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The Limits of Israel's Democracy in the Shadow of Security

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Abstract

Since its establishment in May 1948, the State of Israel has been faced with a broad range of security threats, some of which have resulted in full-scale wars with its neighbors. The article examines the impact that continued preoccupation with national and personal security has had upon the Israeli political culture and, in particular, upon the extent of its commitment to democratic norms and values. In this context, the role which the Israeli Supreme Court has played in constraining the government's efforts to infringe upon core democratic rights (such as the right of free expression) is underscored as a key element which has guaranteed that, even under the shadow of continued Arab-Israeli conflict and its domestic repercussions, the Jewish state has remained largely committed to the democratic rules of the game.

The "Filter of Security": Historical Background

The beginning, in the early 1880s, of the first wave of Jewish immigration from Czarist Russia into Palestine, precipitated by violent attacks—or pogroms—against hundreds of Jewish communities across Russia, and the establishment of the first ten Jewish settlements during this decade (combined with the founding of seven additional settlements during the 1890s) was the initial impetus for the confrontation between the Jewish community and the Arab inhabitants of Palestine, ruled by the Ottoman Empire. By threatening to disrupt the preexisting ethnic, social, cultural, ideological, and religious status quo in Palestine, this early entry of Zionist Jews into the Holy Land during the final two decades of the nineteenth century (and successive large waves of Jewish immigration into Palestine early in the twentieth century) set the stage for the protracted and multifaceted Palestinian-Israeli conflict, which was later expanded beyond the territorial bounds of Palestine.

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For more than a full century after this change had started to unfold (and also after Israel had declared its independence on May 14, 1948, whereupon its neighboring states instantly invaded Israel), relations between Jews and Arabs in Palestine almost invariably continued to be permeated with tension and fraught with animosity and violence. Highly-charged matters of legitimacy and recognition (with the Arab world—except the Hashemite Kingdom of Jordan—remaining adamantly opposed, for almost three decades after Israel had become independent, to the existence of Israel as a legitimate sovereign state) were further compounded and reinforced following the conclusion of the 1948-1949 Arab-Israeli War by an equally emotion-laden and irreconcilable cluster of political, territorial, and security issues between Israel and its neighboring Arab states (at least during the years preceding the conclusion, in 1979, of the peace treaty between Israel and Egypt) and between Israel and the Palestinian-Arab community (both inside Israel and across the Arab world).

For all its complexity and durability, the conflict between Israel and its surrounding Arab states was incorporated—particularly after the formation, in 1964, of the Palestine Liberation Organization (PLO) and the beginning, in 1965, of its cross-border raids into Israel—into an even broader complex of highly controversial issues related to the Palestinian predicament and its appropriate resolution. The fact that 150,000 members of the Palestinian Arab community remained in territory under Israeli control at the end of the 1948-1949 War and were given Israeli citizenship (between 600,000-750,000 Palestinians who lived in Palestine during the British Mandate either fled or were forced to leave Palestine during and in the aftermath of the war) had far-reaching ramifications in terms of the changing dynamics of the democratic processes which were practiced by the Jewish state during the first fifty-eight years of its existence.[1]

In sum, for more than a century, the dispute between Jews and Arabs over Palestine (and later over Israel), and between most—albeit not all—of the Arab Middle East and the Jewish state, has been intense, bitter, and severe.

Against the backdrop of this unabating and emotion-laden conflict, whose core dimensions defied mitigation or resolution for more than a century, and with the Arab-Israeli landscape clouded by recurrent low-intensity violence and outbursts of full-scale hostilities between Israel and some, or all, of its neighbors (as in 1948-1949, 1956, 1967, and 1973), the question arises whether this continued preoccupation with immediate security concerns and threats bred a siege mentality in Israeli society and political culture which, in turn, caused an erosion of Israel's commitment to democratic values and

[1] Alan Dowty, *Israel/Palestine* (Cambridge, UK: Polity Press, 2005), 92-95, and Benny Morris, *The Birth of the Palestinian Refugee Problem, 1947-1949* (Cambridge, UK: Cambridge University Press, 2004), 286-296. See also Alan Dowty, *The Jewish State: A Century Later* (Berkeley, CA: University of California Press, 1998), 93-94.

principles.

In view of this pervasive and omnivorous "filter of security,"[2] which has continuously dominated Israeli society by precipitating a high state of tension and a high degree of social mobilization, the question which the following analysis will address is what has been the domestic civil cost of Israel's immersion in a protracted violent conflict.

Thus, although most analysts of Israeli society and the Israeli political system share the view that Harold Lasswell's 1941 model of the "garrison state," which is ruled by "specialists in violence" (and which is further characterized by the drastic expansion and centralization of the government, the withholding of information, the weakening of the political parties and the legislature, the loss of civil liberties, and the decline of the courts as limits on the government[3]), does not apply in toto to the Israeli case, that Israel can be legitimately defined as a vibrant and effective democracy (whose main attributes are proportional representation and the proliferation of political parties) should not obscure the innate and continued tension between the imperatives of security and the requirements and prerequisites of democracy.

Not only has the challenge of an external threat dominated many facets of Israeli life for decades, with military values penetrating a multitude of social activities "from economic planning to gender relations,"[4] but also the existence in Israel of an Arab minority (approximating 19 percent of the population when the Jewish state was established in May 1948) in an era of deep cleavages and profound animosity between the Jewish state and most of its Arab neighbors, further aggravated a situation already fraught with tension. These circumstances markedly exacerbated the Israeli dilemma of seeking to remain a viable and functioning democracy, while safeguarding the nation's legitimate security interests against a potential domestic threat inherent in the preexisting perception of Israeli Arabs as inextricably and intimately linked (by virtue of ethnic, religious, and cultural ties) to the vast and largely irreconcilable Arab world. In Peri's words:

> For the Arab citizens of Israel, the situation is much more complicated. The approximately one-fifth of the country's population who are Arabs would seem to be citizens of equal standing, but because they belong to the Arab nation (with which Israel is in a state of war), the matter is considerably more complex. For instance, because security defines the boundaries of the Israeli collectivity, contribution to that security is the key to one membership in the collective. The fact that Israeli Arabs do

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[2] Dowty, *The Jewish State*, 85-102.

[3] Harold D. Lasswell, "The Garrison State," *American Journal of Sociology* 46 (January 1941): 455-468.

