

Israeli Democracy at the Crossroads

RAPHAEL COHEN-ALMAGOR

People who live in Israel say there is never a dull moment; we always have action. Indeed, people yearn for some tranquility, for some peace of mind. This collection shows that life in Israel will continue to be interesting and challenging.

Israel is a young democracy. It is still in the process of development and undoubtedly it will face further tests. The key factor for its success is its relationships with its neighbours. Security expenses exhaust a third of Israel's budget, leaving insufficient resources for the development of other spheres. The constant security threat destroys the tourism industry and pre-empts external investments essential for economic growth. Unemployment continues to rise. Salaries are going down in real terms. Welfare benefits are cut. Taxes are high and continue to rise. Israel has the highest rate of taxes in the world, outside Scandinavia. During the past decade many industries and services were regressing, or closing down. High-tech industries experience what the rest of the world is experiencing. The only

Raphael Cohen-Almagor is the founder and director of the Center for Democratic Studies, University of Haifa. In 2003–2004 he was a Senior Fellow at the Center for Policy Studies and Visiting Professor at the Zanvyl Krieger School of Arts and Sciences, Johns Hopkins University.

business that is flourishing is security. Stroll the streets and see soldiers, policemen and personnel from many security operations. People are worried about their physical security as well as about their economic security.

In this article I wish to consider some of the issues raised by the contributors to this volume. The discussion is supposed to give the readers some food for thought as to how we can contribute to the safeguarding and enhancing of Israeli democracy.

MEDIA OWNERSHIP

In modern democracies we find more and more channels of communication held in fewer hands. As evidenced by the historic development of large European media conglomerates, such as *News International*, *Bertelsmann*, *Hachette* and *Fininvest*, the tendency for media firms to expand and diversify is not new.¹ This tendency was on the rise in Europe,² Israel and North America during the 1990s when we witnessed major transactions and mergers that increased the power of a few media tycoons in the major countries of the world.

The process started some 30 years ago. When we look at the Western world we can discern a pattern that developed during the late 1960s—early 1970s, that big conglomerates buy up the media. The 1970s and 1980s saw the most astounding media buy-outs of the century, usually by highly diversified conglomerates looking to expand into ‘infotainment’, information and news. The extraordinary consolidation in media ownership continued with even greater frenzy in the Western world as the 1980s drew to a close with the merger of Warner Brothers and Time Inc. (now called Time Warner Inc.); Rupert Murdoch’s \$3 billion purchase of Walter Annenberg’s Triangle Publications; the decision of Gulf & Western (now called Paramount Communications Inc.) to concentrate on planetary media ownership; and Maclean Hunter’s takeover of Selkirk Communications Ltd. This rapid concentration in media ownership was aided by conservative governments that embraced the principles of deregulation and privatization, including major funding cuts to public broadcasting throughout Europe, Britain, Canada and the United States. As the buying spree continued unabated, fewer media corporate conglomerates own and control most of the world’s major newspapers, magazines, broadcasting stations, book publishers, movie studios, and record and videocassette industries. In August 1995, Walt Disney Co. spent \$19 billion acquiring the ABC television network in the second largest takeover in United States history. The next day it was announced that Westinghouse Electric Corporation had purchased CBS Inc., for \$5.4 billion. A month later, Time Warner Inc. took over Turner Broadcasting System in a \$7 billion stock transaction.³

In Israel, three families and their companies dominate the entire mass media: Moses, Nimrodi and Schocken. The Moses family controls *Yedioth Ahronoth* that has the largest circulation in the country: 390,000 daily and 660,000 on Fridays. *Yedioth* has circulation of more than 40% of the press market on weekdays and 70% of the press circulation on weekends. This circulation exceeds that of all the Hebrew dailies combined, and is more than double the circulation of its main competitor *Ma'ariv*. An impressive achievement that makes *Yedioth* a monopoly in its field.⁴ In addition, the Moses family owns 17 local papers, six periodicals, a Russian-speaking daily, a publishing house, a music company, and is a partner in the commercial channel (Channel 2) and cable television operations (Arutzei Zahav).

The Nimrodi family owns *Ma'ariv*, the second largest daily with a circulation of 250,000 on weekdays (more than 20% of the press market). The family also has one local paper, three periodicals, a music company, a publishing house, shares in the franchise of the commercial television and cable television operations (Matav). In turn, the Schocken family owns the influential liberal-oriented *Ha'aretz* that has a weekday circulation of 73,000 and also have a publishing house, an on-line information company, partnership with the international *Herald Tribune* and control over 14 local newspapers and some local radio stations. Together, the three press barons control 84% of the market.⁵

As for the broadcasting industry, Israel underwent a media revolution during the late 1980s and early 1990s. Until then the electronic media were state owned. The Broadcasting Authority had a monopoly on all radio stations and on the single television station. In effect, the state was the sole producer of all the electronic news. In November 1993, the first broadcast financed by commercials took place. Commercial broadcasting is subject to public monitoring of the Second Television and Radio Authority. This Authority selects through franchise the broadcasting corporations.⁶ In addition to Channel 2, the Israeli public was connected in the early 1990s to extensive cable television systems through five major cable television operations companies, each provides services to a different geographic area. Seventy per cent of the public is connected to cable.⁷ Within five years, most Israeli households were transformed from having access to one major TV station, Channel One, controlled by the Israeli government, to more than 50 cable channels. This was a drastic transformation that reshaped the mass media in Israel.

