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**RELIGION AND QUALITY OF
DEMOCRACY IN ISRAEL**

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ABSTRACT

This research aims to answer the following questions: *How does religion (in particular Judaism) affect the quality of democracy in Israel? Why, historically, religion assumed this role? How the correlation between religion and democracy affects the life of the so called "dominant" Jewish group?*

Using the TODEM method for democratic deepening, the procedural dimensions are investigated. The dimensions are: rule of law, electoral and inter-institutional accountability, participation and competition. After analyzing of all of them, a strong influence of religion is found in rule of law, participation and competition. This influence is evident at the institutional as well as at the social level and deeply affects the quality of democracy. Although the research does not question the belonging of Israel to the democratic group, a label is created to underline the shaping influence of religion: Orthodemocracy. This term refers both to the institutional role of religion (all recognized religions in Israel are given this role) and, in a more specific acceptation, to the role of Orthodox Judaism. The legal validity of religious norms in Orthodemocracy creates paths of discrimination and inequality that greatly impact on the daily life of the citizens. Jewish citizens, that a popular ethnic approach portrays as dominant in the Israeli society are all but exempted from the discriminatory effects.

The strong influence that religion plays has historical reasons: this research argues that the source of power, since the diffusion of the nationalistic ideology, was the need for the state-enterprise to be agreed upon among all Jews. Religious legitimization, especially at the international level, was an absolute necessity for the Zionist project. Benefiting from this very political need, the religious minority managed to achieve astounding victories in terms of autonomy and influence in the society. After the dominance of the Zionists political leadership extinguished, the power was maintained through a new political role that the religious parties acquired in the fragmented Israeli society: that of Kingmakers.

INTRODUCTION

The relation between religion and democracy in Israel, where religion is intertwined in an inextricable way to ethnicity, is a much debated issue. Many scholars addressed the topic of the secularity of the State, talked about citizenship, social conflict and exclusion. The definition of Israel as a Jewish and democratic State has been raising doubts and criticisms. In some cases it has also been defined as an oxymoron.

Many of the theories elaborated on the topic tend to focus on the repercussions that this regime has on the status of the Arab population of Israel, emphasizing the ethnic cleavage existing in the society. While doing so, a dominant position is attributed to the Jewish population. This group is depicted in its entirety, as a body that enjoys the benefits provided by an ad hoc regime. I considered this approach non satisfactory since it lacks the ability to fully picture the Israeli society. In my review, I enlightened how the concepts of ethnic democracy, majoritarian democracy and in general the approaches based on the ethnic cleavage only partially describe rooted mechanisms of discrimination and State malfunctioning whose consequences affect the life of the Jewish population.

As a consequence, I found a greater scientific interest in investigating the religious issue and trying answering the following questions:

How does religion (in particular Judaism) affect the quality of democracy in Israel? Why, historically, religion assumed this role? How the correlation between religion and democracy affects the life of the so called "dominant" Jewish group?

Questions concerning the relation between religion and democracy in Israel have been addressed before and answered according to different disciplinary approaches (legal, political, sociological, historical etc.). In the first chapter the main approaches were reviewed. An extensive theoretical investigation was made on the concept of democracy and its

definition. The focus was directed to the concept of liberal democracy, considered a model to tend to in many of the ethnic-oriented studies. Indeed, liberal democracy is one of the most common and praised models of democracy. I discussed its structural features and its implementation and I reported views on its inadequacy in defending its citizens or to promote reciprocal acceptance and harmony.. A liberal democratic regime would not necessarily guarantee a high democratic quality: structural elements need to be accompanied by a democratic culture in order to be effective and not to lead to distortions. The existence of a democratic culture both in the pre-State Jewish community and in the State era was questioned. Many scholars answer negatively to this question. In the last part of my literature review, I acknowledged the necessity to conduct a deep analysis of the Israeli democracy and I reviewed some of the main approaches that suggest an investigation on the actual functioning of democracy as one of the fundamental indicator of its quality. In this context, I introduced the methodological tool that I chose for my investigation: the TODEM method for democratic deepening.

This method begins the epistemological activity with the exploration of the concept of quality and traces three semantic paths (quality as a procedure, quality as content and quality as a result). These acceptations are then translated in dimensions according to which democracy is analyzed. The procedural, substantial and result dimensions are further divided in sub-dimensions and then in indicators on which is possible to operate a qualitative and quantitative investigation. I decided to focus on the procedural dimensions (that are rule of law, electoral and inter-institutional accountability, participation and competition), in order to examine the provisions that govern the functioning of the Israeli democracy. I investigated deeply the aspect of the rule of law since a great relevance is generally recognized to this aspect; additionally, it was mentioned in the original form of the TODEM model as the basic one. The deepening on the procedural dimension did not exclude the other dimensions that actually emerged during the dissertation, proving the essential interconnection among the dimensions. The provisions and settings

linkable to specific aspect of religion were of course enlightened to be later collected and further elaborated in my third chapter.

In the third chapter I noted how religion affects democracy in the administration of justice both standing as an alternative pole of legal authority and actually discussing the very nature of the law. I pointed out the role of the religious parties in the formation of Governments: their blackmail power as well as their ability to influence the governmental agenda and the allocation of public funds. Further, I noticed a double path in the connection between religion and participation. From one hand, the level of religiosity is linked to segregationist tendencies and refusal of participating. On the other hand, some successful experiments of integration and social approval have been autonomously started by the segregationist communities. The implemented projects are benefic activities that are promoted since they are seen as the implementation of religious values and deeds.

After contextualizing these findings in a historical framework, I drafted my conclusions:

The above mentioned impact of religion in the Israeli democracy discards the view of a society that is strictly divided along the ethnic line Jewish VS Arab population. Segments of the so called “dominant group” are themselves object of some kind of unequal treatment and discrimination. In particular, the outcomes of my research enabled me to elaborate the new label of *Orthodemocracy*, a compromise between democracy and Jewish Orthodoxy that seems to cut the Israeli society (especially referring to the Jewish population) along the confessional line more that along the ethnic one. For some aspects, it is not wrong to say that Israeli democracy treats the inhabitants of the State first as members of religious groups, then as members of ethnic groups and only in the end citizens of the state.

Through the historical consideration, the role of the Status Quo emerged as the proof of the political power that the religious component of the Jewish community acquired since the moment in which the State started to be ideated. I claim this power to be a symbolic one, given the relatively numeric minority that the religious

component represented at the time. The power that the religious faction had was the power of legitimizing the State-project (and then the State) that the secular Zionist elite was in need for. An agreement on the basic features of the State led to the recognition of the state project by the religious community (both Zionist and not Zionist), providing Israel with legitimization also in the international panorama.

The following developments, both in the legal system and in the society, are the result of a continuous negotiation on the meaning of Israel as a political and a symbolic entity and on the unsolvable diatribe about the Jewish identity. A consociational inclusive approach was the political answer to the dilemma. When the political power of the Zionist leadership came to an end and new political dynamics took force, consociational approach left the pace to a more "real" competition. By that moment, however, religious parties were consolidated and able to benefit from their new role of kingmakers. In the meanwhile the social fracture between secular and religious deepened due to a radicalization of the religious agenda and an extension of their requests but also due to the massive secularization that the majority of the Israeli society underwent. Till today politics seems to be unable to offer solutions to this consuming "identity debate" that now has been going on for decades. On the contrary it appears short-sighted and immersed itself in the dilemma.

On the light of the findings of this research a glimmer is seen in the positive role that basic religious values can have as incentive to participate and contribute. Looking at the minority but successful experiments of religious participation it seems that this path can be useful to harmonize social acceptance and valorization of one's value.

CHAPTER 1

How Israeli democracy is assessed: a critical review of the literature

1.1 ETHNIC CLEAVAGE AND DEMOCRACY

The ethnic cleavage is largely applied when studying Israeli society since it has always been extremely relevant in shaping the history and political-social situation of the area.

During the Ottoman Empire, well before the creation of the state and even before the Mandate period, the area was populated by many different ethnic groups; each with its own religion, culture and *ad hoc* legal system. After the decline of the multicultural and multinational Ottoman Empire, the Mandate period saw an intensifying tension among the groups in Palestine. This was due to an alteration in the numerical proportions of the Jewish population and also to the declared nationalist aspirations that were slowly beginning to take form.

The creation of the State and its aftermath all but ameliorated the existing inter-ethnic relationships in any aspect while some sub-ethnic challenges were posed by new waves of immigration, especially within the Jewish population.

In modern times the ethnic divisions are still one of the key elements in Israel. Its origin stems from historical events but also affects present and possible future outcomes. Many scholars focus on this aspect, often extending the perspective to include the broader Middle Eastern geographical area.

Nonetheless, in the specific analysis of the Israeli case, too much focus is placed on this issue, risking underestimation of other issues that are equally important. The main weaknesses of this approach that will be explained in this critical review are:

–When assessing democratic functioning and quality of democracy in general, the Jewish population of Israel tends to be considered as a unitarian actor whose main feature is the dominance of the system.

–The adoption of the ethnic criterion as the only discriminant in assessing the inclusiveness and the equality of the democratic system leaves some cases uncovered. In this way, equally consistent areas of inequality and discrimination are not reported or included in the model. The chosen classification criterion therefore is not fully able to “picture the reality”.

–The analysis of the Jewish population of Israel based on the same ethnic criterion portrays a quasi-stereotypical situation. Intra-subgroup lines of differentiation and the historical developments are not taken into account. The contradiction is evident when analyzing the discontent of the Ashkenazi secular group (seen as the dominant subgroup) toward the democratic system.

In light of my stance, the literature review will start with an analysis of the concept of ethnic democracy, coined by Smooha and attributed to Israel. Smooha¹ compares Israel to other Western democracies and argues that neither the liberal democratic model nor the consociational one can be assimilated into the Israeli model since Israel would not possess the main features that these definitions require.

In a liberal democracy, the individual is at the center of the interest of the State with disregard to his national or ethnic belonging. The neutrality of the State is accompanied by an attempt to create a civic identity to which all citizens can develop a sense of belonging. In a consociational State, collective rights would be granted along with the civic one. In order to preserve the existence and identity of both groups, separate institutions for both groups would be maintained² Other types

¹ Smooha, S. (2003). The Nation before the State in J. E. David (ed.) *The State of Israel: Between Judaism and Democracy*, Jerusalem: IDI, pp. 371- 377.

² On consociational democracy see also Lijphart A., (1968). *The Politics of Accommodation. Pluralism and Democracy in the Netherlands*, Berkeley: University of California Press.

of democracy such as the multicultural democratic model are also excluded, mainly because they lack a civic approach to ruling and have a strong tendency toward unequal treatment of their citizens (according to their ethnic belonging).

The model of ethnic democracy³ describes a hybrid regime. An ethnic democracy meets the minimum definition of democracy; it grants civil liberties, political, social and human rights for all permanent residents. Some collective rights are also granted to minority groups (for example autonomy in language, religious institutions, schools and cultural organizations) but a consistent part of them is denied. For example, the recognition of civil equality and the free expression of national belonging are not the State's priority. On the contrary, they are seen as a potential threat. Minority groups are allowed to struggle for equal rights both publicly and institutionally as well as through their representative in elective bodies, to whom they have free access.

In an ethnic democracy, the State supports an ethno-nationalistic ideology. The State is considered a prerogative of the dominant ethnic group whose components, with exception of a few cases, are determined by lineage. The symbols of the State (language, religion, institutions, flags and anthems, name of places etc.) are affected by the dominant culture. Also laws and policies, especially those regulating naturalization, immigration and ownership of land and businesses, are biased in favor of the core ethnic nation.

In a lighter and more subtle way than the *Herrenvolk* democracy⁴, the ethnic democracy defines a privileged group of citizens on the basis of ethnic belonging. The minority group is marginalized with open discrimination and stigmatization as a threat to the survival and

³ Smooha S., (2001). *Ethnic Democracy a model*. Working paper n. 13, European Centre for Minority Issues

⁴ The term "*Herrenvolk* democracy" was used by Pierre van den Berghe to describe South African regime during the apartheid period. This term refers to a democracy that is officially limited to the dominant group only. Other scholars like Yfitachel took into consideration this definition for Israel, refusing it since the state of Israel grants important civil and political right to the non-dominant groups. See Yfitachel O. (1999), *Ethnocracy: The Politics of Judaizing Israel-Palestine in Constellations*, 6, 364-391

integrity of the ethnic nation. This discourages and prevents the minority group from taking an effective part in the decisional making process and becoming an accredited actor in the political arena.

The concept of Ethnic Democracy is largely used and its validity is recognized by a substantial number of scholars and analysts. Some other scholars go as far as to explain how the tyranny of the majority makes Israel into a "majoritarian state" and not a democracy.⁵

Nevertheless the ability of this theory to effectively describe the Israeli quality of democracy seems to be somehow limited. This model was developed during a study about the Jewish Arab relations but developed from there into a more independent and organic framework. The whole model suffers from the original approach, which focuses on the ethnic division and underestimates the multidimensional political and social conflict in Israel. This prevents it from offering an accurate representation of the current Israeli democracy.

According to the definition of Smooha, "inequality and dominance prevail not only in practice but also in theory"⁶ and the State ends up a tool in the hands of the majority (in this case, the Jewish group) who protect only their interests and work towards the enhancement of their own life-conditions as their main purpose. The examples that he gives are numerous and mostly fitting his theory however, as it is a model for a regime and not a model for studying the relationships among different ethnic groups in a State, it should be noted that inequality and discrimination in Israel might be perpetrated not only through ethnic lines.

Ethnic democracy is defined as a diminished democracy. In the case of Israel, the Arab minority is stated to be the victim of this spoiled regime however its members are granted individual and collective rights: human, social, civil and political as well as the rights of a recognized minority (language, schools, media, cultural and religious institutions.)

⁵ Navot D., (2002) Is the State of Israel Democratic? The Question of Israel's Democratic State in the wake of October Events, Tel Aviv University (Hebrew)

⁶ Smooha, S. (2003) The Nation before the State in J. E. David (ed.) *The State of Israel: Between Judaism and Democracy*, Jerusalem: IDI pp. 371- 377.

It is worth noting that a significant portion of individual and collective rights are negated to some Jewish Israeli citizens while others are negated to all Israeli citizens on the basis of a survival of religious dominance on these spheres.⁷ Cases of unequal treatment toward the Jewish population of Israel have been a leading political debate for years now (public funds to religious communities, non-recognition of the non-Orthodox rabbinical authority, exemption from military service for the Ultraorthodox,⁸ etc.)

Also the definition of “majority group” could be problematic. Smooha educated himself in some of his studies on the cultural and value heterogeneity of Jewish Israeli population (see below the positions of the critical approach.) For many years their sub-ethnic origin put them in a different position in Israeli society and exposed them to an unequal treatment by the state that, according to many researchers would have deeply harmed the development of an egalitarian democracy in Israel. This effect would still be in action today.

Even the Jewishness of the State, unquestioningly considered as a major feature of Israel (part of the ideology that is mirrored in the social dynamics of the State) is a debated definition. There are different meanings attributed to this. The debate is not devoid of ideological connotation and the division reflects on both the theoretical meaning and on the practical effects of the relations with the non-Jewish minorities. The divisions created in trying to define the concept of “Jewishness” are proved to be associated with levels of religiosity, both in public opinion and in the political implementation of policies.

In the model, the dominance of the majority is evident also in the symbolic system of the State. The core group imposes its cultural, religious and historical background as the source for symbolic institutional production. This would prevent the sense of belonging for the minority, a clear discriminatory attitude. Israel’s calendar,

⁷ Freedom of religious expression for example is often denied to non -Orthodox streams of Judaism. Freedom of marriage is negated to all citizens in the country.

⁸ The exemption issue has been recently reconsidered and the Supreme Court has stated the illegitimacy of this provision. However, a new norm has not been implemented and, for the moment, a sort of legislative vacuum have not lead to any solution.

festivities, sites of commemoration, heroes, flag, emblem, national anthem, names of places and the very name of the state belong to the Jewish semiotic sphere. However, many have noticed how this element is not exceptional if compared with most of the Western democracies⁹. It is also important to recognize that the creation of the State of Israel is the result of a deep conflict both with the indigenous Arab population and with other Arab countries. This creates a deep sense of hostility in the Jewish collective memory and the accepting of mixed symbols might have been utopic at that time. The formation and the change of collective memory is quite a long process and the relationship between the two groups has remained tense. For this reason, it is problematic to hypothesize any change in this sense.

On the other hand, Israel does not impose to non-Jewish citizens a strict adherence to the symbolic apparatus. By the law, non-Jews are entitled to their day of rest. In non-Jewish communities, institutions and services work regularly during the Jewish festivities offering a very important occasion of cultural contact and alternative to those Jewish citizens that do not want to comply with the duties and restrictions of the Jewish calendar that entails religious prescriptions. Cultural expression is not forbidden to non-Jewish minorities.¹⁰ The problem is that due to the aforementioned historical reasons, the collective memories and symbols of the State of Israel are often conflicting and

⁹ For example, the French version of the Canadian anthem sings: "As is thy arm ready to wield the sword, so also is it ready to carry the cross" and the English flag has the cross of St. George on it. In Europe as well as in America, an uncountable number of places' name begins with "Saint". On the cognition of the diffuse use of "partisan" symbols as state symbols all over the world see, Yakobson, A., Rubinstein, A., (2008). *Israel and the family of nations: The Jewish state and human rights*. London: Routledge.

¹⁰ To this statement a quite crucial exception needs to be made: the so called Naqba Law, passed by the Knesset in 2011, ruled the curtailment of funds to organizations that are active in the commemoration of the Naqba Day, in which Arab citizens recall the establishment of the State of Israel as the cause of the deportation of many Arabs outside Israel and the deprivation of their lands. This is a too complex issue to be treated in a footnote but contrasting positions have been expressed: the supporters claiming that a State cannot fund events that regard its establishment like a tragedy; the detractors pointing at the law as a deprivation of the freedom of expression and the attempt to suffocate minorities' narrative.

this creates tension and reciprocal refusal. In this aspect, a process of reconciliation may be necessary.

In the attempt to prove the Jewish ethno-national political dominance, it is often pointed out how the various Jewish political parties cooperate, especially through parliamentary coalitions, while the Arab parties are never taken into account as viable allies. This review does not attempt to minimize the commitment on the part of the Jewish political elite to exclude the Arab parties and representatives from official entrance in the majority coalition, however it may be more appropriate to focus for a moment on precisely how the political spectrum has become so sharply divided between religious and secular parties. (The Arab parties are not included when referring to the “dominant group.”) It is a symptom of another deep divide that cannot be left behind when dealing with the quality of Israeli democracy and its party system. The customary coalition between religious and secular parties in the Government is reported as proof of a solid axis of Jewish parties against the Arab parties, with discriminatory intents. These alliances are notoriously considered to be one of the biggest causes of political immobility and instability in the country.¹¹ Historically, however, it is possible to register moments of external collaboration with Arab parties. During Yitzhak Rabin's government in the early 1990s, the government survived thanks to the support of some members of Arab parties.¹² The external support offered by the Arab parties to certain coalition governments led by the Labor party is described as another vexatious and exploiting measure perpetrated by the Jewish political class. On the contrary, it reveals a vivid and open political debate within the party system and opens future possibilities for further political agreement and inclusion.

¹¹ In the attempt to solve this chronic instability, the electoral system has been reformed in 1992. This proved to be totally ineffective as a solution and after few years the old method was restored.

¹² This case is recalled by Peled as the less discriminatory period of Israeli history. See Peled Y., (2005) Ethnic democracy revisited in *Israel Studies Forum*, 20:1, 2005, pp. 3-27.

The prevailing “primordial solidarity”¹³ among the Jewish political actors in Israel is certainly consequence of the Zionist political culture and of the historical conflicting situation among Jews and Arabs (both within the Mandate Palestine and more generally in the Middle Eastern region) but even if it deeply affects levels of inclusiveness and power sharing, it cannot be considered a reason to define a regime as discriminatory. There is no legal provision against Arab involvement in a ruling coalition or as members of government. On the other hand, an amendment to the Basic Law: the Knesset,¹⁴ restricts the participation and election of political parties that contain within their programs the denial of Israel as the homeland of the Jewish people and the elaboration of parliamentary motions with the same content. This constraint, however, extends both to Jewish and Arab parties and concurrently forbids any incitement of racism as well as the denial of Israel as a democracy. This rule, moreover, has been not been restrictively applied by the Supreme Court which has generally allowed the presentation of every party, disregarding possible “problematic platforms” or the enunciation of “forbidden statements.”¹⁵

The same ethnic criterion of analysis is applied when criticizing the immigration policy of the State of Israel and in particular the Law of Return. This is considered as one of the clearest examples of the “ethnic ascendancy criterion”. Jews and their descendants (including those not halachically¹⁶ Jewish) are extended automatic citizenship and their immigration is welcomed and favored. A blatant difference is noted between the possibility of Jewish people to easily immigrate as

¹³ On the concept of primordial solidarity see Gutmann E. (1981), “Religion and its Role in National Integration in Israel,” in Michael Curtis (ed.), Religion and Politics in the Middle East Boulder, CO: Westview Press

¹⁴ Basic Law the Knesset, amendment 7a. For the full text see: http://www.knesset.gov.il/laws/special/eng/basic2_eng.htm

¹⁵ Emblematic is the decision that the Supreme Court took in 2009, overturning the Central Elections Committee’s decision and admitting to elections the United Arab List-Ta’al and Balad. The accusation that was moved to these parties was the non-recognition of the state of Israel and the incitation to fight against it.

¹⁶ Lit. “According to the Halacha”. Halacha is the Jewish religious law and it comprehends direct prescription from the Bible and rules of rabbinical creation.

“returnees” and the impossibility of Arab “returnees” to come back to their pre-State period land. In reality, the “restrictive interpretation” of this law, which in many cases required the intervention of the Supreme Court, demonstrates that members of the Jewish group also undergo some unequal treatment. Non-Orthodox Jews were initially negated the right of *aliyah*,¹⁷ as it was then recognized by the Supreme Court, while converted non-Orthodox Jews are still not entitled to receive all the benefits of citizens even after having immigrated and acquired citizenship under the Law of Return. These Jews cannot marry, divorce or receive funeral services, including burial, within the State of Israel. Their descendants are also ineligible for these services unless they undergo a recognized conversion process. This policy requires serious reflection on the internal dynamics that rule the membership to the “dominant group,” displaying some weakness in the ethnic approach while corroborating the importance of the religious aspect. This concept is partially contained in Smootha's theory when he states that belonging to the core ethnic nation is defined as innate, but it is also possible to acquire if the requirements are met. Which ethnic status is possible to acquire beyond the one that a person is born with?

Smootha makes a very wise consideration when he reports that Jewish religious identity and Arab Islamic religious identity are the prominent identities rather than a shared Israeli civic identity. Here is the conundrum: the religious identity is the one that critically shapes the Israeli society and the ethnic identity is not enough to fully portrait the situation. The Arab world is much more variegated than this model depicts and the differences of faith among the Arabs are very discriminant when analyzing the relationship with the Jewish majority as per their status within the society. Druses, for example, have a much higher status in the Israeli society in regards social integration. They regularly serve in the armed forces and their relationship with the

17 Aliyah is the right of immigrate to Israel as an act of return to the ancient land of the Jews. This process is regulated by the Law of return. It grants an easier bureaucratic *iter* of naturalization, a mostly free process of assimilation (language, culture and socialization) and, especially in the past, gave access to some preferential (and public funded) forms of help for housing and employment.

Jewish population is not as tense. Christian Arabs also enjoy more integration and are less pressured by security control or public distrust.

In ethnic democracy there is a contradiction between democracy and ethnic ascendancy: the reality in Israel is a more complex contradiction that includes in the picture the issue of religious faith as a central element¹⁸.

Those who support the idea of an ethnic dominance in Israel, argue that Israel cannot be labeled as a liberal democracy because the state focuses on ethnic groups, not just individuals. The hypothesis that will be examined in this analysis, however, is that the Israeli democracy treats the inhabitants of the State first as members of religious groups, then as members of ethnic groups and only at the end, as citizens of the State. One could ask why, in Israel, the ethnic criterion is so deeply intertwined with the religious one. Perhaps because Israel, as a Jewish State, aims to mirror the overlapping dynamic of ethnicity and religious belonging that is present in Judaism? Since the insistent complain of the secular Jewish group, can we define this dynamic something agreed upon at least by the "dominant group"? Why then, did the State adopt it and build an institutional system around it?

Ethnic criterion in the analysis of the Israeli Jewish group

The ethnic criteria is largely used both for the creation of a model of democracy and in the study of Israeli Jewish society. Many scholars based their theory on this element in order to prove an internal path of discrimination within the Jewish group. The most popular voices in this sense are: Kimmerling, Yiftachel, Smooha, Rouhana and other scholars of the school of social critic and the critical social science. This approach to the analysis of the Israeli democracy and society might

¹⁸ For the role of religion as a crucial factor in the preservation of ethno-nationalism see Don-Yehiya E.& Susser B. (1999) *Israel and the Decline of the Nation State in the West in Modern Judaism*, May 187-202. They also define Israel as an "exceptional" liberal democracy because it did not manage to create a proper multicultural society.

lead to the same distorted results reached by the assimilationist approach that these scholars try to disenfranchise from.

As Kimmerling¹⁹ summarizes perfectly, historiography and sociology in Israel followed a path of development that went toward the progressive recognition of cultural and social heterogeneity in Israel. The assimilationist approach, guided both early Israeli historiography and sociology. Its main representative and founding father, Eisenstadt,²⁰ described Israeli society as a whole, righteously and successfully oriented toward the absorption of immigrants from different countries in the spirit of Zionist “ingathering of exiles.” According to this approach, the ethnic rift within the Jewish group would have been overcome thanks to the emergence of a common Israeli culture, materialized in a universal use of Hebrew, a high rate of intermarriage, social mobility and lack of ethnic conflict. This would have been favored by the common ethnic descent, a common religion, history and homeland. As Smootha maintains,²¹ this original group of assimilationist scholars and those who are defined as “new assimilationist” define the ethnic divide in Israel as mainly symbolic with neither practical consequences society's dynamics nor quality of democracy. Israel would have become increasingly tolerant toward these kinds of symbolic manifestations, favoring the insurgence of a multicultural society.

The main criticisms to this approach regard the delegitimization of ethnic differences and the assumption of uniformity as a premise for national unity. Jewish ethnic heterogeneity is depicted as real and not just symbolic and the different ethnic identities of Jewish Israelis are recognized as well defined. The most radical voices put the democratic nature of the regime under question, seeing it as deeply vexatious not only toward the Arab minority but also toward some Jewish ethnic groups (in particular *Mizrachim*, Russians and Ethiopians) who would

¹⁹ Kimmerling B., (2001). *The invention and decline of Israeliness*, Los Angeles and Berkeley UC Press

²⁰ Eisenstadt S., (1967) *Israeli Society*, New York: Basic Books

²¹ Smootha S., (2004). *Jewish Ethnicity in Israel, symbolic or real?* Jews in Uzi Rebhun (ed.) *Israel: Contemporary Social and Cultural Patterns*, Hannover: Brandeis University Press.

have faced an unequal treatment in the integration process. Its consequences and traces would persist into the current day in terms of economic and social realization. The Israeli democracy would therefore suffer from the distortions of an ethnic stratification that was created in the first years of the State and which has continued to shape the Israeli society. The critical approach, which aims to give a more detailed and authentic picture of Israeli society while emphasizing a number of critical points in the Israeli democracy, operates in the same “assimilationist way” of the assimilationist approach. It considers the ethnic feature as the only/main line along which identification is created. Ethnic identity is progressively losing relevance in shaping the political and social conflict while other fractures persist in their divisive power.²² Some research²³ showed the lack of an *a priori* exclusion based on ethnic criteria but rather an inclusion, albeit with a certain inequality of opportunities. The inclusion was dependent on the acceptance of a “modern, westernized standard” which seems to be more due to an ideological credo. The same critical scholars recognize that a growing number of Israelis (born from mixed marriages for example) do not recognize themselves as belonging to a specific ethnic group. Might it be the result of a successful (or terribly effective) strategy of assimilation? Might it be attributed to the identification with a higher status group²⁴ or to other causes? Nonetheless, it lacks a complete explanatory power.

Another doubt is in regards to some considerations on the “sub-ethnic hegemony” of the Ashkenazi group and its distortion power. Before the State was created, a solid community in the Yshuv took form. Its members were of mainly Eastern European origin and had moved to Palestine partly for ideological reasons and partly looking for new life-opportunities. From this community, a collective identity originated,

²² Peres Y., Ben Rafael E., Fishler A., (2001) The inter-ethnic cleavage in Israel, a research report. Tel Aviv: Rabin Center for Israel Studies

²³ Khazzoom A., (2003). The Great Chain of Orientalism: Jewish Identity, Stigma Management, and Ethnic Exclusion in Israel, in *American Sociological Review*, 68, Aug. 481–510.

²⁴ Klor, E. F. & Shayo M., (2007), Social Identity and Preferences Over Redistribution Discussion Paper No. DP6406, CEPR.

mainly based on Zionist values. Among them was physical force, masculine resistance to the concrete difficulties and sacrifice for the community. Palestine was progressively populated by new waves of Jewish immigrants, both coming from Eastern Europe and from Arab countries (Middle East and North Africa). After the political and historical developments that led to the formation of the State, the Yshuv veteran members established as leading political and intellectual class discriminated the new immigrants, orientalizing²⁵ them and preventing them from socio-economic development as well as preventing them from influencing the society with their background. The new citizens were therefore considered a potential destructive element that was to be neutralized in a definitive way. Their Diasporic identity was seen as dangerous to the Western aspirations of the European Zionist leading class. Those following this critical approach remark on the persistence of the sub-ethnic dominance (perpetuated by the Ashkenazim not only with the wave of immigration of the Mizrachim, but also with the Russians and the Ethiopians) as deeply affecting Israeli democracy. This view has been popular for a long time, even though a certain improvement in the arena of inter-ethnic relations was later noticed. These critic researchers state the absolute dominance of the “secular successful Ashkenazi,”²⁶ fully embodying the Israeli man and enjoying a society that was built around his needs and culture. This definition claims to point out the ethnic criterion but misses partially the point for two reasons. First, it adds two elements to the ethnic connotation: the economic/professional realization (“successful”) and the religious component (“secular”). The ethnic connotation therefore, seems to be inadequate to define satisfactorily the current Israeli society and or to make precise assessments on the quality of Israeli democracy. Second, it should cause us to reflect on the fact that the “dominant prototype of Israeli” that has been portrayed could have been the one that feels more discriminated by the legal and institutional system as well as by the policies applied by the Governments. That gives religion an important role in defining the life of all its citizens. The dissatisfaction of this

²⁵ For the concept of Orientalization see above Khazzoom A. (2003)

²⁶ Smootha S. (1993) Jewish ethnicity in Israel, in Kyle K. & Peters J. (eds.) *Whither Israel? The Domestic Challenges* London and New York: I.B. Tauris and Co. Ltd.

Ashkenazi success citizen may also be shared by many non-Ashkenazi citizens according to their approach toward religion. This would open a more inter-ethnic and general approach to the interpretation of Israeli democracy.

1.2 LIBERAL DEMOCRACY: FORMAL ASPECTS AND IMPLEMENTATION

In the previous section, the concept of liberal democracy was mentioned as a crucial term of comparison, being one of the most widespread models in Western world. Sometimes it is considered a synonym for the concept of democracy *tout court* and for this reason it deserves a special attention. As always, when trying to define macro-concepts in political science, the definition is one of the most controversial parts. Democracy is considered to be a continuum and the semantic borders of this concept are variable in several directions. Further considerations in this regard will be explained in the next chapter: specific definitions of democracy will be mentioned and the features and explicative power of the TODEM method of analysis will be illustrated. The TODEM method in fact has been chosen as methodological tool to assess the quality of democracy in Israel. The concept of liberal democracy also suffers from these uncertainties of definition; however it is possible to find some basic features on which the scientific consensus is widespread:

a) The role of the individual

The commitment to guarantee a greater level of liberty is implicit in the label of Liberal Democracy. Freedom and the ability to shape one's own fate are the philosophical ideas that guide liberalism. The same individualistic view is applied to society and citizenship. Society is meant to be a gathering of individuals potentially able to self-regulate and reach prosperity. The relationship between the State and its citizens therefore is dual: the State grants citizens with rights provided they fulfill duties. Due to the optimistic view of the individual's ability of realization, citizens in a liberal democracy are perceived to be autonomous and free. The intervention of the State is limited to prevent the violations of other individuals' freedom or of universal norms.

b) Separation of private and public sphere

Liberal regimes might be considered as the righteous subversion of the ancient principle of *cuius regio eius religio*. The authority of the king, at that time, had to be so pervasive and complete that those who lived in

his kingdom were totally subject to his choices in any sense, even if this meant the sudden and total assimilation to a different set of values. The State's minimum intervention in liberal democracies only provides the basics for the survival of the regime itself. The voluntary adhesion to the State,²⁷ a voluntary cession of the minimum personal sovereignty necessary for a collective cohabitation, does not prevent total independence in those aspect of life that are not essential to the functioning of the State.

A large portion of citizens' life is private, meaning it is inaccessible to the State's control and laws. Religion, personal values, ethnicity, sexuality and political views are included in the private sphere. These elements are not subject to any legislation and the complete disengagement of the State from these issues make them formally irrelevant to the status of the individual before the law. Groups or associations formed around these issues, both legally and economically, are totally ignored by the State. Their formation, however, is permitted. The participation or belonging to one of these groups does not prejudice the condition of the citizen nor does it constitute a title of merit: while individual rights are granted and maintained, collective rights are basically nonexistent.

c) Neutrality of the State

The State is considered to be an aggregation of individuals that voluntarily join the collective on the basis of self-interest. A liberal democratic regime, therefore, should ideally be the optimum between freedom and security. An opportunistic rationale neither dictated by blood affiliation nor by cultural or religious affiliation, presupposes the sense of belonging. There is no formal value apparatus beside the

²⁷ The voluntary consent to an organized form of collective life from which state would derive its authority is expressed by Locke. Locke defines this moment as crucial for the passage from state of nature to state of right. These theories and its ideas on liberal democracy are exposed in "Letter concerning toleration", Quadridge 1689 and "Second Treatise of Government", 1690 in electronic form at <http://www.gutenberg.org/ebooks/7370>

agreed upon concept of liberty and few others that are fundamental to maintain the regime.²⁸

A liberal state refrains from dictating a virtuous path along which citizens should walk, not possessing the role and the right to impose a moral code on its citizens. Contrary to the classical vision of the state (with Plato and Aristotle cited as the most famous examples), in liberal states there is neither an ideal citizen nor an educational aspiration. A philosophical explanation might be found in Hume²⁹. In addition to the agreed upon utilitarian view of the state authority, Hume adds a speculation about human inaccessibility to the moral truth. From this, it can be derived that no state can be in the position to impose any moral code on its citizens, having shown the impossibility to choose with certainty among many.

