Arab population during the Oslo years in the 1990's. During this period, in which

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[764] Uri Horowitz, ""Arab-Israelis an the Events of October 2000: Trends and Attitudes towards the State of Israel," see also Uri Horowitz, " The Arabs of Israel and the Palestinian State," Strategic Assessment 3 no. 3 (2000): 1-6.
[765] Uzi Benziman, "Arab Israelis are Crossing a Line."

the Israelis and the Palestinians moved toward mutual recognition and peace, the Arabs in Israel were required to reexamine their relationship with their state and with their brethren. In his words:

> In light of this new reality, the intellectual and political elite of Israel's Arab population began to reexamine the ideological paradigm underlying the extant infrastructure and to propose alternatives to the four-decade-old model of relationships.[766]

Rekhess convincingly argues that during this period of the Oslo peace process, while it was logistically easier for the Arabs in Israel and the Palestinians in the occupied territories to communicate and indeed cooperate, the level of the "Palestinization" process of the Arabs in Israel, as he refers to it, was weakened. The call for the right to self-determination of the Palestinian people had been a significant part of the Arab Israelis' political leadership's platform. The signing of the mutual recognition agreement of Oslo in 1993 and the subsequent Israeli military withdrawal from the Gaza Strip and the West Bank and the establishment of the Palestinian Authority (PA) was a validation of the long standing demand of the Arab Israelis of a two state solution to the conflict.[767] Subsequently the ties between the Arab Israeli leadership and the PA diminished. Indeed the PA, like the Israeli government, did not incorporated the Arab Israeli political leadership in the peace process and maintained an "approach of ignoring, or even harboring a "discriminatory attitude" towards the Arab population of Israel."[768] Rekhess notes that beyond some limited connections

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[766] Elie Rekhess, "The Arabs of Israel After Oslo: Localization of the National Struggle," 1.

[767] Ibid., 3.

[768] Ibid. This theory is also substantiated in the research conducted by Nadim Rouhana and As'ad Ghanem regarding the effects of the peace process on the Palestinians in Israel. They argue that in fact the process has resulted in the Palestinians being neglected by the PA leadership and ignored and alienated by the Israeli leadership, both not incorporating them in the process. See Nadim Rouhana and As'ad Ghanem, "The Crisis of Minorities in Ethnic States: The Case of Palestinian Citizens in Israel," International Journal of Middle East Studies 30 no. 3 (August 1998): 321-346.

between the PA and the Arabs in Israel, no real political cooperation developed prior to al-Aqsa intifada. It has been argued here that in essence the October riots incorporated the Palestinian minority in Israel, for the first time, in a physical confrontation with the Israeli government as part of the greater Palestinian-Israeli conflict and that also served to enhance the relationships between the political leadership of the Arabs in Israel and the political leadership within the PA. It is also not surprising, as a result, more Arab Israelis have been willing to participate and assist in executing attacks against the state and while the numbers are still low, they have been on the rise, particularly since 2000.[769] A recent GSS report indicates that 14% of suicide bombers had Israeli ID cards. This number may be misleading as it also relates to Palestinians who were married to Israelis but did not live in Israel although they did receive Israeli ID cards, which made the execution of the attacks easier. However this number, if accurate (and there is no way to verify these numbers as the GSS would not release its full report or its sources) is indicative of a growing number of Arab Israelis willing to participate in political violence against the state.[770]

During the 1990s, there were growing demands for equality by the Arab leadership within Israel. Coupled with a receptive government, found in the leadership of former Prime Minister Yitzhak Rabin, which relied on external support of the Arab parties for its survival after the 1992 elections (external because the Arab parties were not included in the coalition), the intellectual and political leadership recognized that the solution to their problems was not to be found in the Palestinian

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[769] See also ICG Middle East Report no. 25 (2004), 25.

[770] See Gideon Alon, "Shin Bet: 14% of Suicide Bombers had Israeli ID Cards," Haaretz, January 9, 2007.

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state but rather in the Israeli system. Rekhess argued that as a result the Arabs in Israel weakened their "external Palestinian affinity."[771]

> This realization marked the start of a new process of directing the national resources of the Arab population inward. The focus became the Arabs' civil and national status inside Israel.[772]

Similarly Majid al-Haj notes that "the peace process changed the priorities of the Arab minority in Israel. … The struggle today is focused on the civic issue."[773]

This trend was further documented in public opinion surveys conducted in 1995 and 1997 among the Arab minority in which a strong preference toward realization of sociopolitical equality over support for the struggle of the Palestinians was demonstrated.[774] Conducting similar surveys in the 1990s, Sammy Smooha concluded that the Arabs in Israel were "undergoing an historic process of the Israelization of their political identity" and that "Israelization is gaining over Palestinization."[775]

Coupled with this change in the attitudes and political orientation of the Arabs in Israel, the political climate was one in which advances were made in the status of the Palestinians in Israel. As previously mentioned, the Rabin government, while not officially joining in a coalition agreement with the Arab parties, relied on the outside

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[771] Rekhess, The Arabs of Israel After Oslo," 4.

[772] Ibid., 5.

[773] Majid al-Hajj, "Education Toward Multi-culturalism in Light of the Peace Process," Menachem Mautner, Avi Sagi and Ronen Shamir (eds), Multi-culturalism in a Democratic and Jewish State (Tel Aviv, 1998), 710 [Hebrew]. See also Adel Mana', "Identities in crisis: The Arabs in Israel and the Israeli-PLO Agreement," in Arab Politics in Israel at a Crossroads, ed. Elie Rekhess (Tel Aviv: Moshe Dayan Center for Middle Eastern and African Studies, 1996), 81.

[774] See Elie Rekhess, Ephraim Ya'ar and Tamar Herman, "The Attitudes of the Arab and Druze Public Toward the Knesset Elections 1996," Data and Analysis (Tel Aviv University Press, 1996) [Hebrew]; Elie Rekhess, "Political Positions of the Arab and Druze Public in Israel – Public Opinion Survey Findings," December 2, 1997 [Hebrew, unpublished lecture].

[775] Sammy Smooha, "Arab-Jewish Relations in Israel in the Era of Peace," Hamizrah Hahadash, 36 (1995): 64-78 [Hebrew].

support of Arab parties for the survival of its government. Thus, while not officially members of the government or of the ruling coalition in parliament, the Arab parties often supported the government by voting in favor of its peace initiatives, providing the much needed majority vote on such matters, in hope that this would translate to an improvement in their equality. Moreover, as indicated by the annual reports of *Sikkuy*, The Association for the Advancement of Civic Equality, the Rabin government did work towards attaining parity between the Jews and Arabs in Israel and in some cases even promoted affirmative action.[776]

The link between the perceived enhancement of the status of the Arabs in Israel and the peace process is an important one and relates to the framework suggested herein. The *expectation* for equality was associated with the assumption that the external conflict was nearing a resolution. In this regard Rekhess notes that: "Peace on the horizon was widely perceived as engendering the first realistic chance since 1948 to eliminate discrimination against the Arabs and to attain equal status with the Jewish majority and full rights as citizens of the state."[777] This conclusion is further substantiated by the 1995 Tel Aviv University survey in which Arabs were asked how a comprehensive peace agreement between Israel and the Palestinians would affect their status – 58% thought they would attain greater equality while only 35% thought their status would remain the same.[778] In 1997, following the deterioration in the Israel-Palestinian peace process (after a wave of suicide attacks in

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[776] Sikkuy- Association for the Advancement of Civic Equality, 1996 Annual Report, (Jerusalem: Sikkuy, 1996); 1999 Annual Report.
[777] Rekhess, "The Arabs of Israel After Oslo,", 6.
[778] Rekhess, Ya'ar and Herman, Data and Analysis.

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1996) the numbers were lower – only 46% expected greater equality.[779]

8.2.5. <u>Determining the Domain</u>

Prospect theory not only refers to actual gains and losses incurred, but also to *expectations* of losses or gains. In addition, subjects are more sensitive to *changes in status* or expectation of changes than actual net-assets. Thus, it is not surprising that the Arab community, having experienced a rise in expectation for gains in the status, were disillusioned by the turn of events in the late 1990s with the failure of the peace process, culminating with the eruption of the al-Aqsa intifada. Furthermore, it is expected that with the renewed violence, the "Palestinization" process will grow in strength, and Arabs in Israel will become more and more isolationalist as indicated in recent polls discussed earlier in this study. For instance, in the 1999 elections 95% of the Arab votes were cast in favor of Ehud Barak, the Labor candidate for prime minister. However the October riots represented a turning point in the relationship between the minority and the state that required Arabs to "seriously re-examine the meaning of their Israeli citizenship."[780] As a result in 2001 the idea of boycotting the elections was raised by the Arab leadership, signifying the growth in the isolationalist approach. This was a unique opportunity in which the Arabs could voice their frustration while not incurring substantial political loss since the 2001 elections were only for prime minister and not for parliamentary elections, Israeli Arabs could boycott the elections, costing Ehud Barak a significant amount of support he received in 1999, while maintaining their representation in the Knesset. The call for boycotting

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[779] Rekhess, "Political Positions," (unpublished lecture).
[780] Nadim Rouhana, Nabil Saleh and Nimer Sultany, "Voting without Voice: About the Vote of the Palestinian Minority in the 16th Knesset Elections," in The Elections in Israel, 2003, ed. Asher Arian and Michal Shamir (New Brunswick, NJ: Transaction Publishers, 2005), 224.

the elections however continued in the following Knesset elections in 2003 in which there was a sharp drop in Arab voter turnout from 75% in 1999 to 62% in 2003, the lowest it has ever been.[781] Moreover, while in 1992 (when Rabin was head of Labor party) 20.3% of the Arab vote was cast in favor of Labor, only 7.4% of the Arab vote was cast for Labor in 1999, and 7.5% in 2003. In both 1999 and 2003 only 29.4% of the total Arab vote was cast for Jewish parties, compared with 53.3% in 1992.[782] This sharp decline in the Arab support for Jewish parties in Knesset is another indication of the move away from integration and cooperation with the Jewish political leadership and the adoption of a more isolationalist approach.

In sum, the change brought about by the Oslo peace process served as a reference point for change in political behavior of the Palestinians in Israel, both with regard to their relationship with their brethren in the occupied territories, but more importantly, with regard to the relationship with the state. The advancement in their status led by the Rabin government (1992-1995) resulted in the reassessment of the minority's political objectives and an inward focus on achieving equality within Israel rather than advancing the creation of a Palestinian state. The results of the 1992 elections indicate a move towards integration and cooperation with Zionist political parties with the expectation of improvement in the status of the minority. When these expectations did not materialize, following the election of Benjamin Netanyahu and a Likud led government in 1996, and the failure of the Barak government in reaching an agreement in 2000, the Arab voters moved to a new phase in the relationship with the state, indicated by the boycott of the elections, but also by the reassessment of

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[781] Ibid., 230.
[782] Ibid., 236.

their status vis-à-vis the Jewish majority in Israel and the Palestinians in the territories. As a result, the reference point employed by the Palestinian minority in Israel is that of the Oslo peace process. Moreover, prospect theory suggests that when experiencing loss, people do not adjust to the new reference point as quickly as they should and thus when making decisions, they often refer to the previous reference point rather than their new status. As discussed in the previous chapter, the October riots served as a watershed events that required the Palestinian minority to reassess its status vis-à-vis the Israeli state. However it is expected that when making decisions, this minority will not refer to the current reference point of October 2000, but rather to the previous one of Oslo. This may result in a tendency to adopt riskier behavior than before since the Palestinian minority now sees itself at a great loss compared with its previous status in the 1990s. The strengthens this assessment: results of the survey conducted in this study in which 31 respondents (53%) indicated that while they did not support a violent struggle as an appropriate tactic in achieving their group's political goals, they were more inclined to support violent action to achieve equality now than they were during the Oslo peace process. This result it not surprising, since the Palestinian minority has been experiencing a rise in the sense of alienation and domination, leading it to operate in a loss domain.

8.3. <u>Prospect For Violence</u>

The final objective of this study is to examine the security implications of the majority-minority relations and the Israeli policies with regard to that minority and the effects these policies may have on the adoption of political violence by the Palestinian minority against the state. Drawing on the literature in the field, this

dissertation proposes a theoretical framework defined in chapter two as "Prospect for Violence" model combining the various propositions of relative deprivation theory (RDT) with the proponent of prospect theory to identify six conditions, which must be taken into account in the analysis of the prospects for political violence. First, there has to be a perception of the social conditions is different from the individual reference points. Second, the perceived losses must be widely shared by the members of the community. Third, there must be an organization, which may mobilize the population into collective violent action. Fourth, the rebellious decision must be framed as a means to avoid further losses. Fifth, resources for the violence or rebellious actions must be gathered and finally, issues of fairness and injustice play a significant role in assessing reference points and reactions to changes in status. These conditions will be applied to the case study in the following section.

8.3.1. Political violence – Conditions

In their article "The Crisis of Minorities in Ethnic States: The Case of Palestinian Citizens in Israel,"[783] Nadim Rouhana and Asad Ghanem, writing in 1998 (and before the eruption of al-Aqsa intifada), discuss the status of the Palestinian minority in Israel and present a thesis according to which the structural exclusive collective identity of Israel places the Palestinian minority on a course towards crisis "in its political, cultural, and existential relationship with the state."[784]

According to this crisis approach, the peace process resulted in a separation between the Palestinian communities in Israel and the PA and created a situation in

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[783] Nadim Rouhana and Asad Ghanem, "The Crisis of Minorities in Ethnic States: The Case of Palestinian Citizens in Israel," International Journal of Middle East Studies 30 no. 3 (August 1998): 321-346.
[784] Ibid., 321.

which the Palestinian political leadership in the territories largely ignored the situation of their brethren in Israel and focused on domestic internal issues and their political agenda with little inclusion of the Palestinian community in Israel within their political agenda. This has resulted in the inability of the Palestinian minority in Israel to assert its Palestinian national identity: on the one hand they are not included in the Palestinian national movement on the one hand, and on the other, the minority is blocked from achieving full membership in the Israeli state due to the state's exclusive ethnic nature, leaving the minority in a state of crisis.