During the deliberations about the Second Television and Radio Authority Law there was a debate about the legitimacy of cross-ownership. The publishers of the written press argued that because commercial budgets would be referred to television, their newspapers would suffer great losses. To compensate them, they felt they should have a share in the new medium. Furthermore, they had the experience and expertise to be

involved in the project. Critics spoke of the unhealthy situation when one or a few persons control the most popular information sources. Such a situation could corrupt a person who holds so much power, deciding the agenda and the interpretation of public concerns.⁸

The Second Authority was split among three production networks: Keshet, Reshet (*Yedioth* has 24% of the holdings) and Telad (*Ma'ariv* has 18% of the holdings)⁹ in a way that gives two of the networks control on two different days of the week, and the third controls the content of three days. Through this arrangement it was hoped that a voice would be given to various interests, and none of the networks would decide the agenda alone. A joint News Corporation was established that is in charge of the news reports throughout all seven days of the week. Some of the major national and international (Coca-Cola being one of them) economic corporations and banks have shares in the three production companies. The law prescribes procedures for the transfer of 10% or more of the shares from one shareholder to another without the consent of the Second Television and Radio Authority Council. It also restricts ownership to a maximum 10% of a single franchise. The publishers began an extensive lobby to change the situation and managed to increase the share to 24%. Then they tried to raise it again, this time to 49%, but this attempt has proved unsuccessful thus far. During this lobbying, when the publishers of *Yedioth* and *Ma'ariv* were active in the Knesset trying to change the law to their advantage, neither newspaper discussed the issue and the criticism voiced against their initiative. Consequently, the majority of the public was totally unaware of the debate and its importance. It needed a prime-time report of the issue by Channel One, the public channel, to provoke a debate.¹⁰

There is room for concern when we observe the accumulative power of the *Yedioth* megachain (in Israeli terms). *Yedioth* could exploit its power to over-emphasize a certain issue or to hide another. It could take advantage of its resources to advance a specific matter and to silence another, hindering the public right to know. Moreover, the existing situation connects newsagents and economic corporations. Could the newspapers criticize their partners when such criticisms might hinder their own economic interests? To what extent could the written press publish criticisms of the commercial television of which they are part? And vice versa, could the television openly criticize the press? Cross-ownership serves the interests of the three major families, but it directly negates the public interest.

In purely economic terms, by ensuring a large number of competitors within the media market, competition is promoted which, in turn, leads to a more efficient service, to a quality service, to better reporting, and grants the consumer more effective choice. Competition and choice enhance the market and make it develop more rapidly. Conversely, lack of competition

leads to stagnation. If large chunks of the market are secured, why should a media baron invest more resources in providing a better service and quality reports? Public policy considerations require some degree of intervention by a regulator in order to encourage a variety of voices and views.¹¹

In September 1997, the Public Committee that was established to investigate the legal procedures associated with the conduct of the Israeli press issued its report. The report warned against the mischief of cross-ownership threatening the free press. But because the members of the Committee thought that this issue called for investigation of the entire media market, while their role was limited only to the workings of the written press, the report refrained from concrete recommendations. All the report says is that there should be a symmetric regulation between limitations on press ownership and ownership of the electronic media.¹²

To conclude, freedom of expression and of the media do not imply the freedom to own an unlimited number of organs of communication. On the contrary, these freedoms contradict one another; unrestricted capitalism in the form of either cross-ownership or excessive ownership of media organizations negates free expression and free media. Excessive media ownership can hinder pluralism of ideas, creating a media market that is tightly controlled by a few decision makers who use their power and influence to project views that conform to their partisan interests.¹³

HEALTH RIGHTS

In most liberal societies, basic health is seen as one of the necessary conditions for the exercise of personal autonomy. It is generally acknowledged that individuals have a right to health care. The prevalent assumption is that this right generates an obligation or duty on the part of the state to ensure that adequate health care is made available and which further requires that equal access to available health care is provided through public funds. The state has no obligation to provide a health care system itself, but it does have the obligation to ensure that an adequate system is provided. Basic health care is now recognized as a 'public good' rather than a 'private good' that one is expected to buy for oneself.¹⁴

The constraints on the financial resources allocated for care of the ill force us to consider, in an honest and serious manner, the tension between the ideal and the real. Currently, challenges to our health have medical solutions, albeit sometimes partial, that were unimaginable in the previous century. The new technology is very costly, therefore costs and benefits must be examined and priorities determined as to how to invest the scarce and costly resources.

Every discussion on the allocation of resources is bound to reveal the tension between the macro and the micro, between the needs of society and the needs of the individual. The tension is inescapable, and the work of

drawing the appropriate balance is delicate. Emphasizing the needs of society might inevitably result in ignoring the needs of some individuals. In the liberal tradition, the starting point is the individual rather than the society. Liberals conceive shifting the emphasis from the individual to society as a very dangerous move.

Costs must be examined when society seeks benefit from expensive technological treatments. We must realize that it is unrealistic to expect the government to pay for the most expensive treatments. The question of the extent to which citizens are willing to finance the most expensive treatments should be raised in public forums. The state should provide several insurance alternatives that would suit citizens' different capacities to pay for health services: the higher the premium paid, the more inclusive the medical treatment that citizens would enjoy.¹⁵

As people grow old, their health deteriorates. From the moral-contractual perspective, democracy should not neglect its elderly citizens at the time of their greatest need. There is an unwritten contract between the state and its citizens that should be maintained and preserved. As the state expects its citizens to contribute to its maintenance so the citizens expect their state to assist in their maintenance. The contract is mutual, not one-sided.¹⁶ It is based on the principles of justice and fairness. Having said that, in a constrained reality that does not assume that all needs will be provided, people are forced to recognize that optimal health care for all is an unrealistic expectation. Prioritizing becomes unavoidable, and there is a need for the state to offer citizens a number of insurance alternatives.

In this context, one must examine the concepts of self-responsibility, social responsibility and the relationship between them. Idealization of one of these concepts might lead to neglect of the others. These two concepts are important, and one cannot come at the expense of the other. The concept of social responsibility should be promoted, but it should not be seen as an all-encompassing substitute for the individual's self-responsibility. A view of society that assumes responsibility for everybody might lead to the collectivization of the individual, who might consequently disappear within the collective mass.

That is to say that the concept of social responsibility cannot be applied equally to those who assume responsibility for themselves and to those who shirk it. Take, for example, an individual who becomes addicted to drugs, cigarettes, or alcohol. We believe that there is room in democracy for a certain amount of paternalism, but this does not include the power to force people to stop drinking or smoking. Liberal society may assist alcoholics and drug addicts to overcome their addiction, but it cannot coerce them to quit and act without their consent. The question is whether the state has an obligation to provide identical health care rights to a person who looks after himself or herself and to another who deliberately ruins his or her body. Health cannot be conceived as a concept that is

stripped of individual responsibility. To a great extent, the individual possesses the liberty to destroy his or her health. Does the state have an obligation to invest its limited resources in people who do not undertake the basic responsibility to preserve their health?