Even though there is an official language and there might be some cultural practices that citizens are minimally required to adapt to, such as a day of closure of the public offices, every citizen is free as to whether or not to express a sense of belonging to a particular community, cultural, linguistic or ethnic group. The requirements for inclusion in the State are therefore non-ethnic, non-religious and non-ascriptive.

Is liberal democracy a realistic model?

This issue is not a minor one. When analyzing regimes, we should keep in mind the idealistic nature of the different types we are referring to in order to realistically assess the quality of each analyzed regime. A normative model indicates some general features that, *de facto*, are rarely completely possessed by a political system. Moreover, States have not been created by scientists. Historical facts, social contingencies

²⁸ The elements that are recalled as total concern of the state are the so called "civil interests" in which life, liberty, property, and survival are included. See Locke, 1980

²⁹ Hume D., (1985) *The Origin of Government*, in *Essays: Moral, Political and Literary*, Miller E. F. (ed.), Indianapolis: Liberty Classics

(features of the population, formation of social cleavages and struggles) and political events (both internal and external) shape regimes and their features more than any ideology that might have been dominant in the State-formation period. This could add other factors of risk to the preservation of a potential model-based regime.

The neutrality of the State and the non-affiliation/promotion of a preferred set of values, (culture, religion etc.) is a crucial element for a liberal democracy. These matters must be relegated to the private sphere where the State does not intervene. This definition, however, does not fit any State in the world. In fact, “no State exists in a demographic or cultural vacuum.”³⁰ Being that the State is a human construct, it always reflects the human reality from which it has originated. This holds true beyond those aspects that have been intentionally set, for example, as a result of a political negotiation. Western democracies, main example of liberal democracy, developed historically as nation States. They were dominated by and identified with a conspicuous national majority. The creation of the political and social system was based on a precise background and has never taken place *ex novo*. Usually it implied a radical transformation as compared to the previous regime. The development of liberal democracy therefore took place through the formal establishment/strengthening of a dominant culture, collective memory and language. Zionism, as part of the European nationalism, did not act differently from the other European movements. As it will be elaborated in the continuation of the research, Zionist ideology too was based on a specific cultural and historical background. Zionists rejected it on one hand but, on the other hand, they used it as a cornerstone for the construction of the new ideology. If on the formal side liberal democracies are ethnically inclusive and not discriminatory on the basis of religious or ethnic belonging, on the other side they offer an undisputable mainstream to which everybody is asked to assimilate, without any interim possibility of change. The adopted values, language and culture become an essential part of the State, which have to remain unquestioned in a sort

³⁰ Dowty, A. (1998) *The Jewish State: A Century Later*, Updated With a New Preface. Berkeley: University of California Press.

of "civil religion."³¹ Formal homogeneity is obtained and the State can afford to ignore the residual differences among citizens of different groups. Multiculturalists³² stress how the pressure on minority ethno-cultural groups (as well as minority groups with a different life conduct, sexual orientation, etc.) would force them to abandon and compromise their distinct heritage or lifestyle. Their dilemma in fact is whether to assimilate or being subjected to gross permanent discrimination. The difficult implementation of State neutrality is well represented by France, one of the most cited examples of a liberal democracy. The dominant cultural substratum is clear if simply looking at the calendar: beyond the secular festivities that coincide with specific moments of the State's history, Christian main festivities are celebrated with the closure of public offices and the reduction of public services. A similar deduction can be obtained by looking at law number 228 which was approved in 2004 by the French *Assemblée Nationale* regarding the laity of the State. This law's main provision is a ban from wearing dresses or showing symbols that ostensibly reveal a religious belonging. An interesting analysis of the norm and its meaning comes from Acanfora. Acanfora reflects on the *laïcité de combat* that France seems to strengthen as an absolute value even at the price of discriminating against the freedom of expression of its own citizens.³³ The point that should be enlightened is connected to this analysis but of a slightly different approach. It is interesting to reflect on the concept of "ostensibility" that is mentioned in the text. The "ostensibility" of a symbol is undoubtedly difficult to determine with certainty and leaves much room for interpretation to the legislator. This might create a basis for discriminatory conduct by the public authority and intensify discrimination against religions. How to decide when a symbol can be sanctioned? What is the discriminant? Public order seems to be the answer; but then, what are the borders of the law? If there is no equal

³¹ For an interesting analysis on the ineffective laity of liberal democracy see Acanfora V., *Religione e Stato di diritto. Il Caso Francese in OLIR*, http://www.olir.it/areetematiche/74/documents/Acanfora_Francia.pdf

³² See for example Parekh B., (2000) *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Cambridge MA: Harvard University Press

³³ Acanfora V., *Religione e Stato di diritto. Il Caso Francese in OLIR*, http://www.olir.it/areetematiche/74/documents/Acanfora_Francia.pdf

limit for every citizen, where is the neutrality? Why should the symbol be an obstacle to the realization of a laic society? Where are the centrality of the individual and the protection of his freedom? The idea that liberal democracy is an open system in which citizens are not discriminated on the basis of race, ethnicity, gender or religion and are entitled to participate in determining, shaping and altering the societal goals and features clashes inexorably with the required assimilation and the “sacrifice” requested for the preservation of the system. Standardization seems to prevent the possibility of any change and perpetuates the privileged position of the dominant group.

Always pointing out the openness of liberal democracy, Smooha agrees with Oldfield³⁴ that in liberal democracy, citizens are stratified on the basis of their contribution to a common good. The common goals should be the elements that define the “good citizen” inasmuch as individuals are able to accomplish them. This point is interesting mainly because it reveals that the “minimum intervention,” which is recognized as a basic feature of liberal democracy, is in reality only an ideal and maybe a Utopia. The definition of what is common good means that a path has been recognized as the official one. This implies the adoption a specific set of values to the detriment of others. The dominant group would be, of course, in a favored position as per the definition of the “common good,” being favored also in the conquest of a superior role in society. In a very short but meaningful sentence, Herzl, speaking about the situation of Jews in the Diaspora, said that the “majority may decide who the strangers are.”³⁵ This concept is very realistic and is particularly meaningful in this context. In caustic and clear language, Western States are defined as very inhospitable environments for minorities since they are unable to provide protection from the caprice of the dominant group: “might precedes right.”³⁶

³⁴ Oldfield A., (1990), *Citizenship and Community: Civic Republicanism and the Modern World*, London: Rutledge

³⁵ Herzl T., (1896), *The Jewish State*. Electronic version at <http://www.jewishvirtuallibrary.org/jsource/Zionism/herzl2.html>

Is liberal democracy a good model?

Till this point, the most salient features of liberal democracy have been pointed out. Liberal democracy indeed is one of the main points of reference in the analysis of Israeli democracy and it is often considered to be a positive model to which Israeli democracy should strive for. It has also been enlightened the difficulties of translating this model into practice. Also the criticisms that have been moved to this regime are now worthy of mention. A number of scholars and scholastic conglomerates have outlined the inherent weaknesses in this perception of liberal democracy.

One of the most lucid analyses of liberal democracy comes from Leo Strauss. According to his non-egalitarian vision of humankind and government, a reference is made to the concept of *aristocracy*, as defined by Aristotle.³⁷ Strauss outlines the difference between individuals, their different attitudes, capacities and consciousness. The attitude of “minimum intervention” in a liberal democracy when combined with the egalitarian principle (as the fundamental feature of democracy) creates a premises for a government that is not able to actualize the common good. This allows irresponsible people rule the community and heavily influence decisions.

The very nature of liberal democracy as a covenantal entity based on voluntary adhesion of individuals enables citizens to stress the utilitarian aspect of their belonging and entitles them to seek out their personal interests. It also allows them to express their opinions about political and social issues, such as the right to vote. The positivist approach to society of liberalism also encourages this egoistic attitude as the engine of a virtuous mechanism allowing each and every individual to improve his/her life conditions. The individualistic society that liberal democracy has set would cause the progressive loss of the concept of natural right; thus disgracing the moral bases on which liberal democratic regimes have been built.

³⁷ For a comprehensive analysis of the political thought of Aristotle and its idea of aristocracy see <http://plato.stanford.edu/entries/aristotle-politics/>

The neutrality of the State would worsen the situation. As previously stated, liberal democratic regimes profess themselves neutral, (Machiavelli would say *amoralis*, separated from the morals,) meaning that there is no moral momentum to drive its actions and that it is not interested in diffuse among its citizens. According to Strauss, the positivist and optimistic attitude supporting liberal democratic regimes adopted scientific neutrality when implementing political regimes, replacing morals with dogmatic relativism. As a consequence of this, the positivistic idea of neutrality would drive the public authority to completely suspend judgment. Since the State refrains from enhancing any set of values aside from freedom, an intellectual moral vacuum would inexorably occur in people's conscience to which point there would be no values toward which to orient their behavior. They would no longer be able to discern right from wrong. The consequences could be disastrous in terms of relationship among citizens and social order. The ideas of tolerance and freedom could be so distorted that the inner rationale of liberal democracy is ultimately betrayed. A strict separation between public and private sphere is another ingredient in the recipe for disaster. In the definition of Strauss: "liberal democracy [...] means limited government, the distinction between the public and the private. Not only must the private sphere be protected by the law but it must also be understood to be impervious to the law."³⁸

Liberal democracy is the champion of private freedom. It stems from the idea that communal life should not totally renounce the freedom of its citizens. The natural condition of man is to be free and rationally self-oriented. Therefore, communal authority can be exercised only in a limited way because it originates from the agreement of citizens and is not set above them as a natural supremacy. However, if the private sphere is protected from public interference, the fundamental change compared to the ancient illiberal regimes, there is also another aspect to be taken into account. Since the private sphere is inaccessible to public authority and its citizens are free to live their private lives according to the values that they prefer, the private sphere is also not regulated by

³⁸ Deutsch K. L. & Nicgorski W. (ed.) (1994), Leo Strauss Political Philosopher and Jewish Thinker, Oxford: Rowman & Littlefield

the political authority and is defenseless against degeneration. The circle closes therefore with a fostered private freedom that is not parallel to the virtues of citizens (or to the education to virtue); in this condition the inner principle of liberal democracy is endangered since the protection of individuals might not be reached. This will lead to the contrary establishment of a “tyranny of the majority”.

A comprehensive example of critical interpretation of liberal democracy from Strauss is worthy of mention. Leo Strauss held a very interesting lecture on this topic on the 4 February 1962 at the University of Chicago. The title of the conference was “Why we remain Jews: can Jewish faith and history still speak to us?” In this speech, Strauss³⁹ analyzed the situation of the Jewish Diaspora in modern times. He conferred a symbolic meaning to it, as a case of discrimination and hate experienced by numerous groups in different countries. Jewish question is emblematic of the political-theological problem⁴⁰ and degeneration in liberal democratic times. Liberal Enlightenment attempted to overcome any particularism, as well as different faiths and national cultures, trying to create a sort of egalitarianism and unification. This attempt was unsuccessful. It endangered Jewish self-identity and more generally the Jewish people as a whole (always as an example of a minority group). Strauss underlined that discrimination and persecution against Jews has ancient roots and involves many of the main civilizations in history. It is well known that Jewish history is marked their defense of their identity and beliefs. This can be considered a noble cause for which entire generations dedicated themselves; something higher than the individual life that, on the contrary, has been often sacrificed. In modern times, the Enlightenment proved the necessity of building a State not based on religious power and popular submission to laws (possibly influenced by the orthodoxy commandments) but on rational principles and popular consensus. The neutrality of the State on religious issues formally represented a great opportunity of emancipation for the Jews. Since religion relegated to

³⁹ Strauss L. (1994) See above.

⁴⁰ Strauss was committed in most of his academic life in investigating the so called theological political problem, which is whether the law should stem from religion or human authority.

the private sphere, in liberal democracies, the State guarantees an equal treatment of every citizen before the law and leaves everybody free to profess their own religious beliefs. However, legal equality does not solve the Jewish conundrum. Similarly, it does not eliminate hate and discrimination of minorities. Strauss denounced the existence of an extralegal racial hierarchy in almost every liberal democracy. This symbolizes how weak the instrument of legal equality is. Jews and “Negroes” occupy the last two places in the hierarchy and the legal protection of their rights does not prevent them from being discriminated on a daily basis by private citizens that are themselves protected even in their racist “preferences” or private behaviors. This problem is naturally inherent to liberal democracy's structure and its removal would transform the regime into a communist one. This has been historically proven to be one of the most Anti-Jewish regimes. Actually the only effective measure to avoid cases of private discrimination would be the removal of the private sphere and the creation of an omni-pervasive state's control on individuals. That, as the experience of communist USSR proves according to Strauss, would undermine the basis of liberal democracy fostering the insurgence of a dictatorial regime without solving the problem. Secularism and separation between the public and private spheres is therefore, “a blessing and a curse” because it grants equality before the law but condemns Jews to a subtler but equally ferocious private discrimination.

Both from theoretical considerations and from the analysis of specific cases, structural elements seem insufficient (but necessary) to actualize a regime that would guarantee a good democratic quality. A democratic culture, committed to equality and the guaranty of rights is a crucial ingredient, even though it is acknowledged that ideal model, in practice and implementation, are usually quite different. The analysis of Israeli democracy suffers from underestimating the importance of this issue. Among those who explicitly recognize the relevance of this element in obstructing improvement in the quality of Israeli democracy, Neuberger and Dowty⁴¹ maintain interesting views.

⁴¹ Dowty, A. (1998) See above

Neuberger's main claim is that quality of democracy in Israel is not different from other liberal democracies but for four elements that weaken it considerably. These elements are the lack of a written constitution, the relationship between religion and State, the status of the Arab citizens of Israel and the ambiguous status of the occupied territories and their inhabitants.⁴²The first two elements will be broadly analyzed in the research while the second two will occupy a more marginal position, due to the topic of the research.

Neuberger deals also with another important aspect: the role of education in the creation of a democratic culture for the amelioration of democracy.⁴³ This aspect is a very important one since it deals directly with the effective implementation and practice of formally democratic rules. When analyzing the quality of democracy, it is convenient to look for the existence of formal tools and to the effective use of them. In this respect, Leo Strauss elaborated on a general and very useful framework when he questioned the validity of the liberal democratic model because of the discrepancy between ideal of the model and its practical results.

Neuberger's findings on the lack of a widespread democratic culture in Israel would explain certain features more effectively than the ethnic criterion that has been pointed out in the previous pages. His theories give a more complete overview, including the cases that the ethnic cleavage theories leave uncovered. One of the clearest examples is the legal provision on personal status that, as Neuberger states, denies the right of "freedom *from* religion,"⁴⁴ which delegates exclusive competence to religious authorities and creates a "cross-ethnic" problem. According to Neuberger, a lack of democratic education is noticeable in Israel. He lists nine major constraints for the implementation of an effective democratic education: the non-

⁴² Neuberger B. Religion and Democracy in Israel, (1997), Jerusalem: The Floersheimer Institute for Policy Studies Ltd.

⁴³ Neuberger B. (2007), Education for democracy in Israel: Structural impediments and basic dilemmas in International in *Journal of Educational Development* 27: 292-305

⁴⁴ Neuberger B., (2003) "Israel - A Liberal Democracy with Four Flaws" in Y. David (ed.), *The State of Israel: Between Judaism and Democracy* Jerusalem: The Israel Democracy Institute, pp. 361-370.

democratic countries (the origin of the vast majority of Israel's Jewish and Arab population from Eastern Europe and the Arab Middle East); the partially non-democratic political traditions of the main political wings (the Left, the Right and the Orthodox); the lack of a liberal-democratic written constitution as an educational tool; the absence of a national consensus, especially among the political elites on the fundamental politics of the State; the problems posed by occupied territories under military government; the salience of the security issues which leads teachers and parents to perceive democracy and human rights as a luxury in the context of war and terror; the lack of equality between Jewish and Arab population; the lack of separation between religion and State, including the attitude of Israel's Orthodox and ultra-Orthodox that in a Jewish-democratic state, Jewish should come first and democratic second; and finally, examples of non-democratic behavior on the part of the political leadership. Apart from the fact that some of these elements appear to be an effect of a strongly rooted lack of education to democracy more than a cause, they are thus an effective progress in the mass acquisition of a democratic culture. Some of these elements will be taken into account during the investigation and will enrich the perspective in the analysis. Doing so, the analysis will not be penalized from its focus on the procedural dimensions. These elements might be interestingly intertwined with others mentioned by Dowty. Dowty mentions the continuous mobilization and militarization of the society as a possible obstacle to the development of a liberal culture.

Other scholars attribute the Jewish tradition itself as a main actor in the insurgence of a democratic culture. As far as the sources of Jewish law are concerned, a considerable debate originates. Some stresses include: the voluntary nature of the Covenant, the requirements in Talmudic law regarding public consensus to appointments and regulations and the traditional resistance to centralized authority. Shmuel Eisenstadt refers to "the basic 'democratic' or rather egalitarian premises of the Jewish tradition, premises of basic equality and of equal participation and access of all Jews to the centers of the sacred realm...." ⁴⁵ Others

⁴⁵ Eisenstadt S., (1985) *The Transformation of Israeli Society* Boulder, Colorado: Westview Press p. 46.

argue that traditional Jewish concepts put religious individualism above man-made legislation and cannot be made to encompass universalistic Western liberal versions of democracy and human rights. While the religious mandate of a “higher law” has the virtue of denying the legitimacy of arbitrary authority, it also is “contrary to the people’s political sovereignty upon which every liberal democracy is based.”⁴⁶

Reflecting on the main contributors to the formation of the State, we should consider that the strongest Zionist ideologists and politicians developed their thinking far from a non-religious environment. They were much more educated and, in light of the assimilationist model, influenced by the nationalist wave all over Europe. They were actually revolting against the common model of the Religious Segregated Jew. Despite the concrete realization of the secular aspiration of the Zionist secular idea (and the influence that was exercised by the religious component of this variegated movement) we should acknowledge that modern Zionism actually originates from the implicit recognition of the failure of “modern states” to guarantee equality and freedom and to basically accomplish major tasks of a real democratic State.

Herzl, among the others, proposed a secular model of State and depicted the *Alteneuland* on the model of Western liberal democracies. The new State would have relied on the productive capabilities of its citizens, technologically advanced, lay and pluralist; nonetheless, his ideological corpus had the failures of liberal democratic system in the solution of the Jewish question as a starting point. This was especially true because of the ineffectiveness of the law nullifying the theoretical aspiration of granting freedom and protecting minorities.

Keeping this in mind as well as trying to maintain a certain balance in our analysis, we should question whether the implementation of the pure secular European model would have guaranteed a higher standard of democracy. Many other considerations about the scarcity of a democratic culture in Israel, the causes and the possible evidences,

⁴⁶ Neuberger B., (1990) Does Israel Have a Liberal-Democratic Tradition? in *Jewish Political Studies Review* 2:3-4.

have been under a strict analysis by some scholars. Some focus on the analysis of legal features that in my opinion would be ascribable to a lack of democratic culture and mostly to a political contingency. Rubinstein and Agassi reflect on the lack of a written Constitution in Israel and on the power of the Rule of Arrangement. Rubinstein points out that extra-legal arrangement happened to be quite usual and very productive in terms of shaping important aspects of public life and the institutional framework.⁴⁷ Among the examples: the absence of public transportation on Saturdays throughout most of the country and the reluctance to recognize the institutional rights of non-Orthodox Jewish congregations. According to the scholar, who takes into account the legal-historical framework in which the relationship between religion and State evolved, the Declaration of Independence is actually the only core document containing the fundamental values upon which the State has been built. He theorizes that this document could stand as a guide for further legal development. Even though it might have a high symbolic importance, it has no constitutional authority or binding power whatsoever. In fact, Rubinstein argues that in modern times, most of the legal provisions that are in force might be considered contrary to the ideas expressed in the Declaration of Independence.

The lack of a written Constitution and the broad power of the Knesset resulted in a lack of homogeneity in terms of legislation and a general legal scheme that is not easy to recognize. A very tough statement is made by Rubinstein when referring to religion and law in Israel: "History, political expediency, party politics and, even more, chance are responsible for an amorphous body of laws which baffles outsiders as well as some Israelis dissatisfied with the present state of the law in this field."⁴⁸

A similar issue is raised by Agassi⁴⁹ brings to the table the concept of "rule of arrangement" set beside the concept of "rule of law." The rule of arrangement consists in an ambiguous interpretation of the law

⁴⁷ Rubinstein A., (1967) Law and religion in Israel in *Isr. L. Rev.* 380

⁴⁸ Rubinstein A., see above.

⁴⁹ Agassi, J., (2003) Rule of law, Rule of Arrangement, in J. E. David (ed.) *The State of Israel: Between Judaism and Democracy*, Jerusalem: The Israel Democracy Institute.

especially from administrative authorities and state official in the sense that the role of the legislator gets undermined or even nullified. When this happens, the political actors and public bodies who are involved position themselves above the law. According to Agassi, the gravity of the problem consists of the non-recognition of the supreme rule of law, one of the basics of democracy. The issue assumes cultural features because the conundrum is not a technical but conceptual. The cases studied by Agassi point out how a scarce separation between religion and State is the main source of a political culture that deeply undermines the quality of democracy and the supremacy of the rule of law. On the contrary underlying arrangements would reveal themselves more and more powerful in shaping society and the legal framework.

This kind of remarks not only confirms the dichotomy existing between the formal and practical realization of a democratic regime and the role that religion has in it. The absolute necessity of a methodical analysis of Israeli democracy is confirmed.

1.3 THE NOTION OF STATUS QUO AND HOW IT AFFECTS DEMOCRACY

Status quo can certainly be included in what Agassi calls Rule of Arrangement. From the structural point of view, it is not an organized and coherent set of principles. Most of the provisions that originated from there still lack legal entrenchment and sometimes they do not possess any legal status. Either they are informal or they provide a general framework that leaves the definition of details and the implementation to further development (so often leaving room for the interpretation and the discretion of the administrative bodies). According to Agassi, this is soundly conflicting with the good practice of a democratic state thus with the establishment of a true democratic setting.

As Karyanni⁵⁰ summarizes effectively, the secular-religious social cleavage within the Jewish community in Israel generated and nurtured an intense debate in the public opinion (media, organizations and informal circles of interaction), in the political arena and in the academia. Even though expressed with different intensity according to the periods and the subjects, the claims coming from the secular group regarded the coercive nature of the religious norms, especially in matters pertaining to marriage and divorce. With increasing frequency they asked vehemently for limiting public funding for Jewish religious institutions together with a more equal form of participation in the society especially by the Ultra-Orthodox sector. From the religious side, the requests and the appeals regard a tolerant and respectful attitude toward religious norms and institutions; this would be necessary in order preserve the authentic Jewish heritage, prerequisite for Jewish people unity. The unofficial agreement that was stipulated between the leaders of both camps was supposed to reach some kind of balance in the relationship among the factions. A clear and unambiguous scope was not defined nor was a temporal framework set for the validity of the agreement: the Status Quo had to face the events and the many

⁵⁰ Karyanni M., (2006). The Separate Nature of the Religious Accommodations for the Palestinian-Arab Minority in Israel, 5 *Northwestern University Journal of International Human Rights* 41

changes that the Israeli society went through and it adapted itself with alternate fortune.

Materially the *Status Quo* is constituted by a short series of letters that David Ben Gurion, the future Prime Minister of the State, sent in 1947 to the spiritual leaders of Agudat Ysrael that was the strongest ultra-orthodox Haredi faction. On the eve of the visit of the UN committee to Palestine, this correspondence had the aim to reassure the religious representatives that a general commitment to maintain the pre-state arrangement was guaranteed in a way that the individual and the communal life of the religious people would not go through major changes. A certain utilitarian approach is unanimously recognized, being a certain degree of shared consensus necessary upon the visit of the international organization; but also Ben Gurion's respect for religion and the importance he attributed to Jewish cohesion and unanimity are told to have played an important role.

Thanks to the *Status Quo* arrangement, Rabbinical Orthodox Jewish institutes were granted a specific role gaining a formal authority in matter of personal status and in representing the Jewish confession within the state. In this agreement therefore the exclusive management of all matters of marriage and divorce was attributed to religious rabbinical courts that became an integral part of the state's judicial system. They received total economic support from the state and gained a monopoly in state funded religious services (thanks to the official recognition of a Chief Rabbinate, of a Rabbinical Council and of a capillary net of local religious councils under the control of Ministry for Religious Affairs).

Members of the Ultra-Orthodox communities were given some special concessions in order their lifestyle and their beliefs not to be hurt by the new state settings. A differentiated education systems was conceived granting to both Orthodox and Haredi Jews a high level of independence from the state regulation; public and private schools, were they religious or secular were provided with the same amount of public funds. Moreover being the continuous education and formation on the light of the Sacred Scriptures a duty for Haredi men, they were allowed to "postpone indefinitely" their service the army (compulsory

in Israel for men and women) in order not be distracted in their pious activity and to keep studying in the public financed *Yeshivot*. The exemption was legally guaranteed also to Orthodox religious women in the aftermath of a vivid political battle that resulted with the in Civil Defense Law in 1949⁵¹. Other issues that were tackled in this agreement were the observance of *Kasherut* in public services (extending this rule also to the production of “forbidden” meat in the country and to the availability of leavened food during Passover period) and the limitation of the public service during Sabbath and Jewish holidays (which resulted in a massive ban on public transportation and business almost in every city in Israel).

From an ideal point of view, the Status Quo is not only a set of legal (or non legal) provisions that have been enforced in Israel and influenced the public and political life of all the citizens. The Status Quo is a the very center of any discussion about the nature of the state (secular/non secular) and it is one of the main topics when dealing with the much debated question whether Israel can genuinely be Jewish and democratic at the same time.

Reviewing some of the many contributions that the scientific community gave on this topic I will try to enlighten how the situation of the political elite by whom the State of Israel as a political entity was created is sometimes underestimated. The same argument holds when analyzing the premises upon which the State of Israel was conceived (and still considered to be valid). Not less important I will argue that the Status Quo, as most of the provisions, formal or informal that shape the institutional setting of any society are the consequence of an existent situation and their power of perpetuating it or exacerbating it is much less powerful that what we think. Therefore, I would consider the Status Quo as a result of a peculiar social and political scenario

⁵¹ For the exemption of religious women from the military service and more extensively for the political debate that originated from the different criteria of drafting applied to the different genders, see Berkovitch N., (1997). Motherhood as a national mission: The construction of womanhood in the legal discourse in *Israel, in Women's Studies International Forum*, 20:5/6: 605-519.

instead of (and before of) seeing it as the cause of divisions and social frictions.

Sapir⁵² defines it as an informal “gag rule”⁵³. The idea of gag rule is based on the principle that there are some sensitive issues in a society that is better not to discuss about. Framing the topic of religion and state into a main general agreement from which several informal but effective provision originated (in terms of practical implementation), would avoid, according to the scholar, destructive conflicts that would threat stability of the society. Gag rules would be useful to the democratic process and since they would grant cohesion and cooperation among different groups that otherwise would not be able to coexist pacifically.

None of the arrangements that derived from the *Status Quo* received constitutional status and some of them were not even established in regular legislation and this is why Sapir defines it informal. The awareness from both sides (religious and secular side) that this agreement safeguarded a mutual interest guaranteed the survival of it for more than sixty years.

As a precondition for a gag rule to maintain its effectiveness, the mutual interest has to be permanent and the equilibrium must remain unaltered, especially as far as it concerns the capacity of external actors to intervene. The doubts of Sapir focus on the permanence of these two conditions; the changes, through which the Israeli society and the judicial power passed, would undermine the stability of the *Status Quo*.

The *Status Quo* would have turned to be an ineffective instrument for preventing frictions among the groups and only a Constitution, would be able to serve the purpose more effectively, framing in a more detailed and rigid way the issue and limiting the critical intervention of other subjects.

⁵² Sapir G., (1999). Religion and the State of Israel. The Case for Reevaluation and Constitutional Entrenchment, in *Hastings Int'l & Comp. L. Rev.* 22: 617

⁵³ For a detailed description of the concept of “gag rule” and its features see Holmes, S. (1988). Gag Rules, or the Politics of Omission in Elster J. and Slagstad R. (eds) *Constitutionalism and Democracy*, pp 19-58. Cambridge: Cambridge UP.

Even though not very familiar with the concept of gag rule and with the whole scientific debate about it, it seems to me that in this case the adoption of this model would not be effective because of two reasons: the perception of the fracture between religious and secular groups is greatly affected by time and especially from the secular side, the evolution of reality from the moment in which the agreement was born made new needs and new issues emerge. Framing in a stricter and more detailed way the situation (even starting from a serious reconsideration that would bring on the table demands and ideas up to date) it might lay the foundations for future inadequacy. Moreover, in my opinion any reconsideration of this matter should start with a reciprocal understanding and recognition of the contribution that the different groups gave to the state enterprise and the meaning that they attributed to it. Only on the light of this, a franker reconsideration of the needs of the two parts would be possible and eventually open to further developments.

Another rationale is followed by Karayanni⁵⁴. While theorizing his “regime of separateness” in matter of religion and state he makes a differentiation between the religious accommodations for the Palestinian-Arab minority in Israel and those of the Jewish population. Before the creation of the state, the *millet* system granted certain autonomy to the various religious groups empowering their leaders with jurisdictional power over their members. Nowadays recognized minority groups in Israel are granted with the same freedom of judging their members according to their mores (at least for certain specific issues). This treatment is in continuation with the pre-state situation. But the idea of the *Status Quo* and its binding power to all the population⁵⁵ (and in particular referring to the Jewish group) has its rationale in the conception of the state of Israel as a Jewish State. After the establishment of the state of Israel as a Jewish state it can no longer be said that the Jewish community in Israel is just another millet. On

⁵⁴ Karayanni M. (2006), see above

⁵⁵ It is appropriate here to cite again the remark of Rubinstein A., (1967). Rubinstein claims that with the overcoming of the volunteer association in the Knesset Ysrael and the automatic integration of all the Jewish inhabitants in the same legislative and institutional system, there is a sudden and drastic transformation from religious group to community.

the contrary it is the majority group in a state that defines itself as the homeland of this group (whose ethnicity displays certain promiscuity of the concepts of nation and religion). The *Status Quo* agreements thus can be considered as a consequence of the definition of the state whose creation requested the transformation of the public sphere in something coherent with the character of the state as well as requested the nationalization of religious institutions and norms. This theory is in my opinion very challenging and it opens interesting perspectives for interpreting the status quo as a specific political instrument to legitimize a crucial feature of the state. Taking it into account would immediately create room for consideration of the concept of Jewishness as conceived by the political elite at that time.

A further opinion on the *Status Quo* and the socio-political meaning of it comes from Justice Haim Cohn⁵⁶. He maintains that *Status quo* should be seen as a shameful agreement both in the eyes of a democracy supporter and according to the principles of a religious Jew. It contradicts the fundamental religious principle of free will and adherence to religious rules and it binds the legislator and the law to an immutable situation that does not take into account further changes or developments of the will of people. Erroneously conceived to be an effective measure to achieve domestic peace within the Jewish population of Israel and in particular between secular and religious Jews, actually, he defines the *Status Quo* like the "citadel of the religious parties' battalion"⁵⁷. According to Justice Chaim this has been a fundamental tool in the hands of the religious parties that increased in power year after year. *Status Quo* is described as an instrument for political groups like Shas⁵⁸, to mobilize its voters and to exercise

⁵⁶ Cohn, H., (2003) *The State of Israel and the Status Quo* in David J. E. (ed) *The State of Israel: Between Judaism and Democracy*, Jerusalem: The Israel Democracy Institute.

⁵⁷ Cohn, H, (2003) p 189

⁵⁸ Shas is an Israeli religious party that was founded in 1984 by Rabbi Yoseph Ovadia. Even though its religious connotation is clear, its platform does not contain any reference to the creation of a theocratic state nor to a rebellion to the Zionist ideology (most of the voters are actually enthusiastic supporters of Israel, who serve in the army or in the civil national service and are well integrated in the patriotic system). The party platform anyway rejects the secularism of the state and of the society and devotes its action to the

pressure on the governments in order to achieve their coercive aims. Moreover, this landmark for fierce internal battles cannot drive to any peaceful end: every implementation of further extension of the *Status Quo* principles creates a sense of frustration and discontent in the secular population of Israel and in those who aim to a State free from religious interference. On the other hand, the religious counterpart cannot be satisfied with any kind of conquest since their totalizing idea over the society. Therefore the main faults imputable to the *Status Quo* would be that it did not manage to mitigate or prevent any dispute or friction among Jews with a different perception of the relationship between state and religion but on the contrary it deepened the fracture between secular and religious society, exacerbating this way the political debate and the social conflict. Rather than nurturing unity, the *Status Quo* heavily undermined social cohesion. Only the absence of a law with the necessary legal authority to disprove it, explains its survival. This interpretation seems to me to attach to the *Status Quo* a causative meaning that is not totally appropriate. I would rather look at it as an effect of a certain social conformation. In order to do this I would follow the same approach that Rokkan and Lipset⁵⁹ followed in defining their social cleavage theory.

Seymour Martin Lipset and Stein Rokkan developed their theory of social cleavages in the 1960s analyzing political behavior in different countries in Western Europe. They emphasized how political trends and the dynamics of party support are a consequence of social divides. Social identities were found to be the platform on which party support was built. This finding held quite strong till some fundamental socioeconomic or demographic divides remained powerful in Western Europe. But the major changes that took over from the Seventies led to a review of the social cleavage theory: the attention shifted from political behavior and party support to social conflicts and sensitive issues, relevant for the public debate.

revival and the enhancement of a religious lifestyle also through the implementation of a more traditional formal setting in the state.

⁵⁹ Rokkan S., Lipset S. M. (1967) *Party systems and voter alignments: Cross-national perspectives*. Toronto: The Free Press.

The divide between secular and religious in Israel can be considered to be a social cleavage according to the condition that were identified as necessary: it is based on a social division; there is quite a strong awareness of the characteristics that bond the members of the parts in conflict (stronger probably on the religious side) and commitment to promote the groups' interest; there are institutional actors that can serve the cause of the groups and provide them with organizational support. The religious division was already part of the original set of cleavages discovered in the original study of Rokkan and Lipset. Even though it was not meant to regard Israel, nonetheless the main features that were detected appears quite fitting for our case study also: the debate would in fact be focused on a conservative view of life versus a more liberal one, including marriage, family and the role of women.

On the same spirit of the social cleavage theory is the analysis of the cultural value in the Modernization theory that was revised among the Sixties and the Seventies by Seymour Martin Lipset, Daniel Lerner, Walt Rostow, and Karl Deutsch⁶⁰ These scholars emphasized the importance of developments in the nature of mass societies. In this view basic social identities of class, religion, gender and ethnicity cannot be created or manipulated by parties or other systemic actors. On the contrary, society and its features deeply shape the political structure and institutions and they result to be only a consequence of the feature of the society in which they operate. Changes and progressive evolution in a society therefore can deeply affect not only the political behavior but also the nature of institutional settings. While a general trend is recognizable as it regards the more classic cleavages (class, religion, ethnicity etc.), the changes occurred with development and modernization (due to economic development, widespread individualism, post-materialism etc.) are not unequivocally predictable: the persistence of a cleavage and its persistent strength in shaping the public debate and the reality varies from country to country according to peculiar historic events and background.