In discussing the implication of this crisis the authors argue that it may take a number of different forms, both non-violent and violent depending on the nature of the Israeli government, the relationship with the PA and the extent to which Palestinians in Israel reach the conclusion that equality is no longer achievable.[785] Elsewhere Rouhana had argued that the minority are dominated by the majority, resulting in the inability of the former to develop in the ethnic Jewish state because its development threatens the majority.[786]

The research presented in this study has indicated that since the eruption of al-Aqsa intifada and the rise in the level of violence between the Israelis and the Palestinians, there has been a process in which the status of the minority in Israel is continually deteriorating and that public polling suggests that Palestinians in Israel are in fact reaching the point in which they do not believe that equality will be achievable in the near future, thus making the possibility of violent confrontation more likely. In summarizing their assessment of the possible future implications of

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[785] Ibid., 342.
[786] Rouhana, Palestinian Citizens in an Ethnic Jewish State: Identities in Conflict.

this crisis approach the authors argue that:

> If the state offers to accept the minority as equal citizens, the Arabs will have to redefine their Palestinian identity – underscoring its historical and cultural dimensions and de-emphasizing its political dimension. But if their relationship with the state reaches a dead end, they might need to redefine their Palestinian identity to emphasize the political option, in which case they will face the opposition of a Palestinian National Movement regionally focused on state-building in the territories assigned to it by its agreement with Israel.[787]

While discussing only in general terms the possibility of the outbreak of violence, the authors fail to provide for particular conditions under which violence will be employed. In summarizing their arguments Rouhana and Ghanem conclude that the predicament of the Palestinians in Israel is "likely to deepen and develop into a crisis, elevating the ethnic structure of the state to the top of the political agenda of the Arab citizens in Israel. At that point, it is the nature of the state as an ethnic state, and the nature of the relationship with it, that will have to be negotiated."[788] However they do not provide for a clear picture of the nature of these "negotiations" nor do they provide parameters other than contending that the crisis may take several forms "ranging from massive non-violent civil-rights sanctions to possible violent outbursts on both sides."[789] This is ineffective in providing for an analytical framework in which exact assessment of the threat may take place.

As previously discussed in chapter two of this dissertation, the model referred to here as "prospect for violence" suggests six conditions for the eruption of violence.

<u>Perception of social conditions as different from the individual reference point</u> – RDT theory refers to the gap between what one has and what one expects.

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[787] Nadim Rouhana and Asad Ghanem, "The Crisis of Minorities in Ethnic States: The Case of Palestinian Citizens in Israel," 342.

[788] Ibid., 343.

[789] Ibid., 342.

Moreover, it suggests that when there is a disparity between reality and expectation or when there is a disparity between members of a society, this results in frustration, which leads to aggressive behavior and in the political context - to the adoption of political violence as means to voice those frustrations. As discussed in chapter two, the empirical validity of RDT has largely been refuted in the literature however the psychological credibility of the process of frustration remains in tact. That is, the gap between expectations and realities does give rise to frustration. This is complimentary to the notion of a reference point in prospect theory to which individuals compare and assess their status. If individuals feel deprived compared not only to what they expected to receive but also compared to a previous status, they are more likely to engage in risk seeking behavior. As discussed extensively in earlier chapters, the Palestinians in Israel have been deprived of equality since the inception of the state in 1948 largely as a result of the constitutional definition of the state as "Jewish". In summarizing the Israeli system Gad Barzilai notes:

> Israel's political culture has been both a reflection of this state law-endorsed deprivation, and a source for generating it. The Arab-Palestinian minority has been marginalized during public debates over the country's future, and Arab political parties have not been included in government coalitions. In the Knesset, Zionist parties have tended to estrange the minority, especially during wars and other security crises such as guerilla attacks. Popular nationalistic, including atavistic perceptions of the minority as a fifth column have been pronounced during such times; Jews have viewed Israeli Arab-Palestinians as enemies of the state and allies of the Palestinians and neighboring Arab countries.[790]

It has been argued and demonstrated that this view of the Palestinian minority has been aggravated, resulting in further deprivation of rights. As indicated in the previous sections of this chapter, several surveys, reports and studies including the

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[790] Gad Barzilai, "Fantasies of Liberalism and Liberal Jurisprudence: State Law, Politics, and the Israeli Arab-Palestinian Community," Israel Law Review 34, no. 2 (2000): 433.

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survey conducted in this study all indicate that the Palestinians in Israel expected to enhance their status during the Oslo peace process and were disillusioned when change did not materialize. Moreover, as the results of the Mada survey discussed herein above indicates, Palestinians in Israel are extremely pessimistic about their prospects, they believe, with a majority of 63% believing that the social, economic gap between Jews and Palestinians will widen and that they are worse off then where they were 10 years before. Moreover, only 24% of respondents believed that their status would improve and even a smaller percentage (21%) believed that full equal right would be achieved between Arabs and Jews in Israel even though there is an expectation of equality in a democratic state.[791]

The perceived loss must widely be shared by members of the community – as indicated in the Mada annual survey as well as the survey conducted by this study, the sense of loss in legal status is shared among most of the respondents. Recall that 93% of respondents to the responded that they felt less equal now and 67% believe status will continue to deteriorate over the next 10 years according to the results of the Mada survey.

Organization that could mobilize the population into violent action – violent actions is most likely to occur in societies in which there is an intermediate level of civil liberties, which allow groups to organize and mobilize, but at the same time limitations are presented which prevent effective or comprehensive political participation. In chapter six of this dissertation the various limitations, both legal and political, placed on the effective and comprehensive participation of Arabs in the

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[791] Mada 2004 Annual Survey (Haifa: Mada, 2004).

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political process in Israel were discussed. These limitations include but are not limited to the amendment of Basic Law: The Knesset with the inclusion of section 7a which sought to change the conditions for removing a candidate list from elections; The Political Parties (Amendment No. 13) Law- 2002, which sought to change the party registration rules and procedures; restrictions to the freedom of speech in the Azmi Bishara and Ahmed Tibi cases, as well as the cases involving the Islamic Movement and Sheikh Ra'ad Salah, all discussed in chapter seven of this dissertation. The discussion in chapter six regarding the nature of the Israeli democracy, especially its ranking among other democratic nations, as well as the comprehensive discussion regarding the nature of the legal system included in chapter four of this dissertation; all lead to the conclusion that Israel is in fact an intermediate democracy in which organization and freedom of association is available to all, however there are serious restriction and limitations placed on the minority, preventing it form achieving full participation in the political system. Writing on the political development of the Palestinians in Israel, As'ad Ghanem developed the *"distress model"* according to which the development of the Arabs in Israel is seen in light of the ethnic character of the state. He argues that:

> The combination of limited democracy and ethnic orientation, which guides policy toward the minority, harms the minority rather than helping it. It creates a sense of progress and involvement in the life of the state and a deceptive aura of normal development. In fact, the options available do not help the minority attain equality and actually create a confused developmental situation that erodes the existing structure of the minority while not permitting it to integrate into the state…This leads to the existential stress and crisis situation that beset the minority. Because of the ethnic policy, the minority faces a grave existential threat that permeates its collective life in many areas.[792]

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[792] As'ad Ghanem, Palestinian-Arab Minority in Israel, 1948-2000, 9.

While the ethnic identity and policies of the state play a significant role in the relationship between the minority and the state, the distress model alone may not account for the rise in the discrimination of Palestinians since 2000 nor can it provide insights into the future prospects of this relationship, particularly with regard to the security implications of this discrimination.

While in the past the Arab minority was limited in its ability to organize, particularly in the first period of the state between 1948 and 1966 during which the Arabs were placed under military rule, the 1980s and 1990s in particular brought a new development in the political consciousness of the minority in Israel, resulting in the rise of articulate political elite, able to mobilize the community into organized political action as evident from the effective boycott of the elections in 2001 and 2003. In addition to the parliamentary representatives, there is a competing political elite, which promotes a more isolationalist approach, seeking to offer an alternative, more religious and ethnically oriented agenda. The Islamic movement, and in particular the more radical arm of the northern faction led by Sheikh Ra'ad Salah, provides an organization which may fairly effectively mobilize the population into revolt if framed appropriately.

<u>Framing the use of political violence as means of evading loss</u> – the fourth condition for political violence in this model is the issue of framing referred to herein above. The framing of the rebellious action as a way to escape sure losses is important since framing often determines outcomes. Recall the flu pandemic example in which people were required to make a choice between gambles with similar chances. The first option presented a policy in which 400 out of 600 people would

die, the second option presented a policy, which results in 1/3 chance that no one would die and a 2/3 chance that 600 would die. Despite the same expected utility of both options presented, the way in which they were framed affected the choices made by subjects so that 78% chose the second option demonstrating the tendency to want to escape a *sure* loss even though other options can result in an equal or even greater loss. The same applies to rebellious action. A group of people sharing the same grievances, organized to mobilize by a leadership which articulates the group's prospects in the state as a sure loss (unless they engage in the risky behavior of political violence) may be expected to adopt this option despite its risks and consequences for the group. In previous statements made by the Islamic movement, the option of revolt seems to be implied. This is particularly true with regard to the idea of population swap or some form of transfer proposed by several members of the current government and in particular from the current head of the 'Israel is our Home' party, MK Avigdor Lieberman, who recently joined the government as the minister of Strategic Affairs and Deputy Prime Minister. The propositions of transfer, encouraged emigration or other forms of removing the Arab population from Israel can be framed as a direct assault on this minority and as a guaranteed loss. If this policy gains momentum, it is not out of the realms of possibility that this would be enough to change the decision making process of the Arabs in Israel and to allow for mass political violence to erupt.

Direct resources for rebellious action – this condition is an operational one. In order for effective revolt to erupt the minority in Israel would have to gather military and financial resources to facilitate the rebellious activity. The operational element is

by nature a clandestine one and the information is thus unavailable for assessment without access to intelligence reports. However, the physical proximity to insurgents both in the Palestinian territories, as well as those in South Lebanon allow for the Palestinian minority within Israel to access these resources fairly easily. If recent indictments of Arab citizens involved in terrorist activity are any indication, they suggests that Arabs in Israel can still fairly easily cross the borders into enemy territory and establish connections with insurgent groups.[793] If the political leadership were to decide to operationalize its rebellious activities in an effort to gather these resources, it is expected that it could do so by cooperating with an existing militia groups across the border.

Fairness and Injustice – judgments regarding fairness and injustice are most important, the origins or the escalation of violent conflicts. These issues are particularly important to the establishment of a reference point and whether subjects adjust to their new reference point when the status quo has changed. As discussed previously, people are less likely to readjust to a new reference point after a loss in status while they are quick to adjust to a new reference point, which presents a gain. Arabs in Israel were quick to adjust to the new reference point presented by the prospect for peace with the establishment of mutual recognition between the Israelis and the Palestinians in Oslo. Moreover, Arabs were expecting to achieve greater equality after the 1992 elections that brought the Rabin government to power. When these promises did not materialize and the status greatly deteriorated, Arab subjects did not renormalize their status as quickly to the new reference point as they did to

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[793] See section 9.3.2.2. of this dissertation for further elaboration on this point.

the one in the 1990s. The analysis presented in this dissertation indicated that there is a positive relationship between the willingness to violate the law and the perception that the law is unjust. In the *Justice for All* Project this positive relationship existed in both the Jewish and Arab samples but was significantly stronger in the Arab sample. When asked in general terms whether one should obey the law, both groups indicated with a majority of 80% that they agreed with this statement. However 59% of the Arab sample (28% Jewish) indicated that they felt obligated to obey only those laws that they agreed with. Moreover, 48% of Arabs compared to 29% of Jews felt that the laws do not serve all citizens equally and this contributed to their sense of injustice. When faced with an increased sense of discrimination which is viewed as unjust, as established in this study, Palestinian Israelis are more likely to adopt political violence as a means to both seek the gains lost and to voice their frustration and alienation from the political system in Israel. In previous chapters, the results of the 'Justice for All' project regarding the discrimination between Jewish and Arab defendants in the Israeli criminal justice system and the implications were presented to suggest that when a legal system is perceived as unfair or unjust – the readiness to disobey or disregard that system rises. Moreover, it has been established that the new legal policies adopted since 2000, which resulted in the rise in the discrimination of Palestinians in Israel, are perceived (by this community) as unjust. The following two sections examine the implications of this latter perspective as it relates to the conditions for political violence.

Writing in 1998 Rouhana and Ghanem expressed concern with the lack of political cooperation between the Arabs in Israel and the Palestinian leadership in the

territories arguing that the latter neglected the former. It is thus important to examine whether at present there has been cooperation between the two groups and whether in fact recent trends substantiate the crisis approach according to which Arabs in Israel will reach a point where violence is a viable option considering their predicament. Thus, it is imperative to not only examine the conditions for the eruption of political violence in the Israeli case, but also the indicators on the ground - both on the political level and on the operational level - and this will be the subject of the following section. It is argued that the thesis presented by Rouhana and Ghanem, according to which the movement toward the establishment of the Palestinian state blocks political cooperation between the Palestinians in Israel and those in the territories, is challenged by the emerging realities on the ground in which, at least at the operational level, there have been individual examples of cooperation between Arabs in Israel and Palestinian insurgents in executing attacks against the State of Israel.

8.3.2.   Adoption of Political Violence in the Israeli Case Study

After establishing that the conditions for the eruption of political violence exist in the Israeli case, it is important to examine whether in fact the Palestinians in Israel have moved in the direction of adopting political violence as a tool to voice their grievances. Despite the existence of a ripe environment in which political violence is more likely to be used, it is nevertheless important to examine whether this has translated into action in the Israeli case.