We must, therefore, recognize that individuals have basic medical rights, but it does not follow that the state has a duty to protect a person's health while he or she is harming it in various ways. The state has an obligation to warn us of dangers. The individual has the liberty to take risks. The state can offer schemes for rehabilitation from addiction. When the individual knowingly takes serious risks, such as consumption of hard drugs or alcohol, and does not show a genuine desire to find a way out of this situation, the state's duty loses all significance.¹⁷ It is neither fair nor possible to make the health of one person the duty of another. The state may accordingly decide that assuming responsibility for one's life can serve as a criterion for the allocation of resources. Consequently, certain groups should not receive the care for which they are *prima facie* eligible. Society must declare loudly and clearly that people who refrain from taking responsibility for their own health cannot expect equal attention in the distribution of limited medical goods. These people have brought about their own exclusion from the right to receive health services. The need for medical treatment does not, in and of itself, ensure one the right to receive medical treatment. The need should be rooted in the concept of rights only when accompanied by personal commitment to the preservation of health and to the promotion of social good. A person as a moral agent who lives in a society is obligated not to neglect his or her health if he or she wants to be equally deserving of medical care.¹⁸

It should be further clarified that the suggestion is not to deny medical care to smokers. They should receive care but the state cannot compel them to take treatment to quit their addiction. When there is no will on the part of the smoker, the treatment is bound to fail. Similarly, when the doctor sets ceasing smoking as a precondition for the success of lung treatment and the patient is not willing to make the commitment, the treatment is bound to fail and there is no reason to invest valuable resources in that patient. The resources, which are always limited, should be invested in patients who are willing to make the commitment and who, therefore, have a better chance of overcoming the disease.

In the centre of this perception lies the concept of responsibility. Responsibility is a personal concept, internal to people and subjective in essence, requiring self-recognition and a certain amount of self-sacrifice. Of course, self-responsibility does not exclude the possibility that the agent may ask for assistance and advice from people whose experience and expertise he or she appreciates. People can ask for the opinion of doctors, family members and friends to consider and reconsider options concerning their health. But after reaching a decision, the agent must be held

accountable for his or her resolution. A responsible person is one who recognizes and knows that he or she must pay, whether in monetary or other terms, for his or her (mis)conduct. People who do not take responsibility for their lives thus manifest lack of responsibility for their surroundings and society at large and alienate themselves from the existing social contract. The contract is a mutual one between the individual and society. An ongoing, open, social discussion will determine the boundaries of social accountability resting on the shoulders of every individual and the commitments of the state to its individuals. The boundaries are fluid and non-permanent, and they are open to discussion and argument. This is not a matter of the state shirking its responsibility towards certain populations. The state must offer those people chances for bettering their situation and for rehabilitation by helping them discard their addictions; however, the state may not impose the means of correction to force them 'to be free'.

Some categories of treatment are too costly for most individuals in society. The sums of money involved in the transplantation of organs are enormous, hundreds of thousands of dollars, and in these cases the state should help by devising special insurance schemes in which the state would assist those who commit themselves to having a transplant. The commitment could take two forms: special insurance for organ transplantation, and an explicit willingness to donate organs if certain conditions are fulfilled. Society must not reach a situation where only the richest obtain these expensive operations. Charity and turning to the public for fund-raising are options, but such donations must not be made obligatory: certainly they should not be considered an adequate substitute for state aid.¹⁹ Special public committees of diverse composition should make decisions concerning the allocation of costly treatments. It is preferable that these committees include doctors as well as public representatives from various disciplines: ethicists, economists, sociologists, lawyers, social workers and clergymen. Together they will decide on proper priorities regarding the medical needs of each particular patient.

MULTICULTURAL DEMOCRACY

Values can come into conflict: promoting individual freedom may entail intolerance towards illiberal groups, while promoting tolerance of illiberal groups may entail accepting restrictions on the freedom of individuals. What should be done in such cases?

In every democracy certain norms and moral codes must be shared by all people despite their cultural differences; hence the range of norms that society can respect has limitations. The most basic norms democracy has to secure are, in my opinion, respecting others as human beings (under the Respect for Others Argument), and not inflicting harm upon others (under

the Millian Harm Principle). Having explained these two principles elsewhere, I present them here without much elaboration.²⁰

The respect for others argument is founded on the assertions that we ought to respect others as autonomous human beings who exercise self-determination to live according to their own life plans, and that we respect people as self-developing beings who are able to develop their inherent faculties as they choose (that is, to develop capabilities people wish to develop, not every capability that they are blessed with). At the same time, we insist on the requirement of mutuality. We ought to show respect for those who respect others.

The boundaries of tolerance are determined by the qualification of not harming others, which is added to the respect for others argument. Under the harm principle, restrictions on liberty may be prescribed when there are clear threats of immediate violence against some individuals or groups.²¹ The same idea was pronounced in a different phrase by a Jewish sage, Rabbi Hillel, who said: 'What is hateful to you do not do unto your fellow people'.²²

The upholding of the respect for others argument and the harm principle safeguards the rights of those who might find themselves in a disadvantageous position in society, such as women; ethnic, religious, national and cultural minorities; homosexuals; and others.

Liberal democracy could interfere to curtail some norms that undermine its basic principle of granting equal respect and concern to all. Democracy cannot endure norms that deny respect to individuals and that are offensive to some, although they might be dictated by some religions. Some norms are unacceptable by liberal standards because they are perceived to be intrinsically wrong. Among these are norms prescribing discrimination on grounds which people are not able to change (sex, colour, religion, race, ethnic affiliation, etc.). This holds true for coercive religious practice. Democratic governments have to play the role of umpires both in the sense of applying just considerations when reviewing different conceptions and in trying to reconcile conflicting interests, trends and claims. This delicate task demands integrity as well as impartiality. Governments should not exploit their role for their own advantage, and when making decisions they have to bear in mind the relevant considerations and demands which concern society as a whole, not only one or some fractions of it.

At present, some religious practices are offensive to the sensibilities of women, and involve coercion, which conflicts with the liberal elements of democracy that vouchsafes the rights of individuals. One of these is the right to follow one's conscience and to practice one's beliefs as one sees fit, as long as this practice does not entail harm to others.²³

RELIGION AND STATE

If an illiberal minority is seeking to oppress other groups, then most liberals would agree that intervention is justified in the name of self-defence.²⁴ Hence the secular majority in Israel has every right to object to attempts which aim at narrowing its freedom of conscience and to broaden the authority of religious orthodoxy.