[4] Dowty, *The Jewish State*, 93.

not serve in the army sociologically disenfranchises them from Israeli society. Moreover, this becomes an excuse for discrimination, despite the fact that the law requires equality without regard to creed, race, religion, or sex.[5]

Yet another layer of complexity in this picture of competing—and occasionally incompatible—considerations and priorities is embedded in the definition of Israel as a "Jewish" state from its very inception, which still has "clear implications for the proposition of civil equality for all Israelis, Jewish or non-Jewish."[6] Thus, while the Jewish state promised, in its Declaration of Independence of May 14, 1948, complete equality of social and political rights to *all* citizens, irrespective of religion, race, or sex, its declared mission as the national homeland of the Jewish people was manifested in a variety of laws (such as the 1950 Law of Return and the laws giving the World Zionist Organization and the Jewish Agency special status), the application of which was restricted to the Jewish community.

For all its significance in exposing some of the formal and material origins of "the Arab predicament" in Israel, which quintessentially reflect the Jewishness of the state, this cluster of factors will remain outside the scope of this analysis, which will be confined to the impact that security—rather than religious—premises and calculations had upon the actual dynamics of Israel's society and political system. It is to a more detailed exploration of this impact that we now turn.

National Security versus Collective Democratic Interests: A Groundbreaking Ruling

In trying to elucidate the actual dynamics of the continued effort initiated by the Israeli government, the Knesset (the Israeli parliament), and the courts to define or redefine the legitimate bounds and limits of the democratic game in Israel, the formal ground rules of the process should be addressed. A central component among the formal mechanisms which Israel inherited from the British Mandatory government and incorporated—with a few subsequent changes—into its *de facto* constitution, and which sought to delineate the parameters of the permissible and acceptable in Israeli democracy, was the body of emergency provisions comprising the Defense (Emergency) Regulations of 1945.

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[5] Yoram Peri, "The Arab-Israeli Conflict and Israeli Democracy," in *Israeli Democracy under Stress*, ed. Ehud Sprinzak and Larry Diamond (Boulder, CO: Lynne Rienner Publishers, 1993), 354.

[6] Dowty, *The Jewish State*, 187. See also, Asher Arian, *Politics in Israel: The Second Republic*, 2d ed. (Washington, DC: Congressional Quarterly Press, 2005), 7-18.

Although this comprehensive complex of 147 regulations was enacted by the British Mandate in a context which became completely outdated as soon as Israel had become, in May 1948, an independent state and was intended to provide the British high commissioner in Palestine with additional powers to suppress Jewish resistance to British rule, it has remained largely intact during subsequent decades, except on those occasions when the Knesset decided to replace a few of its provisions with new legislation.[7]

Transplanted from the prestatehood era of chronic domestic strife and continued skirmishes between no less than three Jewish fighting forces and the British authorities, to the considerably more stable domestic setting of Israeli sovereignty after 1948, this cluster of largely anachronistic emergency legislation (originally designed to provide the British authorities with additional and far-reaching measures for restoring public order against the backdrop of continued chaos and violence in Palestine) nevertheless became an integral part of the post-Mandate Israeli law, providing the Israeli government with "a formidable apparatus of emergency powers."[8]

And while most of the provisions incorporated into the Defense Regulations have never been invoked by the Israeli executive branch (and while a few provisions, such as those pertaining to the imposition of new restrictions on illegal Jewish immigration into Palestine, were cancelled by the Knesset), a few with a direct bearing on basic democratic values and principles were repeatedly invoked during Israel's first fifty-eight years of independence, invariably precipitating a public and legal debate concerning the appropriate balance between security considerations and democratic premises.

Specifically, the provisions which were repeatedly invoked were Defense Regulations 86-101, which deal with censorship; Defense Regulations 109-112, which address restriction, detention, and deportation; and Defense Regulation 125, which concerns closed areas. And while it is true that not all of these regulations were exclusively applied to Arab citizens of Israel, the context in which they were invoked was—by and large—inextricably related to the Arab-Israeli conflict or to its impact upon relations between Jews and Arabs in Israel.

In this respect, the absorption by the State of Israel of most of the Defense Regulations reflected in no small measure the enduring anxieties and tensions which the Arab-Israeli conundrum continued to produce and, more specifically, "the pervasive mistrust toward the Arab minority" which, according to Sammy Smooha, "is the main reason for the retention of the 1945 Defense Regulations."[9] As Smooha further points out,

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[7] 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 Yniv (Boulder, CO: Lynne Reinner, 1993), 115.

[8] Dowty, *The Jewish State*, 96.

[9] Smooha, "National Security and the Arab Minority," 115.

> ...the 1945 Defense Regulations provided the legal basis for the military rule over the Arab areas [of Israel].... They enable the authorities to issue military injunctions on a regular basis, and not necessarily during the conduct of war, to detain or restrict the movement of activists, to outlaw a publication or organization, or to declare areas as closed and lands as confiscated. These excessive powers are kept for making it easier to deter, police, and punish those among the Arab citizens of the state contemplating hostile acts. It is plausible to assume that these Draconian emergency regulations would have been repealed had the Arab minority not been perceived as a liability to national security....[10]

Turning now from the general characteristics and attributes of the 1945 Defense Regulations to those specific provisions whose implementation in the postcolonial context provided the impetus for the Israeli political, legal, and social systems to confront, head-on, some of the core issues related to the proper balance between security and democracy, the following analysis will focus on the attempts to invoke Defense Regulations 86-101, 109-112, and 125 as the lens through which the intrinsic nature, as well as dynamic boundaries, of Israeli democracy can be clearly identified and observed.

Defense Regulations 86-101

Among the provisions incorporated into the Defense Regulations, Censorship Regulations 86-101 have been most broadly applied. These regulations reaffirmed and expanded the 1933 Press Ordinance which gave the British high commissioner in Palestine the statutory power to suspend the publication of any newspaper for any period of time if the material published could jeopardize "the defense of Palestine, the public safety or public order."[11] Further, the 1945 Defense Regulations required the licensing of all media, as well as the advance submission—to the British authorities—of any military or security-related material for review. After the State of Israel had been established, the power to implement these censorship provisions, and thus to disallow the publication of any material which was defined as detrimental to the security of the state and to the safety of the public (and to suspend the publication of newspapers for censorship violations), was transferred from the British high commissioner in Palestine to the Israeli interior minister without even marginally modifying this Mandatory set of regulations.

The fact that the newly established state of Israel was confronted with grave and immediate internal and external security threats largely accounted

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[10] Ibid.