8.3.2.1. Indicators of Disregarding the Political System

Political violence does not develop or is not adopted in a vacuum. Often, prior

to the adoption of political violence, groups also de-legitimize the political system thereby setting the stage for disregarding that system and adopting political violence as a legitimate means for achieving political objectives. In the Israeli case, there are several indictors that this is happening.

First, as the Justice for All research revealed, many Palestinians in Israel view the legal system is discriminatory and therefore illegitimate. Consequently, they have expressed the opinion that they would be willing to disregard or disobey that system. The same attitude may also be translated to the political system. It is hard to imagine that Palestinians, experiencing political discrimination in the form of curtailing their freedom of speech, targeting their political representatives and also attacking them physically during political demonstrations, would not develop similar attitudes towards the political system.

Second the boycotting of the elections in 2001 as well as the low turnout in 2003 indicates an alarming shift within the Palestinian community in Israel of disengaging from the legitimate political process since they no longer view this process as an avenue through which they can achieve their political objectives. Furthermore, there has been a rise in the radical rhetoric employed by the Arab leadership in Israel and the rise in power of the radical wing of the Islamic movement, which advocates non-participation in what they deem Zionist political institutions that cannot serve the needs of the Palestinian minority. The ICG report on the status of the Arabs in Israel summarized these points in stating the following:

> Compelled to justify their own electorate their participation in the parliamentary process and, arguably, to compensate for the lack of concrete deliverables, community leaders are tempted at times to resort to more inflammatory rhetoric – a trend that further reduces

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their legitimacy in Jewish Israeli eyes. One manifestation has been a strengthening of organizations, such as the Northern Wing of the Islamic Movement, that advocates boycotting Israeli democratic structures and setting up parallel and independent communal ones. More generally, Arabs have questioned an electoral strategy that has largely consisted of a de facto alliance with the weakening Labor party. They have begun to search for alternatives to ensure they no longer taken for granted by Labor leaders. But one appear readily available, leading many in the community to conclude that they face the choice of remaining hostage to Labor or even greater political marginalization. Hostile political developments such as the inclusion of far-right parties in the government coalition have further contributed to political alienation and bolstered the appeal of more radical options. Indeed, for increasing number of Arab Israelis, the goal of the more radical Jewish parties is to provoke confrontation.[794]

When individuals operating in a loss domain and a hostile environment such as described herein, making decision based on a reference point in which their status was far better than present, and in which there was a sense of cooperation rather than alienation, the alternatives become more and more risky, and the appeal of a violent clash with the Jewish majority more likely.

The rise in popularity and support for the radical stream of the Islamic movement (the northern wing) correlates with the findings of prospect theory as well as the consequences of the relative deprivation theory discussed here. Writing on the future prospects of the Arab minority in Israel, Sammy Smooha substantiates these findings in arguing that:

> Should the Islamic movement reach dominance among Israel's Palestinian Arabs, several ramifications are to be expected. The pool of Arabs motivated by extremist ideology and prepared to pay a high personal sacrifice in pursuit of their convictions will be enlarged appreciably. The idea of securing community control and self-rule for the Arab minority will also be boosted greatly by the movement, whose main objective is to revolutionize individual and community life. The struggle for greater autonomy will escalate the dispute between the Arabs and the authorities who regard autonomy as a step towards secession. Another danger is the links that might be established with the violent Islamic movements, such as the Hamas and Islamic Jihad, in the occupied territories and

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[794] ICG Report, 21-22.

elsewhere.[795]

It is therefore expected that along with the radicalization of the Palestinian Israeli political map, as well as the political alienation of this group, there would also be a rise in the participation in political violence against the state. The following section discusses this issue.

8.3.2.2.Indicators Regarding the Adoption of Violence

The discussion herein attempted to provide a detailed picture of the decision-making environment in which the Palestinian minority is operating. The objective of this dissertation is to provide a more nuanced and layered analysis of the change in the status of the Palestinian minority vis-à-vis the Jewish majority in Israel and the security implications of that change. Despite the environmental, societal, and historiography factors, which serve to shape the minority-majority relations in Israel, there has in fact been a rise in the level and participation of Palestinian citizens in terror related activities. These activities include: sheltering and transporting suicide bombers, providing financial and logistical information, and in some cases, participating in kidnapping, murder or attacks against Jewish civilians.[796] According to a 1999 GSS report, only two Palestinian Israelis were found to be implicated in terrorist activity. By 2001 this number grew to 30 and by 2002 to 77.[797] In September 2001, a year after the eruption of al-Aqsa intifada the first Palestinian Israeli suicide bomber blow himself up at the Nahariya train station. This signified a shift in the

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[795] Sammy Smooha, "Part of the Problem, Part of the Solution: National Security and the Arab Minority," in National Security and Democracy in Israel, 117.

[796] ICG 2004 report, 25. See also Yair Ettinger, "Shin Bet Report: Rise in Involvement of Arabs in Attacks against the State," Haaretz, October 5, 2004.

[797] Ori Nir, "Israel's Arab Minority," remarks given at the Carnegie Endowment for International Peace on 30 April, 2003. (accessed January 17, 2006) Available at http://fmep.org.

minority's actions, adopting tactics used by the Palestinian insurgents against their own state.[798] In August 2002 two Palestinian Israelis helped a Palestinian from Jenin to blow himself up killing nine Israeli civilians, they were convicted and received nine consecutive life terms in April 2003.[799] More recently, two Palestinian Israelis were found guilty of planning to smuggle explosive devices into Israel with the intention of bombing an Israeli Railways train. It was determined that a member of the al-Aqsa Brigade, a Fatah militia group in the occupied territories, approached the two Israelis in the summer of 2005 to assist them in smuggling the explosives and executing the attack. In April of 2002 a member of Hamas in Gaza who was a relative of a Palestinian Israeli from Kfar Qasem approached the latter to participate in the kidnapping of an IDF soldier from Israel to the occupied territories. Altouri, the Palestinian Israeli suspect, pleaded guilty to the charges and was sentenced to 16 years in prison (even though the plan was never executed).[800] Recently, a woman from the Arab town of Tira, was indicted for planning a terror attack in the town of Ra'anana where she worked. The defendant, 20-year-old Warud Qasem was arrested on October 4, 2006 and the attack was thwarted. She was charged with joining the al-Aqsa Brigades militia three months prior to her arrest and helping plan a bombing in a restaurant.[801] Moreover, the rise in participation in attacks against the state is not limited to Palestinians but also some Bedouins as well as Druze (both groups serve in the IDF) who have also been accused of collaborating with the enemy. For example,

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[798] Jerusalem Post, 10 September 2001.

[799] David Rattner, "Riots as Two Israeli Arabs Get Nine Life Terms for Aiding Bomber," Haaretz, 2 April, 2003.

[800] "Israeli Arab Jailed for 16 Years Over Bid to Kidnap IDF Soldier," Haaretz, March 13 2006.

[801] Amos Harel, "Tira Woman Indicted for Planning Terror Attack in Ra'anana," Haaretz October 30, 2006.

Lt. Colonel Omar al-Kheib an officer in the IDF was arrested in September of 2002 for allegedly heading a Hizbollah spy ring.[802] In 2005 an Israeli Druze was arrested for collaborating with Hizbollah even though the indictment indicated that he was apprehended against his will by Hizbollah after he illegally entered Lebanon and gave the organization information about security forces personnel from his village and also drew maps of locations of essential infrastructure facilities in the North of the country.[803]

While there is no denying the increase in the level of involvement of the Palestinian citizens of Israel in attacks or actions against the state, the numbers are nevertheless relatively low. However, should this trend intensify, it will represent a serious challenge to Israel's internal security. Moreover, it will challenge the delicate fabric of the majority-minority relations and intensify the destructive attitudes both groups share vis-à-vis the other.

The rise in the number of Palestinians participating in political violence can be explained, as presented herein above, by prospect theory that relates the environment in which the decision making process takes place. The connection between the Palestinians in Israel and those in the territories had been in existence prior to al-Aqsa intifada, in fact as previously discussed, in the 70s and 80s. The Arab leadership defined its national objective mainly in the establishment of a Palestinian state and was less focused on domestic policies. This had changed during the Oslo peace process period in which the Arabs in Israel focused on their status within Israel and their struggle to achieve equality. During these periods, and even during the first

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[802] Daily Star, 28 September 2002.
[803] Jack Koury, "Israeli Druze Accused on Collaborating with Hizbollah," Haaretz January 24 2006.

intifada, the Palestinian minority within Israel, for the most part, did not participate in acts against the state and the involvement of Palestinian Israelis in connection with the enemy was largely in relations to drug smuggling from Lebanon in which Arab Israelis assisted Hizbollah members to smuggle those drugs but these acts were not politically oriented, but rather criminally motivated. Thus, the ethnic or even family ties between the Palestinians in Israel and those in the territories may not account for the rise in the level of participation in acts against the state in recent years. Moreover, the Palestinian uprising itself (as opposed to the level of violence during the two uprising) cannot account for the change since the Palestinians in Israel were not mobilized to act against the state during the first intifada. Moreover, inequality and discrimination in itself (as opposed to the *change* in levels of discrimination and inequality) cannot account for the change since, as previously described, the Palestinians in Israel have found themselves in a status of second-class citizenship since the inception of the state. However, the change in the level of discrimination coupled with the *expectation* for improvement in their status following the Oslo agreements may provide for an analytical framework that explains the motivation of several individuals to participate in political acts against the state. Recall that individuals operating in a loss domain (loss in legal status) are risk seeking in trying to restore their previous status compared to a reference point. These axioms may serve to explain the decision making processes of a growing number of individuals in the minority groups who see themselves operating in a loss domain, increasingly alienated from the legitimate means of protest, perceiving the change in their legal status as unjust, making them more susceptible to risk seeking behavior and more

predisposed to political violence. In addition, if the use of violence is framed by the leadership as a way to avoid losses, the propensity to adopt such measures increases as well.

8.4. Conclusion

The decision to adopt political violence is rooted in the violation of one of the core tenets of democracy – that of the rule of law. When the legal system is perceived to be unfair or unjust with little or no possibility for achieving full equality, and facilitating conditions discussed here exist, the result is a situation in which the very nature of the state and the relationship between it and the ethnic minority will have to be reexamined and negotiated. In this environment, the adoption of political violence becomes more attractive as a tool for extracting concessions from the state.

Israel's actions have increased the radicalization and alienation of the minority group and resulted in the increase of the very threat it attempted to thwart. While the state must take appropriate measures to limit the threat of internal violence it must pay no less attention to the tendency to overreact and increase the abuse of rights which lie at the root of the motivation for the decision making processes of the Palestinian minority.

This dissertation demonstrated the extent to which the fear of the minority's involvement in political violence has been invoked to justify precedent-setting legal policies to limit and curtail the boundaries of legitimate political protest, freedom of speech, redefine the boundaries of citizenship and, in one case, revocation of citizenship of Palestinian Israeli accused of disloyalty, leaving him stateless in contradiction to recognized international norms. Should this tendency intensify – it

may result in an increase of the very threat it espouses to combat. This was affirmed by the assessment presented by the Israeli National Security Council (NSC) in 2002, which recognized this danger. In its report the NSC associated the rise in tension between the Arabs and the state with "a culture of legislative initiatives perceived as directed against the [Arab Israeli] sector and an increase in government enforcement measures regarding them, alongside an absence of actions to improve their situation."[804]

Moreover, particularly with regard to the treatment of terror suspects it was recently revealed by the chief of the GSS, Yuval Diskin that the GSS show more leniency towards Jewish Israeli terror suspect than towards Palestinian Israeli suspects. The GSS chief admitted that "a Jewish detainee and one from [the Arab town of] Umm al-Fahm, would not be treated equally by the judicial system" and that "they [Jewish VS. Arab suspects] wouldn't have received similar treatment in interrogation or court." Diskin also noted that this discrimination was likely to continue and even worsen.[805] Under these circumstances it is hardly surprising that more and more Palestinian Israelis are willing to engage in political violence against the state and perhaps it is quite surprising that the numbers are not higher.

Despite the tendency to explain the relationship between the majority and the minority through the framework of Jewish democracy or the security doctrine in Israel, these frameworks do not explain fully the extent to which Israel has invoked its legal system in an effort to combat the perceived threat posed by the Palestinian

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[804] National Security Council, "The Arab Citizens of Israel – Organizing Ideas for Addressing the Issue", ICG Middle East Report, no. 25 (2004).
[805] Haaretz Service, "Diskin: Shin Bet treats Jewish Terror Suspects Less Harshly," Haaretz, February 7, 2006.

minority since 2000. The threat has always existed, as did the constitutional framework of Israel as a Jewish state. Nevertheless Israel has embarked on a new and precedent-setting policy resulting in a sharp decline in the status of the Palestinian minority and increasing the likelihood and motivation of Palestinians in Israel to engage in political violence against the state. Prospect theory can betters explain the implications of these discriminatory policies and account for the rise in the level of participation in high-risk activities by the minority. Moreover, the assessment provided herein also suggest that all things remaining the same, there will be an increase in the adoption of political violence by the Palestinian Israelis creating a dangerous situation in which an accelerating event, such as the one which sparked the October riots in 2000 may not only result in 13 civilians dead, but rather many more, both Jewish and Palestinian.

Chapter 9: Conclusions and Policy Recommendations

9. The Puzzle

This dissertation set out to explain the rise in the legal discrimination of the Palestinian minority in Israel since the outbreak of al-Aqsa intifada and to examine the security implications of that rise with regard to the adoption of political violence by the minority. The Israeli case is an important one since Israel's constitutional system as well as its security doctrine is unique in the concert of democratic nations in that it is largely based on an ethnic, not civic nor solely territorial criterion. Moreover, the rise in the legal discrimination of Arabs in Israel cannot be explained by traditional theories relating to the nature of the state as a Jewish one, nor the external threat posed by its security requirements, since they do not account for the changes made since 2000 in the legal system to further alienate and marginalize the minority.