Democracy is supposed to allow each and every individual the opportunity to follow her or his conception of the good without coercion. Israel today gives precedence to Judaism over liberalism. I submit that on issues such as this one, the reverse should be the case.

In this context, Asa Kasher outlines a list of components that make Israel a Jewish state and then demarcates the most notable deficiencies of Israeli democracy. Some of the Jewish characteristics contradict and undermine the democratic nature of the state and here I would like to take issue with them.

Israel, being the only Jewish state in the world, should strive to retain its Jewish character. The symbols should remain Jewish with some accommodations in order to make the state a home for its Palestinian citizens as well. Shabbat should remain the official day of rest. Palestinian villages and towns may make Friday their day of rest. Hopefully, one day, when security considerations would become less dominant and pressing, and the Israeli economy could afford two days of rest, as is the case in many parts of the world, then Friday and Shabbat will become the two official days of rest.

Having said that, the preservation of the Jewish character of the state should not entail coercion of the predominant secular circles of Israel. The guiding principle should be live and let live. We need to differentiate between the symbolic aspects and the *modus operandi* aspects. As far as the latter are concerned, separation between state and religion should be achieved. People are born free and wish to continue their lives as free citizens in their homeland. Coercion is foreign to our natural sentiments and desires to lead our lives free as possible from alien restraints and impediments. Hence, while Shabbat should be observed, malls and shopping places outside the cities should be available for the many people who work during the week and do their shopping at weekends.

Public transportation should be made available for all people who cannot afford a car and for those who do not drive. The state should cater for the needs of as many citizens as possible. Kosher shops and restaurants should be available and with them non-Kosher shops and restaurants for the secular, agnostic population.

Most importantly, the significant events in one's life: birth, wedding, divorce and death should be handled in accordance with people's own choices. If they so desire, people may involve rabbinate and other religious

institutions in their private lives. But this option should be left to them. If people wish to have secular ceremonies then they should have the ability to conduct them and not to be forced to undergo practices which mean very little to them, if anything. The state should have as little as possible say in intimate family affairs.

The argument for religious autonomy and against religious coercion leads me to distinguish between inter-group relationships (one group imposing its views on another), and intra-group relationships (a group imposing its views on its own members). One group has no right to coerce the entire society into following its conception of the good and abiding by its cultural norms. In the event that a religious or cultural group makes such an attempt, other segments of society have to open further channels of communication and resolve the situation by peaceful means. If these means fail, they should resort to authoritative means to draw the boundaries and fight against coercion.

A pertinent distinction to draw is between *internalized coercion* and *designated coercion*. If a religious sect denies rights and liberties to its women members, that sect may continue doing so because it is assumed that all members of that group internalized the system of beliefs that legitimizes the exclusion of rights from women. It is further assumed that all members of that group conform to and abide by the particular conception of the good that guides and directs members of the said group. They do not feel that they are being coerced to follow a certain conception. Outsiders may claim that a whole-encompassing system of manipulation, rationalization and legitimization is being utilized to make women accept their denial of rights. But in most cases this view may only be the view of outsiders, not of the persons concerned. If at all, one may argue that women of that sect are experiencing a form of coercion that could be called *internalized coercion*.

Difficulties arise when some women in the said cultural or religious group fail to internalize fully the system of norms that discriminates against them. Upon realizing that they are being denied fundamental rights, they might wish – for instance – to opt out of their community. If they are allowed to opt out, no question arises. If not allowed, then a case arises for state interference to overrule this individualistic, designated coercion that aims to deny them freedom to leave their community. I call this form of coercion *designated coercion*. Unlike the internalized coercion it is not concerned with a machinery aiming to convince the entire cultural group of an irrefutable truth; instead it is designed to exert pressure on uncertain, ‘confused’ individuals so as to bring them back to their community.²⁵

ACCOMMODATING THE ISRAELI-PALESTINIANS

After the Holocaust, the goal was to found a safe haven for Jews all over the world so as to avoid the possibility of another horrific experience of that nature. Indeed, the United Nations acknowledged the need to establish a Jewish state. This creation, however, based on a specific conception of the good, discriminates against the Israeli Arabs. Israel acknowledges the problems involved in the introduction of this perfectionist element in its framework of ruling. To assure an equal status for the Arab minority, the Declaration of Independence holds that Israel will foster the development of the country for the benefit of all its inhabitants; that it will be based on the foundations of liberty, justice and peace; that it will uphold complete equality of social and political rights to all of its citizens irrespective of religion, race or sex, and that it will guarantee freedom of religion, conscience, language, education and culture. Yet the explicit formulation of these principles could not make an Arab easily (if at all) identify with a state whose hymn speaks of Zion and of 'the yearning of the Jewish soul'.²⁶

The Israeli national anthem is clearly Jewish. It explicitly ignores the multicultural and multinational character of the state. A state anthem should represent *all* people, not just the majority. We should learn from the lessons of other democracies that were bold enough to change their anthems in order to represent all factions of their populations (most notably South Africa, the 'rainbow' nation, after 1994). Israel need not necessarily adopt a different anthem. It may simply change a few words, mentioned above: instead of 'Zion' to speak of 'Israel' or 'our land'; instead of a 'Jew' to speak of a 'person' or 'citizen'. Such accommodations are steps in the right direction towards a more democratic society. Symbols are important in the life of a nation.

Arabic is one of the two official languages of the State of Israel. Therefore it should enjoy a dominant status and have the importance it deserves. Arabic should be taught at every primary and high school together with English. Language is a key factor in creating bridges between people – Israeli Jews and Israeli Palestinians, and between Jews and Arabs in general. Here I should also note that Judaic studies should be available in every primary and high school. They should be made compulsory for two or three years and then optional. Studies of other religions that exist in Israel should also be made available. Signposts should be written in Hebrew and in Arabic. Key signposts should be written also in English (as now is the case) for tourists who hopefully one day will make Israel a 'must see' in their travels.

Delegates of the Arab minority should be represented, in accordance with their size in society, in the Knesset and in the government. To date, there has never been an Arab minister; this should be corrected. At the same time, Israel would like to see from all its citizens, without exception, a

real and strong commitment to the state, to peace, and to the struggle against terror.