[11] Pnina Lahav, "The Press and National Security," in *National Security and Democracy*, 173-178. See also, Dowty, *The Jewish State*, 96.

for the preservation of the Mandatory censorship legislation, but, incredibly, the entire cluster of the Defense Regulations which dealt with censorship has remained an integral part of Israel's legal code from Israel's birth to the present, long after the initial threat to Israel's security and well-being had largely diminished and faded into the background in the aftermath of Israel's War of Independence.[12]

And while the dynamics and patterns by which this complex of provisions was actually interpreted and implemented by successive Israeli governments and officials reflected the changes which had taken place in Israel's domestic environment and in the magnitude and severity of the security threats it produced, the fact that today, fifty-eight years after the establishment of the state and with Israel's existence as a political entity firmly secured, the Israeli press, the electronic media, as well as the "entire publishing industry" are still "subject to the rules of...censorship" and must, therefore, submit—prior to publication—articles and reports "related to certain topics to censorial review"[13] should be neither overlooked nor obfuscated.

Combined with provisions 86-101 of the Defense Regulations which the Israeli state inherited from the Mandatory era (and fully incorporated into its legal code), and in an effort to inject a voluntary ingredient into this set of far-reaching restrictions "upon the contours of expression,"[14] the Israeli government initiated, as early as in 1951, an arrangement (which was accepted by the editors of the mainstream daily newspapers in Hebrew), which committed the editors to submit to the military censor for review any security-related material. In return, the editors were granted the right to appeal any excision or suspension decision to a committee composed of representatives of the press, the military, and "the general public."[15] The agreement—which deprived the interior ministry of its exclusive power to unilaterally interpret and implement the censorship regulations through the formation of this trilateral appeals committee—explicitly asserted that censorship would not apply to purely political matters.

In 1966, following fifteen years of a largely consensual *modus vivendi* between the government and the editors of the newspapers represented in the committee, this arrangement was renewed with minor procedural modifications.[16] In 1989, it was renewed once again, but this time with a

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[12] Lahav, "The Press and National Security," 177-178.

[13] Ibid., 175.

[14] Ibid., 178.

[15] Dowty, *The Jewish State*, 97.

[16] Hillel Nusek and Yehiel Limor, "The Military Censorship in Israel," in *Democracy and National Security in Israel* (in Hebrew), ed. Benyamin Neuberger and Ilan Ben-Ami (Tel Aviv: Open University, 1996), 425. See also, Moshe Negbi, "The Self-Censorship of the Editors' Committee," in *Democracy and National Security in Israel*, 474-481. There was a far more conflictual relationship with the editors of the newspapers that were not represented in the committee.

significant provision that the only criterion for the disqualification or excision of material submitted to the censor (and for the suspension of the publication of a newspaper) would be the near certainty that its publication would seriously jeopardize vital security interests.[17]

The willingness of the Israeli political system to include a mechanism of consultation and arbitration with editors of mainstream Israeli daily newspapers as an institutionalized, legitimate factor in determining the specific circumstances under which censorship regulations could be implemented, imposed significant constraints upon the government's and the bureaucracy's maneuverability and choice in addressing the censorship issue. However, one should not lose sight of the fact that this body of self-imposed restrictions and limitations was but a tip of the iceberg because it was confined to one category of publications: mainstream and Zionist daily newspapers whose editors participated in the trilateral committee.

As we shall now witness, it was beneath this facade of consensus that the opening shot in the unending clash between security imperatives and one of the most central and crucial prerequisites of democracy which pertains to the freedom of expression, was fired in 1953. This shot established the initial ground rules and distinctions defining the realm of legitimate security considerations (and of derivative restrictions on democratic rights), and the quintessential and pure democratic sphere, which should not be infringed upon under any circumstances.

The 1953 case amounted to an effort by the government to censor extreme and irreconcilable views in the Israeli press by suspending publication outright. Invoking the Defense Regulations on censorship, the interior minister moved to exercise his statutory powers and suspended the publication of two daily newspapers, *Kol Ha'am* (in Hebrew) and *Al Ittihad* (in Arabic), which were the official daily publications of the Israeli Communist Party (MAKY), and which invariably supported Soviet policies, both globally and regionally. In March 1953, both newspapers published editorials, based on a report in the Israeli daily *Ha'aretz*—which the Israeli government subsequently denied—stating that, in the event of the outbreak of war between the two superpowers, Israel would dispatch 20,000 soldiers to assist the United States. The editorials harshly criticized the Israeli government for "meekly and obediently following its American masters."

Insisting that these editorials could "jeopardize the public safety" (thus meeting the main criterion for suspension as outlined in section 19 of the 1933 Press Ordinance law, fully incorporated in 1945 into the Defense Regulations, and which gave the minister of interior full discretion to suspend the publication for "such a period as he may think fit"), the interior minister decided to suspend

[17] Nusek and Limor, "The Military Censorship in Israel," 426.

the publication of *Kol Ha'am* and *Al Ittihad* for an indefinite period of time.[18] The newspapers appealed the decision to the Supreme Court, in its capacity as the High Court of Justice, which—in a landmark decision—"held that the principles of freedom of speech and freedom of the press were an integral part of Israel's constitutional system" and thus overturned the suspension order. In his decision, Justice Shimon Agranat ruled that the suspension of a publication could not be justified unless there were "a near certainty" that it would "seriously jeopardize" vital security interests.[19]

By rejecting the general, opaque, and vague criterion of the need to protect "public safety" in favor of the far narrower criterion of near certainty that publication would seriously jeopardize vital security interests, the Supreme Court moved to significantly broaden the parameters within which the free and uninhibited expression of views and opinions could take place, with the burden of proof that actual and tangible damage to core security interests was imminent, now transferred to the interior minister and military censor. As Justice Agranat further observed in his ruling, the significance of the interest in national security "should not mislead one to see the calculus in terms of the interest of the collective, on the one hand, and the mere private interest of the individual, on the other." Indeed, he added, "the interest in preserving free speech is a collective interest, one not less crucial than national security." Hence, concluded Agranat, "the danger may lurk not in the threats from within and from outside the boundaries of the state, but rather in the act of sacrificing the very freedom that the state was set up to promote."[20]

Although no less than thirty-four years would transpire before this criterion ("near certainty" that publication would seriously jeopardize "vital security interests") was fully incorporated into the revised agreement between the government and the editors of Israel's daily newspapers represented in the trilateral committee, the spirit of the Supreme Court's 1953 decision helped define the appropriate balance between security requirements and the need to know by enabling the news media "to function according to the democratic model," and by limiting the scope of the material eligible for censorship to a narrowly-defined cluster of sensitive and immediate security matters.[21] In Lahav's words:

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[18] Pnina Lahav, "Rights and Democracy: The Court's Performance," in *Israeli Democracy under Stress*, 133-137. See also, Lahav, "The Press and National Security," 173-174, and Yitzhak Zamir, "Human Rights and State Security," in *Democracy and National Security in Israel*, 274-277.

[19] Quoted by Lahav, "Rights and Democracy," 135-136. See also, Lahav, "The Press and National Security," 174, and Dowty, *The Jewish State*, 97.