⁶⁰ An interesting review of this theory correlated to the social cleavage theory is provided by Norris, P. (2003) *Electoral Engineering, Voting Rules and Political Behaviors*. Cambridge: Cambridge, University Press.

As said before, religion proved to be one of the most powerful issues at the time in which Lipset and Rokkan conducted their studies. Even though the process of secularization deeply affected its strength, Norris⁶¹ confirmed that it remained extremely relevant in traditional societies as well as in those countries in which it historically represented a point of division among citizenship (like Israel).

Following the just mentioned approach and translating it into the Israeli case, it seems much more natural to me to conceive the *Status Quo* as a result of the fracture between religious and secular Jews in Israel. The conflicting relationship that these two groups have been experiencing since the origin of the state is only marginally imputable to the formal defects of the arrangements and it is most likely to be an endogenous factor that affected the *Status Quo* more than being affected by that. The points of friction are many and kept occupying the public and political agenda independently from the flexibility with which the instrument to heal them were used. Status Quo cannot be blamed for its incapacity of pacifying such a major conflict and we should consider (and I will try to do it in the next chapters) whether that was the real purpose of it or other political considerations were made in stipulating this agreement.

⁶¹ Norris P (2003), See above

1.4 THEORETIC APPROACH TO THE ANALYSIS OF THE QUALITY OF DEMOCRACY

In the last paragraph, the concept of democracy was largely debated and many views, coming from sociologists, political scientists and other scholars were reported. They commented on the actual condition of Israeli democracy and whether this definition is appropriate to the specific case in study. Other studies were mentioned which are more philosophically oriented in the assessment of democracy and whether it is a good and effective method of governing.

Deepening this literature review does not fail to enlighten the need for a comprehensive and thorough analysis of the Israeli democracy. On the contrary, it makes it even more evident how a systematic and specific analysis would clarify questions and crucial doubts pertaining to a broader spectrum.

This paragraph therefore is a very crucial one because it links a piece that is more theoretical to one that is more operational. It explains the conceptual basis and the motivation for choosing the TODDEM method for the analysis of democratic qualities.

The concept of democracy is a very complex and debated one. For centuries the interest in this form of government has spurred the writing of many books and essays which contributed to the current understanding of what democracy is as an ideal. It also fostered an uninterrupted quest for how to improve the quality of government under this kind of regime. As it will be explained below, the questions and answer given were the result of the historical moment and of the State of development in these societies. The definitions have been various, defining a wide range of regimes; the idea of democracy itself has always been subject to controversy in regards to its feasibility and the assessment of its validity.

In modern times, with democracy having been acknowledged almost unanimously as the best form of government invented, the main interest shifted toward the amelioration of this regime and the realization of a fully beneficial effect on those governed under it. The task did not become easier or less controversial: the specific literature

on this topic includes different assumptions (especially in regards to the definition of democracy) and covers different purposes. It thus relies upon different methods of investigation.

Andrew Roberts' provides a very interesting contribution is that is based on a very basic and essential definition of democracy. In his study about quality of democracy on Eastern Europe, he follows the procedural definition of democracy which is founded on two main concepts: free, fair and regular elections in which all adult citizens are allowed to participate without exception as both voters and candidates; and the possibility of all citizens to effectively take part in the process of selection (passive and active) through the enjoyment of a set of civil rights. Appealing to this concept of democracy and concluding that the essence of democracy resides in people's ability to decide, Roberts criticizes those scholars who focus on "non-essential dimensions" in measuring quality of democracy." Dimensions like corruption, legal and human development can affect the functioning of democracy (or any other regime,) but are analytically distinct from democracy itself; they affect democratic quality but are not democratic quality, so they should not be taken into account when evaluating the quality of democracy in a country. The concept of democratic quality should be centered instead on those aspects of politics that are essentially related to democracy itself. What should be crucial to assess is whether citizen rule exists and to what extent. According to Roberts, the fundamental question to be answered is about the strength of linkages between governed and ruling classes, especially regarding the power of control of the former to the latter through the functioning of institutions that should guarantee this. On the other side, though in the same field of studies about democratization, O'Donnell is a scholar who starts from Dahl definition of poliarchy as a base for his theories. There are many scholars that also use this definition. They warn about the need to look behind the façade of established institutions questions about the content and actual working of those institutions. With an extensive analysis of Latin American countries and also some in Asian and Eastern Europe, O'Donnell traces in these Governments the features of Dahl's paradigm. On the other side he reports some distortive elements that are ascribable to the social and economic crisis that most of these

countries inherited from previous authoritarian Governments. Taking this into account, O'Donnell elaborates upon the concept of delegative democracy by depicting formal polyarchic regimes that do not truly match or approach the normative standards of a representative democracy. Dimensions like participation and level of corruption (recognized as such or not) are considered to be crucial in assessing the quality of democracy in these countries.

Easily understandable, O'Donnell's theory represents a broader and in some ways, contrary model from Roberts and offers an example of contrasting voices in the academic panorama of research on quality of democracy. The same commitment to underline the importance of the effective functioning of democracy and the recognition of it as a fundamental indicator of quality is shared by the scholars of the democratic auditing. Two of the founding fathers of this approach, Weir and Beetham, focused mainly on British democracy but the methodological tool that they created is a framework for the quality analysis of any country. Underlining how also in "mature democracies" it is possible to find major defects even in regards the basics of democratic government, they used the notion of audit, that is "a systematic assessment of institutional performance against agreed criteria and standards, so as to provide a reasonably authoritative judgment as to how satisfactory the procedures and arrangements of the given institution are." Besides outlining the popular rule as the essence of democracy, a very important point that these scholars make is the preference for assessments given by national citizens based upon their peculiar knowledge of the culture and their inner understanding of the system. That system would put them in a position of privilege in the assessment of the quality of democracy. This point is a very interesting one because it expresses a definition of democracy that is anchored in locality and gives this aspect a fundamental role in the usage of a universal framework based on a more universalistic definition. As seen until now, the two original questions about quality of democracy are intertwined inextricably. The first one only recently gained prominence in the field and the methods that have been created in order to empirically assess it are strongly influenced by the definition of democracy that the scholars refer to and to the most

salient elements that constitute them, according to this concept. The definition of the second element is not an easy step.

Gallie actually places democracy in the category of a contested concept.

I think it is worthy to go a bit more into the details of this theory since it represents a successful attempt to illuminate fundamental problems in understanding and analyzing concepts but also to.... Its findings stand as a warning against any pretention of absolute accuracy in methods of analysis of democratic regimes and their so-called "qualities". In another way, these remarks can also be interpreted in a positive light, which I will talk about later.

The main issue that Gallie addresses is of conceptual contestation. Briefly and clearly, Gallie states that attempts to define concepts that belong to this category 'inevitably involve endless disputes about their proper uses on the part of their users'. The scholar himself mentions democracy as one of the main examples (together with art, social justice, religious life etc.) Its definition and meaning will always raise harsh debates and will not lead to any accepted conclusion; moreover, it will be always possible to recognize a fixed path on which the debate, and all attempts of conceptualization take form.

First of all, essentially contested concepts have a strong "appraisiveness". They have normative valence, as to say that their definition implies a certain achievement. Moreover, these concepts are in general very complex ones: this makes it likely that different users prefer different conceptions and definitions and make different uses of the significant. The different use of the concepts in different contexts is reciprocally recognized by the various users, specifically because of the unanimously acknowledged difficulty in defining these concepts in an unquestionable way.

The feature of complexity is visibly recognizable and fitting of the concept of democracy within the debate that we are dealing with. Different kinds of democracy are recognized most of the time without contrasting since the accent is posed in different characteristics (it is sufficient to take few examples of definitions that stress one aspect or another: liberal democracy, representative democracy, delegative

democracy, ethnic democracy etc.) A very sharp and legitimate criticism to the problem of internal complexity is that it would be the result of the involvement of multiple concepts. The disaggregation of the macro-concept would therefore be a viable solution. On the other side however, the will of separating all of the concepts into completely independent ones is utopic and not useful in terms of finding a clearer understanding of the original concept. The internal complexity is essential to the concept itself; a concept that is clearly multidimensional and it is not the result of a corollary of accessory features. At this point however, somebody who is constantly comparing the theoretical explanation to the practical object of our study, democracy, can find himself in a sort of paradox when thinking about the development of the concept its creation. Everybody can notice how the original concept was far different from democracy as intended today. Still, back in that primordial definition is anchored the modern and more sophisticated idea of democracy. This could lead one to think that democracy has been primped with a corollary of concepts that, in fact, blur the true meaning of the concept and thus hinder a consensual definition. Gallie attributes this perceived paradox to another feature of the essentially contested concepts: openness. Essentially contested concepts are subject to meaning renegotiation due to changing circumstances. They change according to human development, awareness and more general modifications in the political, economic, and social systems. These modifications, of course, cannot be predicted in advance and are mainly related to historical development.

Beside the idea of openness, Gallie recognizes also the idea of exemplar, the original idea around which the concept was created and on whose validity everybody agrees. Many criticisms have been moved to this point and I agree with the main one which claims that if we recognize the existence of an original model, the definition of a/the contested concept becomes a dispute about deviation from the original unanimously recognized definition. The concept of exemplar is alien to contested concepts and, like in the case of democracy, and although we can trace back the primordial idea, I think it would be too dangerous to accept it as a conceptual example or, even worse, to establish the practical realization of that idea as a model. The feature of openness

makes the change so likely and so essential that it would be more appropriate to talk about "steps" instead of exemplars. What this serves to present in other words is that with the development of the definitions throughout history, it is possible to trace a type of evolution for which there is a progressive enrichment of the "uncontested parts" of the definition through steps.

What I have just said is deeply connected to the idea of progressive competition as the cause of a high quality argument in the dispute, or as further explained by Collier, my claim is closely linked to the concept of progressive cooperation. Even though it follows different approaches and arrives to different conclusions, the community who is dedicated to the definition of these concepts moves itself along a common path which appears to lead to actual progress in clarification; to to a sort of decontestation (or at least to a reduction of friction.)

The analysis of Gallie's position on essentially contested concepts is very useful in the academic debate over democracy and the study of democratic quality. It is able to answer many of the criticisms that undermine the different approaches of study regarding the subject. Contrarily, it encourages a careful analysis that would allow a more thorough understanding of these concepts. Such a theory would certainly praise those methods that try to be as extensive and comprehensive as possible, including the usage of different research approaches and a broad definition of democracy that is the result of a (maybe unintentional) "progressive cooperation."

Another circumspect and very useful contribution comes from Plattner who, in a later study, specifically addresses the "new" trend of studies on the quality of democracy. Plattner considers this more recent scientific interest as a third step, a natural evolution both as political aim and as scientific interest after democratization and consolidation of democratic regime.

As Gallie does with the concept of democracy, also Plattner expresses one of his main warnings about the definition of quality of democracy itself. This concept, according to the scholar, hides a default tendency to a normative approach. "Quality" is definitely an appraisive concept;

its desirability moreover is accompanied by a certain grade of subjectivity that would depend on the researcher and on his personal paradigm. This way, the idea of quality of democracy would imply an assessment that is biased by the personal orientation of the scholar.

The critical contribution of Plattner continues on the semantic field and specifically targets the complexity of the definition democracy. It considers the risk of misreading and underestimating the complexity of political and social assets in an attempt to find some measurable indicators. This is a possible risk in every method that seeks to follow a strict quantitative approach when studying social science through trying to guarantee the results a better reliability, comparability and "objectivity". Moreover, the definition of these indicators and the relevance that is attributed to them may be greatly influenced by personal views. It is largely recognized that not only is the selection of indicators is heavily influenced by the researcher's vision, (especially in the case of an "essentially contested concept" like democracy,) but also the interpretation of the data. Another point that denounces the superficiality of some studies regarding the quality of democracy is the conflicting nature of the very concept of liberal democracy (that he assumes as a model for today's democracy). In more detail, one of these controversial points is that since democracy is a form of government, it has to confront its ideal pureness with its existential purpose i.e., governing. Like Strauss and many others, Plattner questions himself on the tradeoffs between contrasting characters of democracy that exhibits their "incompatibility" when dealing with the practical implementation of an effective governmental regime that wants to keep a high standard of democratic quality. This is especially true in regards to the basic principle of popular rule. Deepening the issue of the "schizophrenia" of democracy, Plattner gives examples of governance results and responsiveness warning on the danger of confusion while relating them to the quality of democracy. Finally, another important aspect that he recommends not to leave out is the cultural one. Democratic culture (culture of freedom, of tolerance and so on) is a landmark of quality of democracy and should never be underestimated both in analysis and as a causative aspect of determined results.

As stated in the beginning of this paragraph, an accurate and systematic analysis of Israeli democracy and its qualities is absolutely necessary in order to understand the state of art and the role of religion in creating and maintaining this condition. The nature of the "third step" that Plattner attributes to quality of democracy should not obscure the fact that a study on quality of democracy can be done in any stage of the process of democratization. Moreover, specifically conducting this analysis in a regime that is generally recognized as democratic would illuminate some commonly accepted practices that are not entirely responsive to democratic standards. Additionally, this analysis could exemplify how consolidated democracies deal with that "schizophrenia" in a more or less efficient ways than other regimens. This would be more effective than a "deviance" in a fluid situation of transformation toward a democratic regime. The very agreed upon concern about objectivity and personal paradigm should not be a reason for renouncement, especially on the light of Gallie's theory. What is fundamental instead is a previously expressed declaration of the "paradigm" (or at least of the main points of reference that one has in mind while conducting the research) and a consequent coherence to what is declared. After all, even though the term "democracy" is defined in a million ways, there are some basic points that are largely recognized on the basis of which more articulated schemes could be produced. Even if it crosses the frontier of scientific interest, a very stimulating point stems from the idea of quality of democracy implies a perceived superiority of some regime model over others and that it might be dangerous. In the case it would become an instrument of political action as, for example, all the actions of democratic promotion and assistance that have been object of discussion in the last decades as a colonizing attitude of some western states and international actors.

Back to the case study of Israel; as already mentioned, Smooha's concept of ethnic democracy as a diminished type of democracy, in my opinion, does not lead to a totally satisfactory explanation of Israeli democracy. In the process of assessment, equality and participation are taken as fundamental points of reference and individuated as the main critical aspects. The main limit is of almost exclusively comparing the two main ethnic groups without lingering on the concept of citizenship,

while this should be the unit of reference for a correct and deep analysis. This opens a serious reflection on the internal dynamics that rule the membership of the dominant group, displaying some weakness in the ethnic approach while corroborating the importance of the religious aspect in order to provide a more accurate representation of reality.

An invitation to a thorough and systematic analysis comes from Agassi's scientific speculation, especially about the rule of law in Israel. His suggestion, and in some respects Rubinstein's as well, is to pay attention to the role of the legislative power in Israel and to its effectiveness in shaping important parts of citizen life. Agassi denounces a dangerous lack of recognition of the law's ruling supremacy. This is the consequence of both cultural (scarce separation of religion and state) and practical conditions (absence of a written constitution); nonetheless the positioning of individuals and bodies above the law would give a strong bias to the quality of democracy in Israel.

Also Menachem Mautner gives an interpretation based on Israeli law and law bodies in shaping Israeli culture and democracy. The dichotomy that he draws is between the Western cultural model (the Anglo-American democracy and legal system) and a more traditional culture (law based on Jewish religious sources). In his research he analyzes the role of the Supreme Court and its progressive judicial activism, defining it as the incarnation of the secular action for the rise of liberal values in the country's political order.

These kinds of remarks from different scholars confirm the dichotomy existing between formal and practical realization of a democratic regime. In addition, they stress the importance of cultural and historical aspects that could transpose in the society and deeply affect the evolution of a regime. All these factors reveal the urge and stimulate at the same time the interest for a methodical analysis of Israeli democracy.

This research, analysis of the quality of democracy in Israel will be based on Morlino's *TODEM* method. Morlino has been interested in

studies on democracy for long time, becoming engaged throughout the years in popular topics like democratization, transition and quality of democracy. He collaborated with scholars in order to elaborate on theories and methodological tools. In 2005, for example, he and Diamonds edited the paper "Assessing the Quality of Democracy," in which they set up a primordial version of the TODEM tool for democratic deepening. They first stated the importance of law in realizing democratic quality since this dimension is one of the most basic to democracy. According to these scholars, when the law's ruling power is weak, participation is not granted to all society members. Morlino and Diamonds refer in particular to the more heavily marginalized groups in regards to their economic status. Marginalization not only follows economic patterns but takes peculiar paths in different societies, changing sometimes also within the same society over time or with the occurrence of notable events. When rule of law is weak, civic groups may be unable to organize and advocate. A situation similar to the one envisioned by Agassi would come into existence with personal interpretation of law (if not actual corruption) overthrowing the administrative apparatus and creating privileged positions whose recipients are above the law. This privileged class and those connected to it would end up benefiting from preferential treatment becoming a vicious circle that would endanger, in the end, the very basic relation between voters and those they elect, which would detriment the very way in which citizens are linked to the regime.

The main goal of the TODEM method is to provide a tool for the analysis of the quality of democracy. In dissecting of the concept, it will be possible to identify the different qualities of democracy, their more specific aspects, and the connections between those qualities.

As said, the interest in discovering the best form of government is a really ancient one. This evolved from the desire to nucleate the optimal "recipe" for the perfect democracy. As soon as this type of regime spread enough, it became recognized as a valuable one by philosophers and intellectuals at large. Today, the leading question in academia (and the one who guided Morlino in setting up this method) is: "What is the

best analytic tool for exploring and detecting democratic deepening and qualities in various countries?" Interest in a deep and appropriate exploration of democratic qualities is explained with very modern reasons: the acquisition of the epithet of "democracy" by new regimes and their will to assessing the trueness of this connotation; the growing discontent, dissatisfaction and alienation which was spread worldwide in recent years and the request for reconsideration of a higher quality form of government. If new and old uncertainty is growing with regard to so called democratic regimes, a serious consideration on whether they are real democracies or are perceived as partially democratic (hybrid regimes) must be carried out and the need to look behind the façade of what the international community has largely accepted is still relevant. The third and part of the second point is the most salient for the present case study. In regards the second point, it is strongly affected by the international crisis that we are now experiencing worldwide. This crisis contributed to the destabilization of many regimes and the weakening of social order. It brought citizens to a reconsideration of the political order, thus to drastic manifestation of their discontent and the perceived need to change. Also, in Israel, this phenomena occurred in the summer 2011 carried by the wave of its manifestation in Spain and many other Western countries. One of the biggest protests since the foundation of the State was organized. Very heterogeneous movement took part in the manifestation and kept high the level of mobilization for months. A claim for social justice and egalitarian policies was made and the discontent about the responsiveness was expressed in clear terms. These events obscured the ethnic divide, and even if the Arab population did not really take part in the protests, a few events were registered in which Arab communities or organizations demonstrated sympathy to the movement.

The previously mentioned questions and claims open the way for research on the quality of democracy and the need for specific research tools as a consequence. The main critical points that were already mentioned above and the TODÉM method were designed as a response to those remarks with a goal of remedying their aforementioned weaknesses. The initial difficulty of building an analytic tool to deeply

detect a contested is solved by not only declaring concepts and hypotheses on which the tool is modeled but by maintaining the empirical part as much coherent and clear as possible. It capitalizes on what was defined before as progressive cooperation, accepting different conceptions of democracy and incorporating the constituting elements within the method. both in the definition and by singling out the dimensions of democratic quality. This variety and the integration of different approaches are also coherently maintained in by method of investigation. Quantitative and qualitative analysis, empirical descriptions and explanations are used. This avoids the risk of narrative oversimplification, ensures the authenticity of the description (and a certain comparability among the case studies) safeguarding the clarity of exposition and the accessibility of the results to a larger public.

A crucial premise of the TODEM method that actually constitutes the spine of the "deepening activity" is the semantic exploration of the concept of quality. The normative bias here is avoided by specifying that quality assumes the meaning of dimension being spoiled by any good or bad connotation.

Quality is defined in three acceptations. In terms of procedure, quality is defined as the result of specific and controlled procedure, traceable in time and repeatable in terms of method. In terms of contents, the quality of something is determined by the essential traits of it and based on substantial investigation of the object in analysis. In terms of results, quality is the user's perception of the final product without any real connection to the procedural or substantial quality of the object.

Once clarified and once the concept of quality is understood in all its meanings, it is possible to enucleate the "product" to which the qualities are referred - that is democracy. How to complete an exhaustive list of qualities of democracy that would be useful for the purpose that would be universally accepted as satisfactory?

Following the triple vision of quality Morlino associates a triple definition of quality of democracy: in procedural terms, in substantial terms and in terms of result. From a procedural point of views, quality

is a system of procedure that guarantees the popular rule over the state institutions, consistently with the primordial meaning of democracy "demos-cratos". Substantially, quality can be found in the degree of citizens' equality and freedom, since these two values are unanimously recognized as fundamental in a democratic regime. Lastly, (and going back to the sovereignty of people in democracy,) quality of democracy can be defined in terms of result as the total satisfaction of citizens and thus to their complete legitimation of the regime. Following this division, eight possible qualities (or dimensions) are listed. The first five dimensions are the rule of law, electoral accountability, inter-institutional accountability, participation and competition. These are defined as procedural dimension. It is not possible, of course, to consider these elements as if they were totally autonomous compartments but the definition of procedural is clearly the most appropriate inasmuch as these qualities are mainly related to procedures and rules.

Rule of law is well explained by Morlino who opposes to the narrow conception of simple enforcement of law. On the contrary," It also connotes the principle of the supremacy of law that is, the Ciceronian *legum servi sumus*, and entails at least the capacity, even if limited, to make authorities respect the laws and to have laws that are non-retroactive, publicly known, universal, stable, and unambiguous." Accountability, in general, is the obligation of elected political leaders to answer for their political decisions. This obligation has two main addressees: the electoral body (from which the vertical accountability stems) and other institutional bodies (from which the horizontal accountability originates.) Electoral accountability is a tool in the hands of the citizens through which they can exercise their sovereignty over the state, even in the case of a representative democracy. It is called vertical because it goes from the basis (the citizens) up to the governmental representatives. This kind of accountability is mainly (but not only) a posteriori, since citizens usually exercise it at the end of a political mandate through the new vote. The inter-institutional accountability, defined also as horizontal, is based on the mechanism of checks and balances among the institutional bodies of a state (or a

supranational entity). This aspect should be a more formal and stable one, as the law normally regulates it.

Participation can be defined as the entire set of behaviors, be they conventional or unconventional, legal or borderline vis-à-vis legality, that allows women and men, as individuals or as groups, to create, revive, or strengthen group identification or to try to influence the recruitment of, and decisions by, political authorities (the representative and/or governmental establishment) in order to maintain or change the allocation of existing values.

Participation is the main tool through which citizens have an impact on the regime. A very important distinction is made by Morlino between identity participation and instrumental participation. The former is the participation that allows citizens to feel part of a community and to identify to some extent with the state. The instrumental one is a more active type of participation since it implies a goal to be reached.

Competition it is considered to be a *sine qua non* for democracy since it guarantees constant involvement of all the popular representatives in the decisional bodies and the real possibility for the realization of the majority rule (thanks to the possible alternation of government forces).

The substantial dimensions that define quality in terms of content are freedom and equality: Freedom and equality are the two main democratic values that stand at the core of many definitions of democracy. Their basically uncontested importance is proved by the relevance that is given to those political and civil rights which are considered concrete mainstays of freedom and to those social rights that are indicators of equality. These two dimensions have a duel relationship because since they are both essential contributors to democracy, sometimes the values may compete as to which different ideologies should be considered most prominent.

The eighth dimension, which defines quality in terms of results, is responsiveness. Responsiveness is the capacity of the system to satisfy the expectations of its citizens. Once again the core value from which this dimension originates is the popular sovereignty that individuals renounce in favor of a collective solution to the administration of

power. They still, however, remain the real "owners" to which the representatives need to respond.

CHAPTER 2

Assessment of the procedural dimensions in Israel

2.1 RULE OF LAW

Individual security and civil order

Crime rate

In order to assess the degree of individual security and civil order, this section will focus on the crime rate in Israel. In this matter, Israel collocates itself in an average position compared to other OECD countries with similar level of economic and social development¹. This kind of comparative analysis takes into account the most serious crimes against property (mainly burglary and other kind of theft) and those against life (assassination, rape etc.).

The estimation of criminal actions in 2011 (including different types of crimes against the property and against the person: murder, aggression, robbery, violence, familial violence etc.) was above 400,000 (364,7302 reported cases plus about 10% of exposure files³). In 2008, the Israel Police opened some 420,000 investigation files, 85% following complaints by citizens and 15% "exposure files". The share of "exposure files" has increased steadily from 10% in 1999. In the period of 1999-2004, the number of investigation files opened was consistent at nearly 500,000 per year. Since 2005, the number of files has declined steadily to approximately 420,000 in 2008. Looking at the crimes against life and specifically at the crime of intentional homicide, Israel places

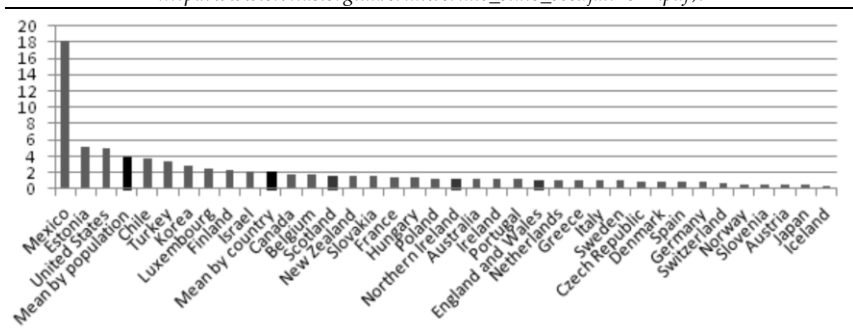
¹ For this comparison with OECD countries I refer to the report: Cowen N. & Williams N., "Comparison of Crime in OECD countries, CIVITAS, at http://www.civitas.org.uk/crime/crime_stats_oecdjan2012.pdf

² 2011 לשנת בישראל הפשיעה סיכום
<http://www.israelidiamond.co.il/news.aspx?boneid=985&objid=14166>, 16 Jan. 2012

³ The exposure files are criminal files opened following activity taken at police initiative.

itself below the mean by population (this shows greater relevance considering the substantial difference between inhabitants among the states included in the comparison). The graph (Fig. 1) clearly shows a difference of nearly half.

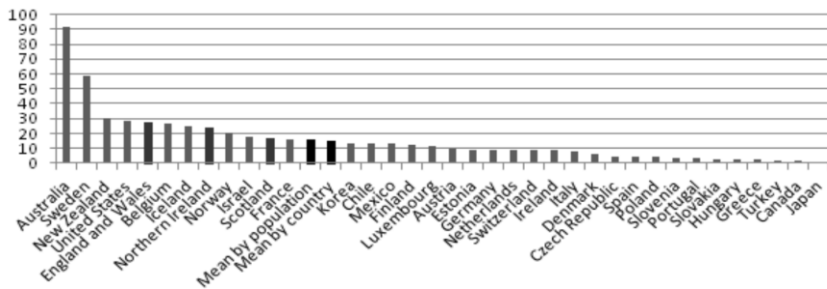
Figure 1. Cases of International Homicide per 100,000 population
 (Source Comparison of Crime in OECD countries, CIVITAS, at http://www.civitas.org.uk/crime/crime_stats_oecdjan2012.pdf).



A value that is much closer to the average value is registered with regards sexual violence (Fig.2). While the cases of rape in Israel are 17.5 for every 100.000 people, the mean per population is between 14,8 (average per country) and 16,2 (statistical data attributed to France).

Figure 2 Cases of rape per 100,000 population

(Source: see above)



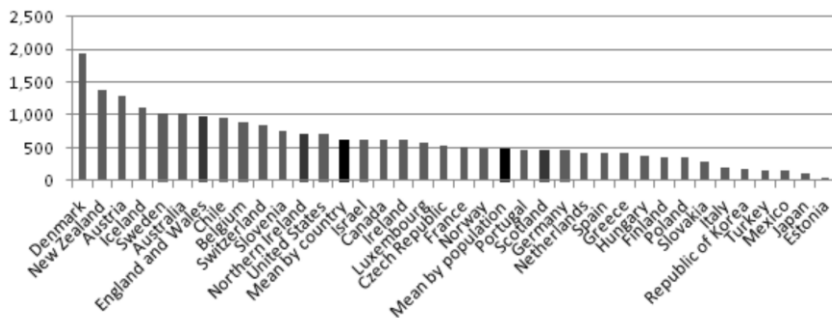
The crime of assault, defined as physical aggression that results in serious body injury, is quite widespread in Israel and the number of cases is significantly higher than both the mean by country and the mean by population. Israel in fact, with its 641 assault per 100,000 members of the population ranks fifth out of 26 countries.

However, crimes against life are not the main security problem in Israel. According to the police reports from 1998 to 2011⁴, the most diffuse types of crime are those against property which represent 48% of the total criminal activity on which police forces investigate, followed by crimes against public order (27% of which invoke threat) and crimes against person and life which make up 11% of investigated cases.

In this case as well, if we compare the national reality with the situation in other countries⁵ (Fig. 3), we see that Israel ranks in a close to average position. In the case of robbery, by contrast, Israel is well below the average (of slightly over 200) value with 40 cases for every 100000 people.

Figure 3 Cases of burglary every 100000 population

(Source: see picture above)



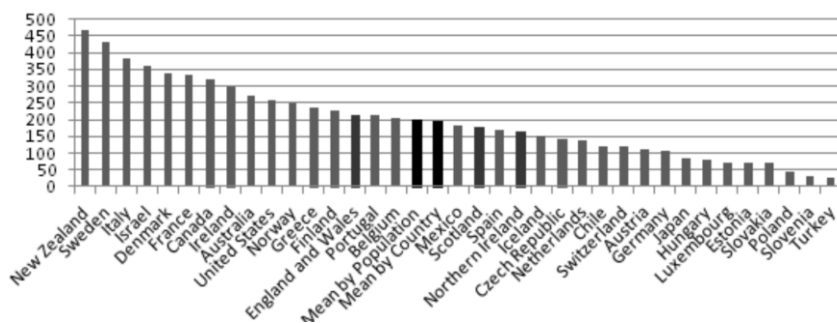
⁴ State of Israel, The Central Bureau of Statistics, Israel Police "Crime in Israel 1999-2008", Statistilite 104.

⁵ The comparative analysis was conducted, as regards Israel on data referred to the period 2004-2008.

A very serious issue in Israel is the one of vehicle theft. This crime is apparently very diffuse in the country and the number of recorded cases (362) is much higher than the average number (approximately 200). However, it is also important to take into account that this kind of value might be affected by the level of trust the population has in the police force; this would directly impact the number of cases that are actually reported.

Figure 4 Cases per vehicle theft every 100,000 population

(Source: see picture above)



This type of security issue is not central in political and social debate. Even though this issue is regularly exposed to the public by the media and other sources of information, the relevance attributed to such a threat is often not deemed significant enough to occupy the realm of Israeli political debate. In fact, the conceptual area of security has been largely dominated by the topic of the Territories and the Israeli-Arab conflict as well as more recently by the Iranian issue and the relationship with other countries in the area (due also to the major changes that occurred in the Arab world in the past years).

The only way in which the issue of crime generally becomes part of the political debate is when it is discussed as a point proving the dangers of an individualistic system of government that produces inequality and marginalization. On the other hand, another interesting point was discussed recently due to the wave of immigrants coming from Sudan,

Eritrea and other African countries. Some criminal activities have been recorded, both on the side of the immigrants and on the side of the Israeli citizens. There have been reports of Israeli citizens perpetrating acts of intolerance and vengeance against the Africans and some social workers who were providing welfare services to migrants and foreign workers. The media covered the events in a very detailed way and fostered a vivid public debate. A roaring quarrel began in which the right wing parties and the Government forces (currently represented as a center-right coalition) accused the immigrants of being a serious threat to the security of the population (as well as to the economy and the demographic balance). They also provided data of a rapid increase of the criminal activity perpetrated by immigrants in 2012 that had already been growing since 2008. On the other side, leftist parties and some NGOs working with immigrants and refugees held the government and its policies responsible for the difficult living conditions of the immigrants in the country that would push them to illegal actions; they also accused the official reports and the data to be deliberately altered in order to nourish intolerance and xenophobia⁶. According to these critical voices, in this specific circumstance, the Government and the police forces were also neglecting international treaties signed by the State of Israel regarding asylum seekers, children rights and many others international laws.

As we can see, this situation is much similar to one that has been experienced in many other Western countries as regarding the tendency to link a rising crime rate with a rising immigration rate. The rising of a xenophobic populism in following a migration wave therefore is much common in many European countries⁷.

Violence against minorities

a) Sexual minorities

⁶ See the article written by Sigal Rozen, Public Policy Coordinator of the Hotline for Migrant Workers, <http://972mag.com/police-distortion-of-crime-data-encourages-rising-violence-against-refugees/46236/>, 19 may 2012

⁷ Tarchi M., (2013) Cos'è il populismo, in *Diorama* 3:313.

Israel has an active gay community who is well integrated and represented by a number of organizations distributed all over the country⁸. These organizations provide assistance and different services (hotlines, health education, legal assistance etc.), promote awareness among the population and the further enhancement of the conditions of sexual minorities. The activity of these organizations is at least partially state funded.

The city of Tel Aviv (well known as an emancipated and modern city) has been recorded as a particularly favorable environment for the gay community. Since 1998, Tel Aviv has hosted an annual Gay Pride Parade and many pubs and entertainment centers are regularly frequented by the gay community. However, this tolerant atmosphere is not equally represented across the country, especially in the more conservative areas where religious members of the three main confessions (Jewish, Muslim and Christian) claim the intolerability of such sexual orientations inasmuch as forbidden by the parameters of their faith. A team of Israeli researchers conducted a survey in 2009 about the perception of homosexuality as a "perversion". 71% of ultra-Orthodox Jews, 67% percent of Orthodox Jews, 64% of Arabs and the 57% percent of Israelis from Russia recognized homosexuality as a perversion as well as 44% of traditional Jews and 24% of the secular population. It is also showed that among the populations with Arab ethnicity, the general attitude toward sexual minorities was of non-acceptance.