THE RIGHTS AND DUTIES OF CITIZENSHIP

Citizenship entails many benefits. Citizens enjoy political and social rights. They are entitled to basic social security and to basic health privileges. However, the existing state of affairs in which large sectors of the population do not fulfil their civic duties is unacceptable and unfair to those who share the burden. People should not only take from the state. They should also invest in it and contribute to it. Israel cannot afford exemption. At present, large sectors, mainly the ultra-orthodox, do not pay taxes, do not serve in the army, do not work; yet they receive state support allowing them to study torah. Resources should be distributed equally to all sectors. Every citizen is expected to pay in accordance with his/her abilities. Israel should sponsor religious studies to the same extent that it supports university and other forms of high education. As long as the state deems it necessary to oblige its young citizens to serve in the army, all healthy people should take part and help in carrying the security burden. This is true for all citizens without exception. Citizens who have a problem in serving the army for religious, moral or national reasons should commit themselves to do national service for the required period of time (presently three years for men; two years for women) in their own communities, working to better the conditions of their own group. That is to say that religious people who object to serving in the army, fearing that the IDF might corrupt their minds and souls, should do national service in their own neighbourhoods. They could volunteer to work in welfare and relief organizations, the fire brigades, medical service, etc. Palestinian citizens who refuse to serve in order to avoid a situation by which they might confront their Palestinian brothers wearing PLO uniforms should do such national service. Finally, conscientious objectors could contribute to Israel in various ways other than serving in the army.

THE STRUGGLE AGAINST TERRORISM

Terrorism and the peace process could not live together. A zero-sum game exists between the two: any gain on one side comes at the expense of the other. Yasser Arafat failed to transform from a terrorist to a statesman and consequently has delivered almost nothing to his people in recent years. The Palestinians are capable of great endurance, but they also expect some return. I am not sure the current el-Aqsa terrorist warfare (unlike the 1987–93 intifada, this is not a popular uprising) has produced any.

Knowing that he cannot win a Palestinian war of independence alone, Arafat had sought to escalate the situation, hoping to spark a wider

conflict. But with Syria, Jordan and Egypt apparently in no mood for war, his sights are now set on international involvement. Israel, of course, resents the prospect of UN and European forces on its soil. History has shown that such a presence invariably harms Israel's interests – as it did prior to the 1967 war.

In recent years Israel has resorted to targeted killing. Granted that a state is entitled to fight terror and to defend its civilians, should it resort to such means as well? Against targeted killing it has been argued that Israel is killing people without trial or due process; that mistakes do happen and innocent lives might be taken; sometimes during the operations not only the targeted individual is killed but also bystanders, including women and children. Furthermore, while targeted killing may disrupt and deter some attacks, it is likely to provoke more killings of civilians as revenge and makes it more difficult to forge peace. Moreover, this policy of targeted killing offends our sense of moral sensibility; government officials are acting like hit-squads.²⁷

For targeted killing it is argued that this policy has prevented some attacks against civilians, made terrorists devote time and energy to hiding instead of planning murderous operations, weakened the effectiveness of terrorist organizations, and possibly served as deterrence. Targeted killing is performed after ample consideration and in accordance with established and well-defined criteria. It is not arbitrary and every effort is being made by the intelligence not to harm innocent bystanders. Terrorists are not immune to being targeted and killed. Fighting them cannot be conducted in accordance with pacifist principles and with velvet gloves. The Palestinian suicide murderers have no qualms or reservations. They seek to kill any innocent Israeli civilian, be it old people, children, women or infants. The more the better. Any place is a suitable target: restaurants, coffee shops, discos, night clubs, pubs, schools and kindergartens, universities, buses. Stopping these operations is of obvious importance and provides justification for targeted killing as means of self-defence. Furthermore, casualties are minimized for both sides, as targeted killing does not require massive operations that endanger both Israeli soldiers and Palestinian civilians. Indeed, targeted killing is a legitimate means to strike at those who terrorize the lives of innocent civilians. Since the policy is applied against those who are either on their way to ('ticking bombs') or preparing for such attacks, targeted killing enables Israel to protect its civilians by eliminating those involved in these crimes.²⁸

On 21 March 2004 Israel assassinated the spiritual leader of the Hamas movement, Ahmed Yassin. This sparked a heated debate in Israel and abroad. Obviously there are important legal and moral problems involved in the policy of targeted assassinations. I object to its being carried out as a matter of political whim. Self-defence is permitted in certain situations and the degree of force applied must be strictly limited to the needs of the

specific situation. As said, I think targeted killing is permissible only in two situations: ticking bombs and in cases like Yichye Ayash, 'The Engineer'. I should further clarify that my objections to *political* assassinations is on a matter of principle. The decision for assassinations should stem from the military leadership, and approval should be given by politicians. This is the right order of things. Hence my objection to Yassin's assassination. I could add a utilitarian argument about the calculus of harms after his assassination.

People may challenge this reasoning, arguing that sometimes the intelligence might be mistaken. This is true. When humans are involved mistakes might happen. The problem is that we do not have any other source to rely upon but our intelligence. If someone is on their way to carry out a suicide attack, we need to rely on the information we have and stop him/her. As for the suicide planning, luckily there are not many Ayashes around, and with regard to them the likelihood of misinformation is quite limited.

People may further argue that people like Ayash and Muchamad Deff (current chief of Hamas operations) should be brought to trial rather than assassinated. Easier said than done. The IDF was on the trail of Ayash for years until his assassination. The IDF is still looking for Deff, has made attempts on his life a few times and failed. Furthermore, suppose the IDF knows the whereabouts of the Hamas chief of operations. Should it send an elite platoon to capture him and bring him to trial, risking the lives of our best soldiers, some of whom will surely not return home given the close guard around such a person, or should it send an Apache helicopter to assassinate him from the sky? It is easy to say 'capture him' and face this tough decision, and afterwards face the families of the soldiers killed during the operation. Most commanders anywhere in this world will opt for the Apache.

From the same utilitarian perspective people challenged the wisdom of assassinating Ayash, saying that all it did was to unleash an even worse regime of terror. Ayash was the person, 'the Muhandes', who prepared the explosive belts, put them on the suicide murderers, organized their routes and planned the place of the attack. It was Ayash who 'educated' his successor Deff and others. Ayash was responsible for the deaths of dozens of Israelis. Leaving him to live is too costly. Israel has the right to target such a mass murderer.