[20] Quoted by Lahav, "Rights and Democracy," 135-136. See also, Lahav, "The Press and National Security," 174, and Dowty, *The Jewish State*, 97.

[21] Quoted by Lahav, "Rights and Democracy," 136.

> The result [of the *Kol Ha'am* ruling] was crucial for ensuring a proximity between the theory and the practice of rights. The opinion not only boldly disrupted the government's crusade against the Communist Party, but it also served as a model for [treating] the vast pool of discretionary powers vested in the executive branch.... What was crucial was the guarantee of substantive judicial review. It was exercised here in full power and vigor. With this opinion, Israel's press began to enjoy considerable freedom to criticize...and the courts had a model theory and methodology for incorporating human rights into the legal system.[22]

For all its significance in dramatically constraining the government's maneuverability in implementing the Defense Regulations and in making the principles of freedom of speech and freedom of the press an integral part of Israel's constitutional system, the fact that the impact of the *Kol Ha'am* decision was confined to the Jewish community and did not extend across the ethnic divide to the Arab minority in Israel, should not be overlooked. Nor did it prevent the Israeli government from repeatedly trying to proceed beyond these restrictions by resorting to broad, inclusive, and sweeping interpretations of the circumstances under which the Defense Regulations, which address censorship, could be implemented.

Concerning the first qualification, whereas the *Kol Ha'am* ruling reverberated across the Jewish community and helped establish new terms of reference and ground rules for reconciling security concerns with basic democratic rights, the picture was fundamentally different when the shadow of the Palestinian-Israeli rift emerged as a determining and decisive factor in this competition between security and democracy, obfuscating any traces of the *Kol Ha'am* ruling and criteria. Specifically, when the issue at stake concerned the Palestinian press in East Jerusalem, permits to publish were repeatedly denied "because of suspicion of links to hostile [Palestinian] organizations," with but a slim chance "for an appellant to disprove the 'security risk' label."[23]

With respect to the second qualification, although the *Kol Ha'am* verdict gradually became an important cornerstone in Israeli public law and provided part of the theoretical and doctrinal foundations of the commitment to free speech, the fact that it unequivocally supported the right of the press to serve as a free podium for deliberation and criticism in matters which were vital to the individual and to the community did not prevent the Israeli authorities from repeatedly seeking to broaden the parameters within which the censorship

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[22] Dina Goren, *Secrecy and the Right to Know* (Tel Aviv: Turtledove, 1979), 112. See also, Dan Horowitz and Moshe Lissak, "Democracy and National Security in a Protracted Conflict," in *Democracy and National Security in Israel*, 101, and Arian, *Politics in Israel*, 305.

[23] Lahav, Rights and Democracy," 173.

provisions of the Defense Regulations could be implemented.

Indeed, in addition to two instances in which the trilateral committee itself decided—in 1955 and in 1972—to suspend publication of daily newspapers for censorship violations (for one and two days, respectively), the interior minister, acting upon the recommendations of the military censor, on several other occasions, unilaterally proceeded (as in the 1953 *Kol Ha'am* case) to suspend the publication of newspapers whose editors were not represented in the trilateral committee. As in 1953, it was the Supreme Court which was called upon to review the power of the interior minister (and of the military censor) to suspend the publication of newspapers (or to excise newspaper reports), and thus to once again define the grounds under which the suspension of publication, or the excision of material, was appropriate.

In most, albeit not all, of its rulings, the Supreme Court forcefully reinforced the 1953 criterion it had articulated and set forth in the *Kol Ha'am* decision—near certainty that the published information would seriously jeopardize vital security interests—as the only legitimate ground for the suspension or excision of material submitted to the censor for clearance.

A major illustration of this propensity—which, in late 1989, directly led to the incorporation of this criterion as an integral and binding part of the *modus operandi* of the trilateral committee—was the ruling of the Supreme Court in the case of a local newspaper in Tel Aviv (*Ha'ir*) in 1989. The newspaper appealed to the Supreme Court after the interior minister, acting upon the recommendations of the military censor, decided to disqualify the publication of parts of an article which discussed the personality and functioning of the head of the Israeli Mossad, Israel's equivalent of the CIA. In deciding to uphold the appeal, the Supreme Court held that "the requirements of national security did not give the censors a blank check to censor anything they deemed as detrimental to the nation's security."[24] It further asserted that security matters were subject to judicial scrutiny and review like any other administrative matter, and that the burden of proof that there was a near certainty that vital national security interests would be compromised and jeopardized as a direct result of the published information rested with the censor.[25] In the words of Justice Aharon Barak (presently the Supreme Court's Chief Justice), who drafted the ruling:

> ...because of the implications that security-related decisions have on the life of the nation, the door should be opened to a candid exchange of views on security matters. In this context it is imperative that the

[24] Dowty, *The Jewish State*, 98. See also, Lahav, "The Press and National Security," 175.

[25] Nusek and Limor, "The Military Censorship in Israel," 433. See also, Lahav, "The Press and National Security," 174.

press remain constantly engaged in free deliberations over matters which are of utmost importance to the community.[26]

Although this 1989 ruling of the Supreme Court quintessentially reflected its continued sensitivity to the need to ascertain that the basic democratic right of free expression was not subordinated to security determinants and concerns, unless the issue at stake was inextricably related to a narrowly-defined cluster of immediate security threats and could, therefore, be legitimately viewed as another important landmark along the evolutionary road of Israel's democracy, the fact that the years which followed this decision witnessed a progressive decline in the power of the military censor cannot be exclusively attributed to the 1989 ruling. Nor can this erosion be traced exclusively to the general role which the Supreme Court systematically performed over the years, as the most determined and effective institutional watchdog and guardian of democratic values and rules of the game in Israel.

Indeed, for all its significance and contribution, the Supreme Court was only one among the various forces and factors that were responsible for the swing of the pendulum during the last decade from the initial preoccupation of the Israeli political culture with national security toward depicting security as secondary and subordinated to core democratic norms.

By the beginning of the new millennium, Israel had ceased to be a mobilized and consensual society, living under the acutely threatening shadow of an invariably hostile regional environment. Together with the rulings of the Supreme Court, there were many factors responsible for this. One such influence was the cumulative impact upon Israeli society of the October 1973 War (the Yom Kippur War) and the June 1982 Lebanon War, which exposed serious deficiencies in military planning and the performance of the Israeli Defense Forces (IDF) and raised doubts as to the credibility and accuracy of the official IDF interpretation of some of the developments in these wars. Also, there had been a drastic weakening of the threat to Israel's existence, which became apparent after the conclusion, in March 1979, of the formal peace treaty between Israel and Egypt, and after the disintegration, a decade later, of the Soviet Union, which for no less than four decades had invariably supported the most irreconcilable Arab positions concerning the terms for resolution of the conflict. The collapse of the Soviet Union eliminated from the scene a major and lasting political and strategic threat to Israel's security. Finally, a wide range of technological developments, inventions, and revolutions, including the Internet, cable television, and satellite communication, severely constrained the ability of the military censor to effectively monitor and control the flow of information accessed by the Israeli public.[27]

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[26] Quoted by Lahav, "The Press and National Security," 174. See also, Nusek and Limor, "The Military Censorship in Israel," 433.