The Palestinian citizens' status is unique since they cannot be fully Israeli in a state defined as Jewish, and yet, they do not share the recent history of the Palestinian people striving for self-determination and living under occupation. In a sense, they are not fully Israeli, and at the same time, not fully Palestinian. Moreover, in the context of a protracted, bloody and cyclical conflict between the Israelis and the Palestinians, the Palestinian minority of Israel presents both a demographic as well as security threat to the Israeli state. This predicament however, has exited since the inception of the state in 1948 and as long as the religious character defines that state's identity, and the external threat remains the same, this predicament is not expected to change.

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The Jewish-democracy theory as well as the security doctrine cannot, alone, account for the changes made in the legal system since the eruption of al-Aqsa intifada. The character of the state remained Jewish throughout and the threat posed by the ethnic and national link between the Palestinians in Israel and those in the occupied territories remained the same. What therefore, may account for the rise in the legal discrimination of the Palestinian Israelis since 2000? And what are the security implications of this rise? The objective of this dissertation has been to answer these questions.

9.1. <u>Summary of Research Findings</u>

Background Research Question: Has there been a rise in the legal discrimination of Palestinian Israelis since the eruption of al-Aqsa intifada in September 2000?

➢ Review of laws passed since October 2000, court decisions and the Orr Commission findings reveal a rise in the discrimination of the Palestinians in Israel with the placement of limits on civil and political rights

➢ Limitations placed on citizenship, political dissent, political participation, free speech, equality, housing and land policy, discrimination in criminal justice system

Primary Research Question: What may account for the rise in the legal discrimination of Palestinian Israelis since the eruption of al-Aqsa intifada?

➢ Rise in the level of violence between the Israelis and the Palestinians during al-Aqsa intifada

➢ Decline in democratic culture

➢ Decline in support for minority rights among Jewish population in Israel

➢ Rise (among the Jewish citizens) in the perception of the demographic

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threat posed by the Palestinian minority

➢ Rise (among the Jewish citizens) in the perception of security threat posed by the Palestinian minority

➢ October 2000 riots as a watershed event – the killing of 13 Palestinian citizens and the Orr Commission findings

Secondary Research Question: What are the security implications of the rise in the legal discrimination of Palestinian Israelis?

➢ Rise in the perception of injustice felt by Palestinian Israelis which in turn results in a rise in the pro-isolationalist policies and increased support for the radical arm of the Islamic Movement

➢ Rise in the number of Palestinian Israelis involved in political violence against the state

➢ Rise in the perception of threat posed by the Palestinian minority among the security community

➢ Rise in legal discrimination may be perceived as a loss in status by Palestinian Israelis

➢ Perceived loss results in an increase in risk-seeking behavior

➢ Rise in discrimination affects the decision making process of the Palestinian minority and results in an increase in the willingness to engage in political violence (risky option) to restore perceived losses

9.2. Implications of Findings

The analytical framework of the dissertation was structured around a dual-layered analysis. The social psychological analysis on the individual and group levels

examined the way in which individuals and groups make decisions. For this purpose, the theoretical models of RDT and prospect theory were employed to show that a discrepancy between actors' value expectation and their environment's actual capabilities, results in a sense of frustration. The relative deprivation of the Palestinians in Israel, either relative to the Jewish members of the society or to the Palestinians' own expectations of improvement in their status following the mutual recognition agreement between Israel and the PLO, results in a frustration and protest which is likely to take the form of direct action. Prospect theory provided some insights into the kind of direct action that most likely will be taken by the deprived minority. The analysis leads to the conclusion that the Palestinians in Israel view themselves as operating in a loss domain in which they have lost in legal status compared to a reference point during the Oslo peace process, when they expected to improve their status as a result of the improvement in the Israeli-Palestinian relations. Since this expected improvement did not materialize, the Palestinians in Israel are now more likely to engage in risk-seeking activities, which in the political context results in the adoption of political violence. This conclusion is substantiated by both the empirical testing of prospect theory and the recent developments observed with the increase in the number of Arabs participating in attacks against the state as well as the rise in the violent rhetoric adopted by political leaders, specifically the radical faction of the Islamic movement, and the rise in the support for such pro-isolationalist groups within the Arab population in Israel. Finally, the results of the survey conducted among 59 Arab participants, affirm the propositions of prospect theory regarding framing, domain, and risk propensity.

The second level of analysis was that of the macro-structural analysis of the constitutional and political systems in Israel. The examination of the findings reveal that the structural level of the Israeli polity, namely the definition of the state as a Jewish-Democracy and the structure of its security paradigm are not sufficient, on their own, to explain the changes in the Israeli system since 2000.

The study attempted to bridge the individual and group psychological level of analysis with the macro-structural analysis of the system. The sociopolitical analysis which looks at the different layers of a particular society in attempting to explain why actors act the way they do and why the system is structured the way it is resulted in some observations regarding the implications for the minority, the majority-minority relations and finally for the government, operating on the systemic level.

9.2.1. <u>Implications for the Minority</u>

The Arab citizens of Israel find themselves in a precarious position. Their state is at constant war with their brethren. This allows for the state to control this potentially threatening group by adopting discriminatory practices against them.

The Palestinians in Israel are Israeli citizens. They carry an Israeli passport. Israel is thus their homeland. But is it? The term "homeland" is a metaphor. It is used to convey a genuine link between a person and a state that is based on intimate kinship; conveys a sense of security; a *Gemeinschaft* of values. But how can the Palestinians in Israel feel that sense of belonging in a state where the value of security seems to supercede the security of values? Where the people who are supposed to constitute the nation are united only by mutual animosities? Where the state continually intends to further discriminate and marginalize a designated population

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based on their ethnic background, despite their legitimate claims for equal status in their state.

As a result of this continued discrimination and exclusive interpretation of the Jewish character of the state, this "genuine link" between the persons and their state has been severed. There is no longer, and arguably there has never been an "intimate kinship" between the State of Israel and its Palestinian citizens. The rise in the discrimination of the Palestinians in Israel since 2000 has served to enhance the sense of disconnect, alienation and domination felt of the minority population since the inception of the state. This study has demonstrated the danger of these feelings of relative deprivation. Under these conditions, the tendency of the minority to engage in subversive acts is underscored. Although the risk is hard to quantify, the evidence presented here leads to the conclusion that there exists a real possibility that the Palestinian minority will adopt mass political violence against the state in an effort to regain losses in legal status and as means to voice grievances and frustration from continual and growing relative deprivation in the form of legal discrimination.

9.2.2. <u>Implications for Majority-Minority Relations in Israel</u>

The analysis presented in this dissertation leads to the conclusion that the challenge to the majority-minority relations in Israel does not lie in its Jewish-democratic identity, although the ethnic criterion is certainly problematic. The problem lies in the cognitive dissonance between framework and reality. On the one hand, the Israeli institutions have adopted a liberal framework in which all member of society are granted equal individual rights. This framework views the citizens as individuals rather than communities. According to this framework, there is no

inherent contradiction between the Jewish identity of the state and its democratic character. The context however, does not reflect reality in which actors are assessed by their ethnic and religious association, not on an individual basis. This is especially evident in the security community which views the minority as a threat irrespective of actual participation is subversive acts against the state or the security of its people.

The Israeli society is defined by its multiculturalism in which communication is dominated by inter-group and intra-group relations. People classify themselves within a group and in relations to other groups. It is this disparity between framework and context, which best explains the status of the Palestinian minority and their inability to achieve equality in Israel. This also explains the reasons why there is fertile ground for the eruption of violence between the two communities. The Arabs can never hope to achieve equality because there is no recognition of the communal aspects of that equality and there are no legitimate means to achieve the desired connection between framework and context. In order for change to occur the framework must change, however the dominant group rarely relinquishes control over institutions and processes peacefully. In this context, violence becomes a reasonable means for social change.

This also explains the actions of the political leadership of the Palestinians in Israel. Since any call for change of the constitutional character of the system is now illegal with the amendment of article 7A of Basic Law: the Knesset (barring any party or list to run on a platform which contradicts the definition of the state as Jewish) the Palestinian leadership cannot legitimately hope to change the nature of the system to a definition which recognizes the state as a 'State of its citizens', rather than the state

of the Jews. Thus, the Palestinian leadership has either adopted an isolationalist approach, separating itself from the political process taking place in the Knesset, or they have focused on the Palestinian cause – supporting the struggle for self-determination of their brethren as a means of voicing their discontent with the state. The often blind support that the Arab leaders in Israel give to the Palestinians in the territories, at least in rhetoric, also serves to feed the perception already held by the government and results in an increase in the level of suspicion felt by the majority.

The adoption of a liberal democracy model, allows the state to maintain its dominance over the minority. Liberal democracies grant all individuals in the society rights but do not necessarily recognize collective rights to ethnic groups and national minorities. The problem lies in the fact that liberal democracies operate on the assumption that all members of the society are treated as a single civic group. However in Israel, no civic identity has developed and the nation, its national institutions and national ethos and symbolism are all based on the Jewish identity, which excludes the non-Jewish community from sharing in those identities. It is the dissonance between the "liberal democracy myth" and the reality of ethnic divergence that it at the root of the problem that challenges the majority-minority relations in Israel between the Jews and the Arabs.

Writing about the role of the Supreme Court in the democracy, former President of the Supreme Court, Aharon Barak, articulated the liberal individual approach arguing that:

> [I]mposed upon the judge is the protection of the human rights of every individual, and inasmuch as there exists societal sympathy or antipathy towards him, depending upon the sentiments of the moment, he, will bear it. Thus, imposed upon the judge is the

> obligation to protect the collective, and therefore human rights should not be used as an instrument of national destruction. If there is no security of the collective, none exist for the individual; ensuring the political social framework is a necessary condition for securing human rights themselves.[806]

While recognizing the importance of human rights, Barak nevertheless recognizes the collective in the context of security, not in the context of rights. This is systemic in Israel – the recognition of the rights of the majority often overshadows those of the minority.

While the change in the definition of the state as "Jewish" is unlikely, the context given to the term may be revised without upsetting the system as a whole. Here again, the words of former Aharon Barak are insightful:

> Jewish Law is used as an inspiration for interpretation. It widens the horizon and the interpretive field of vision. As such, it provides added depth to the interpretive creation. However, this does not grant it first priority in the interpretive process.[807]

A similar approach can be adopted on the political level. The history of the Jewish people has been plagued by insecurities. It is thus imperative that the Jews have a safe-haven where they can be free of persecution and oppression. However, the value of security must not supercede the security of values so that other groups are persecuted or oppressed in the Jewish state. Thus, the Jewish value system may serve as an inspiration for value laden terms such as "good faith", "justice" and "reasonableness." While the fundamental values of the Jewish people have a place of honor in the system, they should not allow for the marginalization of other communities, they should not be employed in policy making, and should not serve to exclude members of the polity from participating in the political process as equal

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[806] Aharon Barak, "The Role of the Supreme Court in a Democracy," Israeli Studies 3 no. 2 (1998): 11.
[807] Ibid.

members of the society.

Interests, values and rights often conflict. In resolving the contradiction the courts adopt the technique of balancing – judges place on a metaphoric scale the conflicting values, weigh and balance them. A "balance formula" is developed representing the relative social importance of the values measured. Here is where change may occur – a society which hopes to express its character as a liberal democracy must, in its balancing formula, give rise to those values which may exemplify that character. The values of justice and equality are compatible with the Jewish tradition and those may be emphasized in the quest for enhancing the Jewish character of the state, while at the same time, not alienating those who are not members of the Jewish people. In this manner, both Jews and non-Jews may hope to find a homeland in Israel.

9.2.3. <u>Implication for Government</u>

The findings of the study have several implications for the Israeli government. On the practical level, the analysis presented here clearly demonstrates that the stated objective of the discriminatory policies, in enhancing the security of the majority, has been largely ineffective. In fact, in many cases the policy of discrimination created the very threat the government fears. The suspicion and perception of threat that is at the heart of the government's policy-making is misguided at best. Throughout its history, the Palestinian minority has adopted a peaceful approach to its legitimate struggle for equality. A historical examination of the majority-minority relations in Israel leads to the conclusion that despite the ethnic ties with the Palestinians, the Arabs in Israel have been largely isolated from the Palestinian national liberation

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movement and since 1948 embarked on a different path than their brethren. The policy of limiting and indeed criminalizing legitimate political protest present a grave danger to the democratic fabric of the Israeli society. The space for legitimate protest and dissent, in which questioning the state's ideology and policy is acceptable, is increasingly becoming limited. The acceptance of increased political incitement from members of the Israeli government, particularly members of the 'Israel is Our Home' party, contributes to the alienation of the minority and the de-legitimization of acceptable means of protest leading to the rise of more extreme elements of the Arab political leadership such as Sheikh Ra'ad Salah of the radical faction of the Islamic movement, and the adoption of more extreme means of protest.

The Israeli legal system has long endorsed the deprivation of the minority and indeed, more recently has generated it. Despite being subjected to marginalization and discrimination, the minority in Israel has aspired to be more integrated into the Jewish majority. For most of its history, the Arab minority overwhelmingly has voted for Zionist parties and has cooperated with those parties in Knesset. Indeed both Labor, Likud and Kadima have Arab members in their party and most recently an Arab was named, for the first time in Israel's history, as a minister. In 1995, public polls indicated that 90% of the Arabs were interested in community or personal Arab-Jewish relations, compared with only 50% among Jews.[808] These signs indicate that the minority is willing to cooperate with the Jewish establishment. The findings in this dissertation however clearly indicate that the communal opposition to state law and to legitimate political processes, increases when the state does not recognize the

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[808] Gad Barzilai, "Fantasies of Liberalism and Liberal Jurisprudence," 434.

rights of the community. The state has resisted recognizing the religious, communal and ethnic identities of the minority, fearing that this would lead to a system of multiculturalism in which the Zionist hegemony would no longer be possible. The recognition of the Palestinian national and religious identity would perhaps necessitate a different political regime, resulting in a different constitutional structure in which the Jewish character of the state is no longer the precondition for the allocation of individual rights to Palestinian Israelis. Gad Barzilai has argued that the recognition of individual rights of the Arab minority, even if existed to the full extent, would not suffice if, at the same time, the communal nature of the minority is ignored. The debate between individual vs. communal rights as means of achieving full equality exceeds the scope of this study. However, if the government of Israel does not recognize the adverse effects of the policies adopted in the period examined in this study, the trends observed here regarding the potential for political violence, will increase.