I am not a pacifist and firmly believe we have the right to defend ourselves against terrorists. We should not be like 'them', blood-thirsty and hateful terrorists, nor do I think we are like them when we take such measures. This is war and in times of war harsh measures like targeted assassinations may be taken.²⁹

Having said that, violence breeds more violence and will not lead us to peace. We need to break this futile cycle of violence. Just as Arafat is not

delivering for his people, so the Israelis are not reaping any benefits. The Palestinians send people to blow themselves up on our streets, while Israel 'targets' their leaders. They shoot, we fire missiles. They kill us, we retaliate – and dozens of lives are lost on both sides. We need to make an innovative, courageous change.

Between the Jordan River and the sea there are now about 6.5 million Israelis (among them 1.3 million Arabs/Palestinians) and 3.2 million Palestinians. The annual growth rate of the Palestinians is among the highest in the world. There is a need for separation in order not to reach the point of an apartheid state. We are facing the danger of becoming another Bosnia, or another white South Africa, or a combination thereof. Therefore there is an existential need to recognize the solution of two states for two nations. This is the essence of the Oslo Accords. This essence has not changed.

In Camp David Israel proposed giving up 92% of the West Bank, and 100% of the Gaza Strip. Arafat insisted on the right of return, which means suicide for Israel. Israel was willing to acknowledge family unification on humanitarian grounds but cannot accept a full-scale right of return for all Palestinian refugees. By insisting on this, Arafat stated that he wishes the demise of Israel as a Jewish-Zionist state.

Since 2000 I have been promoting and calling upon Israeli politicians to push hard the idea of 'Gaza first'. This idea was mentioned in the papers without much elaboration. I have been proposing the following, which was largely adopted by Prime Minister Sharon.

THE GAZA FIRST PLAN

The Gaza Strip is arguably the most populated piece of earth in the world: 365 square kilometres with more than 1.2 million Palestinians, and some 7,500 Jewish settlers in 16 settlements.

Assuming that the Israeli government approves the idea by a majority vote, the heads of settlers who reside in the Gaza Strip will be invited to meet Prime Minister Sharon. It will be explained to them that the government has decided to pull out the IDF from the Strip, and an honourable solution will be offered to resettle them in other parts of Israel. The proposal should be generous, something that the settlers will be happy to accept. This in deep appreciation of their historical role in creating Eretz Israel. This historical role has come to an end. The government of Israel has decided that the costs – in blood and money – are too heavy, and it made a strategic decision that Israel no longer supports settlements at the heart of a hostile Palestinian population. Those who decide, nevertheless, to stay will do this at their own risk. The IDF will supply them with arms and other defence mechanisms but it will be clarified that, on a certain date, the IDF will no longer be around to defend them.

Pulling out from the heart of the Strip is in Israeli interests. Israel needs to acknowledge that the Strip is Palestinian and that we do not have a place there. This trust-building step is designed to show that Israel is willing to make territorial concessions.

A day after the evacuation, Prime Minister Sharon will call a press conference in which he will explain this step and invite Chairperson Arafat to establish an independent Palestinian state in the Strip while Israel closely scrutinizes the region's security. When asked about Judea and Samaria, the answer will be that this issue is dependent on the Palestinian conduct. If they show that they have deserted terrorism and they wish to resolve the conflict, then negotiations will be resumed to deal with all the pertinent issues.

Meanwhile, defence mechanisms will be erected along the Strip to separate the Palestinian authority from Israel.

Gains

The cycle of violence brings nothing but more violence. The present tactic (yes, it is a tactic, not a strategy) is not a solution. The Gaza first plan is not very costly and its gains are considerable. In the national arena, Israel's position will be appreciated: evacuation of major settlements, pulling back the IDF, acknowledging the right of the Palestinians to an independent state. Israel is no longer the strong occupier with 'the best military in the ME' but also a wise democracy that is willing to pay a price to reach a solution. From then on, pressure will mount on Arafat to respond positively.

The Strip does not have any holy component. Evacuation of settlements in Gaza is very different from evacuation of settlements in Judea and Samaria. This will be a test case for evacuation and resettlement.

The answer to the claim that this will be portrayed as a Palestinian victory is that it is an Israeli interest. Israel sees no future in the Strip. It is an essential step to push history in a positive direction. Therefore it is done unilaterally.

As Israel found the resourcefulness to evacuate Lebanon, after sacrificing hundreds of young soldiers in vain, so it is time to evacuate the Strip. Dozens of soldiers are being killed pointlessly, defending the few thousand settlers. It is time to stop this futile bloodshed that will bring no results for Israel. It is time to acknowledge that the Strip is Palestinian, and that we have no share in it.

Sovereignty: a significant difference exists between a Palestinian entity and a Palestinian state. With sovereignty comes accountability. There is a price for entering the community of nations. Sovereign countries are expected to overcome terrorist organizations and blood-brokers. A president cannot say that he does not control his own security forces (Arafat has far too many of those), or people. If he cannot control his own

people, the national community will clarify that he does not deserve independence and sovereignty.

Separation: a test case to examine to what extent this is a useful solution. There is much speculation whether or not this is a viable solution. Instead of speculating, let us examine this issue in practice.

Caveat: of course there are many differences between Gaza and Judea and Samaria. The topography is very different. The holy component is missing. There are fewer settlements in Gaza. So we are talking of a circumscribed test case, but still a test case.

Costs and Disadvantages

Some will conceive this proposal as surrender. However, this step should have been carried out long ago, in light of demography and Israel's yearning to bring peace to our troubled region. We all want peace but not all of us are willing to pay a price for peace. It is time to understand that in order to have peace we need to pay a price. Peace, like any other precious commodity, is costly. Once we have reached the conclusion that Israel has no interest in the Strip and that there are no free meals, especially not in the Middle East, it is time to take some constructive steps towards peace.

Furthermore, the Palestinians still have a lot to lose. In future negotiations both sides must acknowledge that they have something to gain, and no less importantly, something to lose. The Palestinians will not settle for Gaza only. They will ask for the West Bank, and rightly so. In order to continue the peace process, both sides must show commitment and sincerity.