Instead, with its security and well-being fully and firmly secured, and with its regional and global environments becoming steadily more benign, Israel could afford to considerably relax and soften some of the provisions incorporated into the 1945 Defense Regulations, including those pertaining to censorship.[28]

It was against the backdrop of these mutually reinforcing social, political, strategic, and technological processes that the cluster of Defense Regulations dealing with censorship gradually faded into the background of the Israeli political domain, albeit not of its Arab sector. The emerging domination of democratic values—including the principle of free and uninhibited speech—has not permeated the West Bank of Jordan, whose legal status since June 1967 has fallen under the international law of belligerent occupation, allowing the occupying power "a wide range of measures without legislative or judicial review." These may include "freezing political activities, curtailing freedom of speech and assembly, limiting free movement...requisitioning material and services from the population...[and] using state property."[29]

Thus, unlike the situation which now exists in the Jewish sector of Israel, the status of the Palestinian population in the West Bank continues to reflect a wide latitude and discretion in the customary powers of the occupier, with the outcome being quite incompatible with the basic premises of democracy (and with the Israeli Supreme Court being largely predisposed—unlike its conduct within the Green Line—to uphold such policies and measures as the deportation of Palestinians from the occupied West Bank).[30]

In conclusion, more than fifty years after Justice Agranat, in his formative *Kol Ha'am* verdict, had defined the principle "of the right to free expression" as the means of enabling the state—by virtue of examining *all* views and opinions—"to reach the truth,"[31] this vision indeed came to fully permeate and affect all walks of the Jewish society in Israel. With the significant amelioration of Israel's overall security situation, the parameters within which the principle of freedom of expression could now be exercised were extended to allow a "robust and wide-open" articulation of ideas and views, which could be legitimately constrained only in certain isolated instances, where a highly probable linkage between the publication and the subsequent and imminent

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[27] Nusek and Limor, "The Military Censorship in Israel," 436-439. See also, Horowitz and Lissak, "Democracy and National Security in a Protracted Conflict," 100-105.

[28] Ibid., 101.

[29] Dowty, *The Jewish State*, 218.

[30] Menachem Hofnung, "Human Rights in the Occupied Territories, 1967-1987," in *Democracy and National Security in Israel*, 535-543.

[31] Quoted by Aharon Barak. See Aharon Barak, "Freedom of Expression and Its Limitations," in *Challenges to Democracy: Essays in Honour and Memory of Isaiah Berlin*, ed. Raphael Cohen-Almagor (Ashgate, UK: Dartmouth Publishing, 2000), 172.

damage to certain core security interests could be established and proved.

As Aharon Barak put it:

> ...freedom of expression...extends to cover both conventional and anomalous opinions; to views that people like to hear and to those that are enraging and deviant. Freedom of expression is not only the freedom to express things quietly and pleasantly. It is also the freedom to raise an outcry that grates on the ears.[32]

However, as indicated, for all its significance and scope, this democratic expansion and proliferation is yet to spill over to the West Bank, which has remained a fundamentally separate and incompatible entity by virtue of the rules governing the uneasy relationship between the Israeli army and the occupied civilian population.

Defense Regulations 109-112 and 125

The censorship provisions of the 1945 Defense Regulations clearly reflected, in their applications after 1948, the fact that Israeli society was highly fragmented along ideological lines. And while most—albeit not all—of these cleavages and strains were related, directly or indirectly, to the anxieties and tensions created by the Arab-Israeli conflict, the implementation of these provisions was not confined to the Arab sector in Israel, as the cases of the *Kol Ha'am* and *Ha'ir* newspapers demonstrated. By comparison, most other Defense Regulations (with the exception of Regulation 111) have been applied almost exclusively to the Arab minority, and this application not infrequently infringed upon basic democratic rights.[33]

For example, between 1948 and 1966, most Arab populated areas were placed under a military government whose legal basis was the 1945 Defense Regulations. Since the Arab citizens of the Jewish state were initially perceived, under the shadow of the recent invasion of Israel by no less than five Arab armies, "as an integral of the belligerent Arab environment," this dominant and pervasive Jewish perception made it "a matter of elementary prudence" for the State of Israel "to place them under military administration," whose explicit mission was "to prevent their turning into an active fifth column."[34]

Indeed, to forestall the dangers inherent in this preliminary vision of Israeli Arabs as potentially disloyal, the establishment of a military government in the main Arab population centers in Israel guaranteed that, for at least the first eighteen years of Israel's statehood, Jews and Arabs would live "under different

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[32] Ibid., 173.

[33] Smooha, "National Security and the Arab Minority," 112. See also, Dowty, *The Jewish State*, 98, and Peri, "The Arab-Israeli Conflict and Israeli Democracy," 354.

[34] Smooha, "National Security and the Arab Minority," 112.

sets of rules despite the formal civic equality."[35] Thus, while restrictions on movement were applied elsewhere, their main use was—between 1948 and 1966—in the areas under the jurisdiction of the military government. In terms of Defense Regulation 125, these areas were declared "closed," requiring entrance and exit permits. In terms of Defense Regulations 109 and 110, individuals under "special suspicion" could be further restricted in their movements to a particular town.[36] Similarly, during the first two decades of Israel's independence, Defense Regulation 125 was exclusively applied to the Arab sector. The regulation, which enabled the state to expropriate "uncultivated" or "abandoned" land, led to the widespread expropriation of a substantial portion of land owned by Arab citizens, which was then made available for Jewish settlement or cultivation.[37] Although this land, which had originally belonged to Arab citizens or refugees, was formally placed under the control of the custodian for Absentees' Property, it was later invariably transferred to the Jewish agricultural sector. On those occasions after the 1948-1949 War had been terminated when Arab villagers sought to return to their home villages and reclaim their property, they were prevented from doing so. Invoking the provision in Defense Regulation 125, which allowed for the evacuation of populations on security grounds, this group of "present absentees," who were still living under Israeli jurisdiction but not in their original place of residence when official registration took place by the Military Government, were not permitted to return to their homes because their temporary absence was proof of their apparent "hostility toward the Jewish state."[38] As Dowty observes, even when the actual security interest involved in the decision of whether to permit the return of Arab residents to their original villages "was relatively trivial," these marginal security considerations still "outweighed all political... and human factors":

> Security was...the dominant concern in Israeli thinking, especially in the early years [of independence]. In the context of the recent Holocaust and a war for survival [in 1948-1949], Israeli Arabs were seen first as part of a Palestinian Arab community, with which [the Jewish community] had been in violent conflict for decades, and second as part of a vast Arab world that was threatening "a second round" to destroy Israel.... Fears regarding Israel's survival, given

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[35] Dowty, *The Jewish State*, 98. See also, Peri, "The Arab-Israeli Conflict and Israeli Democracy," 354.