Instances of intolerance have been manifested in several occasions in Jerusalem for example during the Gay Pride Parade of 2010 which was conducted under the supervision of police forces in a ratio of 1 to every 2 participants. This was necessary due to the potential risks coming from the counter demonstration of ultra-Orthodox Jews and the words of condemnation expressed by the majority of Jewish Christian and Muslim leaders. There have been a number of episodes of verbal and physical violence against members of the gay community that have

⁸ For the paragraph on sexual minorities, the information refers to the report published in UNHCR website: Immigration and Refugee Board of Canada (2011) Israel: Treatment of sexual minorities; state protection and services available, <http://www.unhcr.org/refworld/docid/4dde1aca2.html>.

been recorded during the past few years; in a few cases the victims paid with their lives or sustained serious and permanent injuries. These crimes, especially those entailing physical damages, were in general persecuted and punished with heavy sentences along with the general condemnation of civil and religious leaders.

In the opinion of well-known members of the gay community, the problems of intolerance and discrimination are represented more on the social-cultural level than on legal one. From the legal perspective, there are a number of rights that are guaranteed to sexual minorities in Israel. These rights exist with regard to freedom of personal choice (even though the possibility of marriage is not entertained); integration into society (gender equality in employment, military service, etc.) and with the official recognition of homosexual couples (as it regards for example the recognition of marriage performed abroad, tax discipline, housing assistance etc.).

Unfortunately, the legal protection granted to this minority does not fully prevent the weakest segments (Arab homosexuals, poor and transgender) from a more "individual" discrimination.

b) Women

Violence against women has partially been analyzed in comparative perspective to the other OECD countries. The rate of sexual violence has been illustrates; however, this topic deserves a separate and deeper analysis because of its complexity and importance. In this paragraph the focus will be on the national reality. Violence against women is a very complex phenomenon to observe and to describe due to the various forms in which violence manifests itself (sexual, physical, verbal, psychological) and due to the different situations in which it can occur (in random circumstances, at home, at the work place etc.). Moreover there is a relatively scarce tendency to report the crime.⁹ In

⁹ Most of the data in this paragraph refer to the report published in the UNHCR website: Immigration and Refugee Board of Canada, Israel (2010, February 26): Violence against women, including legal recourse, response by government authorities and services available to victims of violence., ISR103373.E, available at: <http://www.unhcr.org/refworld/docid/4e42616d2.html>

Israel, as well as in the majority of the Western countries, many cases of violence take place at home or within the familial environment. Statistics show that violence against women is a common phenomenon: a poll conducted in 2010 in Israel showed that one out of every three women had been sexually abused, one out of every four women had been a victim of rape and one out of every six had been abused by a member of her own family (incestuous abuse).

When violence is perpetrated in a domestic context, the victims are usually exposed to repeated episodes of abuse; in most of these cases the level of aggression increases until it leads to the most dramatic consequences. The state of extreme frustration and desperation victims oftentimes experience prevent them from escaping. The weaker the social segment to which the woman belongs, the more unlikely it is that she will take positive action against her persecutor. Immigrant, non-Israeli women who have a violent Israeli partner for example, are more reticent in denouncing the abuse since the ending of the relationship would cause them to lose their rights to live in the country. The murder of the female partner or ex-partner is also quite common, mostly within the lower socioeconomic layers (for example in 2006, there were situations registered with regard to crimes of this type in the Ethiopian community)¹⁰.

Even though it is difficult to gather specific and well organized data in the Arab communities, cases of violence and segregation seem to be more frequent than in Jewish ones. However, in Jewish communities as well, there are cases of domestic violence especially in the aforementioned immigrant communities and Haredi (Ultraorthodox) communities. As the former director-general of the Israel Women's Lobby stated, "We can't say that there are sectors where [violence against women] is more frequent, but there are sectors where this issue is more repressed, like among the Arabs and Haredim, due to their refusal to cooperate with state authorities. There, it is customary to

¹⁰ Immigration and Refugee Board of Canada, (2007, March 2) Israel: Violence against women, including statistics, legal recourse, services available and response by government authorities (2005-2006), , ISR102086.E, available at: <http://www.unhcr.org/refworld/docid/469cd69ec.html>

wash one's dirty linen at home"¹¹. Without succumbing to generalization and demonization of any group or culture, it is important to consider that the low level of integration of these groups, the lack of cultural and economic resources and the uncertainty of the future might discourage the victims from reporting abuse, favoring the creation of a vicious circle of segregation.¹²

Another phenomenon that is worth discussing regarding the Haredi community is the existence of an illegal, self-appointed "modesty police". Predominantly prevalent in Jerusalem (but also present in less structured forms in other very conservative areas of the country) these groups of Ultra-orthodox men have committed many illegal and violent acts against property and people, in particular women. On the basis of a very strict interpretation of Judaism, they perpetrate physical and verbal violence to different degrees. Their offences include, but are not limited to: issuing verbal threats and damaging property (sometimes even by using dangerous substances).

As with many other Western countries, Israel is endowed with formal instruments for the protection of women against violence and discrimination. Many laws and bills were approved in the past ten years; a permanent Knesset committee works on improving women status in the society; hotlines have been connected to police forces all over the country and are available to provide continuous assistance to victims and to women in distress. Moreover, part of the budget has been allocated to fund social work programs dedicated to the care, protection, legal assistance and reintegration of victims. Public opinion seems to be quite active on this issue. Many NGOs are dealing with abused women, especially Arab ones. Arab women are indeed the most discriminated against segment of the female population, suffering from marginalization even in the absence of physical violence. In the last decade, NGOs have been playing an increasing "watchdog role",

¹¹ Heller M., (2012, November 2), Fighting violence against women, in Yiddish in Ynet at <http://www.ynetnews.com/articles/0,7340,L-4295222,00.html>.

¹² On the cultural and social constraints to violence reporting, see United States Department of State (2012 May 24), 2011 Country Reports on Human Rights Practices - Israel and the occupied territories. Available at: <http://www.unhcr.org/refworld/docid/4fc75a905f.html>

pointing out the insufficient attention from the state and calling for the creation of specific legislation that would grant more defined and stricter punishment for the violators. These NGO's have requested government funds for education and prevention activities especially in the more conservative communities (Ultraorthodox Jews and Arabs). They also point out that in order to remedy the existing problem, it is necessary to provide adequate number of shelters and protection programs for the.

c) Ethnic minorities

The problems associated with ethnic minorities is very prevalent in Israel both due to the presence of a substantial Arab minority that represents about 20% of the population and due to the very nature of the Israeli population that is composed of the various waves of immigrations of Jews (or descendants of Jews) from different parts of the world.

One of the most recent reports about violence against minorities was published by the Coalition Against Racism¹³ in March 2012. It documents several types of violence perpetrated against different ethnic and national group in Israel; mainly against the Palestinian Arab community, as well as Ethiopians, Mizrahim (Jews of Eastern origin), refugees and migrant workers. Beyond these episodes of physical violence, other forms of racist violence were reported in the fields of education (the most extreme incidents dealt with actions and attitudes within certain educational institutions that led to the segregation of Ethiopian children from children of other ethnic background), housing (this is one of the most important fields where ethnic violence would be more evident through sudden house demolitions and forced evictions, incitement against leasing or selling houses to Arabs and Ethiopians

¹³ Coalition Against Racism is an NGO that has been operating in Israel since 2003 advocating for the improvement of the life conditions of the Arab minority. This paragraph refers to Coalition Against Racism (2012, March) The Main Findings of the 2012 Racism Israel Report available at <http://www.fightracism.org/en/Article.asp?aid=241>

etc.), employment and in the very legislative activity of the government (with the approval of discriminatory bills and laws)¹⁴.

The report also mentions a certain degree of violence perpetrated by the security forces (especially assault and violent reactions during civil protests) that have been decreasing vis-à-vis the Arab population but have been increasing the cases of other national minority such as Ethiopians (according to the report, this might be due to an increased awareness of the Ethiopian community thus a more dynamic political and civil activation of this group following episodes of discrimination).

Organized Crime

Organized crime in Israel is developed and flourishing. The Israeli mafia is run both by small groups who act locally and by bigger and more articulated groups who are present on the national and international level. The top of the hierarchy in these criminal groups is allegedly occupied mainly by Mizrahi families and some Bedouin families.

The most practiced illegal activities are human trafficking and prostitution, extortion, loan sharking, drugs and arms trafficking, fencing, organizing illegal gambling and casinos, diamond smuggling and most of all money laundering. Money laundering represented a large attraction for the Russian organized crime, especially beginning in 1989 with the mass immigration of Russian Jews to Israel. The economic policy and the banking regulation was extremely favorable in allowing olim (Jews who lived in the Diaspora and decided to immigrate to Israel) to move their financial capital at the moment of their immigration to the "Promised Land". The Russian organized crime took advantage of these conditions in order to launder a large amount of money and to capitalize on the fruits of a discrete and secure activity in Israel. During the same period and continuing into the end of the

¹⁴ For a more detailed description of the claims of NGOs and international organization as it regards the discrimination of some segments of minority population see: Minority Rights Group International (2011, July 6) State of the World's Minorities and Indigenous Peoples 2011 - Israel and the Occupied Palestinian Territory (OPT), available at: <http://www.unhcr.org/refworld/docid/4e16d36ec.html>

Nineties, some of the strongest Israeli groups internationalized their activities, becoming powerful members of the international mafia business. A field in which they have been particularly involved is drug trafficking, especially ecstasy and other synthetic drugs¹⁵ however, their illegal activity is practiced in every country on the broader spectrum of activities (from a general extortion activity to more specific ones according to the peculiar potential of each country)¹⁶.

The increased activity and the escalation of violence that took place in Israel at the start of the new millennium, has led the government to rethink its strategy. In fact, in the fighting between different mafia groups caused harm on the civilian population, leading to many injuries and deaths. The lack of effective containment measures led to low numbers of witnesses willing to testify or people who withdrew testimonies which harmed important judicial procedures. In 2006, the Israeli Government took two important steps in order to fight organized crime: the implementation of an extensive contrasting program and the development of a witness protection program. The cooperation among different policy forces has been implemented (both on the investigative level and on the operational one) and some new divisions have been created ad hoc. For example, a combined intelligence center for the fight against both general violations and organized crime was founded in 2007 and a national crime unit, La'hav 433, was inaugurated in 2008 to lead and provide specific support to the Crime Fighting Units (operating in local and national levels) already active. The second action consists of the creation of an authority (the Israel Witness Protection Authority) with the specific task of codifying standardized measures for witnesses protections, organizing and carrying out the activity itself (that was considered to be defective

¹⁵ As it regards the activity of Israeli organized crime in the United States see one of the press releases of Los Angeles FBI: (2012 May 07) Israeli Organized Crime Figure Pleads Guilty in U.S. to Narcotics and Racketeering Offenses, Including Murder, at <http://www.fbi.gov/losangeles/press-releases/2012/israeli-organized-crime-figure-pleads-guilty-in-u.s.-to-narcotics-and-racketeering-offenses-including-murder>

¹⁶ See for example this article about some illegal activities in South Africa: Haaretz Service and agencies (2003, November 11) South African police confirm existence of Israeli mafia, in Haaretz, at <http://www.haaretz.com/news/south-african-police-confirm-existence-of-israeli-mafia-1.105210>

especially in the long term) and promoting civic awareness and sense of duty¹⁷.

Terrorism

When talking about rule of law and security dimension in Israel, the discussion of the threat of terrorism is unavoidable. The threat of terrorism is strongly perceived by the citizens and has been shaping the political agenda and the government policies since the foundation of the state. Still, this paragraph discusses an essential difficulty that arises with the very definition of terrorism. Until today, the international community has been unable to elaborate upon an undisputed definition of this concept and many scholars positioned it among the essentially contested concepts¹⁸. Apart from complexity and openness, the concept of terrorism is said to be highly evaluative. Sorel suggests that while it is possible to talk about terrorist method and terrorist act (meaning its qualification, its impact and its aim), the real problem arises when trying to provide a definition of terrorist perpetrators and their reasons of action.¹⁹ Not doing so in fact the risk is that a country or more countries take upon themselves the office of judges of the legitimacy, giving of course a very partial (and useless) connotation to the definition. Sorel suggests therefore, to focus on whether the aim is to spread terror (and whether it is the impact), and on the conception of the fact as an action against the state or public order instead of entering into the oppressor-oppressed narrative. Lastly, having in mind a necessary nonjudgmental approach, it is also possible to mention reasons that led to the acts. With this theoretical premise, we can say that there is a terrorist threat in Israel and the history of terrorist attacks impacts Israeli society at on all levels.

¹⁷ The Witnesses protection program is accurately described on the website of the Ministry of Security: <http://mops.gov.il/english/crimeandsocieteng/orgcrime/pages/tiebreaker.aspx>

¹⁸ In the previous chapter, this notion and the original theory of Gallie are presented in details.

¹⁹ Sorel, J. M. (2003), Some Questions about the Definition of Terrorism and the Fight against Its Financing in *European Journal of International Law* 14:2: 365-378.

During the past 10 years for example, more than 100 suicide attacks took place killing about 500 people. The number of this terror form of action has been decreasing substantially from 2002 (in its 2008 report on terrorism, the Ministry of Foreign Affairs reported a progressive reduction in numbers, from 55 in 2002 to 1 in 2007²⁰). The responsibility of these suicide attacks was almost always claimed by larger and smaller armed Arab groups, sometimes cooperating with each other. The most active ones have been Hezbollah, Hamas, the Palestinian Islamic Jihad and the Al-Aqsa Martyr Brigades. The same organizations as well in addition to small and more isolated ones were also responsible for other forms of terror attacks, carried on with non-suicide modalities. Other forms of bombings and shooting on civilians in a non-belligerent context are very frequently registered, especially (but not only) in the Southern part of the country where the geographic proximity with Gaza favors the activity of organized groups situated there. In this area, rockets and other explosive material reach houses, roads and building open to the public with high frequency. According to the Israeli Security Agency, the number of rockets and mortar shells being launched²¹ reached its peak in 2008 when the number overcame 2000 (this violence escalation would be one on the main reasons that, always according to the source, led to the operation Cast Led between the end of 2008 and the beginning of 2009)²² The issue of terrorism is very hot in Israeli society: it is one of the most present in the media debate as well as in the political arena, especially in coincidence of an episode of terror.

²⁰ See the article from Ministry of Foreign Affairs website: <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Palestinian+terror+since+2000/Victims+of+Palestinian+Violence+and+Terrorism+sinc.htm> . See also the 2009 Annual Summary / Data and Trends in Palestinian terrorism published by the Israeli Security Agency: http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/reports/terrorreport2009_en.pdf

²¹ As remarked in the original source, "launch" does not correspond to "attack" since it is the number actually launched in one high trajectory fire attack.

²² See the above mentioned report of the Israeli Security Agency as well as the 2010 Annual Summary: <http://www.shabak.gov.il/English/EnTerrorData/Reviews/Pages/2010summary-en.aspx>

The political debate is heavily affected by the threat of terror, mostly in relation to the Israeli-Arab conflict and the issue of the occupied territories (that will not be taken into account in this analysis, given their extreme complexity that would require a book in itself in order to be treated in details).

Both due to its high relevance in the political debate and to the real necessity of coping with it, to strengthen its capacity of fighting terrorism, the state consistently allocates the largest amount of the national budget for security.

Several operative and intelligence branches of the Israeli police are dedicated to the fight against terrorism: the Counter Terrorism Bureau has been coordinating and organizing antiterrorism activity since 1996 mostly on the intelligence side while the Special Antiterrorism Unit (SATU) and the Crisis Negotiation Unit represent some of the Police departments specialized in counter-terrorism.

Another important aspect to keep in mind is that when referring to terrorism as an empirical dimension for measuring rule of law, there has to be a legitimate balance between measures for contrasting the terrorist activity and the respect of human rights to which democracies are committed and bound through international treaties. Dealing with terrorism is a very delicate task for a democratic state that wants to be defined as such. Crucial decisions are often made in emergency situations where the public pressure is high for an effective and definitive solution to the problem. In these moments, the risk is high that commitment to human rights might be perceived as unimportant compared to the responsibility for the security of the citizens of the state; indeed, the heaviness of the measures adopted might conflict with the compliance with the law (national and international)²³. A very interesting article²⁴ about the fight against terrorism and rule of law was written by the president of the Israeli Supreme Court in 2005,

²³ Bendor, A. L. (2003), The Israeli Constitution and the Fight against Terrorism in *Constitutional Forum* 13: 2.

²⁴ See the article "Judgments of the Israel Supreme Court: Fighting Terrorism within the Law",

<http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Fighting+Terrorism+within+the+Law+2-Jan-2005.htm>

Aharon Barak. Barak discusses the role of the Supreme Court: "The court's role is to ensure the constitutionality and legality of the fight against terrorism. It must ensure that the war against terrorism is conducted within the framework of the law".

Independent judiciary and a modern justice system

The Israeli legal system is commonly recognized as a modern one, where the judicial power is exercised in an effective and independent way²⁵. The codification of the judiciary is delegated to a Basic Law²⁶. Although definitely inspired to the Western legal culture, it can be defined neither as a common law nor as a civil law legal system. Rather, it can be defined as mixed. "Mixed jurisdictions are legal systems in which the Romano-Germanic tradition has become suffused to some degree by Anglo-American law"²⁷. According to Kedar, this is the result of the coexistence between two aspects in society, which started showing its symptoms before the foundation of the state. Kedar points out a complex interplay between law and culture: while the legal system might be predominantly influenced by the Anglo-Saxon tradition, the political and legal culture is heavily inspired by ideas based on Romano Germanic tradition.

During the Ottoman domination the legal apparatus was a combination of traditional Islamic law and modern European laws (German, French, and Swiss) that the Ottomans started to implement in their legal system mainly from the beginning of the last century. With the defeat of the Ottoman Empire and the resolution of the League of Nations, the British established their mandate government in the area replacing, gradually but substantially, the pre-existing law with laws inspired to

²⁵ See Freedom House (2012). Freedom in the World 2012, at <http://www.freedomhouse.org/report/freedom-world/2012/israel>.

²⁶ Basic Laws are quasi-constitutional laws whose coverage is basically exhaustive of the significant constitutional issues (the main branches of government and the majority of basic human rights and civil liberties). The codification of the judicial power can be found in Basic Law: The Judiciary (1984).

²⁷ Walton, F.P. (1907), *The Scope and Interpretation of the Civil Code*. Montreal: Wilson & Lafleur Ltée, reprinted in Toronto by Butterworths (1980), with an introduction by M. Tancelin, 1.

the British-common law-legal tradition. The British legal system was well received by the Jewish community living in the territory because it guaranteed stability and reinforced the rule of law. Within the Zionist movement, however, there was a great intellectual and political ferment for the creation of a civil code and in general a legal system inspired on the European civil law model. Most of the Zionist intelligentsia in fact had European origins and had been formed in academic and cultural circles in which ideas of this kind were promoted. The implementation of a civil legislation represented in the imagery of the most, the realization of a sovereign state with a centralized and efficient government. In this idea of modernity and independence, legal tools like a Constitution and a Civil Code are raised as national symbols. The debate over the creation of these legal tools has been continuing for decades. Since the foundation of the state many steps in the direction of the Roman German system have been taken. Even though in Israel there is not a formal written Constitution, some Basic Laws have been elaborated and a quite widespread political consensus has been reached on their quasi-constitutional value (particularly two of them, regarding the Freedom of Occupation and Human Dignity and Freedom)²⁸. A propos the lack of a Constitution in Israel, pointed as one of the lacks or dangers for the complete realization of a full Israeli democracy²⁹, Bendor claims that the lack is much more on a formal level than on a substantive one. The scholar asserts that in Israel there is a "lack of Constitution-narrative" that does not reflect the practical reality. The Basic Laws in fact are granted in the legislative body an implicit status of Constitution. This despite the fact that most of the Basic Laws require a simple majority to be modified and those that require a qualified majority, demand for a number that would be quite easy to reach, because the coalitions that are usually formed are rarely minimal. In fact, the Knesset generally refrains from legislating

²⁸ The necessity to elaborate some separate laws that would have in their complex constituted the Constitutional Chart of Israel was expressed by the First Knesset in 1950. This resolution is known as the "Harrari Decision".

²⁹ Among the many critical voices see Peleg, I. (1998), *Israel's Constitutional Order and Kulturkampf in Israel Studies*, 3:1: 230-250.

whenever the doubt is raised about possible conflict with one of the Basic Laws (especially the Basic Law Freedom of Occupation and Freedom and Human Dignity). According to this study, then, the lack of a formal Constitutional Chart would not harm the rule of law, granted by a "self-limitation" of the legislative power which recognized in these laws the basic principles of the state, to be protected beyond political majorities and to be inspired by³⁰.

Israeli laws apply within its internationally recognized borders plus some areas conquered in the 1967 Six Days war, East Jerusalem (from 1980) and the Golan Heights (from 1981). Outside the Israeli legal jurisdiction are the West bank and the Gaza Strip even if under a certain degree of military control. For the tight connection between these territories and Israel, some Israeli laws have been applied: for example labor law has been applied in some controversies between Israeli employers and Palestinian employees. Another case of extended jurisdiction in these areas regards cases in which Israeli military members are involved. Since they act on behalf of the state of Israel as an occupying force, denounces against their actions in the West Bank or Gaza are to be directed to the Israeli Supreme Court.

Structure of the judicial system

The judicial system in Israel is articulated in two main branches: the civil one and the religious one. The civil branch has jurisdiction over the largest portion of issues while the religious branch has substantial jurisdiction over the family matters. Therefore, upon its establishment, Israel has delegated the management of family law to the recognized religious communities (such as Jewish, Muslim, or Christian) and their rules. Such application is subject to the supervision of the Supreme Court. The historical origins of this method are to be found in the mandate period and previous to it, in the Ottoman Empire, where family matters were autonomously administered by the religious communities.

³⁰ Bendor, A. L. (2003), *The Israeli Constitution and the Fight Against Terrorism in Constitutional Forum*, 13:2:37-41.

Civil courts are organized on a hierarchical pyramid and the top court is the High Court of Justice. On the regional level there are six district courts dealing with criminal and civil matters over a certain threshold of potential punishment (both in terms of economic sanction and in terms of condemnation to prison), administrative matters and appeal from the lower level of courts, the magistrate's ones. There are thirty magistrate's courts scattered all around the state which deal with minor criminal and civil matters or, in some exceptional circumstances with family or juvenile law cases.

Some special tribunals are also functioning to grant the administration of justice in specific fields; these are the Labor tribunal and the Military tribunal.

The Supreme Court

This institution is at the highest level of the judicial apparatus and serves as a court of further appeal (from cases that passed through the District courts) as well as a court of first instance as it regards State authorities (for example claims over elections, detentions and actions of public servants at any level, including politicians and army members). Even though Israel is not provided with a formal Constitutional Chart, the Supreme Court has in fact a similar function to a Constitutional Court, having, among others, the power of judicial review. After the proclamation of two of the Basic Laws "Freedom of Occupation" and "Human Dignity and Freedom" (which bounded to the principles that they contained other future laws of the state), the Supreme Court recognized the legal superiority of two of the Basic Laws (and the unacceptability of any rule or verdict contrary to them) extending it *de facto* to the other Basic Laws.³¹ A ruling of the Supreme Court is binding upon every court, other than the Supreme Court itself (in application of the principle of *stare decisis* that in Israel is applied in a vertical sense (a

³¹ This statement is known also as the "constitutional revolution". The one who coined this expression is Aaron Barak who sat as a Chief Justice of the Supreme Court between 1995 and 2006. See Barak, A. (1992), *The Constitutional Revolution: Protected Human Rights in Mishpat Umimshal*. Haifa, U. Haifa L. & Gov't J. 9 (Hebrew).

court of lower status cannot adopt a decision that contrasts a decision of a higher level court).

Claims are made by scholars over the Supreme Court interference over the political sphere starting especially in the Nineties. The image of the Supreme Court as strong and influential is reported by many scholars. Hofnung claims how in the early Nineties, with the attribution of Constitutional Review Powers to the Supreme Court, this organ exerted a heavy veto power on the legislation and legislative activity at large. According to the scholar, this would have originated a deep rethinking from the political power about the selection modalities of the judges. This debate is still active today as well as the attempt to reform the selection of the judges. Many Members of Knesset in fact presented bills and proposals to redefine the selection procedure (thus exercising a better control in the selection phase) and for regaining power as ultimate institutional actor in the legislative activity. According to Hofnung, the Supreme Court would seek to preserve its influential power in shaping the legislative activity in Israel and would have reached with the years a more refined method of exercising this power, so as not to be exposed to media or public opinion strong criticism (for example, through a mechanism of agenda setting and formulating recommendations and modification proposals before the bills get approved in the Knesset)³². On the other hand other scholars remark how these decisions are not substantially influencing the reality. Sometimes in fact the pronouncement is purely symbolic and does not entail a practical change. Even when the pronouncement does entail a practical change, it does not affect the large scale but it remains limited to the single case. A very interest contribution on this topic comes from Barak Erez who is analyzing cases in which the Court ruled against appointments, political agreements and allocation of funds³³. According to this research, even though there were in fact pronouncements of the Court in these issues, it had no relevant effect on the fulfillment of political agreements in the country. As it regards the political

³² Hofnung, M. (2012), *The Limits of Judicial Independence: Judges, Law and Politics in Israel*. Jerusalem.

³³ Barak, E.D. (2012), *Judicial Review of Politics: The Israeli Case in Journal of Law and Society* 29: 611-631.

appointments, even though a legal provision was set in order to forbid them, the margin of elusion is substantial and the practice continued to be accepted in the society at large. Also in the case of allocation of public funds, despite the intervention of the Court in this matter (which has been banned many "designated funds" allocations) and its resolution to allocate funds on egalitarian criteria and not on the basis of political agreement the change would have been only symbolic, being the circumvention of the rule as easy as largely practiced

Efficiency of the courts

The Israeli Courts are among the busiest in the world and a quite conspicuous number of cases are presented every year. In the first 7 months of 2012 for example, 450.000 cases in total had been presented. According to the report made by the President of the Supreme Court, Asher Grunis, 707,000 new case files were opened in 2011 while in 2010 the number was about 10,000 lower. A big part of the cases were initially filed in magistrate courts. The files directly presented to the Supreme Court were about 4000 (administrative appeals, High Court petitions). 43 percent were petitions, filed by single citizens or non-governmental organizations. In 2011, 9,775 in total case files were submitted to the top court. In 2010 nearly the same number of cases was presented too. 9,565 case files were closed in 2011, data that is defined by Justice Grunis as a significant success in the attempt of optimization of the Court efficiency. The handling time of a case by the Supreme Court were also reduced in 2011. In fact, 15.5 months were necessary on average in 2010 while in 2011, 14 months on average were sufficient³⁴.

Religious Tribunals

Religious tribunals in Israel are responsible for matters relating to personal status between members of recognized religious communities.

³⁴ Zarchin T., (2012, June 25), Supreme Court handled cases faster in 2011 in Haaretz at <http://www.haaretz.com/news/national/supreme-court-handled-cases-faster-in-2011-1.443648>.

For these reasons there are Rabbinical Courts for Jews, Sharia Courts for Muslims, Druze Courts and religious courts for Christian communities. They are under the supervision of the Ministry of Justice³⁵ and their organization is not very different from any other tribunal in the country.

Due to the relevance of this topic for deeper analysis of the relationship between religion and the quality of democracy in the country, a more detailed description of Jewish religious tribunals will be given. Twelve Jewish Religious Courts are distributed in the territory of the State and one High rabbinical court sits in Jerusalem. The High Rabbinical Court is meant to be an appeal court and it is controlled by a President.

The status of the religious courts judges is determined by the Dayanim Act (*dayan* is the Hebrew word for judge), enforced in 1955. Judges of religious tribunals are considered by the law as public servants, paid by the State and loyal to the State regulations. Like the civil judges they are appointed by the President under recommendation of a special committee but the selection procedure, as well as the main working procedures in the religious courts follow religious predicaments and principles. For example, only men can serve as judges in religious courts and no women (as well as minors and mentally disable people) can sit in court as witnesses. The role of woman rabbinical lawyers is quite complicated. The possibility for women to officially pledge in front of religious courts was opened in 1994 after the intervention of the Supreme Court. This news actually broke the de facto exclusion of women from being recognized as official defendant in religious courts with all the consequences in terms of choice for citizens who pledged their cases in front of a Rabbinical Court. However, claims are made that the procedure to gain the title of religious rabbinical advocate decreases the possibilities for women to become accredited pleaders to the Rabbinical Courts. Rabbinical advocates are in fact licensed by the President of the High Rabbinical Court. In order to get the license,

³⁵ The institutional reference was initially the Ministry of Religious Affairs but in 2003 the Ministry was dismissed due to the pressure of an antireligious party, Shinui. The authority passed to the Ministry of Justice. When the Ministry of Religious Services was reestablished later in 2008 the supervision of the religious courts remain under the Ministry of Justice.

applicants need to study for four years in a Yeshiva (religious school for men exclusively) or to graduate in a recognized institute. A final exam is mandatory for all candidates (under the organization and the supervision of the President of the High Rabbinical Court) and their character and lifestyle is also examined as *sine qua non* for the appointment.

Since the Rabbinical Court are part of the judicial apparatus of the country, the Supreme Court of Israel has a supervision power on all religious tribunals through the instrument of the High Court of Justice. The power of intervention of this civil judicial body included the order of hearing or not hearing particular cases (according to the attributed jurisdiction and to the particular request of the citizen involved in the case), and the power to nullify the decision taken by the religious court in case the verdict is considered illegitimate. The civil branch of the law has been intervening during the years in some rulings of the rabbinical court, motivating its intervention with the protection of rules of natural justice or to the basic principles of the Israeli legal system. The Supreme Court's activism on this matter caused along the years moments of tense confrontation between the two systems that resulted in vivid disputation in the political world and in the public opinion. A proof of the recalcitrant attitude toward this dynamic and asset of powers is evident in the self-definition of the Rabbinical High Court as a parallel Supreme Court. As Cohn notes well, such a definition is actually not accurate or respondent to the reality. However, it is explicative of the conception of the two legal powers are separate identities³⁶. The existence of religious tribunals in the State and their jurisdiction is an extremely controversial issue as one of the vessels in the fracture between secular and religious Jews. The reason for the institution of the religious courts is partially explicable with ideological reasons (Judaism is very "involved" in behavioral practices of the believers) and, interestingly, partially related to historical reasons: at the time of the Ottoman Empire, the justice administration was decentralized and very dynamic, as required by the big extension of the imperial territory and by the presence of a great variety of population. For this purpose,

³⁶ Cohn M., (2004) Women, Religious Courts and Religious Law in Israel: The Jewish Case, in *Scandinavian Journal of Social Sciences*, 107:57-76.

beside the Sharia law and the Kanun law, a special legal regime was in force for which the non-Muslim millets could administer justice according to their customary law. This was especially true for matters of personal status (marriage, divorce and burial) but also economic and social relations. Even penal matters were partially delegated to the communities but, in this case, the Ottoman court had supremacy. The high degree of autonomy was preserved under the British mandate. The "Palestine Order in Council 1922" and its later amendments granted religious courts the exclusive jurisdiction in family and probate issues (art. 51 and 53). On one hand, this contributed to the creation of proto-institutions, covering a broad range of educational, cultural, economic, legal and even political matters. On the other side, this strengthened religious judicial authority attributing again an exclusive jurisdiction on personal matters.

With the formation of the State in 1948, existing law was to largely remain in force, including the Order in Council. Religious courts maintained a large portion of their jurisdiction even though some areas of personal law, such as inheritance and adoption, gradually shifted under the jurisdiction of the civil courts. In 1953 a specific bill explicitly stated the area of intervention of the Rabbinate and the rabbinical courts. Exclusive authority was granted in marriage and divorce between Jews (nationals and residents) while for ancillary matters related to the just mentioned issues, a concurrent system will be created with the institution of the Family courts. Nowadays, while divorce proceedings are exclusive competence of the religious courts, citizens are free to choose about related matters. The first court addressed by one of the spouses will be in fact responsible. Authoritative voices point out a substantial difference in the behavior of the two judicial bodies: generally the Rabbinical Courts tend to be more favorable for men, in virtue of the gender biased rationale underlying religious rules³⁷.

Citizens' perception of the judicial system and level of trust

³⁷ Ibidem.

When dealing with the public perception of the judicial system, the absolute protagonist is the Supreme Court. As said the activism of the Supreme Court in Israel as well as in many Western countries is a well-known phenomenon. The judicial power engagement in political questions and promotion of a legislative political agenda has been triggering in Israel huge debates in the public opinion and the media that reflected in a quite definite fracture also in the political arena³⁸. Public petitions can be filed by organizations or individuals regarding human rights, strengthen the rule of law, and eliminate governmental corruption or illegal activity by any authority. Unlike class action suits, petitions are not filed with the purpose of gaining economic compensation. They rather have a social goal and often organizations and civic groups aim to see principles officially recognized by the court, often in behalf of disadvantaged segments of the society. Sometimes petitions or requests to the Court led to the affirmation of principles that served, in other cases, as a sort of precedent.

Woods notes how this intervention in sensitive political issues causes the Supreme Court to acquire political power. Starting from 1988 the Supreme Court increased its level of involvement in sensitive issues. In parallel, a higher number of cases were presented to the Court. The liberal positions expressed and the intervention against the rulings of the rabbinical court made the religious institutions assuming a more and more intransigent attitude. The Court was accused to outrage to the religious institutions and their leaders. The administrative bodies of the State were also targeted by this more active role of the judicial supreme body. The media exposure provoked an increment of the Court's popularity: challenging the administrative power therefore the Supreme Court became the champion of justice among the population. The polls demonstrated this public attitude of increasing trust. From the last statistical surveys, it appears that the Supreme Court is one of the institutional bodies that enjoy the highest level of public trust (See graphic below). In 2012 the level of the citizens' trust was 72.5% among

³⁸ Woods, P. J. (2008), *Judicial Power and National Politics: Courts, Gender and the Religious Secular Conflict in Israel*. Albany, NY, SUNY Press.

Jews and 78% among Arabs³⁹. Among the Arab population of Israel the Supreme Court was the most trusted institutional body. This is understandable considering the rulings that the Supreme Court emanated in favor of the safeguard of minorities rights and equality. Combining the trust data with the political views of the respondents it emerges that Leftist voters have the Supreme Court as a first institution trusted. This shows a prevailing view for which the Supreme Court is the vessel of secularism and civil rights.

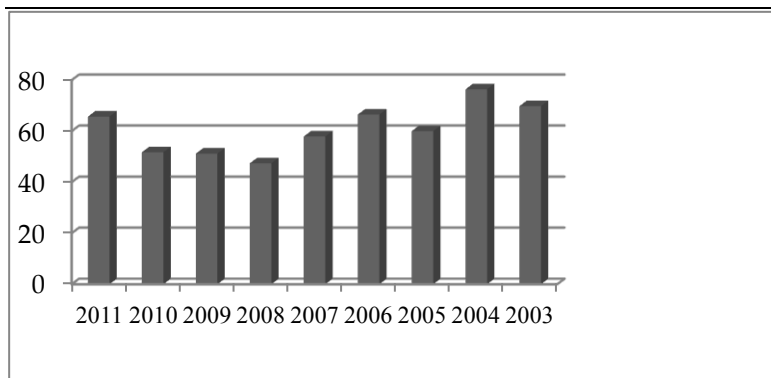
IDI published another data in its report of 2011⁴⁰ that results from the combination of trust and general political knowledge of the statistical population. According to this study, the higher the political knowledge, the higher the trust is in the civil judicial bodies. On the contrary, the lower the general political knowledge of the respondents (and the closer they are to religion), the broader is their trust in the Rabbinate. This data does not intend to denigrate any part of the population of Israel, nor discriminating them according to their religious views. However, it is possible that been the Supreme Court actively engaged in a "reformist" activity, the respondents that more deeply trust this body are the ones who desire a bigger change in the society and are therefore more interested in knowing and be updated about the current situation that they wish to change.