Escalation of terrorism is a concrete issue that deserves careful attention. Thus, separation is suggested. The topography of the region is less complicated than the topography of the West Bank. Of course, separation entails an economic price, especially to the Palestinians. Therefore, Palestine and Israel may both request economic assistance for Gaza. If there is quiet, there is more likelihood that international support will be granted. It is in Israeli interests not to suffocate Gaza and to enable the Gazans to develop independent economic resources.

Sovereignty without a counter-Palestinian payment: we need to acknowledge that the Israeli stance until now was wrong. Evidently, a Palestinian independent state is only a matter of time. We will be far better off initiating its establishment rather than succumbing to international pressure in due course. Further, as said, sovereignty will yield positive results for Israel.

Economic costs: resettling Israeli citizens after their evacuation from Gaza is very costly. This burden might be too heavy for the shaky Israeli economy. The government of Israel will need to approach the international community to commit a special fund for this purpose. Israel should not

turn its back on the settlers who built their homes in the Gaza Strip and have resided there for years, some of them for dozens of years.

It is time to be active: 'Gaza first', I feel, is a sensible step in the right direction.³⁰

ISRAEL IN THE MIDDLE EAST

Israel had signed peace pacts with Egypt and Jordan and maintains quiet borders with these two countries. The leaders of the three countries communicate and have mutual interest in continuing relationships and making the Middle East a more peaceful and secure place.

There are no imminent signs of similar pacts with the two other neighbours. Syria wishes to have the entire Golan Heights in return for peace, cold as it might be. I do not foresee any Likud leader agreeing to this demand. Syria maintains a strong hold over Lebanon, a puppet state that is unable to achieve independence. Lebanon is the valve through which Syria unleashes grievances and escalates the situation.

Israel will strive to maintain a good and stable relationship with its strongest ally, the United States. The US has proved to be Israel's most reliable ally, and Israel has been a reliable partner of the US in the Middle East. Both countries need each other and both appreciate the mutual friendship and trust. With the American presence closer to Israel's border, the alliance between the two countries will further grow and develop.

The coalition involvement in Iraq is expected to last for long months. I also think Iraq is the second stone in the domino (after Afghanistan) and that we can expect more. I have a growing feeling that 11 September 2001 was the Sarajevo act of the new millennium (First world war opened after the assassination in Sarajevo). I fear we might be heading to a third world war. The process is much slower in comparison to the events leading to WWI. Having the experience of two world wars, and the knowledge of the destruction capacity that now exists, people are far more cautious with their actions. But I think the clash between the Western world, fighting for its security and survival, and the enemies of democracy fighting for their identity and values, is unavoidable. The values of al Qaeda and of the dictatorships sponsoring violence and terror cannot coexist with the values underlying the Western world. We are expected to have long years of bloodshed, with escalating violence, until the eradication of democracy's enemies, hopefully without the destruction of humanity.

The problem is that we think in accordance with Western values, forgetting that not all people actually adhere to these values. We hope for the best, while dictators wage war and terror on people whom they view as rivals. They use what I call in my writings 'the catch of democracy', i.e., the values underpinning democracy – first and foremost liberty and tolerance – to advance their position in the world at the expense of these same

values.³¹ Because we do not have much experience in dealing with such people we have let them continue their activities for many years. Now they see that the patience of the champions of democracy is short. With the events of September 11 we began to digest what is at stake.

Another concern in Israel nowadays is Iran. It is estimated that by the end of 2005, early 2006, Iran will possess nuclear weapons. The intelligence warns that Iran might obtain nuclear capacity even sooner from another country, such as North Korea or the Ukraine. Israel certainly does not wish to have such a threat in the region. At heart, some key players in Israel wish for an American involvement in Iran as well.

FURTHER CONCERNS

Ample safeguards should be installed to protect us. We live in an era of political violence and extremism and we need to find answers to the radical forces that seem to be going from strength to strength so that we can overcome them. We need to declare that incitement is well outside the boundaries of tolerance. We need to adopt legal measures to exclude it from the protection of the free speech principle and not hesitate to prosecute people who call for murderous attacks on others.

We must take stringent action now if we do not want to face yet more challenges. The legislature, the police, the courts and the media should take measures to exclude certain modes of speech from our society. Furthermore, we need to fight down all forms of terrorism, whether directed against Jews or against Arabs. Terrorism and democracy cannot live together. One must advance at the expense of the other. It is in our common interest to work for the victory of democracy. We also need to build bridges and promote understanding between different factions of the population, especially between the secular and the religious factions. Terminology such as 'we are enlightened liberals and they constitute the forces of darkness' which is often utilized by Israeli civil libertarians will not help the forces of democracy. There are enlightened individuals within the religious circles just as there are intolerant individuals within the secular circles. Israel, as a religious and democratic state, needs to work out ways to bring about the good of both traditions, and to enrich the citizens' understanding of both great forces that made Israel the state it now is.

NOTES

1. Gillian Doyle, 'Regulation of Media Ownership and Pluralism in Europe: Can the European Union Take Us Forward?', *Cardozo Arts & Entertainment Law Journal*, Vol.16, Nos.2-3 (1998), p.451.
2. Cf. Serge Robillard, 'Vers une nouvelle réglementation européenne', in *La Concentration dans les médias*, No.1, Quebec, December 1996, pp.25-33.