[36] Dowty, *The Jewish State*, 98.

[37] David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder, CO: Westview Press, 1990), 59-60.

[38] Ibid., 59-61. See also, Dowty, *The Jewish State*, 98.

Arab superiority in numbers, were easily transferred from the external realm to the population at hand.[39]

Although the expropriation and evacuation provisions of Defense Regulation 125 ceased to be a major operational instrument vis-à-vis the Arab population in Israel after the military government in Arab areas had been abolished in 1966, they did not altogether fade into the background but instead became a frequently and widely used tool in the occupied territories after 1967. During the 1967-1978 period, for example, 1,151 Palestinians were expelled from the West Bank and the Gaza Strip,[40] and in December 1992 alone, no less than 415 members of Hamas and the Islamic Jihad were expelled from the occupied territories to Lebanon.

Contrary to the situation that developed inside the Green Line, which witnessed the early emergence of the Israeli Supreme Court (as was manifested in the *Kol Ha'am* ruling of 1953) as a determined guardian and defender of such core democratic rights as the right of free expression, the role which the Supreme Court generally played across the Green Line was considerably more limited and constrained in addressing issues of expulsion and expropriation.

Concerning expulsions, the Supreme Court almost invariably sided with the government's position, maintaining that article 49 of the Geneva Convention, which forbids "individual or mass forcible transfers," addresses the kinds of mass deportations that had taken place during the Second World War and thus did not apply to the expulsion of individuals "acting as enemy agents."[41]

In the context of largely upholding expulsion decisions, the court's intervention was restricted to technical and procedural matters. For example, after three Palestinian leaders had been expelled from the West Bank (in the wake of the killing of six Jewish settlers in the West Bank town of Hebron), the Supreme Court ruled that, because the expulsion was carried out without providing the three leaders with advance opportunity to appeal the verdict before a "reviewing committee," they should be permitted to return to the West Bank in order to personally appeal the expulsion. Despite the strong opposition of the military commander of the region, the ruling was implemented. The three returned, appealed, but were expelled after the reviewing committee decided to uphold the expulsion order.[42]

Similarly, concerning the issue of expropriations in the West Bank, except for the 1978 Elon Moreh case, in which the Supreme Court rejected the

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[39] Dowty, *The Jewish State*, 189-190.

[40] Ann M. Lesch, "Israeli Deportation of Palestinians from the West Bank and the Gaza Strip, 1967-1978," *Journal of Palestine Studies* 8 (Winter 1979): 102-103.

[41] Esther Rosalind Cohen, *Human Rights in the Israeli-Occupied Territories, 1967-1982* (Manchester, UK: Manchester University Press, 1985), 110-111.

[42] Zamir, "Human Rights and State Security," 292-293.

contention of the military authorities that the expropriation of Palestinian lands near Nablus on the West Bank was necessitated by security considerations (and concluded that the motives for the expropriation were primarily ideological), Israeli courts—including the Supreme Court—were largely predisposed to accept at face value the claim of military necessity as a legitimate ground for the requisitioning of land.[43]

Whereas the provisions incorporated into most 1945 Defense Regulations (and their derivative Knesset legislation) have largely faded into the background of the domestic political, strategic, legal, and social environment and have been implemented only rarely by the Israeli authorities in Israel itself in recent years (albeit not in the occupied territories, where they continue to constitute a standard operational tool for the military authorities), Regulation 111, which deals with the issue of administrative detention (and its derivative Emergency Powers [Detention] Law of 1979) continued to be imposed—although in a limited and selective way—in both the Jewish and Arab sectors of Israel (as well as in the West Bank and Gaza). The regulation, which was originally enacted by the British during the last three years of their rule over Palestine, empowered "a military commander" to detain any person in any place of the commander's choosing for renewable periods of one year, enabling the military authorities to imprison individuals for an indefinite period of time without trial and without an appropriate judicial review. And while the detainees were permitted to appeal the verdict to an advisory judicial committee, its actual power was limited to issuing unbinding recommendations.[44]

It was only in 1979 that this far-reaching regulation, which had been implemented in no less than 315 instances between 1956 and 1967, was replaced by a regular legislative act. Entitled the Emergency Powers (Detention) Law, the 1979 Knesset act eliminated the most controversial provisions of Defense Regulation 111 by requiring judicial *approval* of any detention within forty-eight hours, as with regular police arrests. It also provided for the full examination of the "objective reasons of state security" that apparently justify the detention, the full disclosure by the authorities of the grounds for detention, and humane treatment of the detainee.[45]

As a direct result of this legislation, the post-1979 period is characterized by a dramatic decline in the number of the detainees, at least inside the Green Line. Indeed, whereas under the draconian Defense Regulation 111 administrative detention was widely used, and sometimes indiscriminately

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[43] Hofnung, "Human Rights in the Occupied Territories," 537.

[44] Dowty, *The Jewish State*, 98-99; Raphael Cohen-Almagor, "Reflections on Administrative Detention in Israel: A Critique," in *Challenges to Democracy*, 204-205; and Zamir, "Human Rights and State Security," 283.

[45] Dowty, *The Jewish State*, 133-134, and Cohen-Almagor, "Reflections on Administrative Detention in Israel," 205.

(particularly prior to 1967) against members of certain right-wing and ultra-orthodox radical groups (including, in late 1948, against one hundred members of the Jewish militant movement called LEHI, or the Fighters for the Liberation of Israel), as well as, in 1953, against fifty-three members of an ultra-Orthodox underground movement that planned to bomb the Knesset),[46] the passing, in 1979, of the Emergency Powers (Detention) Law marked the beginning of a new era in which this measure was very sparingly used in Israel (but not in the West Bank and Gaza), and primarily against leading members of KACH, the racist and militant party of Rabbi Meir Kahana and its various organizational mutations.