It has been argued that the rationale for government policy does not solely rest on the security interest but rather on the demographic "threat" the minority poses to the structure of the "Jewish democracy". If non-Jews will become the majority in Israel, as is predicted to occur within the next century, Israel will be faced with the choice between remaining Jewish and remaining democratic. This is understood to be an inevitable reality (all things remaining equal). Under these circumstances the policies of exclusion and alienation may have short term advantages, but will be damning in the long-run. If one is to learn from other societies such as the Balkans or Rwanda, continual oppression of one group by another within a society will result in

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an uncontrollable outburst of revengeful slaughter. In this regard Bad Barzilai concluded:

> The state may regard one identity as desirable for its interests and other identities as harmful. That cycle of interactions, based on the weakness of segmented communities and on inclusion in state policies for purposes of exclusion, may help state law garner obedience in the short run, and yet foster resistance in the longer run. But it also may persist for generations and generations, making segmentation and deprivations by, towards and within state law an open-ended, tragic realm of politics and society.[809]

Such realities should be prevented for the sake of long-term survival of the delicate social fabric of the State of Israel.

9.3. Significance of findings

This study has important theoretical and practical implications. As previously mentioned, to date, no comprehensive study employing prospect theory has been conducted to determine the security threat posed by the rise in the legal discrimination of the Arab population in Israel, and in this sense the study has contributed to the existing body of literature.

The objective of the dissertation was to throw some additional light on the conditions of political turbulence from a different perspective than the psychological and political orientation of most current research on the subject. This approach employed a critical examination of the structures, historical myths, perceptions of threat and injustice that guide both the legal and political systems in Israel and result in a rise in legal discrimination of Palestinian Israelis, irrespective of the actual threat posed. This process has been connected to the specific history of the Jewish people, the constitutional structures of the Israeli state, and mainly, the power domination

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[809] Gad Barzilai, "Fantasies of Liberalism and Liberal Jurisprudence," 451.

characterizing most majority-minority relations.

The significance of the findings are two fold: first, on the theoretical level, the study reveals that the Jewish-democracy theory and the security doctrine may not account for the change in the legal status of the Palestinian Israelis since 2000. Second, on the practical level, the findings clearly demonstrate how the legal discrimination of the minority in Israel under the auspices of enhancing national security results in the opposite effect, increasing the very threat the state is attempting to thwart. The following discussion will examine these two levels of analysis.

The traditional models employed to explain the status of the Palestinian minority in Israel center around two schools of thought. The first, presented here in chapter three, examines the status of the Palestinians in Israel through the lens of the constitutional character of the state as a Jewish democracy.

Within this school of thought, there are various arguments regarding the nature of the constitutional system. According to the ethnocracy model Israel is not a democracy but rather an ethnocracy where non-Jews can never hope to become equal citizens. The ethnic democracy models present a different approach according to the political institutions and process in Israel are dominated by one group but individual rights and equal participation in the political process are granted to the minorities, providing avenues for change in the system through the democratic process. Finally, proponents of the liberal democracy model view the Israeli system as a liberal democracy in which all are provided equal protection of the law.

The treatment of the minority is defined by the approach to the constitutional framework so that those who argue that Israel is an ethnocracy highlight its

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exclusionary character, resulting in a system which, by default, ensures the second – class status of the minority. On the other hand, proponents of the liberal democracy model argue that while the discrimination of minorities is prevalent in the Israeli system, this is not inherent to the system but rather the practical applications of policies. However, these policies can be changed and consequently, the status of the minority can improve. According to this theory, no democracy is perfect but rather a process through which all members of the polity may advance their political objectives through the legitimate political process.

The second traditional model employed in understanding the status of the Palestinian minority in Israel is the security model. According to this framework, the relationship between the state and its national minority is determined by the larger context of the Arab-Israeli conflict and the constant state of emergency the country has been under since its inception. According to this theory, the existential threat to the state results in the disproportional emphasis on security, which leads to the limitation of rights and liberties. It is argued that a democracy defending itself must engage in such limitations dictated by the political reality in which its minority population is ethnically tied to the external enemy. It is unreasonable, it follows, that the state would not take all precautionary measures to ensure that this minority does not engage in attacks against the state, and this may result in the infringement of the rights of the minority and its discrimination as well as its marginalization from power sharing positions. It is to be expected that because of the political necessities, the security interest must overshadow all others.

This is a traditional argument used by various nations, both democratic and

non-democratic to justify curtailing political participation and civil rights and liberties. Indeed the "war on terror" is yet another example of this process whereby governments over-emphasize the need for security to allow for a shift in the delicate balance between the executive discretion and the rights and freedoms of the people. This is not unique to Israel, nor to democracies in general, but it is especially dangerous in democratic regimes, which rely on a system of checks and balances and the supremacy of the rule of law for the survival of their regime.

Both the Jewish democracy argument as well as the security model do not account for the change in the legal status of the Palestinians in Israel, observed in this study. The constitutional character of the state as a Jewish democracy has been in existence since 1948 with little threat posed to it by the Palestinian minority or its leadership. In addition, the call for a change in the definition of the state from a "Jewish democracy" to a "State for All its Citizens" has also been adopted by Arab politicians such as Azmi Bishara and Ahmed Tibi since the early 1990s and thus is not a new phenomenon. Moreover, the support for the establishment of a Palestinian state has been a political objective of the Arabs in Israel since 1948. The system could sustain such criticism without the need to legally block the ability to challenge the Jewish character of the state or to support the Palestinian national cause. Moreover, the structure of the system effectively resulted in the containment of the Arab political power and the reduction of the minority to second-class citizenship. An elaborate system of preferential treatment of Jews in all aspects of social and political life had developed in the first 50 years of the state's existence with effective marginalization of the minority from power centers. This was understood to be a

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necessary evil given the particular history of the Jewish people, plagued by insecurity and threat to its very survival. However, this model does not explain the need to overtly change the delicate status quo between the majority and the minority and aggressively adopt a policy, which *explicitly* calls for the discrimination and marginalization of the Palestinian minority in Israel.

The security model offers no answer either. As discussed, the potential threat posed by the Arab minority in Israel and its ethnic links to the Palestinians in the territories has been in existence since the creation of the state in 1948. However, there has been very little political cooperation between the Arab leadership in Israel and the Palestinian one. In this sense, the Arabs in Israel have been neglected both by the Israeli government and the Palestinian leadership. The predictions and warnings of a possible strategic, operational or tactical cooperation between Palestinians in Israel and those in the territories was largely refuted by the fact that the Arabs in Israel did not join their brethren in the uprising in 1987, nor did they participate in any attacks (on an organizational level) against the state during the first intifada. The justification for the many limitations imposed on the Arab minority in Israel throughout the years, ranging from the military rule between 1948-1966, to racial profiling in airports, to security background checks of all teachers and principals in Arab schools by the GSS, to limitation on land allocation for Arab towns and villages; all have been justified by the need to limit the organization and mobilization capabilities of this population, to prevent them from rising against the state and threatening the survival of the Jewish homeland. If one were to subscribe to the security model, it would follow that given the opportunity and the right organizational capability, the Arabs in Israel would rebel

against the state. This opportunity presented itself in the form of the first Palestinian intifada in 1987, the Arabs in Israel however, refrained from joining that fight. Instead they maintained a fairly neutral composition, only assisting their brethren on a humanitarian level and continuing to support the platform of a two state solution to the conflict. Moreover, if the rise in the legal discrimination can be justified in the outbreak of the intifadas, why was there no spike in discrimination of Palestinian Israelis following the first intifada? The security model, relating the treatment of the Palestinians in Israel to the security threat posed by the Palestinians in the occupied territories cannot, alone, explain the rise in the legal discrimination of the Arabs in Israel following the eruption of al-Aqsa intifada. This is not to say that the two phenomena are not linked. In fact, it has been argued in this dissertation that the two processes are very much intertwined, however not in the way the security community in Israel has assessed this linkage.

By employing both RDT and Prospect theory, this study developed the model of 'Prospect for Violence' which in fact links the individual level of analysis with group setting and at the same time, comprehensively examines the environment in which those individuals and groups operate. This framework has led to the conclusion that on the practical level, the processes are linked in a cycle in which the rise in the level of violence between the Israelis and the Palestinians does not result in the willingness and motivation of Arab in Israel to participate in attacks against the state. Rather, the rise in level of violence results in a rise in the level of *perception of threat* (rather than actual threat) leading to the adoption of discriminatory policies which in turn result in the rise in the legal discrimination of the minority, leading it to feel

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alienated, marginalized and thus frustrated by the system which it views as unjust. This perception makes that minority more likely to engage in political violence against the state. Thus, paradoxically, the state, by adopting these policies, is creating and enhancing the very threat it hopes to deter, thereby feeding into its own preconceptions regarding the threat posed by the minority, and justifying the continuation of the discriminatory policy. Figure 9.1 summarized these findings.

The cumulative impression is one of dismal culture of policy making at the base of which is the shouldering of minimal responsibility and the dependence on preexisting notions of threat and strategy which may not accurately describe the reality and may in fact feed into the general sense of insecurity plaguing the Israeli society, resulting in missed opportunities, poor policy and ultimately an increase in the likelihood of political violence.

Figure 9.1: Cycle of Threat-Violence
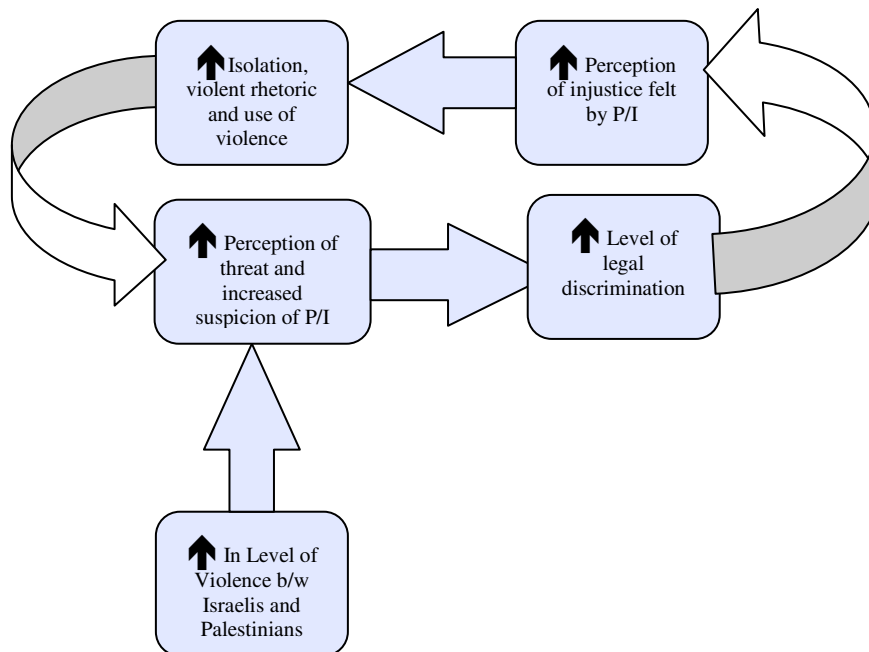
9.4. Positive Developments

Despite the concerning developments since 2000 in the Israeli legal and political systems, some encouraging developments have taken place regarding the status of Arabs in Israel and the Jewish-Arab relations that should be noted.

The appointment of the first Arab minister in Israel's history took place on January 30, 2007. The Israeli cabinet approved MK Raleb Majadele of Labor as the first Arab Muslim minister with only one objection from the minister of Strategic Affairs (name of ministry recently changed to 'Strategic Threats'), Avigdor Lieberman of Israeli is Our Home party. While the appointment represents a historic move forward, its effects should not be overemphasized. First, MK Majadele has been appointed as a minister without portfolio and has not (as of February 2007) received particular responsibilities. Second, the appointment should be politically contextualized. It comes on the heals of a political compromise struck between Prime Minister Olmert and head of Labor, MK Amir Peretz, in exchange for Labor's support for the inclusion in government of the ultra-nationalist party of Avigdor Lieberman and his appointment as Minister of Strategic Affairs. When contextualized in this manner, the historic appointment is less effective. It does not suggest a real shift in government policy but rather falls within regular coalition politics, which define the Israeli political system. In trying to save political face, Peretz demanded the appointment of Majadele to justify his (Peretz's) going back on a promise to not sit in a coalition with MK Lieberman made prior to the March 2006 elections. The heart of the matter lies in political maneuvering rather than a true ideological shift in the Israeli government. Nevertheless, the symbolic gesture is an important step forward and may shatter perceptions regarding the ability of Arabs to serve in the

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government and allow for future Arab MK to achieve similar positions.

The revocation of the GSS position as Deputy Minister of Education – the abolition of the position of the GSS officer to administer a security background check to all teachers and administrators in the Arab schools is an important change in Israeli policy. It is unclear just how long this position had been in existence prior to it uncovering in 2004 however the Dovrat Commission, established to review the Ministry of Education and propose a reform, adamantly argued against this practice, suggesting that it was inherently discriminatory and unnecessary. As a result, in 2006 the Israeli government, in a positive step forward, revoked the position and teachers and staff in the Arab schools are no longer subjected to security background checks.