3. Cf. Joyce Nelson, *Sultans of Sleaze*, Monroe, ME, 1989, pp.63–4; James Winter, *Democracy's Oxygen: How Corporations Control the News*, Montreal, 1997, pp.xxiii, 3–11; Dwayne Winseck, *Reconvergence: A Political Economy of Telecommunications in Canada*, Cresskill, NJ, 1998.
4. Dan Caspi, *Mass Media and Politics*, Tel Aviv, 1997, p.20 (Hebrew).
5. Dan Caspi and Yehiel Limor, "Introduction", in D. Caspi and Y. Limor (eds.), *Mass Media in Israel*, Tel Aviv, 1998, pp.20–21 (Hebrew).
6. Chapter C, Second Television and Radio Authority Law (1990), in *Ethics in Television and Radio Broadcasting*, Jerusalem, 1997, pp.26–29 (Hebrew).
7. Yaron Katz, 'The Development of Cable Television in Israel and Its Connection to the Social and Political System', *Patuach: Forum for Culture and Society* (March 1996), p.87 (Hebrew).
8. Moshe Negbi, *Freedom of the Press in Israel – the Legal Aspect*, Jerusalem, 1995, p.177 (Hebrew).
9. Davida Lahman-Meser, 'The New Map of the Media: Structure and Ownership, Challenges and Risks', in Caspi and Limor (eds), *Mass Media in Israel*, p.185.
10. Negbi, *Freedom of the Press in Israel*, p.179.
11. Hazel Fleming, 'Media Ownership: In the Public Interest? The Broadcasting Act 1996', *Modern Law Review*, Vol.60 (May 1997), pp.378–87. For further discussion on competition law, see Eric Barendt, *Broadcasting Law*, Oxford, 1995, esp. pp.121–43. For discussion on various forms of regulation, see David Goldberg, Tony Prosser and Stefaan Verhulst (eds), *Regulating the Changing Media*, Oxford, 1998.
12. *Report of the Public Committee on Press Laws*, presented to the Minister of Justice and Minister of the Interior (September 1997), pp.47–52 (Hebrew).
13. For further discussion, see R. Cohen-Almagor, 'Responsibility and Ethics in the Canadian Media: Some Basic Concerns', *Journal of Mass Media Ethics*, Vol.17, No.1 (2002), pp.35–52.
14. Max Charlesworth, *Bioethics in a Liberal Society*, Cambridge, 1993, p.108. For further discussion on the duties of the liberal state in maintaining the health of its citizens, see Troyen A. Brennan, *Just Doctoring*, Berkeley, CA, 1991, esp. chapters 3, 4, 8, 9.
15. For further discussion, see Lester C. Thurow, 'Medicine versus Economics', *New England Journal of Medicine*, Vol.313, No.10 (5 September 1985), pp.611–14.
16. For further deliberation on the contractarian approach, see John Rawls, *A Theory of Justice*, Oxford, 1971; idem, *Political Liberalism*, New York, 1993.
17. The discussion here concerns adults who supposedly are responsible for their lives. The case is different when minors are involved, and certainly with infants who become addicted to drugs or alcohol while still in the womb.
18. Another approach draws a distinction between discrimination of products and discrimination of people. While it is just to discriminate among products (such as cigarettes) by means of taxation, no discrimination among people should be made for the sole reason that they do not know how to preserve their health. See Robert G. Evans, "'We'll Take Care of It for You': Health Care in the Canadian Community", *Deedalus*, Vol.117, No.4 (Fall 1988), p.163.
19. For further discussion, see Eike-Henner W. Kluge, 'Designated Organ Donation: Private Choice in Social Context', *Hastings Center Report* (September/October 1989), pp.10–16; Raymond J. Devettere, *Practical Decision Making in Health Care Ethics*, Washington, DC, 1995, pp.440–66; R. Cohen-Almagor, *The Right to Die with Dignity: An Argument in Ethics, Medicine, and Law*, Piscataway, NJ, 2001.
20. The Harm Principle is explained in R. Cohen-Almagor, 'Harm Principle, Offence Principle, and the Skokie Affair', *Political Studies*, Vol.XLI, No.3 (1993), pp.453–70, reprinted in Steven J. Heyman (ed.), *Controversies in Constitutional Law: Hate Speech and the Constitution*, New York and London, 1996, Vol.II, pp.277–94. For a discussion of the Respect for Others Argument, see R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance*, Gainesville, FL, 1994, chapters 3, 7, 8.
21. To quote Mill, the end for which 'mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection'. Power can be rightfully exercised over any member of society, against her will, is to prevent harm to others. Cf. J.S. Mill, *On Liberty*, in *Utilitarianism, Liberty and Representative Government*, London, 1948, at pp.72–3. See also pp.114–138.
22. Babylonian Talmud, Sabbath 31a.

23. For discussion, see R. Cohen-Almagor, 'Israeli Democracy, Religion and the Practice of *Halizah* in Jewish Law', *UCLA Women's Law Journal*, Vol.11, No.1 (Fall/Winter 2000), pp.45–65.
24. See Rawls, *A Theory of Justice*, pp.216–21.
25. For further deliberation, see Will Kymlicka and Raphael Cohen-Almagor, 'Ethnocultural Minorities in Liberal Democracies', in Maria Baghramian and Attracta Ingram (eds), *Pluralism: The Philosophy and Politics of Diversity*, London, 2000, pp.228–50.
26. For an elaborated discussion, see R. Cohen-Almagor, 'Between Neutrality and Perfectionism', *The Canadian Journal of Law and Jurisprudence*, Vol.VII, No.2 (1994), pp.217–36.
27. Cf. Michael L. Gross, 'Fighting by Other Means in the Mideast: A Critical Analysis of Israel's Assassination Policy', *Journal of Political Studies*, Vol.51 (2003), pp.1–19; idem, 'Assassination: Killing in the Shadow of Self-Defense', in J. Irwin (ed.), *War and Virtual War: The Challenge to Communities*, Amsterdam, forthcoming. See also H.C. 769/02 *Public Committee against Torture v. The Government of Israel*.
28. For further deliberation, see Asa Kasher, 'The Morality of Preemptive Warfare', *Maariv*, 12 January 2001 (Hebrew); Steven R. David, 'Fatal Choices: Israel's Policy of Targeted Killing', *Ethics and International Affairs*, Vol.17, No.1 (2003); Emanuel Gross, 'Thwarting Terrorist Acts by Attacking the Perpetrators or Their Commanders as an Act of Self-Defense – Human Rights Versus the State's Duty to Protect its Citizens', *Temple Int. & Comp. L.J.*, Vol.15, No.2 (2001), pp.195–246; Emanuel Gross, 'Self-defense against Terrorism – What Does It Mean? The Israeli Perspective', *Journal of Military Ethics*, Vol.1, No.2 (2002), pp.91–108; Daniel Statman, 'Targeted Killing', *Theoretical Inquiries in Law*, Vol.5 (2004), pp.179–98.
29. Raphael Cohen-Almagor, 'Targeting Assassination', *Washington Post*, Sunday, 25 April 2004, Outlook, p.B4.
30. For further discussion, see <http://almagor.blogspot.com>.
31. R. Cohen-Almagor, *The Boundaries of Liberty and Tolerance*; idem, *Speech, Media, and Ethics: The Limits of Free Expression*, Houndmills and New York, 2005.