Indeed, during the last twenty-six years since May 1980, the Detention Law has been implemented almost exclusively in the context of the repeated efforts by the KACH party to carry out violent actions against Palestinian targets. Against the backdrop of imminent assaults against Palestinians (which, in 1980, included plans to bomb the Temple Mount mosques), and in an effort not to expose and compromise sensitive intelligence sources, the Supreme Court—after carefully reviewing the merits of each case—occasionally approved a detention order, but only after it became fully convinced that administrative detention remained the only means of preventing "an acute threat" to the security of the state. This was, indeed, the case in the Temple Mount plot, when Meir Kahane and another KACH member, Baruch Green, were placed under administrative detention in 1980, and in several other instances during the following decades, when extreme right-wing activists, such as Noam Federman, were administratively detained for planning to harm Palestinian individuals and property.[47]

In view of this criterion, and thus of the court's insistence on ironclad, conclusive evidence that administrative detention was necessary in order to thwart "a highly dangerous deed" (and that open criminal proceedings could not be pursued for fear of exposing vital sources of information), it is hardly surprising that the Supreme Court repeatedly overturned the authorities' detention efforts—as in the 1994 proceedings against KACH's member Michael Ben-Horin—insisting that administrative detention "should be used only in extraordinary circumstances for security reasons" as a default option when it was impossible to charge a person through the usual criminal channels without compromising methods of gathering evidence.[48]

In many of its rulings, and in an effort to clarify and elucidate the circumstances under which such procedures and actions as administrative deten-

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[46] Cohen-Almagor, "Reflections on Administrative Detention in Israel," 207.

[47] Ibid., 208. See also, Zamir, "Human Rights and State Security," 282-283, and Hofnung, "Human Rights in the Occupied Territories," 537-539.

[48] Cohen-Almagor, "Reflections on Administrative Detention in Israel," 215. See also, Benyamin Neuberger, "National Security and Democracy: Tensions and Dilemmas," in *Democracy and National Security in Israel*, 14.

tion, which are usually incompatible with basic democratic rights and liberties, could still be defended and justified in the face of grave and impending security threats, the Israeli Supreme Court closely followed the spirit of its 1953 *Kol Ha'am* verdict.

Although the issue at stake concerned administrative detention rather than the freedom of the press, the court was continuously predisposed to define security threats—as the *Kol Ha'am* verdict did—in specific, concrete, and most immediate terms rather than in a general and sweeping fashion.

When the question on hand was inextricably linked to fundamental democratic rights (free expression, free movement, or open criminal proceedings) and detention was approved and implemented, the Supreme Court insisted—in numerous rulings—on clear, unequivocal, and convincing proof that there was indeed a high probability, or a near certainty, that specific narrowly defined core security interests would be jeopardized unless publication was suspended (or censored).[49]

In other words, despite the fact that it was exclusively preoccupied with determining the boundaries of free expression of views, the 1953 *Kol Ha'am* verdict—which most significantly constrained legitimate infringement upon the exercise of this democratic right—eventually became the lens or the prism through which other democratic rights and norms were assessed and evaluated by the Supreme Court.

By establishing the basic yardstick for distinguishing between the permissible and the forbidden, and in order to protect the quintessential democratic zone from interference and trespassing, the courts contributed most profoundly to the institutionalization, consolidation, and perpetuation of democratic principles in the Israeli political culture.

Against this background, it can be argued that, in terms of its long-term ramifications on such core issues as the limits of administrative detention, the *Kol Ha'am* precedent had an impact which surpassed the intrinsic and specific context within which it had originally been issued, thus permeating all dimensions and aspects of the basic encounter between democracy and security.

Constituting a formative event which transcended the initial bounds within which it initially unfolded in 1953, the court's decision had a durable and lasting impact upon a broad range of issues related to other democratic rights. Not only did the court's ruling establish new standards and criteria for interpreting the Defense Regulations in their entirety, but it also inspired the Supreme Court, during the years and decades since its historical *Kol Ha'am* verdict, to follow suit and remain committed to its spirit.

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[49] Cohen-Almagor, "Reflections on Administrative Detention in Israel," 215.

Notwithstanding the impact which the *Kol Ha'am* ruling had on a wide range of questions related to human rights, including administrative detention, the fact that its "constraining function" remained confined to Israel itself and did not spill over to the occupied territories, should be neither overlooked nor obfuscated. In other words, although the application of the *Kol Ha'am* standard of clear, most likely, and imminent threat to core security interests as a legitimate ground for administrative detention led to a gradual reduction in the number of detainees inside the Green Line, no such development took place in the West Bank and Gaza.

Thus, although the number of Palestinian detainees—which reached a peak of 1,100 in 1970—dropped to fewer than one hundred in subsequent years, the outbreak, in late 1987, of the first Palestinian *intifada* led to the renewed reliance upon detention machinery as a large-scale preventive measure, designed to restrict members of Palestinian organizations who planned acts of terrorism.

Still, although the number of Palestinian detainees in the occupied territories increased significantly during the late 1980s, the enactment of the 1979 Emergency Powers (Detention) Law did eventually permeate the West Bank by precipitating regulations which (1) limited the authority of the military commander to issue detention orders; (2) required the approval—by a qualified judge—at the time of detention; and (3) expanded the judicial review of detention orders.[50]

For all of these improvements—combined with the fact that the last decade witnessed a marked reduction in the number of Palestinian detainees—the basic attributes of administrative detentions, including loose rules of evidence and the withholding of evidence from the accused, have remained essentially intact in the West Bank and Gaza, with the number of detainees rising once again during the second Palestinian *intifada* (2000-2004). As Dowty states, it is under these highly-charged and violent circumstances that "the entire administrative detention breaks down when it is flooded with large numbers of detainees; rather than the individual consideration that each case receives in theory, the process becomes a parody of proper legal procedure."[51]

Although the preceding analysis focused on the 1945 Defense Regulations as the main lens or prism through which the continued public, social, and legal discourse over the bounds and limits of Israeli democracy could be most clearly elucidated, additional—and more recent—relevant legislation also should be briefly mentioned.