Figure 5 Level of Popular Trust in the Supreme Court

(Source: The 2011 Democracy Index, IDI)

³⁹ Hermann T. et al. (2012). The Israeli Democracy Index 2012, Jerusalem: The Israel Democracy Institute.

⁴⁰ Hermann T. et al. (2011). The Israeli Democracy Index 2011, Jerusalem: The Israel Democracy Institute.



According to Shetreet, trust of the public is one of the priorities of the judicial system and in particular of the Supreme Court in Israel. Proofs of that are "the *open court* principle, which is one of those fundamental principles of the legal system with a basis in statutory law and a court's duty (again grounded in statute) to state reasons for its decisions"⁴¹.

Another evidence of this attitude would be the strict criteria of disqualification of judges; the possibility of eventual bias would be sufficient by itself to disqualify a judge from a case, even if *de facto* the bias has not been recorded. Also the procedure followed in the assignment of cases is pointed out as a way of maintain public confidence. The general guideline about the appointment of judges provides that the presidents of the courts should apply an automatic system (that would ensure a random assignation) or operate a more specific selection, according to case specificity. According to Shetreet, the selective criteria would be distortive on one side and on the other side explicative of the public-support-gaining rationale generally followed by the Supreme Court. The specialization of some judges in certain matters could endanger the judicial independence, biasing the verdicts, according to the interpretation of one single judge. On the other side, the strong reputation acquired by some judges in peculiar matters would not rest unnoticed by press and public opinion.

⁴¹ Shetreet, S. (2001), *The Critical Challenge of Judicial Independence in Israel*, in Russell P.H. & O'Brien D. M. (eds.) *Judicial Independence in the Age of Democracy*. Charlottesville & London: University Press Virginia.

Nonetheless, this has not prevented some judges from gaining a strong reputation for their expertise in certain areas of the law.⁴²

A critical issue that is considered to be potentially harmful for the public perception of the judiciary and for the effective public accessibility to the Court comes from Association for Civil Rights in Israel (ACRI). An interesting point is raised by ACRI regarding the costs imposed by the judicial system on petitions filed by citizens and organizations in case of petition denial from the court. On the Situation Report 2012, ACRI questions the opportunity of this attitude that became more frequent in the last year. Negative consequences can be originated by the imposing of large court fees. It would prevent the social actors from applying to the courts for fear of economic sanctions whenever the petition was denied. Moreover, this would seriously compromise the capacity of the NGOs to continue existing and carrying on their work, due to the economic burden that they will not be able to sustain. Essentially, according to ACRI, this practice risks to endanger the public contribution to the amelioration of the society, broadening the distance between society and institutions⁴³.

The Ombudsman Office of the Judiciary

The Ombudsman's Office of the Israeli Judiciary was established in 2003, as an implementation measure of the Ombudsman for Complaints against Judges Law, 2002. This body is formally part of the Ministry of Justice, but it acts independently and it cannot be considered as a normal branch of the judicial. Its purpose is to investigate on judges following complaints from individuals or groups of citizens. In particular, the filed complaints can regard judges' conduct or trials' management. Its authority is exerted on all serving judges in all civil courts, religious, labor and military ones.

As stated by Strasberg Cohen, this mechanism guarantees supervision of the judges from an external body in a way that the judiciary itself would not be actively involved in the supervision process. In order for the judicial independence not to be endangered, some conditions have

⁴² Shetreet, S. (2001) *ibidem*.

⁴³ ACRI, (2012) Situation Report, The State of Human Rights in Israel and OPT.

been set by the law: as said before, the Ombudsman enjoys a particular status inside the Ministry of Justice being functionally independent but at the same time part of the Ministry. The selection criteria enlighten this link: the Ombudsman is actually selected by the Committee for the Appointment of Judges and needs to possess the same requirements of a Supreme Court judge. That is why he is selected among retired members of the Supreme Court. In his office, he coordinates a team of legal experts.

The nature of complains that the Ombudsman is entitled to handle can also be regarded as another guarantee of independence for the judges. The Ombudsman supervises judges' personal behavior in the exercises of their functions and the way a case is handled. Its competence extends to conflict of interests, unreasonable prolongation of proceedings or of the expression of a sentence, judges verbal misconduct etc. The Ombudsman is a disciplinary organ and has no authority to investigate about the content of a sentence; an intrusion of the Ombudsman in this field this would compromise the authority, independence and the immunity of the judicial power. The investigations are confidential. The decisions, however, are communicated to the complainant, to the judge and to the higher ranks of the Judicial Body (Minister, President of the Supreme Court, Director of the Courts and President of the Judge's court). The sentence is definitive and without appeal. Sanctions can vary according to the gravity of the violation: a simple rebuke can be made to the judge or more serious disciplinary sanctions can be adopted, such as a dismissal recommendation to the Judicial Appointment committee (in cases of serious violations or reiterated ones).

However, safeguarding the above mentioned criteria of independence and privacy, the law explicitly forbids that the decision form a basis for a claim, can be used as evidence in a proceeding.

Institutional and administrative capability

Parliament

The Israeli Parliament (Knesset) was established in 1949 from the Constitutional Assembly. The Knesset is a unicameral legislative body

composed by 120 members (MKs). The MKs are elected with a proportional method according to the simple quotient and highest average system (D'Hondt method). The low electoral threshold (2%) and the national single constituency make the electoral system one of the most proportional in the world.

Every citizen of Israel, resident in the State and above the age of 18 can express his vote for the Parliament (not mandatory though). An impediment to the right to vote can be a disqualification for legal reasons or the non-presence in the country at the time of the elections (except from some state workers, Jewish agencies workers and their families and ship crew's members).

As it regards the passive electorate, every citizen of the State above the age of 21 has the right to be a candidate, also for consecutive electoral tournaments. Citizens can be disqualified from this right by a judicial sentence and if they are condemned for five years for attempting the national security, they cannot be candidate until the five-years imprisonment has served. Some public offices are incompatible with the candidature: the President of the State, the two Chief Rabbis, judges of civil and religious courts, the State Comptroller, rabbis and minister of other religions, officers in the professional army, senior civil servants, senior officers in the police and prisons service, senior employees of associations established by law cannot be candidate in a party list for the Parliament unless they abandon the task before the lists of candidates are submitted⁴⁴.

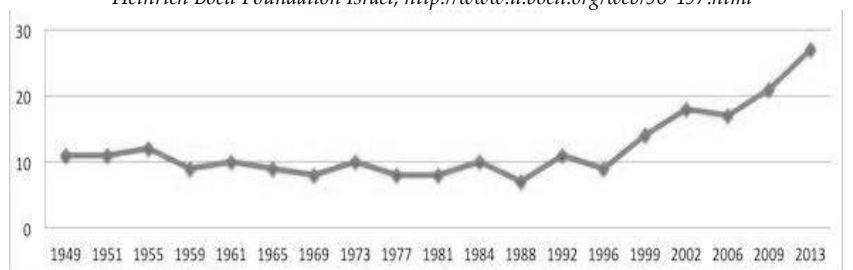
The electoral lists in Israel are party closed lists. This means that voters cannot express their preference, nor nominal or ordinal: the seats are allotted to candidates according to their order of appearance on the list. Since the territory is not divided in constituencies but the all country is included in one big national constituency, the lists are national. There are no reserved seats or quotas for women, ethnic minorities or other categories, even though a passionate debate is open on this issue in the media and in the public opinion (a very strong feminist movement is active in Israel and many NGOs demand a more inclusive representation in the Knesset). In the last years a substantial

⁴⁴ Basic Law the Knesset, art. 7

effort has been made to increase gender representation in the Parliament. With the 2013 elections, a record number of 27 female MKS (about 1/4 of the total) has been reached. The following chart, gives an interesting comparative in historical perspective⁴⁵

Figure 6: Women Representation in the Knesset

Source: Saragusti A., (2013 February 10) *Post-Election Gender Roadmap for the Israeli Knesset*, Heinrich Boell Foundation Israel, <http://www.il.boell.org/web/96-497.html>



MKS stay in office for the all duration of the legislature (4 years). If one of the elected resigns or needs to be "replaced" during the legislature, the first non-elected of the same list is appointed in his place.

The duration of the legislature can be shorter than 4 years, in case in the Knesset there is not a political majority able to govern or in case the President of the State consents to the Prime Minister's request to dissolve the legislative body and to organize new elections. In special cases, the Knesset can also decide by a special majority, to prolong its term beyond four years. This happened for example in 1973 while the Yom Kippur War was taking place⁴⁶.

The Speaker of the Knesset (who has function of President of the legislative body) is elected among the MKs by simple majority. The Speaker of the Knesset has general tasks related to the management of the parliamentary agenda and work sessions. Furthermore, he manages

⁴⁵ Saragusti A., (2013 February 10) *Post-Election Gender Roadmap for the Israeli Knesset*, Heinrich Boell Foundation Israel, <http://www.il.boell.org/web/96-497.html>

⁴⁶ For a schematic presentation of the structure of the Israeli Parliament and for possible comparative studies see the Interparliamentary Union <http://www.ipu.org>

inter-parliamentary relations with foreign countries, represents the Parliament in international bodies and replaces temporarily the President of the State when he is not in the country. The Speaker of the Knesset has seven MKs formally appointed as his deputies (with the same election method).

As it regards the activity of the Knesset, the "Knesset year" (or annual sitting) is divided into two sessions: the Winter Session that starts after the High Holidays (the days changes because of the lunar calendar but it is usually in September) and the Summer Session, which opens after Passover (March-April). The meetings of the Knesset take place on workdays (as stated by the Basic Law: The Knesset). Specific time is allocated to the relation with the executive branch (parliamentary requests to Ministries, answers, presentations etc.); other meetings are set to hear and discuss private members' bills. Most of the work of the Knesset is performed in the plenum and in the committees. The plenum is formally the supreme authority of the Parliament. Beyond the two regular sessions, the plenum can be convened in additional special sessions upon request of the Government or of a group of MKs.

The main activity of the plenum consists in general debates, on discussion of bills (the former often ends without a voting, unlike the latter), motions, parliamentary questions (to draw the attention to an issue that, in the presenter's opinion, needs corrective action) and motions of no confidence to the Government. In the plenum, simple majority is usually the requirement although there are cases in which the law requires a qualified majority (like in a motion of non-confidence, where the law requires the absolute majority).

The laws discussed by the Knesset are usually proposed by the executive branch, but any group of MKs or even a single MK can propose ("private member's bill"). The bill *iter* is articulated in three phases: its acceptance as a proposal, the "reformulation" in the committee, and the vote divided by sections. Only after these passages, a final vote is made on the full bill.

Like many of the Knesset meetings, deliberations are open to the media and the public. Also the expression of the vote is generally public (sometimes also through roll call) but in certain cases the modality of

secret-ballot vote is chosen. From 2003, after repeated scandals due to double voting of some MKs, an electronic system with fingerprint recognition device has been set up in the Parliament.

Another significant part of the Parliamentary activity is carried on in the committees. There are several types of committees mainly distinguishable in permanent and special. Currently, there are twelve permanent committees: the Committee for the Advancement of the Status of Women; the Constitution, Law and Justice Committee; the Economic Affairs Committee; the Education, Culture, and Sports Committee; the Finance Committee; the Foreign Affairs and Defense Committee; the House Committee; the Immigration and Absorption Committee; the Internal Affairs and Environment Committee; the Labor and Welfare Committee; the Science and Technology Committee; and the State Control Committee. Their composition of these committees is set up during a special session of the Parliament, called the Arrangements Committee, organized by the Speaker of the Knesset. The Special Committees differ from the permanent ones only for matter of duration, being them active for a limited amount of time. Sometimes, a special committee is transformed in a Permanent one, whenever a more continuative work on the issue is requested. This is the case of the Committee for the Advanced Status of Women that was originally created as a temporary special committee. The Ethics Committee is responsible for the jurisdiction over Knesset Members who have violated rules of ethics of the Knesset or who have been involved in illegal activity outside of the Knesset. In the elaboration of the Ethical Guidelines for Knesset Members a public committee was created. This type of committee (the public one) is therefore created exceptionally to deal with issues that are connected to the Knesset. A public committee is usually composed by experts, public figures together with past and current MKs. Other types of committees are created *ad hoc* to deal with matters of special national importance (Parliamentary Inquiry Committees) or to investigate about interpretations made by the Speaker on which an appeal has been raised (Interpretations committees).

The activity of the committees to revise the law proposals and reformulate them can be carried on by specific subcommittees (that the

committee nominates and to which powers are delegate) or by joint committees whenever the complexity of the issue requires a broader approach to the matter. As a source of reliable and updated information for the Committees and the MKs, the Knesset Research and Information Center was established in 2000. Moreover, senior officials, members of the Government or expert in general can be invited to take part to the meetings to be heard or to express a qualified opinion on a specific subject. There is no limit to the amendments that can be done, but to preserve the general topic of the bill. The committees have the ulterior task (clearly not unrelated to the main one) to discuss in the plenum any matter that is under their sphere of authority.

Rights and Duties of Members of Knesset

Like in most Western countries, the members of the Israeli parliament have parliamentary immunity⁴⁷. This instrument aims to guarantee freedom of action and independence from the other State powers. It quite broad and the possibility to narrow it have been questioned several times. Members of Parliament cannot be persecuted for any act performed while fulfilling their duty. While in office, they are exempted from searches, detention, criminal hearings and legal proceedings which are not connected with his work as a Member of Knesset. Only the Knesset has the right to lift the immunity, following specific requests and *iter* of notifications; in this case, public expression of the vote is requested and simple majority is sufficient.⁴⁸ While stating the right to immunity, the same law establishes a set of general rules of behavior instituting at this purpose an Ethics Committee of Members of Knesset⁴⁹. The committee is responsible for the jurisdiction over Knesset Members who have violated rules of ethics or have been involved in illegal business outside the Knesset.

⁴⁷ This matter is regulated by the "Knesset Members Immunity, Rights and Duties Law", 1951

⁴⁸ An comprehensive frame of the issue is given in the website of the Knesset: http://www.knesset.gov.il/description/eng/eng_work_chak1.htm

⁴⁹ "Knesset Members Immunity, Rights and Duties Law", section 13d.

The basic ethic norms for MKs are inserted in the original text of the law and are listed in the Rules of Ethics of the Parliament. General recommendations on honorable and dignified public and personal behavior are made in order to protect the credibility of the Parliament and not to misuse the immunity that MKs enjoy. Among the rules of ethics there is the prohibition to accept gifts while in office as well as to use the title acquired for personal purposes. The warning against the conflict of interest is also present as well as the prohibition for the MKs to engage in any additional occupation beside the political one. A relatively new norm requires a financial declaration to every elected MK in order to increase the transparency and monitor the effective abstention from prohibited activities or conflict of interests.

The Ethics Committee does not only have advisory and consulting power but also sanctioning ones. The sanctions varies of intensity (comments, admonitions, reprimands, temporary exclusion from the plenum, economic sanctions etc.) on the basis of the violation registered and on the recidivism of the MK. The decisions of the Ethics Committee are public; the identity of the sanctioned MKs is published together with the deliberations. This is coherent with the purpose of the Committee: to protect the public credibility of the Knesset and to guarantee its appropriate functioning. An official and renewed code of conduct has been in the agenda for many years now. In 2003, a public committee was formed for this purpose, leaded by retired Supreme Court Justice Zamir. From the Committee work a new code took form in 2006. However it never reached the final stage of voting due to the refusal of the Knesset to accept the figure of the Ethic Advisor (a sort of controller that would have been a bridge between the MKs and the committee and would have enforced an accurate control and an immediate report of any violation) that caused the members of the Commission to suspend their activity⁵⁰.

The Government

⁵⁰ See the chronological review of the XVII legislation on the Knesset website: <http://www.knesset.gov.il/review/PrintPage.aspx?kns=17&lng=3>

Israel is a parliamentary democracy whose Government is ruled by the "Basic Law: The Government". After the elections a member of the Knesset is appointed by the President to compose the Government that he should lead as a Prime Minister. Actually, nowadays, especially the big parties already conduct their electoral campaign with a "prime minister candidate". Therefore in Israel, as well as in many other parliamentary democracies, the President usually gives the office to the "designated Prime Minister" of the party that won the elections. After the appointment, the Prime Minister-to-be has 45 days (plus a 2 weeks extension) to form a cabinet that will have to receive the vote of confidence of the Parliament to become effective. In the history of Israel Governments have always been "coalition Governments", since no party has ever gained the absolute majority of seats in the Knesset. Like the Knesset, the Government usually serves for four years, but its term may be shortened due to the resignation of the Prime Minister or a non-confidence vote by the Knesset. The Prime Minister appoints some ministries (with or without portfolio) and assigns them specific competences. The Prime Minister enjoys a status of *primus inter pares* and has faculty to keep for himself some ministerial competencies. The Cabinet can include external ministries, as to say citizens that have not been elected as MKs (however they need to enjoy all political rights, thus be eligible for Knesset membership). There is not a limit to the size of the Cabinet; this decision is made by the Prime Minister and it is actually the result both of practical needs of dealing with specific issues (beyond the classic areas of governance) and of coalition needs (interesting enough is to know that the size of the cabinet had been growing in the last years till to arrive to the number of 30 ministers). Similarly to the Parliament, also the Government works in committees. This instrument has proven as effective and functional. The Ministerial Committee on Defense has been instituted on a permanent basis in 1991. Members of this committee are the Prime Minister, the Deputy Prime Minister, the Minister of Defense, the Minister of Foreign Affairs, and the Minister of Finance. Beside this "compulsory" one, four other committees are usually created in order to deal with economic affairs, legislation, foreign affairs and security, and home affairs and services. Evidently the competencies of these committees are inter-ministerial.

Special committees are sometimes created whenever an urgent matter arises.

As stated in the beginning of the "Basic law: The Government", the Government is the repository of the executive power. Formally the Government can implement policies in whatever field is not exclusive competence of another authority⁵¹. The absence of a formal Constitution together with this provision potentially empowers the executive to shape the legal system in a way that its action will be easier and less restricted. All deliberations of the cabinet meetings are generally secret and little is known about their proceedings, especially in security-related issues. As mentioned before, the Government has relative freedom from the Knesset. For example, international treaties and agreements are totally within its competency, unless the national existing law needs to be accordingly modified.

Said that, it is important to remind that, in parliamentary democracies, the Executive is dependent on parliamentary support. As a measure of check and balances both the bodies have the power to dissolve each other whenever the level of confidence does not reach the minimum threshold. Any political group in the Knesset has the faculty to submit a motion of non-confidence and to have it voted in the plenum. The Knesset may also dismiss the Prime Minister by failing to adopt the annual budget within three months of its submission. On the other side, also the Prime Minister can submit a request to dissolve the Parliament to the President whenever the Knesset does not guarantee him a decent governability.

The Prime Minister is the head of the Executive and he has responsibility to manage the activity of the body as well as to stand in front of the public as the Executive representative. His responsibility entitles him to nominate ministries and the heads of unelected power-sharing institutions such as the Governor of the Bank of Israel, the Attorney General, and the Director of the Mossad. The whole cabinet is legally meant to be a strictly personal emanation of the Prime Minister's will. Members of the Cabinet can be dismissed in any moment by the

⁵¹ See the "Basic Law: The Knesset", art. 32: "The Government is authorized to perform in the name of the State and subject to any law, all actions which are not legally incumbent on another authority."

Prime Minister and whenever the latter resigns, dies or has a long impediment to govern the whole team loses its status. The Prime Minister cannot be removed but by a non-confidence vote (or in case of criminal sentence authorized by the General Attorney and aggravated with the accusation of the moral turpitude).⁵²

Bureaucracy

Israel is a unitary State whose centralization is known and pointed out in many researches. The centralization of the State has historical and ideological roots dated in the aftermath of the establishment of the State. The previous experience of the Yshuv, in which the Jewish community enjoyed a sort of large federal autonomy, was recalled as insufficient to express a full national and political autonomy. The political elite opted for the European classic model of State, based on the view that centralization confers legitimacy and governability. The governmental apparatus was conceived and built with a central authority that retained the core power and with some peripheral emanations that would have worked as the instruments of this central actor⁵³. This setting was regulated by law through the Municipalities Ordinance and Local Council Ordinance, originally created in the mandate period⁵⁴. Other legislation was set in the Fifties concerning the work of the councils and the local elected. The political debate over the regulation of the local governments has been in the political agenda till today (even though not in a primary position). Several attempts of reform were made. Some changes were accomplished during the years but the core legal framework and the structure of the administrative apparatus remained the same.

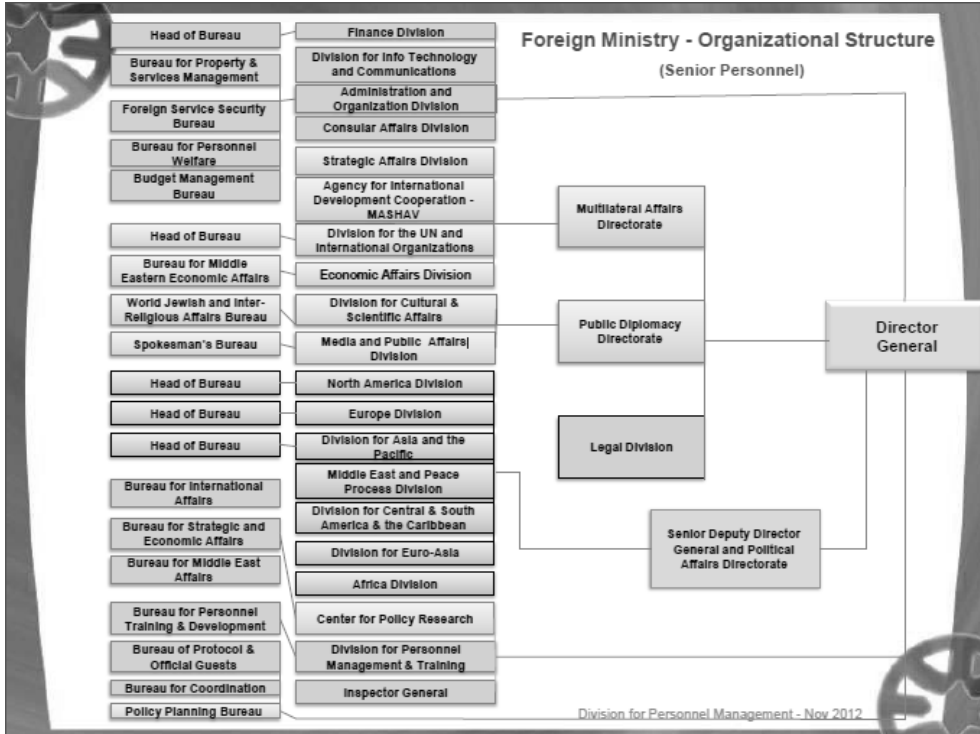
⁵² See above, art. 18.

⁵³ For a more extensive description of the historical course of the local authorities in Israel see Elazar, D. (2008), *The Local Dimension in Israeli Government and Politics in Local Government in Israel*. Elazar & Kalchheim (eds.). University Press of America, Lanham MD.

⁵⁴ These two laws have been later renovated (in the mid Sixties). Nowadays are commonly known as Municipalities Ordinance and Local Council Ordinance "new version".

In Israel there are two levels of government, central and local, with respective administrative apparatuses. Although the State is formally divided in six regional districts, it would be inappropriate to speak about a regional government. These districts in fact are merely geographical and they do not vest political or administrative power. Their task is mainly to facilitate of control of the local areas and in particular land planning. The central Government, composed by the Prime Minister and the Ministers is provided with a quite extensive bureaucratic apparatus. The organogram of the main ministries is broadly articulated (in departments, divisions, special offices etc.) and employs a considerable number of civil servants at different levels (below the organogram of two of the main ministries is reported as an example). The ministries' headquarters are in Jerusalem and only few of them have branches dislocated in the national territories.

Figure 8 Organogram Ministry of Foreign Affairs
 (Source: institutional website of the Ministry of Foreign Affairs, 2013)



The only political form of decentralization of the central Government is at the municipal level. Official data of the Central Bureau of Statistic from 2010, counted 253 local governments and specifically 75 cities (more than 20,000 people), 125 smaller municipalities (between 5,000 and 20,000 people) and 53 regional councils⁵⁵. The definition of regional council is articulated: it comprised both agricultural agglomerates as well ex-urban neighborhoods, commercial, and industrial sites. The number of local authorities is subject to change since the debate over

⁵⁵ Central Bureau of Statistics, Local Authorities in Israel 2010 (Hebrew)

the inefficient too divisive asset, as well as the expansion of the populated areas can bring to merge but also to create units.

As Galnoor⁵⁶ remarks, the functional essence of public service generally is the implementation of the policymaking thus the provision of services to the citizens, groups and organizations. Public service also regulates tasks performed by others, in order to protect public interest an individual rights. This general definition leads to the evident consideration that the field of competencies changes during the years, according to the specific needs of the society and to the level of development. For example, in many Western countries, environmental protection as well as accountability and quality service to the public were included not long ago among the priorities of the public service. Due to the "change of times" other issues have been gradually abandoned by the public and other actors have replaced it (for example many services related to communication, that is television and telephone services). The empowered subjects to perform the above functions can change from state to state or coexist with different degrees of responsibility. In Israel for example the public service is carried out by governmental executive branches (ministries and their subsidiaries units, governmental corporations and statutory authorities), non-governmental executive branches, public institutions and national institutions (that are not public sector but they play a major role in the public arena: Jewish agency, World Zionist Organization Jewish national fund and Keren Hayesod) and local authorities. Some of these actors entered in force in more recent times and adjustment of authorities were made during the years. This confirms the idea of public service as a dynamic body, subject to the changes both in the political culture and in the societies in which they operate.

The prominent role of the central government in Israel is well expressed in the 2007 country report of the Platform of Experts of Planning Law: "Israel is one of the only advanced-economy countries where no major decentralization and devolution of powers have

⁵⁶ Galnoor, I. (2010), *Public Management in Israel: Development, Structure Functions and Reform*. USA and Canada:Routledge.

officially taken place. The central Government legally still retains most of the powers it possessed when Israel was in its formative stages".⁵⁷ Legally, the Ministry of Interior has almost total authority on the local level. He is charge of the establishment or dismissal of the municipalities and he regulates the political cycle pace ordering the elections (within the temporal frame dictated by the law). In justified cases (especially in case of malfunctioning of the local government or serious financial problems), the Ministry can also dissolve the elected council and can appoint non-elected administrators till new elections. The local authorities enjoy autonomy only for the powers that are explicitly attributed by the law and any initiative that has not explicit legal coverage is invalid and can be disqualified according to the *ultra vires* principle. In virtue of this principle, the Supreme Court has been nullifying many municipal provisions and orders making clear that not even "legislative silence" can be interpreted as a free space for the local authorities to exercise their power⁵⁸. The only legislative power retained by the municipalities is the secondary legislation, necessary to perform the activities that are legally attributed to the peripheral government.

Local governments are the closest institutions to citizens as it regards their daily life and the use of basic public services. Municipalities are in fact responsible for the basic infrastructures (paving local roads, building and renovation permissions, sewage systems, sanitation etc.) and for some practical aspects related to the provision of social services (sport and cultural areas, public schools and other buildings where educational activities are performed). This does not mean that the municipalities are fully responsible (even at local level) for the above mentioned policy areas. The specific ministries retain the core authority; any initiative of the local authorities can be dismissed in any moment as not legitimate. Also in case of provision of services that

⁵⁷ Alterman R., (2007 December 12)Introduction to Israel's Planning and Building Law, Platform of Experts in planning law, http://www.internationalplanninglaw.com/templates/mercury.asp?page_id=1514&country_id=6&dossier_category_id=6

⁵⁸ For an interesting review of legal cases see Navot S., (2007) The Constitutional Law of Israel Alphen aan den Rijn: Kluwer Law International.

need a direct contact with the citizens and physical presence in the territories, the ministries directly provide them with offices *in loco*. The Ministry of Interior for example provides basic services to citizens (emission of identity cards and certificates) not through the municipalities but through its own offices dislocated in most of the towns and cities. The centralism is mostly evident in matter of finances: according to the 2011 country report from OECD the central Government collects over 77% of revenues and accounts over 72% of total expenditures⁵⁹. Taxes therefore are mostly centralized and the municipal ones are anyhow monitored. Also in case of municipal taxes (like the municipal tax on property) that usually represent the main entrance for the municipalities (in Tel Aviv, for instance, it provides nearly two-thirds of the city's annual income) the municipalities must move within a minimum-maximum range established by the Ministry of Finance according to inflation rates and the cost of living index.

The restricted autonomy of local governments has been questioned many times during the years, due to its impact on the daily management of cities and towns. If it true that there was not a radical renovation in the matter, however some change have occurred, also due to the modern era new needs of which we discussed above. Looking back at the original bureaucratic setting, it is possible to see that some kind of progressive decentralization has been taking place, new authorities (detached subjects but accountable to the Ministers) have been created to which the central government has delegated specific competencies regarding agriculture, science, cultural events of national relevance, economy and the regulation of specific fields (nowadays the number of these authorities amount to about 45, with approximately 20,000 employees)⁶⁰. From the Eighties moreover, a significant privatization process have been taking place, usually selling the entire enterprise to private buyers or issuing a minority stake to the public. Privatization in the Israeli case is not a pure one since the public administration retained a strong regulative power. This creates strict bounds to the private organizations and prevented some foreign

⁵⁹ OECD (2012) Country report, Government at a Glance 2011, OECD Publishing.

⁶⁰ On the authorities and some non-central bureaucratic subjects See above Galnor, I., (2010).

entrepreneurs to invest in the local economy. Nonetheless, the privatization of publicly owned firms and services has improved the state of the economy. Also local authorities were affected by this "decentralization process", getting more involved in issues on which the State had the exclusive authority. For example, 1995, local commissions were appointed to approve some local building plans of minor impact (but being it quite a sensitive issue in Israel the ministry retained ultimate control power. In general and beyond the official reforms, they have been increasing their informal authority, handling issues that are not among their official competences.

Actually, Elazar⁶¹ pointed out how the political culture of the citizens of Israel contrasted with the constraints of the central government. For this reason, new informal methods have been adopted in order to bypass the formal rigid procedure and establish an informal order that is closer to people's mentality. Despite the central-Government presence in many sectors, negotiations and various expedients have been implemented by the local authorities in order to gain a broader margin of action. Doing so, the highly centralized government practically lost some of its prerogatives and a quite consistent decentralization took place in an informal but still effective way. This informal decentralization partially increases the quality of the service provided to the citizens but poses other considerable problems. First of all, it creates institutional insecurity and scarce attitude to a steady collaboration, since the responsibility is not clearly stated. Critical voices remark how the central power is reluctant to an official reorganization since this would mean a serious limitation of the ministerial powers. A similar approach would come also from the local authorities who are free from a full responsibility and can maintain a certain margin to "blame" the central government.

The gap between legal frame and practice has also economic consequences. As previously mentioned, the majority of the resources and the responsibility of distribute them are in the hands of the central government. The extended informal competences of the peripheral authorities require financial resources that the municipalities do not

⁶¹ Elazar (2008), See above.

possess (not they are likely to receive as part of their budget since the tasks are not legally envisaged). Municipalities are forced to maximize the fruitfulness of the allocated resources, saving on the services that they are called upon to deliver. Even doing so, the fundraising for the additional activities can be very difficult. Among the local authorities the practice of "deficit management" has been spreading. In order to perform the activities for which a sufficient budget has not been allocated, mayors borrow money from banks and only after will ask for a further financial allocation from the State⁶²

Together with the analysis of governance and bureaucracy, it is useful to have a more detailed insight of the nonpolitical actors of the process: the public servants. The organ that is in charge of coordinating and regulating the civil bureaucracy in Israel is the Civil Service Commission, put in force by the Civil Service Appointment law. Officially the commission is an autonomous subsidiary unit of the Ministry of Finance but in the past it has been subject to the authority of the Prime Minister Office. Through its departments, the Civil Service Commission supervises the government ministry personnel quotas and approves the structure and division of powers among government agencies and ministries. It is in charge of coordinating the publications of the vacancies and the selection process. It decides on promotions tracks as well as dismissals and retirements and organizes training. The Civil Service Commission is also in charge of setting the terms of the work, optimization and disciplinary sanctions.

Recruitment in the Israeli public service is based on educational credentials and a civil service entry examination⁶³. When a position is opened, applicants from within civil service system are considered first, with a second competition open to external applicants if no suitable internal applicant has been found. The competition process usually includes a series of written and oral public exams included an interview held by an examination committee. Mechanisms of minority

⁶² For a more detailed explanation of the mechanism and some proposed solution to the economic malfunctioning of Israeli administration at local level see: JCPA & the Milken Institute (1998) *Practical Privatization: Lessons from Cities and Markets*, Jerusalem: JCPA and the Milken Institute.

⁶³ See the Civil Service Appointment Law (1959).

inclusions are active and during the years many initiatives have been set in order to favor the entrance of women and ethnic minorities in the public work. Still they are underrepresented. A very sensitive issue in the recruitment process is the political influence that since the beginning of the State significantly influenced the appointment of civil servants. A big concern about it has been emerging for two decades and legislative steps have been taken in order to forbid this practice, exception made for some "confidential appointments" that mainly regard the strict entourage of ministries, and high executive positions. Despite the fact that merit and professionalism are the legislative basis for the appointments, nonetheless political influence causes the distortion of the merit-based selection.