Revocation of nationality section on Identity Cards (ID cards) – in Israel, all Israelis above the age of 18, must carry on them, at all times, an ID card. Until April 2002, the Israeli ID cards included a section for "nationality", as opposed to citizenship. As previously discussed, the structure of the Israeli system is one in which citizenship does not correlate to nationality. The Israeli ID cards, up until 2002 reflected this dichotomy. Citizens were categorized as either being Jewish (indicating the state regarded Judaism not only as a religion but rather a nationality), Arab or Druze. Those who did not fall into these categories were registered based on their country of origin, or, alternatively, the space on the ID cards was left blank. Many MKs in the past had raised the concern over the nationality section in the ID cards, arguing that it was blatantly discriminatory. Only in 2002 did the Knesset Committee on Constituion and Law pass a regulation ordering the removal of nationality section from all ID cards. This is seen as an important move forward so that citizens are no

longer categorized in their ID cards on the basis of ethnicity.

Recently MK Tzipi Livni (as former Minister of Education) issued a directive to teach about the Kfar Qasem shooting (in which 49 Arab Israeli civilians were shot dead by Israeli border police soldiers) in all Israeli schools. This directive also followed on the heals of the Lieberman appointment and is also seen as means to appease the Arabs in exchange for the addition of an ultra-nationalist party advocating for their (the Arabs) forceful transfer from Israel in a population or land exchange with the Palestinians.

Establishment of a new Arab city – lawmakers across the political spectrum approved a bill proposal calling for the construction of a new Arab city in the north of the country. This is the first new Arab city since the founding of the state in 1948 (except the settlements in the Negev which house the Bedouins). Unlike most residential communities in Israel, this new city will be open to all citizens of Israel without acceptance or membership committee approval needed. This is important since most Arab citizens are denied residency in Jewish towns by the membership committees. Most recently, the selection committee of the community of Rakefet for example, rejected the request of a Shknin (Arab town in the North of Israel) couple to build their home there. The two young, educated architects, wishing to move to the middle class community, were rejected because the husband was evaluated as lacking "sufficient interpersonal sophistication" while the wife was overly "individualistic."[810] The case is before the Supreme Court, but even if the Court forces Rakefet to accept the couple, as it did in the Ka'adan case discussed in this

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[810] Haaretz Editorial, "Living in Sophisticated Rakefet," Haaretz, February 16, 2007.

dissertation, it is doubtful whether they will enjoy living in a community that so blatantly rejected them. Despite the historic Ka'adan ruling, it is clear that the practice of discrimination of Arab families, preventing them from integrating into Jewish communities, still exists. It is therefore important to develop further towns, which cannot reject individuals based on their ethnicity by use of these "selection committees."

In May 2004 the first Arab was appointed as a permanent Justice on the Israeli Supreme Court. Salim Jubran, was born in Haifa to a Christian Arab Family, and later was appointed to the Haifa Magistrate court and in 1993 was promoted to the city's district court were he served for the following ten years. Prior to this appointment, Abdel Rahman Zuabi, a Muslim Arab, received a temporary nine month appointment to the Supreme Court in May of 1999. Both of these developments are encouraging and should be promoted. The service of an Arab on Israel's highest judiciary body signals an important change both symbolically and practically, opening the doors for more opportunities for minorities in the future.

While these are encouraging developments they do not represent the systemic changes needed in order to alter the direction in which the Israeli society is headed. This direction is represented here in figure 9.1 in which a cyclical process occurs eventually leading to the rise in the potential for, and the level of, political violence between Jews and Arabs in Israel. For this to occur, both the minority and the majority need to change their strategic assessments and policies. Some recommendations follow herein below.

9.5. Policy Recommendations

The following section includes policy recommendations for both the Israeli government and the Arab minority. Considering the unlikelihood of the Israeli Palestinian conflict resolving itself in the near future, the recommendations here take into account the complexity of the Palestinian minority's situation within Israel and its status as both members of the Palestinian nation and Israeli citizens. In general, Jewish citizens and the government can become more understanding of the sympathy Arabs in Israel feel for their brethren without feeling the need to curtail the democratic rights of those citizens as equal members of the society. Equally, Arabs must understand that the violent rhetoric and the rejection of the state as a Jewish homeland, threatens the very fabric of the Zionist endeavor. If both communities fail to understand the other though the other's perspective, borrowing the words of Joseph Algazy, "our lives together will become hell."[811]

9.5.1. Policy Recommendations for Government

While fighting a protracted war against Palestinian insurgents, the Israeli government has adopted counterproductive measures against its minority population, which results in the rise in the very threat it attempts to prevent. This argument has been discussed extensively in the dissertation. The following section suggests some practical changes, which need to take place to mitigate the potential for the eruption of political violence and to increase the integration between Jews and Arabs in Israel. Regardless of Israel's attempts to curtail the rights of the minority or to manipulate the demographic ratio between Jews and Arab in Israel, the reality is such that eventually Israel will have to come to terms with the nature of the state, both in terms

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[811] Joseph Algazy, "MKs by Right, not by Privilege."

of its national definition as Jewish as well as the lack of separation of religion and state, which threatens to divide the Jewish community along religious lines. When that day comes, the nature of the national discourse between Jews and Arabs will largely depend on actions taken now, when the Arabs are still a minority, albeit a distinctive and growing one. In this respect the government should focus its action in the following areas:

Education – during the 1990s the Ministry of Education adopted a peace education program in the Israeli school system, which resulted in an improvement in the perceptions held by students about the "other".[812] This program was subsequently abandoned however the investment in the education system may prove to be, in the long run, most fruitful. More importantly, increased allocation of resources to Arab education should be considered as an affirmative action to elevate the status of the Arab youth so that they may have better opportunities to integrate with the Jewish population at a later stage of their lives. The educated members of the minorities tend to be the more affluent and in addition, often live in integrated cities where they interact with their Jewish counterparts. The subjugation of the Arab education system to the Zionist curriculum presents an injustice to their national heritage, the history of their people and their culture. The Israeli education system should recognize the uniqueness of this community. This does not entail political or even educational autonomy but rather an understanding of the needs of the community. Just as religious communities in Israel are granted their own schools, incorporating Jewish

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[812] Ahsiya Posner, "Teaching Peace While Living War: Obstacles to Effective Peace Education by Non-Governmental Organizations. The case of Israel/Palestine (2000--2004)" (PhD Diss., Fletcher School, 2006).

religious teachings to serve the needs of the orthodox community, similar sensitivities are appropriate for the Arab educational system. Furthermore, effective Arab teachers should be highly compensated in an act of affirmative action, to attract the most qualified candidates for the Arab educational system. Integrated schools, which now exist on a private level in Jerusalem, Haifa and Neve-Shalom/Wahat al-Salam should be further developed.[813] The integrated school system, while presenting teachers, students and parents with great challenges, has, for the most part, been a success story. In fact Neve-Shalom has a long waiting-list of families wanting to join the community. The same is experienced by other integrated schools. This indicates that there is a growing demand for co-existence projects such as Neve-Shalom in which both Jews and Arabs learns together, both languages are spoken and the history and culture of both peoples are taught. If Israel ever hopes to successfully integrate its minority population and convince them of the necessity for a Jewish safe-haven, the Arabs must be made partners in this endeavor, not made to sustain its price. The reform in the education system may be the first step in this new future.

The removal of limitations on legitimate political dissent and participation – There needs to be a distinction made between legitimate political protest and illegitimate political protest. The demonstrations of the Arabs in Israel following the eruption of al-Aqsa intifada in 2000 should not have been met with such violent reaction and over-reaction by the Israeli security forces. Moreover, the changes made to the legal system, which serve to limit the boundaries of political protest and the

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[813] Neve Shalom (in Hebrew)/ What al-Salam (in Arabic), "Oasis for Peace" is the only town in Israel in which a bi-lingual community was established with an equal number of Jewish and Arab families, an integrated school, teaching both in Hebrew and in Arabic and equal representation of members of the community in all the communal bodies, including two principals for the schools, one Arab and one Jewish.

ability to challenge the system, have been disproportionate and illegitimate. The Israeli system, prior to 2000 could sustain such protest from its non-Jewish citizens challenging the idea of a Jewish state and its policies in the occupied territories. Illegalizing such protest is unnecessary and dangerous as it challenges the fabric of the democratic system. The market of ideas should be allowed to decide whether such ideologies resonate with the majority. One cannot equate the call for racism and Nazism, which is illegitimate and may be outlaws, with the call for a state for all its citizens. The latter is a legitimate political objective, if upsetting to many Jews. By outlawing political protest the system is undermining its own credibility as a democratic one, thereby violating its own Basic Law which does not allow for parties to challenge the democratic nature of the state. The minority should be allowed to promote their rights and interests and articulate protest within the confinement of the rule of law. There is quite a difference between the call of an intifada against the state and a call for a constitution, which would define the state as a state for all its people. By not making any distinctions between the two, the government loses credibility and international legitimacy in its attempt to fight against leaders such as Sheikh Salah and accord the more extremist factions with legitimacy for their protests within their own constituency. The President of the Supreme Court, Aharon Barak argued that democracy in action represents a fragile balance between majority rule and the need to protect basic norms such as human rights. The protection of the majority cannot justify the limitations introduced since 2000 and discussed in this dissertation, especially in the areas of elections and political protest, as those do not establish a threat to the well-being of the majority, but rather challenge its hegemony over

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Israel's institutions. This challenge is part of the democratic process, which is not based on the tyranny of the majority and provides for legitimate and effective avenues through which the minority may seek to advance its political objectives.

Recognition of community rights – Gad Barzilai find the answers to the majority-minority relations in Israel in the recognition of communal rights of the Arabs in Israel. He argues that individual equality may not suffice since collective equality is also required. The lack of recognition of Palestinian minority as a national minority with collective rights undermines the fabric of the democratic society and its institutions. The individual citizen may not enjoy full equality if his or her ethnic group does not enjoy equality as well. Despite this necessity, it is unrealistic, at this stage, to demand that Jews recognize the Arab community as a national ethnic minority since the very existence of this minority threatens the future of the state as "Jewish". Despite this fear, Jews and Arabs will inevitable have to come together in the near or far future to resolve this communal dispute about the nature of the state. The Israeli government would be advised to understand that in the long run, some recognition of collective rights will have to take place. In the short term, as has been suggested here, more recognition of the collective history of the Arab minority should be incorporated into school curriculum. Moreover, the establishment of cultural institutions, dedicated to the advancement and celebration of the Arab culture should be allowed to emerge. The allocation of land should reflect the growing Arab population and allow for the expansion of Arab localities. All these practices do not threaten the hegemony of the Jewish culture while go a long way in providing symbolic recognition of the Arab community as part of the Israeli collective.

Long-term strategy for the economic development of Arab localities – serious investments need to be made in the Arab localities, which have been neglected by the government since 1948. This includes - but not limited to - investment in facilities, roads, structural buildings, government services, public transportation, development of local industries, schools and community centers. Only recently, as mentioned herein above, has the Israeli legislator approved the establishment of the first Arab town since 1948. These processes should be encouraged and developed even further, to create an increasing number of integrated cities and towns in which all members of the society are welcomed. The Land administration, which was ordered by the Supreme Court not to discriminate between Jews and Arabs in land allocation, following the Ka'adan case, must enforce these principles on these selection committees, which operate in towns with less than 500 households. The justification for these committees in creating "social cohesion" in small localities, cannot be used as pretence for discrimination.

Effectively combating terrorism – Boaz Ganor, a leading counter-terrorism expert has written extensively about effective measures in combating terrorism.[814] Ganor explains that the dilemma democracies face in fighting terrorism is enhanced by their need to maintain "open societies", in which human rights and civil liberties exist, while combating attacks against its citizens. The exploitation of these open societies by terrorists and the need to engage in covert action often challenges the democratic nature of the state. According to Ganor's thesis, effectively combating terrorism requires not only effective offensive military action but also counter

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[814] Boaz Ganor, The Counter-Terrorism Puzzle: A Guide for Decision Makers, (Herzeliya: The Interdisciplinary Center For Herzeliya Projects, 2005).

motivation measures which include education, economic development, changing the "heart and minds" of the population which supports terrorism (as opposed to changing the heart and minds of the terrorists themselves which is futile), and most importantly, adherence to human rights. This latter point can be done for example not by preventing the security officials from conducting their operations, but in cases where no evidence is found against suspects, they must immediately be released and compensated by the state for any damage incurred as a result of the operation. Furthermore, the principles of proportionality and necessity must be maintained at all times to prevent large, sweeping actions, which result in tremendous damage to the targeted population and often yield very little results. Ganor creates a terror level line – groups, which are under the terror line, are regarded as not currently exhibiting motivation for organized terrorism. However, Dr. Ganor had acknowledged that the legal policies of the Israeli government might raise the level of motivation among the Palestinian minority. The rise in the level of motivation, to cross over the terror line, coupled with operational capabilities, may lead the Palestinian Israelis to execute organized terrorism against the state.[815] Ganor further notes that legal policies in this regard are extremely important and crucial, especially relating to groups that have not crossed the terror line, as is the case with the Palestinian minority in Israel. He further notes that historically, Palestinian terrorists have not recruited Palestinian Israelis because they saw this as counter-productive to their goal since the political objective of the Palestinian Israelis was to transform Israel into a state "of all its citizens." This has not been the objective of many of the Palestinian insurgents, particularly Hamas

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[815] Interview with Ronnie Olesker, conducted in Herzeliya, June 2005.

and Islamic Jihad that, until recently, called for a one state solution. Ganor further confirms that Israel's policies in combating the perceived threat may increase the motivation of the Arab minority to cross the terrorism line as they come to realize that they will never achieve equality in the Jewish state. By cooperating with the Palestinians, the Arabs in Israel can achieve operational capabilities while Israel's policies provide for the motivation needed. Thus, as has been presented in this study, the Israeli policies are extremely dangerous and counter-productive in establishing security and decreasing the threat posed by the Palestinian minority. This understanding must be incorporated into the counter-terrorism strategy of the state to more effectively combat the existing threat, rather than imagined ones.