A major example was the revision, in 1985, of provision 63 of the Election Law which, in addition to barring any party with a racist or antidemocratic program from participating in the elections to the Knesset, ruled out any list which denied the existence of Israel "as the state of the Jewish people."[52] Based

[50] Dowty, *The Jewish State*, 224.
[51] Ibid.

on this legislation, the racist party of Meir Kahane, KACH, was barred from participating in the Knesset elections of 1988 and 1991, and—in 1993—was outlawed because of its "racist platform and undisguised support of terrorist activities."[53]

The reference, in the 1985 Election Law, to Israel as the state of the Jewish people, represented a dilemma for several Arab political parties and movements which were reluctant to even implicitly endorse the Jewish character of the state. And, indeed, in the 1992 elections, the Progressive List for Peace (PLP), a joint Arab-Jewish party with an ultra dovish platform, was challenged on the ground that it denied the legitimacy of Israel as a Jewish state. It was ultimately allowed to run, however, only on the basis of "the factual determination that there was insufficient evidence" in support of this claim.[54]

In 2002, in an effort to provide more specific guidelines for determining whether to prevent political parties from participation in the Knesset elections, provision 7 of the Basic Law: The Knesset, was revised by augmenting and clarifying provision 63 (revised) of the Election Law. For the first time in Israel's history, its legislative branch—the Knesset—fully endorsed and reinforced the spirit and standards which were set forth by the Supreme Court almost four decades earlier in the *Kol Ha'am* verdict. Although the context of the 2002 legislation was broader (the right of participation) than the case had been in 1953, the Knesset adopted the basic criterion which had guided Justice Agranat in his *Kol Ha'am* ruling.

Specifically, in order for a political party to be disqualified and thus denied a core democratic right, the fact that its platform was incompatible with the vision of Israel as a Jewish entity (or that it expressed solidarity with Palestinian terrorist organizations) was insufficient for disqualifying it from taking part in the electoral process. What was needed in order to deny the right of political participation to any such party or movement was, in addition to all other necessary preconditions, ironclad proof that the party indeed acted in a most tangible and concrete way "to accomplish its illegitimate objectives."[55]

With this legislation, a circle was closed in Israeli political, social, and legal history. What initially had been inaugurated in 1953 in the delimited context of the permitted margin of free expression was ultimately adopted by the Knesset and incorporated into a body of legislation that addressed the legitimate bounds of political participation (including the right of political parties to express iconoclastic or recalcitrant opinions). Once again, the ultimate test evolved

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[52] Ricki Tessler, "Religious Radicalism between Defensive Democracy, Defensive Politics, and Defensive Civil Society," *State and Society* (in Hebrew) 3 (April 2003): 586-588.

[53] Ibid., 588. See also, Ami Pedhatzur and Aryeh Perliger, "The Challenge of Radical Parties to Democratic Regimes: Israel as an Example," *Democratic Culture* 8 (2004): 97-103.

[54] Dowty, *The Jewish State*, 196. See also, Tessler, "Religious Radicalism," 586.

[55] Tessler, "Religious Radicalism," 387, 593.

around the tangible, the concrete, and the operational, rather than around the general, the abstract, and the rhetorical.

Thus, while Israeli democracy was still entitled to defend itself and cope with domestic menace and threat, the encounter with adversity could be legitimately pursued only within narrow and strict boundaries. Unless the threat to core security interests had been proven as most likely, imminent and clear (whether by the publication of an inflammatory or inciting article or by the statements or actions of a political party), the Israeli political system had no choice but to acquiesce and tolerate the deviant, irreconcilable, iconoclastic, and nonconformist.

This legal (and—more recently—legislative) propensity to subordinate security considerations to the prerequisites of the democratic process, unless the issue at stake is most directly and inextricably related to a cluster of actual immediate threats of significant magnitude, is yet to fully permeate the occupied territories, an altogether different matter. However, conditions in the occupied territories should not downgrade the fact that "the filter of security,"[56] which for decades had been the only screen through which every facet or development in Israel's social and political life was measured and assessed, now at least partially had faded into the background, being unable to provide any longer the ultimate justification for any move or action which might have—in the aggregate—brought Israel to the very brink of the garrison state model.

Conclusion

As we have witnessed in the preceding pages, the State of Israel has been continuously preoccupied, since its establishment in 1948 (and during the five decades which preceded its independence), with a broad range of security problems. This preoccupation has resulted in the periodic mobilization of its military reserve units as well as in the fact that the per capita weight of the Israeli national security effort is the heaviest in the world—between 12 to 13 percent of the GNP and foreign aid usually is spent on defense.[57] Notwithstanding this burden, Israel "has not succumbed to the lures of a less democratic government, maintaining a vibrant, occasionally almost chaotic, democratic process."[58]

While the preceding analysis underscored the role which the Israeli Supreme Court played in guaranteeing that the Israeli political system remained

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[56] Dowty, *The Jewish State*, 85-102.

[57] Avner Yaniv, "A Question of Survival: The Military and Politics under Siege," in *National Security and Democracy in Israel*, 82. See also, Peri, "The Arab-Israeli Conflict and Israeli Democracy," 351.

[58] Yaniv, "A Question of Survival," 82.

committed to basic democratic principles, a number of factors embedded in Israel's social and political structure and ethos also should be mentioned as key determinants that further reinforced and augmented the Supreme Court in ensuring that the state did not abandon its democratic tradition. Central among these was the fact that Israel never had had "a strictly military tradition." According to Dowty, "there was no history of a military role in politics, and in fact it was the political leadership [during the pre-independence period] that invented the military."[59]

Thus, while such leaders of the Jewish community as David Ben-Gurion moved to professionalize the newly-established military force, they "made sure of civilian supremacy before and after statehood."[60] To keep the army out of politics, Ben-Gurion took over its direction personally, serving as minister of defense as well as prime minister. Ultimate control of the military was vested in the civilian cabinet, through the minister of defense, with the chief of staff appointed by the cabinet on the recommendation of the minister of defense.[61]

All of these institutionalized arrangements fully reflected Ben-Gurion's conviction that Israel must "eliminate the common but pernicious misconception that the army alone can guarantee state security," and that the "security problem is more comprehensive and intensive than the military problem."[62] Combined with the more recent erosion in the magnitude of the threat to Israel's security (particularly during the years which followed the conclusion of formal peace treaties between Israel and Egypt), these formal and informal rules of the political-military game have provided a safety net for Israel's democracy, ensuring that its behavioral attributes do not even partially approximate the model of the garrison state.

Indeed, with the filter of security no longer comprising the only standard for approaching and interpreting the regional environment in an era of diminishing security threats, the prospects that this revised setting would affect Israel's internal environment by making it more determined to defend a broad spectrum of humanitarian values—particularly in the West Bank—should not be, therefore, discounted.

It remains to be seen whether this optimistic scenario indeed materializes, and whether the inherent tension which has existed since the establishment of the State of Israel, between security considerations and some of the normative prerequisites of democracy, ultimately subsides, with democratic values and principles emerging invariably dominant and unassailable.

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[59] Dowty, *The Jewish State*, 92.

[60] Ibid. See also Yaniv, "A Question of Survival," 82-83.

[61] Dowty, *The Jewish State*, 92. See also, Yaniv, "A Question of Survival," 82.

[62] Ben-Gurion's words. Quoted by Moshe Lissak, "Civilian Components in the National Security Doctrine," in *National Security and Democracy in Israel*, 67.