The Ministry of Finance, through the Wage and Labor Agreements Department is responsible for setting and implementing wage policy in the public sector. Basic economic treatment as well as bonuses, management tools and work conditions are to be negotiated with the Unions (the general Union for the general agreements and the specific Union divisions for the sectorial secondary agreements). Recently the practice of individual contracts for employees in professional positions in public administration have been increasingly used, formally to keep excellent employees or to afford greater managerial flexibility⁶⁴. Determinant criteria for salaries are the specific ministry, educational qualifications, experience (especially in similar position to the one covered) and seniority. Retribution of civil servants and the retributive disparities among employees are much debated issues in the Israeli public opinion. The debate is fomented by the frequent mobilization and strike of certain categories of public workers who claim that their professional activity in granting fundamental public services is not fairly compensated. The average gross salary of civil servants in 2011 was of NIS 14,321/month (about 2,870 Euros). The need of wage increase is generally recognized especially in critical sectors like medicine and ministerial bureaucracy, to attract highly qualified staff. The evident retributive disparities among public servants however are

⁶⁴ On individual contracts see Michelson, N. (2012) The effect of personal contracts in public administration in Israel on length of service". Research paper commissioned by the Bank of Israel. Available at http://www.boi.org.il/en/research/pages/papers_dp1202e.aspx

the main trigger for criticism and contestation: the political inability to enhance equality and workers' rights in this field creates unrest. As reported by the newspaper Haaretz, the Finance Ministry's wages director, Ilan Levin (in charge till May 2012), stated during an interview: "I don't sleep at night...A social worker's average gross salary is NIS 13,000 per month, while forklift operators at the ports gross between NIS 35,000 and NIS 40,000...There's no logic or justice in the public sector...Wages are set based on each institution's power... The pressure by workers' committees at the large government monopolies - including the ports, the electric company, the railways and the airport authority - lets the workers boost salaries and employment terms unreasonably"⁶⁵. The here mentioned example of the port workers is the most striking: this category of workers has the highest average overall wage among all public workers.

The current Finance Ministry's wages director, Kobi Amsalem, in a recent interview in Haaretz, blamed the distortive effects of the bureaucratic system and the legislation for the unfair remunerations of public servants: "Many well-paid civil servants are entitled to income supplements because of a distorted set of criteria in need of a complete overhaul...As a result, public sector employees earning an average pay of NIS 10,000 a month were designated as being in the minimum-wage income bracket"⁶⁶ (for the law, income supplements should be given to those workers who earn less than the minimum wage, established in 2011 at 4,100 NIS a month).

Despite the non-encouraging situation of public service workers, according to an OECD report⁶⁷, Israel goes much better as it concerns performance incentives and performance assessment. Israel makes more use of performance assessment in HR decisions than the average OECD country. Assessment is mandatory for almost all employees and takes the form of an annual meeting with, and written feedback from,

⁶⁵ Haaretz Editorial, (2012 March 16), Israel needs public sector reform in Haaretz at <http://www.haaretz.com/opinion/israel-needs-public-sector-reform-1.424504>

⁶⁶ Bassok M. & Zrahiya Z. (2013 January 7) Doctors topped list for public sector salaries in 2011, treasury report finds. In Haaretz, at <http://www.haaretz.com/business/doctors-topped-list-for-public-sector-salaries-in-2011-treasury-report-finds.premium-1.492347>

⁶⁷ OECD (2012) Human Resources Management Country Profiles 2012 at <http://www.oecd.org/gov/pem/OECD%20HRM%20Profile%20-%20Israel.pdf>

the immediate superior. A wide range of criteria are used: activities undertaken, timeliness and quality of outputs, interpersonal skills, improvement of competencies etc. Performance assessment is of high importance for career advancement and contract renewal, and lesser importance for remuneration. However, Israel uses performance related pay (PRP) to a substantially greater extent than the average OECD country. PRP takes the form of permanent pay increments and is used for most employees. The maximum proportion of base salary PRP can represent is 21-40%. Promotions are a result of performance appraisal as well as a semiautomatic upgrade after years of service. According to a survey conducted among a small sample of public servants (but still significant for the coherence with other issues discussed above and for the "insider perspective" that it gives), many public workers (mainly not in managerial positions) consider organizational politics, tenure, and pressure on the supervisor much more determinant factors to gain a promotion than merit criteria⁶⁸. The necessity to further improvements is more evident if considering that public employment is, for most employees, a long-life position. Despite the necessary adaptation to a more flexible job market due to the growing privatization of the last decades, the Unions have been fighting for the rights of the "old" workers to maintain their guarantees and for the stabilization and equal conditions of those hired with more precarious contracts. Public sector remains, like in many countries, one of the safest from firing and mobility among different offices is not a common practice. The Government, however, has faculty to dismiss employees with open-term contracts due to restructuring (proposing reallocation plans). Voluntary departures with attractive allowances and early retirement packages are another common option⁶⁹.

Bureaucracy and governance

⁶⁸ For an interesting survey on the perception of civil servants and managers in matter of promotion process in public sector see: Sharabi M., (2012) Performance or Politics: Promotions in the Israeli Public Sector in *Public Administration Research*; 1:1.

⁶⁹ OECD (2012) Human Resources Management Country Profiles 2012 at <http://www.oecd.org/gov/pem/OECD%20HRM%20Profile%20-%20Israel.pdf>

Many scholars have been pointing out the relation between poor executive performance in Israel and a scarce bureaucracy support to the Government. Freilich, analyzing the decision-making process in the field of security criticizes the ineffectiveness of the policy-making machine and its poor performance in formulation and coordination. The Prime Minister Office is formally well articulated and has expanded in the last decade. Its main task is to support the Prime Minister in his daily work as well as to increase the efficacy of the Executive in the implementation of policies. A plethora of advisors are working in the Prime Minister Office and different departments are in charge of a step by step consultancy. The Government Secretariat has a more general function to assist the needs of the ministers and committees and to facilitate their relations with the legislative body. The secretariat should be a fundamental tool in the formulation of the agenda as well as in providing all the background information to the ministers.

The main criticism against these bodies consists in the lack of organizational capabilities and the scarce provision of information, sometimes due to a lack of communication and coordination. These flaws would seriously endanger the whole executive process: not possessing the Ministries the necessary knowledge to effectively assess the problems, the governmental debate cannot be deep and constructive. As a consequence, the formulation of policies is difficult.

El Gendi⁷⁰ depicts the consequences of this insufficient preparatory work. The Cabinet meetings penalize the phase of debate and deliberation in favor of a general presentation of the issue usually given by the policy advocate (the relevant Minister, ministry official, or the Prime Minister). The MKs reliance on the partisan presentation (due to the superficial knowledge of the noninvolved Ministers), would cause a deliberation that is based on the partisan point of view of the proponent. A weak bureaucratic support (together with the growing tendency to personalization) not only influences the deliberative phase but prevents the inter-ministerial collaboration for the definition of policies. The highly politicized composition of the cabinet has

⁷⁰ El Gendi K., (2010) *The Process of Israeli Decision Making: Mechanisms, Forces and Influences*. Beirut: Al-Zaytouna Centre for Studies and Consultations.

downplayed the collaborative approach. Ministers have been increasingly avoiding consultations and preparatory work. Prime Minister's Office and the Cabinet are not able to organize systematic staff work that is fundamental to prepare the Ministries and to give them deeper knowledge of the issues that are to be discussed.

Relation with the public

Achieving excellence in results and creating a more user-oriented service are objectives of the Civil Service Commission. Beside the optimization of the service, amelioration of the working procedures, human resource development and inter-ministerial cooperation are sought too.

To ameliorate the relationship with the citizens, every Minister has an institutional website and many non-official portals are regularly updated with reliable information. In the institutional websites explanations are usually available in several languages (Hebrew and at least Arabic, English, and Russian) given the multilingual population in the country. Assistance is provided both online and on the phone, in a way to minimize the need to physically go to the offices. The possibility of complain is granted through administrative tribunals, law courts and through the State Comptroller (with functions of Ombudsman).

Administrative tribunals and law courts deal with conflicts between State bureaucracy and the citizens. The number of administrative departments dedicated to complaints management and appeals is impressive and has been growing in the last decade⁷¹. As a consequence, competences are more and more fragmented and the cooperation among the units is more difficult.

Since 1971, the State Comptroller has been fulfilling the function of Ombudsman. In this function, it is the recipient of complaints from any person who claims to have been harmed by a State or public body subject to the audit of the Comptroller. In its original form, the State Comptroller Law included two acceptations of audit: audit of regularity and legality; and audit of efficiency and economy. In 1952

⁷¹ Galnoor Y, (2010). See above.

the audit of moral integrity was added. Over the years, the competencies of the Comptroller broadened further. As of today government corporations, local authorities, subsidiaries of audited bodies, institutions of higher education, health insurance funds and public transportation cooperatives are under the State Comptroller's supervision. Since the 1980's, the State Comptroller's Office turned to be, in specific cases, an evaluator of the results of government performance and policy. Besides being a great instrument for fighting corruption and for guaranteeing accountability to citizens, the Comptroller is actually a positive tool for the improvement of democratic quality. On the light of its investigations it proposes solutions to the malfunctioning and the ineffectiveness of the State.

Fight against corruption, illegality, and abuse of power by state/public agencies

Transparency International (TI), a world leader in the fight against corruption of all kinds, developed the Corruption Perceptions Index⁷² where it assessed countries and territories based on how corrupt their public sector is perceived to be. The countries were attributed a score in a range from 0 to 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. In 2012 Israel reached a score of 60 was ranked 39th out of 176 countries analyzed⁷³. Even though Israel is not the last ranked among the Western countries, its placing is among the lowest and its score is lower than the previous years. When the report was published, the news did not arouse a strong reaction in the public. According to the newspaper Haaretz, the indifference is the result of a widespread feeling of resignation among the citizens. Citizens accepted a condition of

⁷² The Corruption Perception Index was elaborated by Transparency International combining 13 surveys from ten research centers examining the perception of experts regarding the corruption in the analyzed countries.

⁷³ Transparency International, (2012) 2012 World Ranking at <http://www.transparency.org/cpi2012/results>

"spoiled legality"⁷⁴ that concerns the high ranks of governance as well as the everyday life.

This tendency is in contrast to the legal framework aiming at preventing corruption. Indeed it is very articulated and undergoes constant updates. Regulative efforts are also done in compliance with the international conventions to which the country adheres. Efforts have been made also to improve the level of transparency. In 1998 the Freedom of Information Law gave legal impulse to a more transparent governmental approach to citizens' information, included the disclosure of governmental documents. The purpose of the law was to empower the public with further awareness and knowledge regarding State management. Under this law, citizens are entitled to ask for public documents to the State and to receive it, even though with certain limitations. A discrete amount of material has been made available through the media, including the internet. Nowadays, the institutional websites publish (mostly in Hebrew and Arabic) Government resolutions, meeting agendas, drafts, annual plans of local and central authorities and legal texts including the ones related to anti-corruption measures. On this specific topic a dedicated website has been opened under the supervision of the Ministry of Justice: the website is fairly updated on new legislation and on the main measures implemented by the Government to fight corruption both in private and public sector.

The strict confidentiality of many State's reports, however, creates a grey area that is impenetrable by the citizens. Israel is a country that suffers from security problems (both on the internal and on the external side) and this cause a deep sense of insecurity as it regards the dispatch of any information that is perceived as potentially revealing for the "enemy". The strict secrecy of some issues is accompanied by a big range of non-secret information about which the State lacks to give the maximum diffusion, for example uploading them as a digital free content. This might be due to strategic or logistic ones, or simply might

⁷⁴ The Marker, (2012 December 6) Israel fails to improve corruption ranking in Haaretz at <http://www.haaretz.com/business/israel-fails-to-improve-corruption-ranking-premium-1.482924>

be the result of a superficial implementation of the norm. The lack of systematic publication of the material discourages public review. In fact, even if the non-classified material is available upon formal request to the specific Ministries, Authorities, State Comptroller's or other offices, this procedure requires a deliberate, much bigger effort of activation that is not justified, given the great use that citizens makes of the internet. The partial compilation of the English version of the websites (some ministers do not have it at all) might also depend on different causes (lack of resources, arbitrary decisions on the utility of such information, the less probable deliberate attempt to reduce English speaking access to such information etc.). Independently from the reason, it has a very negative impact on the accessibility to the websites of a large community of users (the new immigrants for example as well as the consistent English speaking community in Israel). Many of them have no or non-sufficient knowledge of Hebrew, As a consequence their possibility to get information is somehow limited.

Budget and allocation of funds review

Commenting the low performance of Israel in the Corruption Perception Index⁷⁵, Yoav Lehman, a member of the Transparency International Israel board commented: "The fact that Israel is trading water in the global corruption perception index is disturbing and requires concrete action to improve it...Public money and the way in which budgets are allocated is not transparent enough. The data exist, but it is very difficult to get a true picture and to trace where the money goes". This statement describes one of the main plagues that afflict the Israeli commitment to eradication of corruption.

The contrast between a highly regulated process of allocation of funds (to local authorities, third sector organizations and other recipients) and a scarce monitoring activity is stated as the conundrum by many

⁷⁵The Marker, "Israel fails to improve corruption ranking" in Haaretz December 6, 2012.

experts in the field. In the funds-allocation procedures, the phase of evaluation and follow up is poor. This prevents a result-based refunding of projects that have proved not successful. According to Schwartz⁷⁶ the problem stems from partisan considerations that prevent the adoption of efficiency criteria. Even though some efforts have been made to provide the bureaucratic system with stronger evaluative skills (organization of specific trainings, development of research centers whose main task is the public policies evaluation etc.) significant results are still to be noted.

In a critical analysis of the Israeli governance and institutions, Galnor⁷⁷ maintains that in Israel internal audit is not effective against corruption. The scholar claims the necessity of binding rules on ethics, independence of the internal auditors (with authorization to publish the results of their investigations) and more stringent procedures in any phase of the budget allocation. Etzioni Halevy⁷⁸ notes how in Israel the material resources are consistent since they do not come only from the fiscal pressure on the citizens but also by conspicuous donation of foreign organization or privates (namely Jews in diaspora). Thus, the need is even more pressing to have a much controlled procedure of allocation. Moreover, the need of a strict supervision is due to the fact that while the allocation general rationale has governmental (so political) source, the actual management of the funds carried out by non-elected actors (the administrative body) whose influence might put them in a situation of democratically illegitimate power. The commission for budget allocation is in fact usually composed by ministerial auditors and senior bureaucrats, for the most part appointed by the Ministry on the basis of personal trust. The decision is not subject to review.

Classic ways of non-transparent allocation of funds are: the politically driven allocation of funds through local authorities and the politically

⁷⁶Schwartz R., (2000) State Audit - Panacea for the Crisis of Accountability? An Empirical Study of the Israeli Case in *International Journal of Public Administration* 23:4: 405-433

⁷⁷ Galnor Y., (2010) See above.

⁷⁸ Etzioni Halevy E., (2002) Administrative Power in Israel in Maor M. (ed.) *Development in Israeli Public Administration* London, Frank Cass Publishers.

driven allocation through special funds.⁷⁹ In the first case, the Ministry of Interior delegates the local authorities to allocate funds to associations and different bodies. The political connotation of the Ministry of interior (and that of the Government in general) has proven crucial for the allocation of money to institutions that are ideologically or culturally close to that political connotation. Even if since the Eighties, a regulation was instituted in the attempt to stop this dynamic, funds are still allocated according to this rationale, despite the formal prohibition. Suspicious allocations have been reported by the State Comptroller and defined as a persuasive method to maintain and enlarge electoral consensus. The closer the electoral moment, the more sizeable the funds are. The availability of the local authorities to act as delegates of the "national level" in the political allocation of funds is due to financial reasons (since their budget depends on the allocation of the Ministry of Interior) and to political reasons (since the political influence in the appointment of bureaucrats at any level, they are more likely to respond to a political logic and contravene formal regulation). Special funds are distributed via Ministries (often Education and Religious affairs). These are usually negotiated in coalition forming agreements. This practice is very common: religious parties for example, are used to trade their political support for funds religious institutions and associations linked to the party. The Knesset passed in the Eighties a resolution to block the arbitrary allocation of funds. The core points of the resolution were the establishment of a clear set of criteria for the allocations, strict verification of the requirements and follow up activity. This resolution and the legal provision that came afterward did not lead to a substantial improvement of the situation: criteria that were set vaguely or a posteriori; partisan evaluation of the projects and many other irregularities that proved the problem to be particularly resistant⁸⁰.

The control and follow up measures are the main problem in this process. The initial phase of the allocation is, as we said, out of any

⁷⁹ Ibidem.

⁸⁰ Barak Erez D., (2002) Judicial Review of Politics: The Israeli Case, in *Journal of Law and Society* 29: 611-631.

independent review. As it regards the implementation of the projects and the responsiveness to the criteria expressed in the ministerial "call for interest" the problem is mainly the State Comptroller's dimensional incapacity to audit all the cases. Hetzioni Halevi points out that the only real possibilities of a more stringent control would be only through the ministries themselves that unfortunately are the starting point of a defective allocation for the just mentioned political reasons.

Basic Legislation against Corruption in State Bureaucracy⁸¹

Weak points in a country are physiological but dangerous since they loosen the control, favoring the insurgence of distorted practices. However, the State of Israel is committed both at the national and at the international level to eradicate the plague of corruption. There are a comprehensive general set of provisions regulating public service in Israel among which a set of rules against corruption and related crimes. These are contained in the Civil Service Regulations (*Takshir*). The *Takshir* is published (only in Hebrew) on the Civil Service Commission's website. Corruption of a public officer is a penal crime and the offenders get severe sanctions. Public servants are requested to report any case of corruption that they witness at work to their superiors or to the representatives of the law (Code of Ethics art 4.2 and Civil Service Law (Discipline), Art 17). Public servants who do not report substantial information concerning an act of corruption are charged with disciplinary sanctions. The cooperation instead is considered a proof of loyalty to the State. To favor cooperation, public employees who report a case of corruption are protected against retaliation (and especially against the removal from their office) by the Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law that was created in 1997.

⁸¹ Information about this paragraph is mainly extracted from the report of the Ministry of Justice (2011) "Information Regarding Certain Preventive Measures Under Chapter II of the United Nations Convention against Corruption".

Legal Provisions against Bribery

The Israeli Penal Law draws an articulated system against bribery, both in the public and in the private sector. In 2008 article 291 of the Penal Code, regulating the crime in object was enriched of a section that extended the validity of the law also in case of bribery of a foreign public employee. The article includes indirect and direct bribery aiming at promoting personal interest in the business sector or in any other field. The definition of foreign public employee is broadened to employees of a foreign State, public office holders and employees of international organizations. The definition is also extended to State bodies that do not belong to a recognized State, like the Palestinian Legislative Council. The sanctions have recently strengthened through a further modification in the Penal Code. Currently, bribery is punished with seven years' imprisonment and a monetary sanction (that can reach almost 500.000 Euros). Corrupted officers are punishable with ten years imprisonment. Also the fiscal legislation contributes to the fight against national and international bribery. The Israel Tax Authority acquired in 2009 the authority of rejecting taxes deductions for payments that arouse reasonable doubts about their legal nature.

Investigation on Corruption at High levels

Corruption has recurrently plagued the Israeli democracy, with resounding cases among the national political leadership. Prime Ministers and members of Government have often been investigated for corruption or similar crimes, either during their mandate or afterwards. At the moment, the ex-Foreign Minister Lieberman (reconfirmed with reserve for the current legislature) is being accused for fraud, breach of trust, aggravated fraud, money laundering and for harassing a witness. The main allegation regards the transfer of millions of shekels to shell companies and accounts belonging to people close to him. Under Israeli law, if he is found guilty of these accusations, he should be deposed from his political office. In case of

an absolution or in case of a light non-custodial sentence he will be able to continue his political career as a member of Knesset and Government.⁸² The current minister Netanyahu was also investigated in 1997 for a suspicious political appointment of an attorney general and in 1999 for a 100.000 dollars case of corruption in free services from a government contractor (though not indicted for insufficient evidence in both cases). Ehud Olmert, the former Israeli Prime Minister, left his office after being impeached on charges of fraud, breach of trust, false entries in corporate documents and acquisition through fraudulent means in different cases. The accusations were definitely heavy and an imprisonment sanction was not a far hypothesis. Olmert was acquitted of these charges due to reasonable doubt. He has been declared not guilty for two charges of corruption but sentenced for another count⁸³. The complete judgment has not been expressed and some of the accusations are still under the analysis of the competent legal bodies. Ariel Sharon, now incapable of standing in any possible trial due to the serious consequences of a cerebral stroke, was investigated for several corruption cases and suspicious appointments. One of the most famous cases that involved his unclear relationship with an Austrian businessman has been then related to Sharon's sons considered responsible for mediating bribes between the businessman and their father. Many other members of Parliament and local politicians have been involved in illegal activities and namely bribery and corruption. In recent times Ramat Gan mayor, Zvi Bar, was indicted on charges of bribery. The main charge would be (beside fraud, money laundering and obstruction of justice) bribes acceptance in exchange for support in real estate projects in Ramat Gan⁸⁴.

⁸² The Guardian, (2011 April 13). Avigdor Lieberman set to face Israeli corruption charges in The Guardian at <http://www.guardian.co.uk/world/2011/apr/13/avigdor-lieberman-israel-corruption-charges>.

⁸³ Greenwood P., (2012 July 10) Ehud Olmert convicted in corruption case, in The Guardian, at <http://www.guardian.co.uk/world/2012/jul/10/ehud-olmert-guilty-corruption>

⁸⁴ Cohen Friedman N., (2013 January 31) Ramat Gan mayor charged with taking bribes, in Ynet, at <http://www.ynetnews.com/articles/0,7340,L-4339575,00.html>

Money Laundering

As mentioned when analyzing the crime rate in Israel, money laundering is one of the most lucrative activities associated with the organized crime in the country. In the early nineties, it has proved especially attractive for Russian organized crime since the bank system and the economic policy favored new immigrants' capital transfer and investment. The speculation has been discovered and regulated but also today cases of money laundering are reported for conspicuous sums. In 2000, the New York Times called Israel a "Paradise for Money Laundering"⁸⁵ referring to the massive financial operations that were done every day in Israel, most of which remained unpunished or uninvestigated for lack of specific legislation. Further documents state how criminal organizations of different kind took advantage of the Israeli financial system to perform financial illicit operations. Also American citizens were accused to "export" their financial assets in Israel to cover fiscal evasion⁸⁶.

Bank Secrecy

For many years, Israel did not possess a specific legislation for fighting the financial illicit operations. Also nowadays, bank secrecy is largely maintained and the banks are not entitled to disclosing information relating to a customer's business to third parties. Bank secrecy is not clearly regulated in a separate law but is included in the privacy

⁸⁵ According to this article, Yossi Sedbon, head of the investigative division of Israel's national police at the time, defined Israel as a paradise for money laundry activities. See WILLIAM A. ORME Jr, (2000 February 21) "Israel Seen as Paradise for Money Laundering", in The New York Times at <http://www.nytimes.com/2000/02/21/world/israel-seen-as-paradise-for-money-laundering.html>

⁸⁶ Browning L., (2011 September 16), U.S. tax-evasion probe turns to Israeli banks in Reuters, <http://www.reuters.com/article/2011/09/16/us-usa-tax-swiss-israel-idUSTRE78E7PU20110916>

protection laws and all the norms that aim to preserve and improve the freedom of the individual (or corporation) in their private life. Bank secrecy therefore is also an extended consequence of the penal norms regarding confidential data disclosure. A shared opinion among Israelis is that the bank has a fiduciary duty toward the clients, whose interest is to be preserved against third parts intrusions. The same legal principles, from which bank secrecy originates, create also the premises for the exceptions to the bank secrecy. Being secrecy a tool that aims to protect the interest of the clients and being the bank bound to a fiduciary relation, clients themselves can give the permission to the bank to reveal their data to third parts for personal reasons. Cases in which the bank is freed from the fiduciary duty are the cases in which a superior interest is at stake. For example, the bank is obliged to reveal information on the financial status/activities of a client whenever a specific bodies like Police, Tax Authority, the Bank of Israel (that has a supervision role on the other banks in the country and can be involved in dispatching information related to money laundering investigations), the Israeli Security Authorities, and the Israeli Money Laundering Prohibition Authority requires such information. The disclosure obligation is also applicable whenever public interest might be endangered by a non-disclosure, like in the case of an international police operation. The bank may disclose information also if its own interest is seriously endangered (for example in case of a claim against a client for repayment of a debt).

The prohibition of money laundering role

In 2000 a specific law to fight money laundering was enforced in compliance with the Financial Action Task Force demands for the international fight to money laundering (and illicit financial activities in general) and terror financing. Money laundering was defined as the performance of a property transaction, on property originating directly or indirectly in an offense, used to commit an offense, or enabling the commission of an offense, with the object of concealing or disguising its

source, the identity of the owners of the rights therein, its location, its movements or the performance of a transaction with respect to such property.⁸⁷ The law established The Israel Money Laundering Prohibition Authority that became operative in 2002. This body has the function of a financial intelligence unit and it is the coordinating body in the fight against money laundering crime. The Authority is responsible to receive and process all banks' reports made in compliance with the above mentioned law. Report activity is another fundamental piece in the puzzle. Banks are provided with an automatic program that reports of transactions that exceed a certain amount. Banks are obligated to clearly identify the account holders (or clients at large) and as well as others that might be related to those accounts or business. Besides that, banks are requested to report any suspected transaction, at discretion of the bank itself. The Israel Money Laundering Prohibition Authority is authorized to request additional information to the banks and, in case this information is necessary to a national or international investigation, the Authority is entitled to divulge the data to other foreign money laundering prohibition authorities, Police and to General Security Services. Art. 3 of the law prescribes heavy sanctions for money laundering crime: the sanctioned can receive up to ten years imprisonment sanction and conspicuous monetary sanctions ("a fine twenty times greater than the fine specified in section 61(a)(4) of the Penal Law")⁸⁸. In the frame of the Mapping Financial Secrecy project (managed by the Tax Justice Network)⁸⁹ a report on financial secrecy was elaborated for the purpose of improving the international activity of fighting against financial illicit activities and increase transparency. Even though positive aspects were enlightened in the report, Israel was found only partially compliant with the FATF recommendations on money laundering. On the international level, Israel has still to complete the ratification of some of the most relevant international treaties about international

⁸⁷ From the General Overview over the Anti-Money Laundering Activity of the Israeli Ministry of Justice; available on the official website.

⁸⁸ Anti-Money Laundering Law (2000), art 3..

⁸⁹ Tax Justice Network, Mapping Financial Secrecy. Israel, (2011 October 4)Updated in January 20, 2012. Available at <http://www.secrecyjurisdictions.com/PDF/Israel.pdf>

transparency. Moreover, the cooperation with other states can be further developed. According to the report, Israel does not fully participate in projects of Automatic Information Exchange and the bilateral cooperation with OECD states regarding broad information exchange, covering all tax matters is also not complete.

In the Tax Justice Network Ranking Israel positioned in 38th position with a secrecy score of 58. According to the network, this result shows that Israel still needs to increase its efforts in creating a more transparent financial system. Such an improvement would allow the country to acquire more credibility in the financial international panorama as well as would facilitate its internal activity in impeding illicit financial flows.

Conflict of Interests

As previously noted in the paragraph related to the Parliament, Members of Knesset are prevented from engaging activities or holding parallel appointments that would create a situation of conflict of interest. They are also requested to declare the state of their properties once their mandate starts in order for them to be monitored. Such a report includes the family members' state of property in order to avoid the conflict of interest to be hidden behind a relative's name. The transparency on these matters is formally granted by several regulations like the Rules for the Prevention of Conflicts of Interest by Ministers and Deputy Ministers, active from 2003 and other legal texts (circulars, directives etc). The State Comptroller is the main monitoring body in this respect. It has the authority of controlling the declarations made by Ministers and Deputy Ministers and to notify the Knesset committee in charge whenever any irregularity is found. This mechanism should guarantee a certain degree of self-control among the elected representatives even though, as we saw while analyzing the cases of indictment of high political figures, this deterrent proves not to be effective in certain cases. Also elected bodies at local level are subjects to basic legal provisions that are dated many years in the past.

This indicates that, despite the political and governmental role of the peripheral authorities was not a priority in the Israeli government system, certain values such as transparency and legitimacy of public decisions were at the very basis of the state early ideology. The main legislation about conflict of interest in local government is contained in the Municipalities Ordinance (New Version) 1968, the Local Councils Order, 1951 and the Regional Council Order, 1958. According to these laws, elected officials are forbidden to have professional relations with the municipality in which they have been elected and cannot proceed to the hiring to relatives, but with a special permission from an independent committee. Violations of these and other prescriptions contained in the three mentioned laws encounter penal sanctions. Another important provision of 1965 (Planning and Building Law) states the impossibility of elected municipal officials to deliberate or vote in case of personal interest coincident with the matter at stake, informing the chairperson of the assembly about the incompatibility. Moreover, local authorities are often updated on the most recent provisions in matter of conflict of interest and corruption by the Director General of the Ministry of Interior through circulars that address specific issues. In 2009, for example, a significant directive was dispatched warning on the personal responsibility of elected local officials (and employees) whose actions have resulted in an illegal expenditure for the local government. The Union of Municipal Authorities plays quite an active role in implementing the rules that favor a transparent and not corrupted governance. From 1984 it created the Advisory Committee for the Prevention of Conflicts of Interest of Elected Officials in Local Government together with the Attorney General and the Ministry of Interior published in 2002 a Code of Ethics for elected. The committee is a consultant body that the municipalities can address in matters of conflicts of interest. The committee addresses also topic arouse by the large public on matter of municipal affairs, serving this way a bigger social purpose in the enhancement of transparency. Code of Ethics for Mayors and Heads of Other Local Authorities was also set up by the Union of Local Authorities reviewing in detail all the legislation on conflict of interest and corruption as well

as dictating guidelines on good governance at the service of public interest.

The Civil Service Regulations, main regulatory tool for the public service in Israel explicitly prohibit the gaining personal benefit from public positions and operating in conflicts of interest. Many other provisions that reinforce this prohibition are in force. Duties and sanctions are expressed in them. An entire section of the Public service law (1979) is dedicated to the prohibition of accepting gifts related to public servant-s professional function. The regulations apply to central bureaucracy as well as to local one. Also directors of government-owned companies, usually nominated by the government (and whose nomination need to respect certain criteria that avoid the conflict of interest), are subordinated to such regulations and can be charged with sanctions. Under the same rationale of the elected bodies, also several senior public officers, heads of municipal authorities and their deputies are required to submit declarations concerning their private interests, including properties, financial income, debts and other interests. This is particularly important once it has been clarified the enormous power that certain public servants detain in the allocation of state budget, that could be otherwise misused as a resource for personal enrichment.

Also at local level elected authorities and public servants are bound by some common rules to contrast the conflict of interest. The planning and building law for example applies the same concept of incompatibility both to elected and non-elected member of a deliberative assembly. The directive taken as an example in the above paragraph also attributes personal responsibility both to elected and to public servants in case an illicit expense is done on behalf of the local authority.

Collaborative behaviors of public servants to fight illegal practices are encouraged and protected through the Encouragement of Public Morality in Public Service Law (1992), about which we have previously elaborated.

The Israeli law does not limit itself to regulate the period in which personnel is in charge as public servant but also the Post Employment

period. Some restrictions are imposed by the Civil Service law about positions that the ex-public servant could obtain thanks to his previous office. Similar limitations are posed also for Members of the armed forces.

Fight to corruption at the international level

Despite the claims of Tax Justice Network about Israel not being fully engaged in international activities against international corruption and illicit activities, in the last years the country took crucial steps in this direction. In February 2009 after four years from the initial signature, Israel ratified the United Nations Convention against Corruption (UNCAC). The Convention aims to improve state's commitment to prevention, criminalization, international cooperation and asset recovery against corruption. In the frame of the UNCAC a special unit is active to fight against money laundering and financing of terrorism: The Law Enforcement, Organized Crime and Anti-Money-Laundering Unit of UNODC. Through the management of a global program, this unit seeks to further empower the States in defeating such illegal activities and provides them assistance in detecting, seizing and confiscating illicit proceeds. Not long after the ratification of the UNCAC, Israel ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Doing so the country joined the most important organ in OECD area dedicated to the fight against international corruption and in particular the bribery of foreign public officials in international business transactions. The internal body that carries on most of the international activity of the state regarding the anticorruption actions is the IMPA. To this actor is delegated the international activity foreign financial intelligence. Part of the international cooperation takes place in the frame of the International Monetary Fund, the Financial Action Task Force (and in particular the MONEYVAL) and the Egmont Group, an international organization that Israel joined in 2002. Other relationships are set as bilateral agreements.

Corruption in the Armed forces

In 2012 Transparency international published a report on the risk of corruption in the Defense Ministries and Armed Forces⁹⁰. In a comparative study among the MENA region Israel occupies a critical position in the study, being it in level D, which is high risk of corruption. However, the report analyses potential corruption not just in the classical meaning of bribery or illicit monetary activity. The definition comprehends the political aspect, the financial aspect, the personnel aspect, the operation aspect and the procurement one. As referring to a more classical acceptance of the term "corruption" the evaluation is different. According to the report, corruption is nor an institutional plague neither in the IDF nor in the Israeli Police. Some rare cases have been registered of individual corruption. Whenever these phenomena occur, the fact is publicly blamed by the military and civil authorities. The responsible is immediately deferred to the justice that sanctions him according to the law.

Security forces that are respectful of citizen rights and are under civilian control

For the scope of this paragraph, it is important to divide the security forces in Israel in two macro-groups: the Israeli Defense Force, known as IDF and the Israeli Police. These two actors have different functions in the field of security and are subordinated to different ministries (the former is subordinated to the Ministry of Public Security. The Israeli Police is a civilian professional force responsible mainly for public security and order (in daily life, special events, riots etc.), law enforcement and crime investigation and fighting. The IDF is the sole

⁹⁰Transparency International (2012), Government Defense Anti-Corruption Index. Available at <http://government.defenceindex.org/sites/default/files/documents/Israel.pdf>

military branch of the military forces and it is responsible for the defense of the country and all the defense related activities. Intelligence bodies like the Mossad, the Shabak (Israel Security Agency) and the Aman (Directorate of Military Intelligence) are also part of the Israeli Security forces (together with the Emergency forces like the emergency medical service, the fire and rescue service, etc.) but have a marginal role in this analysis that will focus mainly on the IDF.

Budget

The defense sector has been draining enormous amount of money from the national budget since the foundation of the state. The peak was reached in the Eighties when the defense expenditure overcame the 20% of the GDP. In the following years the military expense has decreased, but still remains considerable. A report on military expenditure as a share of GDP in the period 2005-2010 shows that the expenditure oscillated between 6.5 and 8% of the national GDP⁹¹ (see table below). In 2011 the budget allocated to the Ministry of Defense was of 49.4 billion Shekels, reduction that provoked criticisms in the political opposition and in the IDF for the negative consequences deriving from a cut in this policy field.

Military Expenditure in Israel 2005-2010

(GDP rate and Shekels billions)

2005	2006	2007	2008	2009	2010
8.0	8.1	7.5	7.1	7.0	6.5
48,264₪	52,518₪	51,251₪	51,481₪	53,656₪	53,251₪

⁹¹ Stockholm International Peace research Institute, (2002) Report on 15 countries Military Expenses Database, at <http://milexdata.sipri.org/>

The sizeable allocation of money to the defense sector rises among the public opinion contrasted feeling. On one hand Israel lives in a perpetual status of mobilization and agitation due to the instable external relations with its neighbors; this favors a shared view about the necessity of a modern and well prepared army. On the other hand the large budget allocated to defense creates shortages in other fields like education, social welfare and development.