Missed Opportunities – the Israeli government, in its pursuit of a negotiated peace agreement with the Palestinians, has neglected to tap into one of its most important human resources – its Palestinian minority. The ambiguous position of the Palestinians in Israel, described here as not quite Palestinian and not quite Israeli, may serve greatly in the negotiation process. This population can effective serve both parties, bridging the gap between the two adversaries. The Palestinian Israelis have a unique opportunity to provide for the perspective of the "other". They relate to both cultures, speak both languages, and it is in their best interest to achieve a successful resolution of the conflict. Thus, they would be highly motivated in participating in this process. To use prospect theory, the expected utility of their participation in the negotiation process is high. Despite these apparent advantages, the Palestinians of Israel were not present at the negotiation table and were not invited to participate in the process. This, in the long run, may serve to be very detrimental. Much has been

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written about that peace process, issues of culture, history, symbols and language are extremely important in resolving such protracted conflicts as the one between Israel and the Palestinians. The Israeli government would be wise to include those who can most easily bridge the gaps on such matters both substantively and procedurally. The government's inhibition to tap into this unused resource to achieve its interests with regard to the conflict is an enormous missed opportunity and should be reconsidered given the potential advantages.

The fact that Arabs indicate that despite their inferior status they wish to remain citizens of the state should not be viewed by the government as an opportunistic posture but rather as a building block for further integration. By viewing the Palestinian minority by default, as a threat, the security community in Israel is not only doing a great disservice to the minority, but it is also anchoring its national security assessment on perception rather than fact, thereby creating the very reality it fears the most.

9.5.2. Policy Recommendations for Palestinian Minority Leadership

While suffering from systemic discrimination, the political leadership of the Palestinian minority has been largely ineffective in recent years in convincing even the dovish Jewish segments of the population to support their objectives and cooperate together in an effort to redefine the majority-minority relations in the state and curtail the grave infringements of the minority's rights since 2000.

The Arab leadership in Israel has adopted ineffective strategies. It has largely focused on the Israeli-Palestinian conflict, often advocating on behalf of the Palestinians in the occupied territories, rather than those within Israel. This policy has

served to further alienate the Jewish population who sees the Arab leadership as co-conspirators or co-instigators in the Palestinian uprising. This in turn serves to enhance the suspicion and the perception of threat, which, as established by this study, is at the root of the policies adopted against the minority. Moreover, the low turnout in the 2003 election resulted in the establishment of a far-right government which does not serve the political objectives of the Arab constituency both with regard to the external conflict with the Palestinians as well as domestically. Furthermore, the rise in popularity of the Northern faction of the Islamic movement (which does not participate in general elections) and the move towards isolationalism within the Arab community serve again to enhance the alienation felt by the Jewish community and the justification of the adoption of discriminatory policies. The use of violent rhetoric, both by the Arab MKs as well as by the Islamic Movement increase the level of perception of threat felt by the Jewish establishment. Most recently, Sheikh Ra'ad Salah called for an "intifada" to save al-Aqsa mosque in protest over Israel's dig near the Mugrabi Gate leading to the Temple Mount which is meant to precede the replacement of a temporary bridge leading to the al-Aqsa mosque which was deemed unsafe by Israeli officials. The dig sparked waves of protests, from Palestinians in East Jerusalem to Muslims in Kashmir, and Sheikh Salah's comments were made during a demonstration against what he argues is Israel's attempt to build a Temple on the Temple Mount "while drenched in Arab blood."[816] In response to these and other like-minded statements, Public Security Minister, Avi Dichter asked the Attorney General to investigate whether Salah's comments constituted incitement

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[816] Jonathan Lis, "Salah Calls for Intifada Against Temple Mount Construction," Haaretz, February 16, 2007.

or sedition. Meanwhile MKs from the right issued statements against Salah calling him a "ticking bomb under the fabric of relations between Israeli Arabs and the State of Israel."[817] Members of 'Israel is Our Home' party called on the Attorney General to arrest Salah and indict him and once he has served his sentence to revoke his citizenship and expel him from Israel.[818]

These are familiar statements that have been used in prior cases against the Islamic movements and other Arab representatives. However, the use of such violent and provocative rhetoric by Salah and other members of the Islamic Movement and in some cases, the Arab MKs, serves only to affirm the perceptions held by the Jewish establishment that the Arab citizens of Israel are in fact disloyal and their objective is the destruction of the Jewish state. This has been refuted by numerous surveys and studies presented herein, however the rhetoric and inflammatory disposition of these representatives serve to enhance the problem, not mitigate it. While political protest and dissent are an integral part of the democratic system, these representatives are doing little to advance the political objectives of their constituency. These strategies are geared towards the provocation of the Israeli government but result in little utility for the Palestinian minority in Israel, and thus are unproductive. If the political objective is not secession, as is argued by the Islamic Movement and all the Arab leadership, it is unclear how such calls for an intifada against Israel can be justified within the realms of the legitimate political debate, on the legal level, and productive in achieving the political goals of the minority, on a practical level.

The Arab leadership is not a holistic unit and cannot be analyzed as such. The

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[817] Ibid.
[818] Ibid.

various parties have different political objectives but all include the demand for full equality of the Palestinian citizens of Israel. In an attempt to achieve this political objectives the following recommendations should be considered by the Arab leadership:

Integration not Isolation – during the 1990s the Arab leadership embraced the Zionist parties as a venue through which political objectives could be achieved. Indeed, some positive steps were made to improve the status of the Arab citizens of Israel during the Rabin government, which unfortunately only lasted three years due to the assassination of Yitzhak Rabin in 1995. Nevertheless, that experience has demonstrated that there are several avenues for political cooperation between Jews and Arabs in Israel. The representation of Arabs in Zionist parties like Likud and Labor is an important step, however even sectarian Arab parties like NDA can hope to achieve more cooperation with their Jewish counterparts by changing their rhetoric and disengaging from inflammatory actions such as participation in rallies organized by Hizbollah in Lebanon. Little political capital is achieved by these actions while costs, as demonstrated here, are grave.

Clear separation between equality and ideology - The articulation of Arab demands must focus on a clear separation between the demand for equal rights and the more general question regarding the character of the state. Public polling conducted by Sammy Smooha and discussed in this study suggest that Arabs do not, for the most part, object to the definition of the state as Jewish, nor do they object to its existence as a Jewish homeland. The practical manifestation of this definition however, which results in marginalization of the minority from power sharing

positions as well as the disparity in the allocation of resources and in the treatment of Arabs by the government, is the source of the grievances. In focusing on the debate over the character of the state, Arabs are losing on both ends of the stick. The Jewish establishment, indeed academics and activists alike, have a hard time coming to the table when the question of whether Israel should remain Jewish by definition is presented as the starting point of the discussion. Nothing demonstrates this more than the recently failed attempt of 20 Jewish and Arab intellectuals to come together (under the auspices of the IDI) and develop a social compact, which would define the majority-minority relations in Israel. The protocols of this group were recently published. This was a unique enterprise in which participants shed off their public personas and spoke from their personal perspective and identity. They expressed their national identity, their civic participation and the expectations from their counterparts in the debate. The book, "Whose country?"[819] depicts the trenches through which this group struggled in an attempt to find common ground, to find a definition that all could agree on regarding the parameters of citizenship in Israel and attempted to bridge the internal tension in the definition of the state as both Jewish and democratic. The group discussed the various proposals for legal and constitutional changes which would respond to the expectations of the Arab minority regarding its status on the one hand, and its acceptance of obligations such as civil service (instead of military service) on the other. The group met between January 1999 and January 2001 but was unable to reach a consensus. The events of October 2000 did not surprise the group members and served to illustrate the basic disparity between Jews and Arabs in Israel,

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[819] Uzi Benziman, ed. Whose Country (Jerusalem: Israeli Institute for Democracy, 2007).[Hebrew].

which ultimately prevented them, despite the intellectual effort, from reaching an agreement. Reading through these protocols it becomes clear that one of the road-blocks for progress was the inability of the group to agree on framework. While the Jews were sympathetic to the Arabs and their plight, they would not agree to discuss the proposal to change the constitutional definition of the state to a "state of all its citizens" because of the implications this meant for the Zionist endeavor in establishing a Jewish homeland. This change, they argued, would undermine the entire Zionist movement's achievements and in the future may result in a case in which the Jews find themselves defenseless. The Arabs on the other hand, felt that the very framework of Jewish democracy secures their status as second class citizens, irrespective of the specific policies adopted. Thus unable to move beyond this framework, the group failed to achieve consensus on other matters. Herein lies the irony. While members of the group expressed similar sentiments regarding the actual policies adopted by the state, and while all agreed that change is needed and that the alienation of the minority as well as its consistent discrimination is unacceptable. It would not have been, under these circumstances, difficult for the group to reach some agreements on important substantive issues such as land allocation, civil service for Arabs, equal treatment by the police and security authorities and so forth. Instead, the group found itself, as does the nation as a whole, entangled in a debate regarding frameworks rather than practical application of the law. While the question of whether Arabs may hope to ultimately achieve full equality in a state defined by its Jewish character is an important one, it should not be used as a means to prevent, in the immediate term, the critical examination of the application of law within the

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existing constitutional framework of Jewish-democracy. In the struggle for equality, the efforts of the Arab minority should be placed in areas which may yield the most utility such as a focus on demands to include the minority in power sharing positions, equal allocation of land and resources, and investment in Arab localities and education. At this first stage, through the focus on issues that may yield great consensus, a trust building process will develop in which Arabs and Jews work together in an attempt to better their societies. Perhaps at a later stage, once trust has been built and perceptions have changed, the Israeli society, as a whole will move forward to develop a new compact in the form of a constitution, which is gravely needed.

Autonomy - Some Arabs, especially the Islamic movement (both the moderate and more radical factions) as well as intellectuals, call for the awarding institutional autonomy, including elected representatives institutions, which would distinguish the Palestinian Israelis as an ethnic minority, on the basis of the 1992 UN Declaration of the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities (a law proposing these elements was proposed by MK Azmi Bishara of NDA in 2001). This is viewed by the Jewish establishment as the first step toward secession and a call for self-determination. The growth in this isolationist approach poses a direct threat to the Israeli state, which faces another conflict involving self-determination, thus viewing these calls for autonomy with great suspicion. This is enhanced by the fact that the Arabs in Israel in numerous occasions have stated that they would not emigrate to the Palestinian state and become Palestinian citizens if and when that state is established. This translates to an ambiguous state in which the

Arabs in Israel would like to remain under the auspices of the Israeli state for economic reasons but for all intent and purposes maintain their own state within-a-state. This approach is also destructive since it feeds into the cycle presented here in figure 9.1 in which the growing isolationalism of the Arabs results in an increase in the level of suspicion and threat felt by the Jews. This results in a growing acceptance for the need to marginalize the Arab and place limits and restrictions on their political activities, which in turn creates a fertile ground for the eruption of violence. The sense of citizenship, the intimate kinship between state and individual, must also be sustained by the minority. Calls for autonomy indicate to the Jewish establishment that the Arab minority does not in fact want to participate in this intimate relationship, thereby justifying such calls as Lieberman's transfer proposals or the further discrimination of the minority which cannot be regarded as equal citizens since they do not display "loyalty" to the state. The establishment of autonomy would not mitigate the grievances, which serve to provide the conditions for political violence but rather enhance them. The Arab leadership would thus be advised to adopt policies of integration, rather than isolation. Moreover, calls for autonomy would justify the refusal to allocate further resources to the Arab towns since the state may reasonable argue that these autonomous regions must be self-sufficient, leaving the Arabs bare on both ends. They will not achieve the equality they strive for and will also not enjoy the economic benefits of living in the most developed country in the region.

9.6. <u>Further Research</u>

This study is only the very beginning of the effort to ascertain the implications of legal discrimination of minorities on their support or non-support for political

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violence when making decisions under risk. In order to make any of the findings more widely generalizable, additional research must be conducted in the following areas:

The first aim must be to create a larger data set on which more extensive quantitative analysis can be performed. The literature to date in this area is very anecdotal and although this study goes beyond the purely anecdotal by looking at both the individual and structural setting of this case study, additional empirical data needs to be collected on how groups, especially minorities, make decisions when operating in these settings. A larger data set would allow researchers to make more general observations. Furthermore, a comparison between various minority groups operating under similar conditions (intermediate level of democracy, external conflict, and exclusion policies of the host nation) would be most illuminating in detecting similar trends and attitudes across national boundaries. The empirical application of prospect theory to this case study or other similar case studies involving minorities would both expand the understanding of this particular case as well as the understanding of group decision making processes.

Prospect theory has several weaknesses, namely a lack of a framing theory discussed elsewhere in this study. Thus, there is a need for the development of a model accounting for how people frame options. Moreover, a development of a model to account for cases involving dynamic interaction between individuals or group conflict would greatly enhance the validity of the theory and its applicability to group behavior.

There is little or no attention paid to emotion in the prospect theory model,

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however, as demonstrated here with the incorporation of RDT to establish the prospect for violence model, emotions, feelings of injustice and unfairness play a key role in the decision making process, especially when operating under risk. Thus, a prospect theory model should be developed to incorporate this aspect of human behavior to better articulate the calculations of utility. Factors such as memory may play a crucial role in the decision making process of individuals as well as groups, and further work should be conducted to explore how anticipation of emotion (for example how the disappointing a constituency or being held accountable for the decisions) might influence the decision making processes. Finally, further research should be conducted regarding the definition of a reference point, particularly how to separate reference point as status quo from reference points defined by terms of expectations, aspiration or social comparison as in this case study. Emotions play a role in this aspect as well. When an individual receives a raise that is objectively good, he or she may still feel frustrated if everyone else in the office received a larger one.[820] While we understand that expectation, aspirations and social comparison may affect the definition of the reference point, as demonstrated here, we have yet to develop a comprehensive model which would clearly present the circumstances under which these factors will affect the reference point, and when the reference point will be the status quo.