Another issue discussed by some Israeli press and by the scientific community is the scarcity of information regarding the actual destination of the money. In 2010 Haaretz published an article that addressed critically the matter⁹²: it was noted that only a very general description was given about the expenses chapters and that the last budget prevision was almost not specific at all. Some incongruence was noticed comparing the previous budgets like for example an increase in personnel costs despite a decrease in personnel. A scarce transparency in the elaboration of the annual budget was also denounced: according to the article the line of budget regarding the Ministry of Defense was not sufficiently explicative and could let to an erroneous evaluation. A closer examination of the budget and a broader consideration of extra-budget voices could reveal that a much bigger sum had been made available for defense. The lack of information on defense budget is generally acknowledged. The scarce intervention of the Ministry of Defense and the acceptance of vague report activity leave a broad margin of action to the IDF in presenting its requirements and priorities and integrating them into budget requests and official planning documents. To the Knesset political analysis, the defense budget arrives divided in three macro-areas: cost of personnel, local purchases and imports of major weapons systems. This setting leaves a big part of the data unrevealed. The necessity to preserve from the public a consistent amount of classified information prevents a complete overview on the matter. In the balance between accountability and confidentiality the

⁹² Bassok M., (2010 October 21) Secrets of the defense budget revealed, in Haaretz, at <http://www.haaretz.com/print-edition/business/secrets-of-the-defense-budget-revealed-1.320356>

second element seems to be much heavier.⁹³ Classified lines of budget are known only to a very strict group⁹⁴ and the legislative oversight is minimal. The total secrecy of this information from the public and from most of its elected representatives is a common reality in all the MENA area, as reported by Transparency International. Apart from Lebanon, all the analyzed MENA countries refrain from revealing the percentage of spending on secret items and programs.

Efficiency and Corruption Monitoring Activity

Assessment of budget, efficiency and corruption is very problematic in the sector of defense and often creates frictions among the ministerial apparatuses. Debates among Finance Ministry and the Defense are common and sometimes the tones rise as in an irreconcilable diatribe over efficiency as opposed to transparency⁹⁵. The Defense Ministry has a budget control division (thought the Minister's accountant) and a specific internal civil comptroller that operates as a general auditing body in all the defense dominion but does not operate corruption risk assessment. The State Comptroller is tasked with investigating corruption risk within Israel's Government. If the auditing activity of the State Comptroller reveals some suspected or critical points, the information passes to the Attorney General for an inquiry to be opened. Relevant comments on the matter of efficiency and integrity are made by the State Comptroller in the annual report but doubts are often expressed about the real consequences that these comments have. The

⁹³ Steinberg G., Israel in Arms Procurement Decision Making, SIPRI at <http://books.sipri.org/files/books/SIPRI98Singh/SIPRI98Singh04.pdf>

⁹⁴ The Joint Committee is the body in charge of reviewing and approving the annual defense budget. It has the power of amending the budget every three months according to specific requests of the Ministry of Defense (generally suggested by the IDF) The Joint committee is composed of five Members of Knesset (MKs) from the Finance Committee and five MKs from the Foreign Affairs and Defense Committee. All the activity of the Joint committee is of course confidential.

⁹⁵ Harkov L., (2011 September 12), Barak blames Steinitz for defense budget dispute in Jerusalem Post, at <http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=248782>

legislative should contribute to the work of the State Comptroller tanks to subcommittees that deal respectively with security services and with the compliance with the Comptroller's suggestions.

Salary and Integrity

Salaries in the armed forces and the work conditions are relatively fair and cannot be considered as the cause for eventual corruption. The entrance salary is above the minimum wage salary and it increases according to the activity (determined mainly by the degree of danger), education level, rank, special skills and other elements. Working in the army entitles to additional "corporate" benefits like preferential treatments in certain banks, discounts etc. The current retirement age is 45 but on the aftermath of recent agreements a long term plan has been set in order to raise it to 50.

Disciplinary rules

The 1955 Military Justice Law established the military courts system to regulate the conduct of the army members. Military offenses were defined and the consequent punishments. The legal procedure to follow in court was also described as well as the recipients of the provision: military personnel, (including reservists on active duty), civilian employees of the IDF, and other civilians categories related to defense related activities. For the effects of this law the Military Advocate General's office was activated as the responsible for legality awareness in the IDF. The Military Advocate General promotes justice and the integration of the rule of law within the army.

Beside this general provision of civil origin, internal regulations are in force in the army and in the corps. A Code of Ethics exists that the IDF set up in order to publicize its own basic values and to inspire the soldiers to maintain those priorities while serving the military body.

Important points for this study are the principle for exemplar conduct and the principle of loyalty to the State. The spirit of the IDF mentions the importance of respecting the directions of the democratic civilian authorities and the laws of the State. The safeguard of Israel as a Jewish and democratic State is the main scope that is to reach also at cost of life⁹⁶. Even though this code is very general and almost rhetoric it is possible to recognize in it some of the genuine ideological apparatus of the army as a structure. The specific mention to loyalty is an additional guarantee on the loyalty to the army to the democratic basic structure.

The case of the settlement dismantling in 2005 is an interesting case of refusal to comply with superior directives, (contrasting with one of the basic army rules of conduct). Many religious IDF troops declared their difficulty in obey orders and some refused to evacuate the Jewish settlements because of rabbinical prohibition and religious believes. These cases were handled with different approaches due to the sensitivity of the issue both from a personal and from a political point of view. Some of the unsubordinated soldiers were deferred to disciplinary bodies and charged with consequent sanctions. Some others, according to superior discretion, were assigned to other positions and their refusal was approached in a more understanding way.

Relation with elected power

Being the Army subject to the democratic power of the State by law (Basic Law: the Military), the legislative oversight of the defense policy has taken the form of a permanent committee (the Foreign Affairs and Defense Committee). In the Parliament the Subcommittees of the Knesset Foreign Affairs and Defense Committee are also active. They are specifically in charge of monitoring the army's activity. Members of Knesset have faculty to summon and interrogate army workers in the frame of an investigation; the Parliament indeed is derives its authority

directly from the popular mandate. However, according to Transparency International, the monitoring activity of the Knesset is spoiled by its investigative scarce capacities, by a general supportive approach to the defense establishment and by some obstructionism operated by the Ministry of Defense. As a consequence, a limited parliamentary influence and supervision on the defense is assessed. On the practical side however this has never led to army's subtraction to the legal procedures of action. In fact, a quite clear line of approved directions is traceable when analyzing army's operations.

Another view is expressed by Cohen in a 2006 article. Cohen maintains that the risk of a civilian intromission in the military apparatus seems nowadays much more potentially harmful than the opposite option. One of the examples that he uses to prove that this phenomenon is already in process, is the activism of the Supreme Court on military issues. According to Cohen the Supreme Court has overcome its original reticence to deal with military-related-issues and has been extending its judgment on a judicial area that is specifically designated as divided from the "regular justice".⁹⁷ The point is clear and the pronouncements of the Supreme Court about army operations and similar events related to the defense system created a massive opinion movement in the public opinion, proof that this act was perceived by many as an undue intromission. Also the recent pronouncement on the unconstitutionality of the Tal Law marks another big step taken by the Supreme Court on a civil provision that significantly impacts on the defense system. It needs to be said however that the submission of the army to the civil power is the first essential point of the "Basic Law: The Military", from which the Israeli armed force was originate (see Art 2).

Public perception

⁹⁷ Cohen S., Changing Civil-Military Relations in Israel: Towards an Over subordinate IDF? In Israel affairs 2006

The IDF is a very present institution in the daily life of the citizens. Almost every youngster is called to serve for three years (girls for two years) in the army. Arabs are exempted to serve (not prohibited) like other minorities like the Druses that regularly serve in the Israeli armed forces. The army is regarded as a life formative experience and in the past it was regarded as one of the finest tools for social integration and identity building. According to the Democracy Index 2012, the IDF is the most trusted public body among the Jewish population (with a percentage of 94.2% of the respondents stating their trust in this institution). IDF is the first choice in terms of trust by center and right winged citizen and the second trusted by left winged citizen (whose first preferred is the Supreme Court). Among the Arab population the perception is different: the IDF is middle ranked as trusted institutions, interestingly before the Government and the Prime Minister. However, critical voices in the public opinion have been strengthening: among the representatives of the negative views are NGOs, academics and the media. In the past the public debate never questioned efficiency of the army or the legitimacy of its actions. A full supportive approach was encouraged by the State and by the Ministry of Defense in specific, who is still the most supportive actor in the governmental arena. Nowadays the debate is more open, even though the dominant feeling is still the supportive one.

NGOs and grassroots movements started stigmatizing the scarce transparency of the Defense budget, the massive financial allocations and the scarce legislative overview. Sensitive issues as human rights violations and abuse of power have been brought to public attention with alternate fortune inside and outside the country. The Government has been responding to these claims with a double attitude. If from one side the organizations that actively criticize defense and security policies are looked at with suspicion, on the other side the Government hastened to prove that provisions are taken to guarantee that the army will remain one of the tools of the Government to promote democratic improvement and not prevent it.

2.2 ELECTORAL ACCOUNTABILITY

Accountability is the capacity of the political class to respond to the public about what they do, say or the policies they implement. For practical reasons, electoral accountability is measurable mainly on a periodic cyclical base and it regards the national or the local level (we will focus on the national one). Accountability is deeply related with transparency and it can realize only upon three conditions: information, justification requirements, and sanctioning ability of the voters. Informed voters in fact might decide to reward or punish politicians with their vote. The system can facilitate this process imposing transparency in the political process and multiplying the occasions of judgment from the electorate. In this paragraph, some variables that influence electoral accountability are taken into account. After a brief introduction on the electoral and the party system, fundamental frames in which the electoral accountability originates, the legal apparatus that regulates the electoral competition in the country and triggers mechanisms of electoral accountability will be studied. In particular the focus will be on the general electoral provisions, the discipline and the activity of the Electoral Committees, the sanctioning system, the laws on propaganda and party funding and the selection of candidates through the primary method, which is also regulated by the law of the State.

Electoral System

The political competition in Israel takes place in a proportional system according to the D'Hont method (simple quotient and highest average system). The constituency is national and the threshold is 2%, among the lowest in the world. The total number of Parliamentary seats is 120 and number of seats which every list receives in the Knesset is proportional to the number of voters who voted for it. Only parties can compete for elections and there is no other actor that can present a list. The vote is given to the entire list and not to a single candidate: in fact there is no possibility to express any preference and the allocation of

seats within the list follows a progressive order (the first names on the list have more possibility to gain a seat). The Knesset elections take place once every four years, but the Knesset or the Prime Minister can decide to hold early elections. Under certain circumstances, the Parliament can serve for more than four years.

This almost perfect proportional system favors the formation of a multiparty system, a broad competition among the parties and the presence of a rich representation in the Knesset. This is especially true since the Seventies, when the socialist party MAPAI, that had dominated the political scene since the formation of the State, lost its predominance. Voters' preferences opened to a broader spectrum, allowing a more differentiated composition of the Knesset and a more vehement representation of ideas that, till that moment, had encountered less success.

The impossibility to express a nominal preference with the vote, transfers the electoral accountability and the reward-punishment mechanism to the party. Nonetheless, a certain personalization have been emerging as a tendency for the last decade. This process, which surely is part of an international trend of personalization of politics (due to the media logic of news exposition, the simplification of the political discourse, etc.), was partially encouraged by the parliamentary presidentialist electoral reform that was enacted between 1992 and 2001. The current electoral system is the original one, in use at the beginning of the Israeli state-experience (except for the electoral threshold that was initially 1% and was progressively raised till the current 2%). Due to a significant instability of the Governments and the impasses that often led to stagnation in the policy making (mainly imputed to the high veto power of the smaller coalition members), the system was reformed. A very unique formula of direct election of the Prime Minister was set up. The hope was that the Prime Minister would have been strengthened by the direct election. The Prime Minister would have been less conditioned in the coalition making process and the likelihood of political impasse would have been

minor⁹⁸. The results however led to a higher fragmentation in the Parliament and to a weakening of the bigger parties, since the "strategic vote" got lost with the possibility to cast a double ballot⁹⁹. After three electoral turns, in 2001 the Knesset went back to the previous electoral system that is currently in force.

The party system

The electoral system as it is, favors the insurgence of multipartitism and a wide representation. About 30-35 parties usually take part in the elections and of them usually 10-15 sit in the Parliament. Generally correct implementation of the rules, formally allows the alternation that actually took place quite regularly from the Seventies. The two main parties in the political panorama are Likud and Labor (*Avoda*), collocated respectively in center-right and center-left of the political spectrum. These two parties have played a predominant role in the formation of governments in almost all the elections even though, not receiving a sufficient majority to govern alone, they have always needed to form a coalition in order to reach the majority in the Knesset. Besides these two parties, that experimented themselves joint lists with other parties, there is quite a changing party panorama that offers different voting options almost in every election, sometimes with successful results in terms of consensus. Defections are the norm among the Israeli Members of Knesset. So are the creation of new parties and the transformation of old ones. In the 2000s a new centrist party, formed by some Likud members and new personalities, gained the scene and reached the majority of the votes in two elections, Kadima (but managed to form the government only once, with Olmert, while in 2009 Livni was not able to form a government coalition and

⁹⁸ For an effective explanation of the cause and desired effect of the electoral reform see Hazan, RY (1996). Presidential Parliamentarism: direct popular election of the prime minister in *Electoral Studies* 15: 21-38.

⁹⁹ For a comment on the malfunctioning of the system see Brichta A (1998)., The New Premier-Parliamentary System in Israel in *Annals of the American Academy of Political and Social Science*, 5:180-192

left the place to the Likud party, second most voted in that election). In the last election, while the comet of *Kadima* seems to have dissolved, another centrist party has raised gaining a considerable amount of votes (it was the second most voted party), *Iesh Atid* (There is future), guided by Lapid. Party volatility is associated with electoral volatility, Israel has the highest electoral change per election over the post-war period and about 1/4 of voters change their electoral preference from one election to the other¹⁰⁰. The political spectrum is multidimensional in Israel and the parties position themselves along the lines right/left, religious/secular and doves/hawks. The issues that orient these dimensions are the socioeconomic one (that is regaining power in the last years and became one of the main topics of the last electoral campaign following the social unrest of 2011/2012¹⁰¹), the secularity of the state and the relationship with the Arab neighbors (including the security issue and the territorial claims). Religious parties usually hold more conservative positions and are intransigent as it concerns the relations with the Arab and their claims on the land. For this reasons, they are usually collocated on the right side of the political continuum, with the right wing conservative parties with whom they share the hawkish attitude in matters of foreign relations and Arab-Jewish issues (it is important to keep in mind the multidimensionality of the political space and to think that not necessarily the socioeconomic positions of the parties on the right side of the party scheme coincide). On the left side of the secular, dovish parties are located. Together with them, the Arab parties: their positioning is mainly due to the opposition to the right wing and religious parties that they perceive as hostile and because of the recurrent social claims that compose their agenda of an equal distribution of resources and a social reform that will help the Arab social segment to grow and develop. About 70% of the population felt attracted by such a party arrangement since 2000 and was motivated to express their vote. This data is not negative in absolute

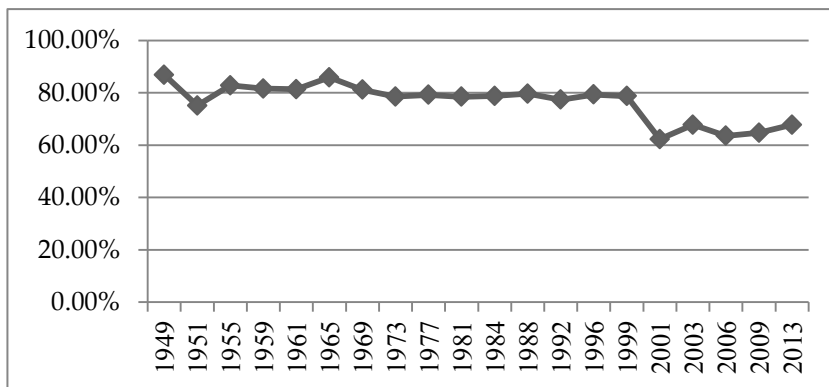
¹⁰⁰ See Krouwel A., Rajmil D., The increasingly polarized and fragmented party system in Israel will make it difficult for a stable government to emerge from this month's elections. At <http://blogs.lse.ac.uk/europpblog/2013/01/14/israel-elections-2013-israeli-party-system/>

¹⁰¹ See Hexel R., (2013 January) Israel after the elections: Is the country facing political change? International Policy Analysis, Friedrich-Ebert-Stiftung.

but it is significant if looked in comparative perspective with the past elections. While the population keeps growing in Israel and so does the population who is entitled to vote, the turnover is low. This would require a more specific analysis in order to understand the causes of this disaffection (see table below). A particular indifference to the electoral call is registered among Arab Israelis whose turnover is lower than 55%. The negative attitude of the Arab population is due to the perception of a discriminatory attitude toward the Arab population, both in the representative bodies and in the implementation of policies. An unequal distribution of resource and the systematic exclusion of the Arab party formations from the governmental activity would discourage the electorate from participating¹⁰².

Figure 9 Electoral Turnover 1949-2013

(Source: IDEA, Institute for Democracy and Electoral Assistance, <http://www.idea.int/vt/countryview.cfm?CountryCode=IL>)



The formation of the Government, as said, entails usually the creation of a coalition. The most voted list is given by the law the possibility of

¹⁰² Khouri J., (2013 January 20) Israel's 'Arab parties' seek to combat indifference and low voter turnout, in Haaretz at <http://www.haaretz.com/news/national/israel-s-arab-parties-look-to-combat-indifference-and-low-voter-turnout.premium-1.494979>

forming the ruling coalition¹⁰³. Important to note that the assignment of the office to the most voted party is a custom and not a law since. The President of the State, considered a guarantee figure, is left with the choice of the most appropriate candidate to be chosen. Whenever the attempt of the first member of Knesset fails, another party (usually the second preferred in terms of votes) gets the chance to form the Government. The alliance dynamic is an interesting phenomenon to observe. As mentioned in the previous chapters, Arab parties are informally not considered potential allies by the main parties. The ethnic fracture in Israel has been preserving its relevance since it has always directly linked to foreign policy (in particular with the hostile relations with the neighbor countries), the internal security, the territorial issue and the very existence of the State. Arab parties pay the price for representing a social group that is often looked at with suspicion, and that has been considered a "local branch" of a threatening enemy committed to the usurpation of the land and to the destruction of the State. Not even the left wing parties, more open to dialogue and the inclusion, which contributed many times to public battles for the enhancement of the conditions of the Arab population, dared opening their governments of the Arab parties, fearing maybe the reaction of the public or the requests of these allies. On the contrary, a much practiced alliance is the one with the religious parties. As said, till now, the most frequent winners of elections were Labor and *Likud*. Both parties turned often to the religious political groups in order to reach the majority. With a declared preference for the right wing coalitions (because of the Labor proximity to the extreme left parties, unpopular in the religious world), the religious parties usually accepted the invite of both parties, stably obtaining the role of kingmakers. Their crucial position allowed them to maximize their requests, by many judged disproportionate for the effective numerical strength of these formations. *Shas*, ultraorthodox Sephardi party built on this strategy a real political phenomenon that traduced in a well-organized social system on the model of the traditional mass parties. The creation and the preservation of this system, offered the voters a

¹⁰³ See Basic Law The Government, art 8.

specific kind of accountability: a material one, made of funding to the community institution and of legislation that would protect group's interest. The mechanism is looked at by the main parties with ambivalence: from one side in the moment of need, the religious parties represent a secure option for forming the government. From the other side their requests and the constraints that they pose both in the beginning of the negotiation and during the governmental activity limit the ray of action of the government. The effects sometimes fall on the government itself (thus on the main party) that is harshly criticized by the public (in particular by the secular one), averse to the decisions of the government. In the last election, with the insurgence of a third political power, *Iesh Atid*, the Likud (that run in a joint list with another "historical" ally of its, *Ysrael Beitenu*, without by the way a significant increase of seats) renounced to the alliance to the Ultraorthodox parties (upon which *Iesh Atid*, centrist party that built its successful campaign on the elimination of some privileges reserved to the religious communities, had posed a veto). Instead, *HaBait HaYehudi*, a right wing religious party that gained a massive consensus in the elections, born from the ashes of the National Religious Party and other religious political formations, was included in the government. The ultraorthodox parties were left apart and in the near future will be possible to tell whether the government will be able to survive without their support or if external negotiation will be opened to secure the majority to the leading party.

General provisions on Elections

The electoral process in Israel formally follows the basic rules for free, fair, recurrent, and competitive election. The Parliament (Knesset) is a 120-members body whose status and features are described by the Basic law: The Knesset, the first basic law to be approved after the formation of the State. The law establishes the status of the Knesset as the supreme legislative body, expression of the democratic will of people. Article 4 states that the Knesset is to be elected through

"general, country-wide, direct, equal, secret and proportional elections". This article set the main traits of the electoral system and can only be amended by a vote of a majority of the Knesset members.

In this law, the articles 8, 9, 10 establish the basic feature of a recurrent electoral process, determining the tenure of the Knesset (4 years), fixing a day for the election (Art. 9 (amended): *"The elections to the Knesset shall take place on the third Tuesday of the month of Cheshvan¹⁰⁴ in the year in which the tenure of the outgoing Knesset ends, but if the year which preceded that year was a leap year, the elections shall take place on the first Tuesday of that month"*) and attributing a social solemnity and priority to the election day declaring it a day of rest (with public transportation and services to regularly performs their work, so that the mobility across the country would not penalize the actual possibility to perform the vote). Beside the normative tenure of the Knesset an earlier dissolution is contemplated (with the call for earlier elections); in emergency cases¹⁰⁵ and after the consent of a qualified majority, the Knesset can also prolong its mandate.

The law set the general requirements for active and passive electoral rights, extending the right to vote to all nationals who have reached the age of eighteen (unless the national has been deprived of this right by a court or he has been sentenced to a penalty of actual imprisonment for at least five years for specific crimes against the state and five years have not yet passed since the day when he terminated his period of imprisonment) and allowing the potential election for all citizens above the age of twenty-one (unless court restriction and on the premise that the person is part of a party list during the elections). The candidature is also forbidden to those holding specific political or social roles¹⁰⁶

¹⁰⁴ The Hebrew calendar is a lunar calendar. Cheshvan is the name of a Hebrew month that corresponds, in the Gregorian calendar to October/November.

¹⁰⁵ In case of war, for example. This was actually the case during the Yom Kippur war (1973) when the Seventh Knesset remained in power few months more because of the Yom Kippur War.

¹⁰⁶ According to art 7., the President of the State; the two Chief Rabbis; a judge, so long as he holds office; a judge of a religious court, so long as he holds office; the State Comptroller; the Chief of the General Staff of the Defense Army of Israel; rabbis and ministers of other religions, so long as they hold office; senior State employees and senior

(unless their renounce to the positions and held the previous conditions).

The other main law that frames the electoral process are the Knesset Elections Law (Consolidated Version) approved in 1969, The Knesset Election Law (on Propaganda methods), the Party financing Law (1973) and the parties Law (1992).

While the Basic Law: The Knesset set the general provisions, the Knesset Elections Law¹⁰⁷ deals with all of the organizational and legal aspects of the elections, defining them more in detail. The Knesset Elections Law determines who has the right to vote and where¹⁰⁸; it defines the election districts (administrative units) and the polling districts (physical places) according to geographical continuity, municipal units and populations. The law defines moreover the procedures for the preparatory activity, Election Day, the counting activity and the proclamation of the results. Moreover, it lists the sanctions concerning the electoral process.

The Electoral Committees: preparation and management of the electoral process

Army officers of such grades or ranks and in such functions as shall be determined by Law cannot be candidate of a party list, this cannot be elected.

¹⁰⁷ For the English version of the law see the official website of the Knesset: http://www.knesset.gov.il/elections19/eng/law/ElectionsLaw1969_eng.pdf

¹⁰⁸ The Knesset Election Law provides with specific indications on some groups of voters who are entitled to express their vote even if they are not on Israeli soil or anyway outside their voting districts. Sections nine and ten of the law are in fact dedicated to soldiers, police forces and workers under Israeli vessel. Soldiers who are in a mission and cannot reach their usual voting district in order to cast their vote are entitled to cast their vote in the camp voting station. The same logic is valid for workers under Israeli vessels abroad. Specific restrictions for the propaganda directed to these citizens are also specified in these sections. Policemen are allowed to cast their ballot outside their usual voting station whenever there are in service during the Election Day to guarantee security and legality of the voting process.

The law establishes the collective figure of Electoral Committee, in charge of organizing and administering the electoral process. This body is composed by a central organism and by several peripheral branches both in the election districts (Districts Electoral Committees) and in the polling districts (Polling Committees, more than 10.000 in the territory of the country). The committee is comprised of representatives of the political parties proportionate to the party size in the sitting Knesset and is chaired by a Supreme Court justice appointed by the justices on the court. In the district committees the party representation is the same as in the Central Committee and the chair is judge nominated by the Supreme Court. The composition of the Polling Committees is decided by the District Committees that is requested to maintain a certain degree of parties' representation while performing this task. The Central Electoral Committee, together with the Ministry of Interior is responsible to set up the Voters' Register. The law expresses in details the modalities of preparation of the Voters' Registers, specifying the requirements to be inserted in the registry and offering the public to review them (in a public exhibition in time and place decided by the Committee and the Ministry of Interior) and ask for modifications. The section 6 of the law establishes the criteria for the candidates' lists remarking the impossibility for a candidate to be part of more than one list. A deposit of 5000 pounds is requested at the moment of the presentation of the list. At the moment of the presentation of the list, the list is entitled to choose the identification letter (or two letters) that will be used as identification mark in the voting papers. In Israel in fact the voters do not write themselves their party preference nor make any sign on the ballot. In fact they choose among cards printed with the symbols of the competing parties and put them in an envelope that they will cast as an expression of their vote. Upon request however, the voter could receive a blank slip in which he could express its vote, writing the identification letters of the party he chooses. The admission of a list is prerogative of the Central Electoral Committee (that will judge the admissibility of the list follows the criteria dictated by the law) but, in case of an appeal on this judgment the Supreme Court can be asked to give a definitive verdict. The law sets the criteria of selection of the polling station, giving strong preference to public

buildings without religious or other partisan connotations (in most cases actually schools are used as polling stations). The number of the polling stations is determined by the number of voters that should not exceed 1000 per station. As it regards the operation of vote, the secrecy is safeguarded since the voters are asked to exercise their voting right in a cabin and to cast themselves the ballot inside a box, without anybody else to touch the envelope containing the voting card. Disabled people are allowed to receive help in their voting activity from a person that they choose. The cards are written both in Hebrew and in Arabic, the second official language of the country. This however is not established by the law as mandatory but under specific request of the list at the moment of presentation to the Central Committee.

The law specifies the cases in which a vote would be considered invalid, among which the cast of a double vote or identification marks (for example, in the case of a voter who requires to write himself the vote, any other sign beside the letter/s of the party provokes the annulment of the ballot).

The counting operation is done at the end of the Election Day and it follows a formal procedure that involves the three levels of the Electoral Committees. The Polling Committees count the ballots of their own station; the ballots and the relative report is then passed to the District Committee that elaborates a further and more general report on the result obtained by the Polling Committees and pass the material to the Central Committee that is responsible to elaborate the final and global report.

Sanctions related to the electoral process

The Knesset Election vote lists also sanctions regarding irregularities concerning the vote. The mentioned cases concern the falsification of the voters' registers or the voters' list (at the polling station or once they are delivered to the Ministry of Interior). The sanction is notably heavier if the falsification is made by a member of the Election

Committees. Members of the Election Committee are also punishable for abandonment of election material (punishable with monetary sanction and imprisonment) and for behaving irresponsibly toward their duty of state trustees.

Other action sanctioned by the law is the interference with the election procedure and, most of all the interference of freedom of vote. Specific articles are in fact dedicated to describe the actions that might be interpreted as interference with the freedom of vote: threats to force or to prevent the vote (vote is not obligatory in Israel), exploitation of positions of authority in order to influence the vote (in employment context for example) and attempt to bribe the voters with money or any other kind of personal benefit in exchange for a vote. Attempts to vote more than once or to vote on behalf of another person are also considered to be illegal acts and are punishable under this law.

Electoral regulation regarding propaganda and political information

The main law that regulates the propaganda is the Election law (propaganda methods) but other laws fix important rules that are to be mentioned in this section.

For the purposes of procedures, propaganda and financial matters (for example the calculation of the electoral expenses) the Party Financial Law regulates the period of the electoral campaign. In a regular case, in which the Knesset completes its four years mandate, the campaign period starts 101 day before the Election Day. In case of dissolution of the Knesset, both for voluntary decision of the Knesset or for other reasons (decision of the President in the cases contemplated by the law, for example) the campaign commences three days after the provision of dissolution takes effect. The general election campaign period lasts from the “determining day” until the Election Day.

The Knesset Election Law (Consolidated Version) expresses some restrictions as it regards the propaganda for special categories of voters (soldiers and nationals under Israeli vessels) posing limitations on

material that can be submitted to their attention, especially in public space. The rationale seems to be the one of safeguarding the public decency of the place granting its neutrality; moreover the possibility of clearly and publicly campaigning might create abuses of power in contexts where the hierarchic ties are stronger and more direct than in other workplaces. However, the proper source deputed to deal in detail with the electoral campaigning is the Knesset Elections Law (Propaganda methods) that was approved in 1959 and, after many modifications during the years, is still the main text of reference. The Knesset Elections Law (Propaganda methods) is meant to ensure a fair and equal exposition of the public to the electoral propaganda, considering the media a powerful and dangerous (if not regulated) tool of expression and persuasion¹⁰⁹. The prescriptions about electoral propaganda are quite detailed regulating the use of various media and in certain cases specifying the technical traits of the propaganda tools (defining for example the size of the posters or the specification of the sponsorship on press advertisements). At the time of the creation of the law, the main prescriptions regarded the radio and movies broadcasting, being those the most modern media at the time to which was attributed an enormous persuasive power. The bill's purpose was also to guarantee a fair competition, avoiding possible exploitation of the media by the party in government, who detained an economic and a political power that would have created an evident and exaggerated gap toward the other parties. A careful approach to the matter of power abuse by parties in government is still traceable today in the law. It is therefore forbidden to use funds originating from bodies that are subject to the control of the State Comptroller (Ministries, local councils; public managers etc.) for electoral campaigning (paragraph 2a).

The media exposition was regulated this way by the original version of the law: every party was assigned 25 free minutes of exposure in the media in which they could have aired their electoral message (prepared

¹⁰⁹ Caspi D., Leshem B., (2006) From Electoral Propaganda to Political Advertising in Israel in Kaid L. L. & Holtz-Bacha C. (ed.) *The SAGE Handbook of Political Advertising*. Thousand Oaks, CA: SAGE Publications, Inc.

at their expenses). Additionally, every party present in the Knesset would have had an extra time proportionately to the seats occupied in the Knesset by its members. Beside the allocated time, propaganda during the regular programming was strictly forbidden and even the avoidance of showing candidates or even airing their voice was absolute.

The allocation of free space to the parties have been surviving till nowadays with substantial differences as it concerns the length of the allocated spaces (reduced in general and in comparison), the timing of airing and the channels (since the introduction of the television and then the creation of a multichannel service). The method of allocation has been criticized many times due to the disproportion of exposure that the law creates among small and big parties and among new and "old" parties. Especially in periods in which a neat majority was hold by a party compared to the smaller ones, the allocation rate was disproportionately bigger (as Caspi and Leshem note, a party with 40 Knesset representative could have gained 170 minutes of exposure in television and 185 on the radio, while an incumbent party would have acceded to the basic quota only). When interrogated on this matter, the Supreme Court justified the disparity with the need of the bigger parties to explain their platform (and possibly their action in government) more extensively than smaller parties and filed the case considering the gap as not harming the equality principle in electoral campaign¹¹⁰. The disproportion was noticed as particularly evident during the presidential parenthesis of the electoral system in which, big parties presenting a candidate for the premiership were entitled to a more consistent propaganda than smaller or newer parties that presented a candidate without, an equal and equally effective possibility to promote him.

The prohibition of broadcasting images or voices of candidates, present in the original text of the Knesset Elections (propaganda methods) Law

¹¹⁰ For this and for following considerations on the inappropriateness of the law governing the propaganda in Israel see Shejter A. M. & Yemini M. (2009) Eyes have they but they see not: Israeli Election laws, Freedom of Expression and the need for Transparent Speech in COMM. L. & POL'Y 14:411-452

and in its amended version, was emphasized on the Laws governing the Broadcasting service in Israel. On the television context the Supreme Court ruled that while events in which candidates took part could actually been broadcasted (because responding to the television's task to air a news and to inform the public of an event), the physical image of the candidates was not to be shown nor his presence should have been mentioned, since this would have constituted a violation of the law. Sheiter and Yemini notice the naïve if not contradictory interpretation of the law, that was limited in its efficacy for a non-thorough consideration of the possible propagandistic aims of candidate's participations to events and for the scarce attention to the messages that they might have delivered to the electorate with their presence or with interviews that were considered to have non propagandistic contents. In 1996, after progressive amendments on the discipline (mainly regarding the period of application of the ban) the prohibition of showing images or airing events in which candidates where present was abolished and only the ban on airing propaganda messages beside the free space allocated with the proportional methods mentioned before remained valid. Sheiter and Yemini underline how the previous misconceived focus on the image of the candidates cause, with the abolishment of this constrain, to the indiscriminate (and usually unsanctioned) broadcasting of events and images of candidates that actually might be considered as inappropriate due to the prohibition on propaganda outside the assigned allocated spaces.

The current asset about electoral propaganda through television consists in ten minutes of electoral commercials (plus the proportional quota) to be aired two weeks before the elections by each party, mainly in non-prime time (despite the earlier custom, based on a decision of the Supreme Court to broadcast them in prime time). It is forbidden to the parties to purchase additional broadcasting time for purposes of propaganda. With the introduction of the satellite TV and its great diffusion in the Israelis' houses the ban on purchasing visibility on the TV channels have been circumvented by some parties, especially by those with a specific electorate, particular consumer of these satellite channels.