Second, while excluded from this study, an examination of the larger context of the rise in global Islam could provide additional insights into this case study. The rise in the support for the northern faction of the Islamic Movement and the apparent

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[820] Kahneman and Tversky, *Choices, Values and Frames*.

radicalization of the Arab leadership in Israel may be tied to the global setting of the post-9/11 paradigm. The link between the domestic and international paradigms is largely missing from the literature on the status of the Palestinians in Israel and could be an important avenue of investigation.

Finally, the application of prospect theory to the failed peace negotiations between the Israelis and the Palestinian in Camp David 2000 is another interesting avenue of research, which may shed some additional light on the reasons for the failure of process. While the expected utility of a successful negotiation for both Ehud Barak and Yasir Arafat could have been great, the two nevertheless failed to maximize that utility by reaching an agreement. By understanding the negotiation process between these two leaders as a process of decision making under risk – prospect theory may provide additional understandings not yet revealed in the literature for the failure of the process and the decision of Yassir Arafat to reject what has been dubbed as a "historic offer" and decide to adopt a risk seeking behavior with the renewal of the violence in the form of the al-Aqsa intifada. An analysis using prospect theory to explain this decision making process would provide a new perspective grounded in empirical data as well as a combination of the psychological-individual level of analysis with the examination of the environment in which the individual is making the decision. If Yassir Arafat was entering the negotiation feeling that he was operating in a loss domain, this can serve to better explain his actions before, during, and following that process.

9.7. Contribution of Research to the Field
This dissertation further contributes to the literature in three aspects. First, it

applies prospect theory to a case study, which never employed the use of this theory, thereby developing its application and providing new insight into how the minority makes decisions under risk in Israel. Second, while relying on secondary sources, this dissertation comprehensively combines the various studies, surveys of all law introduced since 2000, research papers, statements of public officials and news articles relating to the rise in the legal discrimination of Palestinian Israelis since the eruption of al-Aqsa intifada. There have been several studies on this matter, namely the Justice for All study conducted by Gideon Fishman and Arye Rattner regarding the discrimination of Arabs in the criminal justice system, and the annual report of Mada, surveying all legislation relating to Palestinians in Israel. This study however, combines and surveys the literature, as well as public statements of officials, court decisions and data sets from various public opinion polls and the democracy index produced by the IDI to provide a comprehensive picture regarding the *change* in the status of the Palestinians in Israel since 2000. This study also correlates the change to the breakout of al-Aqsa intifada with an extensive analysis of the October events and their aftermath vis-à-vis the Jewish-Arab relations in Israel, arguing that these events served as a watershed in that relationship. Finally, through the use of prospect theory, combining the psychological individual level of analysis with the macro-structural one, the study provides a comprehensive examination of both the status of the Palestinian minority as one suffering from discrimination, and the implication of that discrimination to the stability of the system. The combination of these level of analysis follow the conclusion that the traditional schools of thought in the literature are insufficient in explaining the changes observed in the legal status of the minority

in Israel.

Social and political science researchers not only emphasize the implications of their empirical or qualitative work for reform and perhaps social movement, they view their academic work itself as political action in the sense that it is a narrative told from subject position, with certain political perceptivity. This is not to suggest that one collapses the academic work into one's politics, abandoning objectivity and distance. Indeed, a hallmark of critical analysis is in the ability to make distinctions between objectivity and subjectivity, the 'real" and the desirable, thus ensuring that the study will remain rigorous, unsentimental, and hence persuasive. And yet one of the objectives of this study has been to raise the readers' political consciousness by demonstrating how discrimination operates, its possible consequences and how it can be resisted and overcome from within the system. The point of such research is not to earn tenure, build careers or accumulate academic prestige but rather to have political impact. As the title of the dissertation suggest, its concern is with values. Values; not as an issue excluded from the discourse of academic research, but rather as a shaping factor of individual actors' behavior, a characterizing factor of systems, and a guiding instrument for the discourse between the two.

While positivists may criticize this work by saying that facts and values must strictly be separated lest one lose perspective and confuse analysis with advocacy, it is argued here that "all knowledge is perspectival and flows from certain metaphysical, epistemological, and political commitments."[821]

One cannot legitimately argue to be free of values, even though one must

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[821] Ben Agger, Critical Social Theories: An Introduction (Boulder, CO: Westview Press, 1998), 179.

rigorously distinguish between what "is" and what "should" be. This distinction has been followed throughout the dissertation. But one cannot simultaneously intend and attempt objectivity – analysis and critique of the world as it is – and at the same time suggest that the world "as it is" is flawed and can be changed. The study attempted to be *dialectical* not utopian. It concentrates on analysis and critique, not the drafting of blueprints of how people should act.

Perhaps, when the value of security no longer supercedes the security of values, all in Israel, may find a homeland.

Appendices

Appendix A: Selected Legislation

The Citizenship and Entry into Israel Law (temporary provision) 5763 - 2003

(Unofficial Translation)

Definitions
1. In this law -"area" - any one of the following: Judea and Samaria, and the Gaza Strip;
"Citizenship Law" - The Citizenship Law, 5712 - 1952;
"Entry into Israel Law" - Entry into Israel Law, 5712 - 1952;
"Area Commander" - the commander of the Israel Defense Forces in the area;
"inhabitant of an area" - including anyone residing in the area, even though he is not registered in the population register of the area, and excluding the inhabitant of an Israeli settlement in the area.

Limitation of citizenship and stay in Israel
2. During the period in which this law shall remain in force, despite what is said in any legal provision, including article 7 of the Citizenship Law, the Minister of the Interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him a license to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant, a permit to stay in Israel, on the basis with the security legislation in the area.

Reservations
3. Despite the instructions of article 2 -

(1) The Minister of the Interior, or the Area Commander, as the case may be, is entitled to grant an inhabitant of an area a license to reside in Israel, or a permit to stay in Israel, for a fixed period, for the purpose of work, or in order to receive medical treatment, and also for some other temporary purpose - for a cumulative period of no more than six months, as well as a license to reside in Israel, or a permit to stay in Israel in order to prevent the separation of a child, aged up to 12, from its parent who is staying in Israel legally;

(2) The Minister of the Interior is entitled to grant citizenship, or provide a license to reside in Israel, to an inhabitant of an area, if he is convinced that he identifies with the State of Israel and its goals, and that he or a member of his family performed a significant act to promote the security, economy or some other important matter of the State, or that the granting of citizenship or provision of the license to reside in Israel, are of special interest to the State; In this paragraph, "member of family" - spouse, parent, child.

Transition regulations
4.Despite the instructions of this law -

(1)The Minister of the Interior or the Area Commander, as the case may be, is entitled to prolong the validity of a license to reside in Israel, or of a permit to stay in Israel, that were in the possession of the inhabitant of an area, on the eve of this law going into force;

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(2)The Area Commander is entitled to grant a permit for a temporary stay in Israel to an inhabitant of an area, who applied for citizenship, in accordance with the Citizenship Law, or made a request for a license to reside in Israel, in accordance with the Entry into Israel Law, before Sunday, Sivan 1, 5862 (May 12, 2002), and in whose case a decision was not yet taken on the day that this law went into force, as long as the said inhabitant shall not be granted, on the basis of the instructions of this paragraph, citizenship in accordance with the Citizenship Law, and shall not be given a license to stay temporarily, or to stay permanently, in accordance with the Entry into Israel Law.

Validity
5. This law shall remain in force until the end of a year from the day on which it is published, but the Government is entitled, with the approval of the Knesset, to prolong its validity by order, from time to time, for a period that shall not exceed one year on each occasion

LAW OF RETURN, 5710-1950*

1. Every Jew has the right to come to this country as an *oleh*[1].

2.(a) *Aliyah* shall be by *oleh's* visa.
(b) An *oleh's* visa shall be granted to every Jew who has expressed his desire to settle in Israel, unless the Minister of Immigration is satisfied that the applicant
(1) is engaged in an activity directed against the Jewish people; or (2) is likely to endanger public health or the security of the State.

3. (a) A Jew who has come to Israel and subsequent to his arrival has express his desire to settle in Israel may, while still in Israel, receive an *oleh's* certificate.

 (b) The restrictions specified in section 2(b) shall apply also to the grant an *oleh's* certificate, but a person shall not be regarded as endangering public health on account of an illness contracted after his arrival in Israel.

4. Every Jew who has immigrated into this country before the coming into force of this Law, and every Jew who was born in this country, whether before or after the coming into force of this Law, shall be deemed to be a person, who has come to this country as an *'oleh* under this Law.

5. The Minister of Immigration is charged with the implementation of this Law and may make regulations as to any matter relating to such implementation and also as to the grant of *oleh's* visas and *oleh's* certificates to minors up to age of 18 years.

* Passed by the Knesset on the 20th Tammuz, 5710 (5th July, 1950) and published in *Sefer Ha-Chukkim* No. 51 of the 21st Tammuz, 5710 (5th July, 1950), p. 159; the Bill and an Explanatory Note were published in *Hatza'ot Chok* No. 48 of the 12th Tammuz, 5710 (27th June, 1950), p. 189.

[1] Translator's Note: *aliya* means immigration of Jews, and *oleh* (plural: *olim*) means a Jew immigrating, into Israel.

LAW OF RETURN (AMENDMENT NO. 2) LAW, 5730—1970*

Addition of
sections **4A** and **4B**.

1. In the Law of Return, 5710-1950(1), the following sections shall be inserted after section 4:

4A.
(a) The rights of a Jew under this Law and the rights of an *oleh* under the Nationality Law, 5712-1952(2), as well as the rights of an *oleh* under any other enactment, are also vested in a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.
(b) It shall be immaterial whether or not a Jew by whose right a right under subsection (a) is claimed is still alive and whether or not he has immigrated to Israel.
(c) The restrictions and conditions prescribed in respect of a Jew or an *oleh* by or under this Law or by the enactments referred to in subsection (a) shall also apply to a person who claims a right under subsection (a).
4B. For the purposes of this Law, "Jew" means a person who was bom of a Jewish mother or has become converted to Judaism and who is not a member of another religion."

Amendment of
section **5**.
2. In section 5 of the Law of Return, 5710-1950, the following shall be added at the end:
"Regulations for the purposes of sections 4A and 4B require the approval of the Constitution, Legislation and Juridical Committee of the Knesset.".

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Appendix B: Survey Questionnaire

INTERVIEW PURPOSE: The purpose of the following questionnaire is to gather information regarding the implications of change in the Israeli legal system regarding the rights of Palestinian Israelis.

The following is an **anonymous survey**. At no point will your identity be revealed by the interviewer or by anyone else. You are not required to report your name.

You are asked for your demographic data (gender, level of education, occupation, average income and religious affiliation for statistical use only. You may fill in whichever information you feel comfortable. The demographic data assists the interviewer in analyzing the data. **It is not use for identification purposes**.

PRINCIPAL INTERVIEWER: Ronnie Olesker
PhD Candidate, The Fletcher School, Tufts University
160 Packard Ave.
Medford, MA 02155

1. Demography

Gender: _____

Education: (Number of Years) _____

Average Income: _____

Religious Affiliation: _____

2. Identity

1. How would you describe your national background? (Arab, Palestinian Arab, Arab Israeli, Palestinian Israeli, Arab Muslim, Arab Christian, Israeli, other)

2. What factors would place another person in your identity group (ex: religion, language)?

3. What factors would exclude a person from you identity group?

3. Identifying Goals, Status and Losses Frame

4. What group do you support? (Raam-Taal, Balad, Hadash, Islamic Movement, Hamas, Fatah, PFLP)

5. What are the goals of the group you support?

6. Does your group include equality and/or end to discrimination as one of its goals

7. Has your legal status changed since October 2000?

8. Do you feel you are more or less equal than you were prior to October 2000?

9. Considering the past situation (pre-Oslo Peace Process) were you closer to or farther away from achieving equal status than you had been during Oslo peace process (1993-2000)?

10. Considering the past situation (during Oslo Peace Process 1993-2000) were you more or less close to achieving equality than you are now (June 2006)?

11. Considering the past situation (during the Oslo Peace Process) did you feel more or less able to express dissent than you do now (June 2006)?

12. Has the eruption of Al Aqsa Intifada had a positive, negative or no impact on the attainment of equality for your group?

4. Levels of Support

13. Do you support violent struggle as an appropriate tactic to achieve your group's goals? (Why? Or why not?)

14. Considering the past situation (during the Oslo Peace Process) were you more or less likely to support violent struggle to achieve equality?

   Supporters

15. Do you consider support or use of violent struggle as an effective tactic to achieve your group's goals?

16. Does you perception of the risks involved with armed conflict affect your decision to support its use to achieve your groups goals?

17. Do you consider support or use of violent struggle to be a violation of the law?

18. Do you feel there is a high risk of being arrested, injured, or killed if one supports violent struggle?

19. Do you feel the violent struggle would lead to more equality for your group?

20. How risky do you think it is to support an violent struggle?

21. In your opinion would your legal status improve, remain the same, or get worse if you supported violent struggle?

22. Does the likelihood that you get harassed, arrested, or killed if you support an violent struggle influence your decision to support it?

Non-supporters

23. What type of activities do you engage in or support for achieving the goals of your group?

24. In your opinion, is the armed conflict alternative a high or low risk alternative for achieving equality for your group?

25. Does armed conflict have a positive or negative impact on the attainment of equality for your group?

26. Does you perception of the risks involved with violent struggle affect your decision to support its use to achieve your group's goals?

27. Do you feel your lack of support for the violent struggle negatively affects the accomplishment of your group's goals?

28. Would you consider it too risky to support the violent struggle? (why or why not?)

29. In your opinion, how best can you achieve your group's goal for equality?

30. Given the current status of your group, are you now less or more likely to support violent struggle to achieve equality than you were in 2000?

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