Another cop out to the limits posed by the law, and a natural result of the further development of the media world is the use of the internet. The use of the internet is not strictly regulated and offers an exceptional opportunity for the parties, given also the massive audience that it is possible to reach through this media. Recently the Central Election Committee extended some of the criteria applicable to the propaganda via press to the publication through the internet: anonymous political advertisements will be considered illegal, since, like in newspapers and other forms of press they should always indicate their sponsorship. The lack of a specific regulation might in fact lead to the misuse of the net, also for denigration purposes (negative advertisement)¹¹¹. Some scholars maintain that the new media are the frontier of the political propaganda (as well as of a big portion of communication) and that the law should be revised accordingly, further diminishing or abolishing the use of television that has already lost its prominence as a deliverer of political propaganda in electoral time.¹¹²

Electoral funding

The party financing is regulated mainly by the Party Financing Law created in 1973 and, partially by the more recent Party law approved in 1992. Framing the financing of electoral parties can be an effective method to guarantee transparency and to avoid manipulation of the parties (that should safeguard the interest of the citizens and promote policies that enhance the quality of people's life) by third actors through the allocation of financial or other material resources. On the other side, the limit of expenditure and the provision of a public funding guarantee as a principle a free competition and equal access to the political competition, not based on the ability to find economic

¹¹¹ Jerusalem Post Staff (2013 January 5) Elections C'tee: Propaganda Law also applies to Internet in Jerusalem Post, at <http://www.jpost.com/Breaking-News/Elections-Ctee-Propaganda-Law-also-applies-to-Internet>

¹¹² For this and for a general comment about some obsolete features of the Israeli laws on elections see Atmor N.& Kening O., (2012 December 19) Brushing Off the Dust in Israel Democracy Institute (IDI), at <http://en.idi.org.il/analysis/articles/brushing-off-the-dust/>

support (or on owning economic resources). The financing of political campaigns in Israel is derived from both private as well as government funding, with the last one playing a crucial role in the allocation of resources to the parties (that by the law, are the only subject entitled to present a list). As it regard the latter, for election campaigns, every list is funded on the basis of the seats earned in the previous legislature and the seats earned in the current legislature (plus an additional fixed amount, whose amount changes according to the decision of a public committee). For the new lists (of parties that were not represented in the previous Knesset but the got admitted to the election after their registration), the calculations are made only on the basis of the seat won on the new legislature (plus the fixed amount). Part of the sum (that is perceived as a reimbursement for the electoral campaign and the ongoing expenses) can be requested in advance by the parties.

Private contributions to general elections are limited in a way to guarantee transparency and traceability. In fact, no anonymous donation is allowed for electoral expenses¹¹³ and the donor must be a citizen of Israel who is eligible for voting¹¹⁴. The contribution from corporations or registered partnerships in Israel or abroad is explicitly forbidden for any election, local or national and also for primary elections. As mentioned in the previous paragraphs, there are some subjects (like NGOs) that are not included in such a restriction with the provision that their support is limited in quantity and purpose (especially if given to parties' cultural foundations). These contributions are anyway subjected to verification by the state organs (State Comptroller). Moreover quantitative limits are posed to the electoral expenses. This should prevent candidates or parties to take advantage of personal availability of money; moreover, it should prevent the creation of a significant dependence of the parties on

¹¹³ Party financing Law Article 8, Clause d2 (page 6) (as reported in the English version by the Institute of Democracy and Electoral Assistance, IDEA): "A party group or candidates' list shall not receive anonymous contributions. For this purpose, contributions given by a person whose identity and address are not checked and verified by or on behalf of the party group or candidates' list are deemed to be given anonymously." At <http://www.idea.int/political-finance/country.cfm?id=103>

¹¹⁴ Party Financing Law, Section 8, Clause a

private subjects that might use it as a leverage to promote its own interest in the decisional organisms of the state. Actually, since the limit amount differs from party to party (with a similar calculation as for the allocation of direct public funds, that is considering the number of previous members of Knesset, with a maximum amount fixed by the same public committee in charge of the allocations) the smaller parties or the new ones are much more strictly limited in the electoral expenses than the big ones.

The control of the electoral expenditure is stated by the law. Article 10, Clause a of the Party Financing law imposes that "Within ten weeks from the end of the month in which the election results are published, the representatives of a party group or candidates' list shall deliver to the State Comptroller its accounts for the election period." For the working procedure of the State Comptroller that has been analyzed in the previous chapters, the data transmitted by the parties are not completely public (in the report, only the violations are pointed out). This is significant since it somehow limits the possibility of the public to control the party expenditure and to exercise a detailed control. A further step toward a total transparency might actually allow a more conscious approach to the electoral phase and might stimulate a public debate, independently from the violations that the State Comptroller publishes.

Whenever irregularities are found in the reports (or through investigations of other kind), sanctions are inflicted in various forms according to the gravity of the infraction. Overspending and over-financing are usually punished with pecuniary sanctions (in a similar way to the infraction to the propaganda rules); if a major fraud is discovered, however, imprisonment can be ruled by the court.

Parties and party primaries

The Parties Law, approved in 1992, represents another tassel of this analysis. It provides with a definition of party, specifies some matters regarding the party formation, management and funding and gives a

legal frame to a very important phenomenon that is more and more diffuse in the party lives in Israel: the primaries. Parties in Israel are the only subject who is allowed to formally present a list for electoral competition. Not affiliated candidates can participate in the lists but the party plays a formal and essential role in the formation of the list. The law defines the party as a group of people who have associated together in order to advance, in accordance with the law, political or social goals, and to represent these goals in the Knesset by way of their elected representatives. Every citizen and resident of Israel can, in accordance with at least other 99 people form a party and ask for its formal registration. Provisions are set regarding the bureaucratic *iter* to follow in order to be recognized. Among other documents, the programmatic platform needs to be deposited to the Party Registrar. The programmatic platform is analyzed and whenever it contains the rejection of Israel's existence as a Jewish or democratic state, the promotion of the armed fight against the state or the incitation to racism as among the basic principles, the party cannot be recognized as legitimate. As mentioned, among the most salient points treated by the law there is that of the primaries (Parties law, Chapter II). The legislation does not make the primaries a mandatory instrument for the composition of the electoral list. In fact, different parties use very diverse method of selection. In some parties (and in the majority till the Nineties), the party leader (that can be religious or lay) determines who the candidates are. The selection can also be operated by a party committee or through a party congress where the elected are the mirror of the factions that compose the party. The primaries are the newest method of selection in the country and for the moment they follow the model of "closed primaries"

This method of choice of candidates entered in the Israel party system exactly in 1992, when the Labor Party decided to renounce to the classic method of internal selection of candidates operated by party nomenclature and to turn to the voters for a more participate form of selection (that in the moment was also functional to part of the Labor leadership). Labor's initiative was followed by the Likud and progressively by other parties. In the past elections three parties officially called for primaries: the Labor, the Likud and the religious

party Bait HaYehudi. These parties ruled with internal regulation the process of voting and selection, organizing though same aspects of the procedure in a way to guarantee a balance between participation needs and party priorities. The internal regulation addressed mainly the eligibility to vote in the primaries, the district formation and the representativity of the lists. The eligibility to vote in the primaries generally does not coincide with the party membership. Membership in fact is a necessary but non-sufficient condition, since members are not allowed to vote before acquiring a certain seniority (that can vary sensibly from party to party). This limitation of participation, that is actually an unequal treatment of the membership, is due to the need of safeguarding the party interest against overthrows brought by new waves of members, especially if they are the product of strategic moves of one of the internal factions. This rule was adopted by the parties with the claim of endorsing the opinion of the membership without the primaries becoming a strategic tool for low party politics. Even though this will not be analyzed in this work, an interesting analysis would come out from the comparative study of the relation between the requested seniority and the party dynamics (concentration of power, methods of recruitment, etc.). Another internal regulation regards the division in districts. Likud, therefore, guarantees the geographical representation through a double vote that all primaries voters are entitled to cast: one ballot contains a general list of names and it has national distribution in the polling station of Likud's primaries. The second one is different in every district and aims to ensure that representatives of each district will have chances of being elected. This provision has undoubtedly strategic purposes beside the will of ensuring a better representation and increasing accountability with a geographical-proximity dynamic. The population in Israel is in fact distributed, especially in some areas, in homogeneous groups. Giving the possibility to vote for district candidates, will attract the population of that specific district and the winning candidate will be more appealing also for those who are not party members but share with the candidate a common cultural or ethnic background. Another provision that can be considered a point of contact between ensuring a broad and fair representation of the society in the list and profiting in

terms of electoral consensus by candidates that the electorate can identify with for a number of reasons is the reservation of quotas in the lists. Women, young people, non-Jews, settlers etc. have some granted positions in the lists that would attributed to them in case their absolute results were not competitive with the results of other candidates. Again, this originates from the idea that some candidates are voted because of a direct identification with them or their interests¹¹⁵.

Israel is one of the few countries where the primaries are examined in detail by the law and precise limits and rules are posed¹¹⁶. Competitors in the primaries are asked to provide their own financial statements to the regulating authority that is in charge to verify the respect of the founding (governed by similar rules as the main elections) and the expenses for the campaign. The rationale of the law is to ensure a fair intraparty competition and to avoid the contraction of dependence bounds with external funders that might spoil the representative role of the candidate once he gets elected

The primaries were saluted, in the academia also, as an historic step toward democratization. Transparency and participations were to replace the oligarchic methods of internal nomination¹¹⁷ and a new season of inclusiveness was envisioned. a procedure in which all rank-and-file party members participate in choosing the party's leader and list of candidates for the Knesset, marked the climax of a democratization process that saw the parties shift from the closed, oligarchic era of nomination committees to a more open and inclusive method. Benvenisti stressed how the primaries system would make the legislative body a more independent and assertive body, that could

¹¹⁵ A broader analysis of the primaries and their internal regulation is available at <http://en.idi.org.il/analysis/articles/primary-season-in-israel/> . This IDI analysis of the primaries for the 19th Knesset elections quotes as a main source Rahat, G.(2011) The Political Consequences of Candidate Selection to the 18th Knesset. in Arian A. et al. (eds.) The Elections in Israel—2009, Transaction Publishers.

¹¹⁶ Hofnung M.,(2008) Unaccounted Competition : The Finance of Intra-Party Elections in *Party Politics* 14: 726

¹¹⁷ See Kenig, O.,(2012 March 17) The Primary System in Israel: A Balance Sheet, IDI Analysis, at <http://en.idi.org.il/analysis/articles/the-primary-system-in-israel-a-balance-sheet/>

more effectively perform the legislative task and the supervision on the government¹¹⁸. The scholar noted how the dependence from the party decreases with the popular election of the candidate. Thus the party discipline is loosened. Shifting the decisional power on the hand of the electorate, the accountability would grow and would foster a more independent behavior especially of new candidates or those who do not hold a central and majoritarian position within the parties. The party and the party establishment would actually be deprived of a crucial instrument in terms of ensuring party discipline in favor of a stronger and more direct control by the citizens. The candidate might decide to attract specific groups in the electorate addressing side issues upon which the group disagrees with the official position of the party (even though agreeing with main values). With this strategy the candidate might be recognized as a "specialist" on some specific issues (usually social ones, that deeply affect the daily agenda of the target electorate) and become a point of reference (so a voted candidate) by the target addressed.

As a consequence of this new form of accountability originated from the institution of the primary selection, a secularization of the Knesset activity is pointed out. According to Benvenisti the primaries posed the religious parties in a less powerful position while increased the power of the religious Jewish parties. The position of the latter, decisive for almost every government starting from the Seventies, would be in danger because of the dissolution of a bipolar setting in the Knesset from which they earned the biggest advantage. More independent member of parliaments, even in the majority coalition decide to ride popular antireligious issues in the country (profitable in terms of consensus) and establish transversal temporal alliances with other parties' members in order to propose legislation on the matter or opposing to religious parties' agenda. On the other hand, Arab members of Parliament, have the possibility to establish partnerships with the members of other parties that decide to "play independent" on specific

¹¹⁸ Benvenisti E., (2002) Party Primaries as Collective Action with Constitutional Ramifications: Israel as a Case Study, in *Theoretical Inquiries in Law* 3:1:197-206 Available at SSRN: <http://ssrn.com/abstract=304019>

issue. This provides them with a bigger visibility and with the participation in the resource sharing, through legislation and participation in Knesset committees. In the same way, Arab members of "non-Arab" parties can decide themselves to grow autonomous on certain issue and establish temporary alliances with Arab parties.

However, some criticisms were moved to the Parties Law and to the primaries system itself. Hofnung¹¹⁹ noted how the control on candidates' financial activity was limited in time (9 months prior the candidature) allowing a discrete maneuvering power to candidates. The implementation of the regulation was another weak point that was pointed out in comparison with the strict enforcement of the electoral competition regulation. In the original version of the Parties Law therefore, parties themselves were put in charge of ensuring the respect of the law and reporting the violations of the candidates. The task attributed by the law was often neglected due to the will of protecting the party image (especially before the elections) and evident misconduct of some candidates (as it regards the limit of expenditure or the collection of funding) took place¹²⁰. Other minuses, that did not entail any violation of the law but can be considered as side effects of the primaries are the strategies of election that groups of candidate to the primaries put in act. It has been stressed how the multiple-choice of preferred candidates in the primaries originates electoral agreements among competitors what would share their respective electorates in a way to maximize their consensus¹²¹. This way, the genuine popular voice would be driven by political agreements and the power would return, at least partially inside the party. As it concerns the later repercussions on the legislative and governmental activity, a tendency of some Members of Parliament would be clear to over-legislate (for the above mentioned autonomy that they develop with the selection by the electorate and their need of visibility to show accountability to their supporters). Furthermore, the stability of governments would be

¹¹⁹ Hofnung M. (2008), See above.

¹²⁰ In 2006 the Parties Law was amended and the controlling power passed to the State Comptroller.

¹²¹ Tauber D., (2012 December 20) Understanding Israel's 'Deal System' in Jewish Press at <http://www.jewishpress.com/blogs/hadar/the-likuds-top-25-the-deal-system/2012/12/20/>

weakened because of the loosening of the party/coalition discipline (other side of the medal of the increased autonomy and more independent judgment of the members of Parliament)¹²².

¹²² For a brief but comprehensive analysis of the criticisms to the primary system see above Kening O. (2012 March 17), The Primary System in Israel: A Balance Sheet, IDI at <http://en.idi.org.il/analysis/articles/2012/the-primary-system-in-israel-a-balance-sheet/>

2.3 INTERINSTITUTIONAL ACCOUNTABILITY

The inter-institutional accountability is the procedural dimension that deals with checks and balances among the institutions. In democratic regimes in fact the equilibrium among the basic powers is considered as the optimum in terms of quality government and safeguard from malfunctions. A good inter-institutional accountability should grant the procedures to be respected and should contrast abuses of power by the public bodies. Many actors play a role in this net of reciprocal control. The most relevant in this context are the Parliament, the Government but also the State Comptroller and the audit bodies. A final section will be dedicated to the media, a non-institutional actor that nonetheless promotes accountability.

The role of the Parliament in legislation and executive overview

Israel was born as a parliamentary democracy and after a short "presidential parliamentarism" parenthesis it returned to the original type. In a parliamentary democracy the legislative power and the executive one are in the hands respectively of the Government and the Parliament. The Government, however, is usually entitled to contribute (in most of the cases in a consistent manner) to the legislative proposal that the Parliament, direct emanation of citizens, will discuss and possibly approves. The Parliament is undoubtedly the highest symbolic actor in a parliamentary democracy since it represents the voters and from them it originates its power. The supremacy of the Parliament is demonstrated through its ability to overthrow the Government through a vote of non-confidence. The government in fact is meant to be the expression of a constructive majority, able to implement policies agreed upon by the representatives of the people. The survival of the Government in parliamentary democracies is determined by the existence of a majority support in the Parliament.

As explained in the previous paragraphs, the legislative body operates in plenary sessions and through its committees. In plenary sessions, general debates are conducted on government policy and activity, as

well as on legislation. The legislative initiative can be taken by a Member of Parliament (or by a group of members) or by the Government (whenever a legislative proposal is introduced by a Ministry, the Government has to approve it anyways before presenting it to the Knesset). The legislative procedure is articulated in several steps that allow the Parliament to discuss and to exercise its power of legislative control: after a first reading in the plenum, the bill is analyzed and revised by the appropriate Knesset committee. The Committee's eventual modifications or observations are then presented in the plenum where a vote is expressed on the need to return to the committee for further modifications or on the possibility to approve the bill directly.

While traditionally, the government was considered to play a main role as provider of legislative proposals¹²³, in the last decade an increased legislative activity of Members of Knesset has been observed. Chazan¹²⁴ notes how the Knesset became one of the most active parliaments in the world and defines hyperactive for them number of bills that are presented and discussed every year. This might be a direct consequence of the primary system of selections of candidates that, as argued above, would foster single members' autonomy and desire of visibility in order to gain popularity in front of the electorate. The massive activity, however, is not considered to be an optimal one nor for the legislative procedure nor for its responsiveness toward the citizens.

Posed that the substantial role of the Knesset as a legislative body is certainly performed and that the research does not aim to discuss the democratic nature of Israel and its institutional apparatus but the quality of it, we can trace few issues that prevent the Knesset to be defined as a high quality legislator. Some of them are quite widespread in Western democracies and can find explanation in the political culture

¹²³ Brichta A. Zalmanovitch Y., (1986), The Proposals for Presidential Government in Israel: A Case Study in the Possibility of Institutional Transference, in *Comparative Politics*, 19:1.: 57-68

¹²⁴ Chazan, N (2005) The Knesset in Cohen Almagor R. (ed.), *Israeli Institutions at crossroad*. London and New York, Routledge

of the country as well as in the peculiar traits of the society that reflect on this representative body.

The first one is the high rate of absenteeism progressively increased since the foundation of the State. A low attendance does not halt concretely the legislative activity since in Israel there is no quorum for debates of deliberations. The Basic Law: the Knesset (art 24) states that "The Knesset shall hold debates and pass decisions whatever the number of members present" unless specific provision are dictated by peculiar laws (required special majorities for example)¹²⁵.

Despite the fact that the attendance to the parliamentary meetings (plenary sittings, committee meetings or general ones) is not commanded by the law (that explicitly gives the MK the possibility to decide whether to be present or not), a low attendance affects negatively the legislative debate and the representativeness of the deliberation (even though remaining totally within the sphere of legal legitimacy).

A more mature interpretation of the MKs freedom of choice as it concerns the participation to the Parliament's activities and the critical reactions of the public opinion, led to a reconsideration of the issue, to safeguard the accountability and promote the substantial legitimacy of the body. The Research and Information Center of the Knesset addressed the issue of the quorum and evaluated several methods that Western democracies implement in the approval procedures¹²⁶. A more active involvement was warmly advised to the MKs and some attendance norms were created by the Ethics Committee that fixed a general limit to the absences stating also sanctions in case of contravention. The most common sanction in case of unjustified absence (especially if significant and reiterated) is the detraction of part of the MK's salary. This measure has been applied in several cases but it has not seemed to be an effective deterrent. As a measure of

¹²⁵ See Basic law: The Knesset, art 24, 25

¹²⁶ See for example The Knesset Research and Information Center (2003), Quorums in Parliaments, Presented to the Joint Team of the Association for Parliamentarism and the Knesset House Committee, available at <http://www.knesset.gov.il/mmm/data/pdf/me00563.pdf>

transparency and in order to enable the public to exercise a (symbolic) control on the matter, a digital system of monitoring has been set up with which, at any moment, is possible to see in the Knesset website the MKs present in the Knesset. The system is however not perfectly functioning since also during holidays or days in which the Knesset is closed, a certain number of MKs are anyway reported to be present. Media have been also focusing on the attendance issue: reports and ranks have been published. "Open Knesset" an unofficial website that gathers information about MKs and their bills, averaged the attendance data of every MKs of the last legislation (XVII) and found that Uri Maklev (United Torah Judaism) was the most present MK, participating for about 30.7 hours per week. Defense Minister Ehud Barak was instead the less present. He spent in the Knesset about 4.4 hours per week, an eighth of which was usually spent in the Monday appointment with the press¹²⁷.

In the commission this problem has translated in a less effective functioning (given that commission are still considered by the majority one of the most productive moments of the legislative activity) and even in the refusal by expert and consultants to participate, given the scant audience.

In the plenum, debates suffer from the same problem. Not more than 30% of the elected take part in the discussions and only at the moment of the vote the aula becomes more populated. The impossibility of a rich and various exchange of opinions in many cases reduces the debates to a subsequence of slogans. For the most important and sensitive issues the aula gets full and the situation is overturned: the rhythm becomes pressing and the debate is of difficult management on part of the Speaker. The method of consultation largely considered to be the most popular is the unofficial consultations and meetings (one of the most common meeting points is the Knesset cafeteria). This however eludes the control of the formal interaction in the legislative body and, for some aspect can represent a risk more than an opportunity of debate. In these meetings negotiations and agreements are carried on

¹²⁷ Harkov L. ,(2012 October 18) "The 18th Knesset Yearbook" in Jerusalem Post , at <http://www.jpost.com/Features/FrontLines/Article.aspx?id=288459>

between speakers of different parties for the legislative activity. This is regarded by Chazan¹²⁸ as a typical phenomenon in the Israeli politics at large that creates a lower quality political procedure: the presence of a formal structure is almost disdained and alternative informal channel are established.

The activity to which the elected seem to attribute priority and to which they dedicate more time is the internal one. Factions meetings are the more attended and during these, political issues are discusses and strategies are decided. The link between the individual MK and the political formation to which he belongs could be though as a decisive one in promoting a more responsible participation and in general a positive element for the stability if the legislative activity. Unfortunately the party discipline is progressively loosening and often single members prefer to "play free" in order to gain media attention or to preserve their own political interest.

The overview independence and a the contribution to a high quality legislation whose only goal is to pursue the common good might also be endangered by the status that lobbyists enjoy in the parliament. In the Knesset, lobbyists have almost unlimited access to the meetings, to the Knesset itself and to most of the facilities (they have special prices for the canteen service for example). This welcoming environment has favored a constant presence of the lobbyists and the establishment of quite friendly relations with the MKs. Whenever issues affecting the future of powerful financial corporations are discussed or voted, the lobbyists enter in action to convince the Members to vote in favor of their clients. Advocacy affects also the legislative initiative of some members, inspiring bills proposals. The relationship between the lobbyists and the Members has been addressed in the legislation: transparency and a certain distance are requested to the MKs in order for their independency to be preserved and their honesty not to be far questioned. Bribes in fact do not seem to be an element in this equation. The issue in this case is the role that lobbyists play the influence that they have on the MKs. The former are a precious source of information

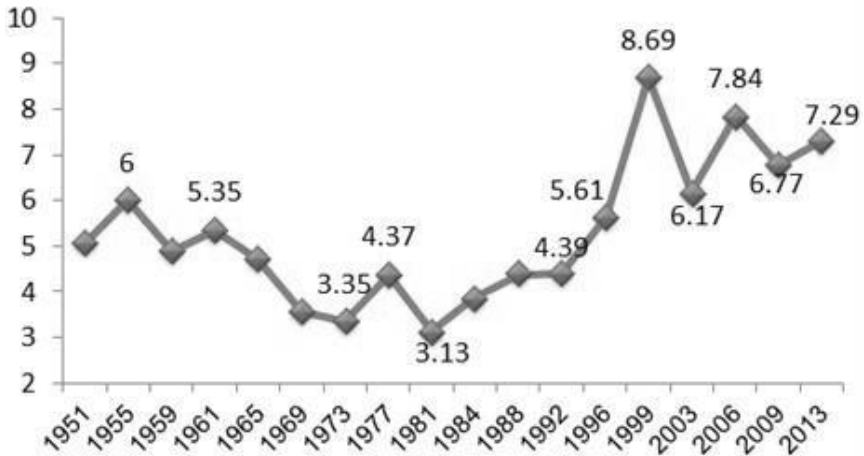
¹²⁸ See above Chazan N.

for the latter, giving them updated news in a short time and with no effort on their part. The "dependence" on these to-go-information put the MKs in a weak position that sometimes lead to manipulations. According to Jerusalem Post's columnist, "the tragedy of the matter is that there are MKs who do not seem to mind this role (of puppets), especially if acting in accordance with the instructions of the lobbyists will win them a headline in the media"¹²⁹.

Another factor that represents an obstacle to an efficient legislation activity and to an effective overview of the executive, is the fragmentation of the Knesset under the party/political perspective. Many scholars point out how the extreme proportionality of the electoral system and some events that signed the political system and the society are the main cause of party fragmentation. After a period of relative homogeneity in fact (with the biggest parties in a neat majority), starting from the Eighties the solidity of the party asset started to crumble, reaching the peak of fragmentation when the electoral reform was put into force. From 1996 to 2003, the double cast method (one for the Prime Minister and one for the Knesset) made the number of parties grow exceptionally and the scarce governability induced the institutions to go back to the old method. The abolition of the Prime Minister direct did not restore the previous situation and the fragmentation index kept growing in the last years. Also from the graph below, it is evident how the effective number of parties (ENPP) was only partially dependent on the electoral system giving a hint on a possible increasing fragmentation in the society that would reflect in the representative bodies.

¹²⁹ See Hattis Rolef S., (2012 February 9) Calling the Knesset lobbyists to order in Jerusalem Post, at <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=258505>

Figure 10 The Effective Number of Parliamentary Parties (ENPP)



Fragmentation represents a problem for the executive, since it decreases the governability. The Prime Minister cannot count on a strong majority from his own party and he is forced to group many different parties in order to reach a decent majority. Strong ideological differences, often non-negotiable, reflected in a fragmented composition of the Knesset, affects also the ability to the Parliament, as a legislation producer, to respond to the society needs. The debate over the “Tal Law”¹³⁰ in the last legislature is an outstanding example of this. The Tal Law was declared invalid by the Supreme Court and expired in August 2012, leaving uncovered one of the hottest issues that has consequences both in the security and in the social sector. A number of proposals from different parties and MKs were made but the discussion had proved itself totally unfruitful. No consensus was found on the matter and the *ad hoc* commission that was established demonstrated all the inability of the legislative body to find an

¹³⁰ The Tal Law, officially known as *Deferral of Military Service for Yeshiva Students Law*, is a temporary law approved in 2001 as a result of a committee work headed by Zvi Tal. It provided the legal framework for ultra-Orthodox men’s deferral of military service. During the years this law has been used as a massive cop out for Haredi men to avoid the compulsory draft.

agreement on such an urgent problem. In a highly conflictive atmosphere, the Haredi parties boycotted the panel and the government, caught in between of public opinion and electoral considerations, ended up dissolving the committee. A legislative vacuum has been left since then while the difficulties of the Knesset to effectively legislate (especially on certain issues) have been showed once again. The extreme fragmentation can also harm the effective control that the legislative exerts on the executive since the fragility of the government could lead to extra-coalitional agreements of external support whenever the fragility of the government should force the executive to search for external support. Potential external allies would guard themselves, at least in some occasions, from directly attacking the government in view of a possible agreement and would lead to a more cautious approach to the government overview.

Legislative supervision on the Executive

The Knesset has some formal instruments to hold the executive accountable. In the Plenum, the dedicated moment for the parliamentary debate and the discussion/approval of the laws, the members of parliament have faculty to ask Ministries to provide the Knesset with information or to appear before it. The instrument of parliamentary questions is a well-known instrument in many parliamentary democracies that allows a Member of Knesset to pose specific questions to a member of the Government (in particular the ministry of the field concerning the question). In Israel three kinds of questions are possible: ordinary, oral and direct questions¹³¹. Questions are limited in quantity, in wording, in the structure and in the content. Ordinary questions (maximum 50 words) are passed from the Member of Knesset to the Minister by the Speaker of the Knesset, after a preliminary evaluation on their opportunity. The answer is expected to be given in the Plenum in three weeks to six months by the addressed

¹³¹ The data of this brief descriptions can be found in the official website of the Knesset at http://www.knesset.gov.il/description/eng/eng_work_mel4.htm

Minister, a vice minister or another delegated component of the government. It is possible to choose the form of answer, except the cases in which the Minister refuses to answer publicly in order not to endanger the state affairs. Every Member of Knesset can ask thirty ordinary questions per Knesset years (two sessions). In case of an urgent matter to discuss, that needs to match some specific conditions in order to be declared as such, the question (structured in no more than 40 words) is publicly read in the Plenum and the Minister must answer within two days. Only seven questions can be asked as urgent. The third type of question is the direct one that arrives to the addressed Minister through the Knesset secretariat. The Minister has 21 days of time to answer or to send a delegated minister to answer. Each MKs disposes of sixty direct questions per Knesset year.

Occasions of debate and confrontation between the Parliament and the Government are also the motions, presented by MKs to discuss specific matters. The interested Minister is allowed to appear in the Plenum and express the Government's position on the matter, answering the facts to the motion.

Beside the Plenum, the Parliament is entitled to carry on its role of legislator and controller of the executive power in the Commissions. The commissions are a much restricted organs, whose rationale is to guarantee a better practicality and to allow a deeper activity. Art 21 and 22 of the Basic Law: the Knesset provides the legislative organ with this tool and encourages using it in all its different forms

As broadly discussed, the Commissions are considered the most profitable occasion for the parliamentary work. The fact that they hold such a central role in the legislative process clearly reveals the power that it is attributed to these organs. The closest collaboration and the greatest availability from the government are commanded by the Basic Law: The government. Art 42 disposed that the Government and its members will provide all the information necessary to an informed legislative deliberation (both to the committees and to the Plenum), also with personal interventions of Ministers, upon request of the legislative

body. However, as many studies prove¹³², the formal empowerment is not sufficient to guarantee an efficient activity, due to structural and logistic problems that weaken significantly the powers that the law grants. A logistic problem is registered as it regards the composition of the committees: the number of the MKs that entitled to participate to the commissions is significantly small compared to the necessary committees' members. The same member is thus obliged to take part in more than one committee, significantly decreasing the possibilities for a continuous and fruitful participation. Low attendance to the committees is partially explained as a consequence. Usually one third of the designated members take part to the committees. This attendance, which anyhow varies according to the relevance of the topic, is registered at the moment of the vote and usually it is even lower. Since the attendance is not compulsory and there is no quorum for debating and voting, the members participate only to the last part of the meeting and do not attend the all debate; the case might be that they have to attend to more meetings and divide their time in a way to be present at the vote. Being committees one of the fundamental places for the legislative scrutiny on the government, it would be more effective to assign to each of them the specific supervision on a particular ministry. On the contrary, there is a radical incongruence between competencies of the committees and the ones of the ministries. This causes some committees to cover an extensive field to review, that comprised several areas of different ministries. If the cross-ministeriality might give a broader overview, however it deems their control to remain in the surface, weakening their activity. The composition of the committees and the mechanism of replacement do not contribute to a quality control over the government. As stated by the law, the composition of the committees is decided on the basis of proportional representation that mirrors the composition of the Knesset. The allocations of seats in the committees are done on the basis of general calculations and the smaller parties are usually left outside from some committees. Even though they are usually invited to participate as auditor, the process of deliberation remains anyway

¹³² See Hazan R.(2001), *Reforming Parliament Committees*, Columbus Ohio State : University Press.

detached from them. More gravely, professional or personal competences of the MKs are not kept into account when forming the commissions. New members of Knesset are the most burdened in terms of appointment to the committees and usually the most active. Their participation is a determinant moment of political growth for them but, without a significant guide from more experienced MKs their activity risks to be less incisive. From year to year moreover (and sometimes also in the middle of the year), the composition of a committee can be changed by the parties who are entitled to replace the participants, even without the consent of the interested MK (this can usually happen because of the separation of a MK from the party group or, more interestingly, because the participant to the committees has expressed opinions or votes contrary to the party line). As a result, the familiarization with the matters and with the working method of a specific committee results in vain and the replacing member will have to undergo the "learning process" again, to the detriment of a professional and not superficial committee activity.

As stated by the above mentioned art 42 of the Basic Law: The Government, the members of the government are invited to provide the Committees with the maximum collaboration, appearing before them whenever they request and producing the necessary documentation. Committees indeed can request hearings of ministers or functionaries in order to gather information on specific issues. However, only the inquiry committees (rarely activated) can actually compel someone to appear before it. The refusal to appear before a permanent or a special committee does not lead to any sanction. This way it is easier for the government to elude the control of such organs while the committees are left powerless in case of a lack of documentation or information. The lack of information that a collaborative attitude can lead to is to take seriously: the resources of the Committees for the consultancy of experts and professionals on specific questions is very limited compared to the necessity. The main source on which they can rely on is, indeed, the governmental apparatus, political and bureaucratic (beside, of course the Knesset administration and the more and more active Knesset Research and Information Center). Not possessing coercive authority, the committees can find themselves in a

disadvantaged position. The non-binding powers are also a main obstacle as it regards the implementation of the committees' conclusions about matters. The only obligation that the Ministries have is to give a feedback within three months on the recommendations received but still they have no binding value¹³³.

Government Dissolution

In a parliamentary democracy the subsistence of a majority in the elected body that sustains the nominated Government (that not necessarily is formed only by elected people) is *sine qua non*. Occasional episodes of denial of the majority are not regarded as official end of the ruling coalition power (even though it is a clear sign of unpopularity and weakness of the Government that evidently lost its majority). Exception is made for the budget law: the approval of this law is therefore crucial since it decides the destination of the economic resources for the implementation of the policies (and so the actuation of the line of government).

The direct way for the Parliament to exercise its sovereignty and to give effect to the lack of support toward the Government is the vote of non-confidence. Any political group in the Knesset has the faculty to submit a motion of non-confidence that is then object of vote in the plenum. If the motion gains the absolute majority of 61 the government is defeated and loses its right to stay in power.

The basic tool of non-confidence in Israel is actually molded in the form of "constructive" non-confidence¹³⁴. In fact, when a group presents the motion to the plenum, an alternative potential Prime Minister has to be

¹³³ On the weaknesses of the Parliamentary committees as an actor of inter-institutional accountability see also Freidberg C., (2008) Legislative oversight and the Israeli Committee system. Problems and Solutions in Pellizzo R., Stapenhurst F., Olson D, Von Trapp L. (ed.), Legislative Oversight and Budgeting: a World Perspective, Washington: World Bank.

¹³⁴ The constructive non-confidence procedure is stated by the Basic Law: The Government, as amended in 2011.

proposed in order to try form a new ruling coalition. The instrument of non-confidence is actually very used by the opposition as a method of political pressure on the Government. Through non-confidence motions (that usually do no pass because of the lack of absolute majority support) the opposition aims to send public message of distrust and harsh criticism toward the government, triggering the public debate and sending signals to the other parties (also of the ruling coalition) about possible alternative solutions. The instrument of non-confidence has been put under question many times and bills have been proposed by the majority to limit the ability of the Parliament to use this tool. A much debated reform is the establishment of stricter requirements to propose: for example, the required absolute majority to present the motion and not just to approve it¹³⁵. Such proposals' consequences are double sided. If on one hand they aim to strengthen the government stability, they sensibly reduce the possibility of the opposition to carry on their watchdog task on the executive branch.

Parliament Overview over the Budget Law

The Basic Law the Government rules that "the Government is collectively responsible to the Knesset". One of the highest moments of responsibility is the presentation of the budget law that has a particular relevance since it is the program of State resources expenditure in order to pursue public interest. This general principle is well absorbed in the Israeli law that attaches to the budget approval an informal value: in fact, the budget needs to be approved within three months from the government's submission. If the Knesset does not approve the Budget Law, the government is dismantled. The institutional sources prize the budget process as a transparent one, on which the legislative body exerts a consistent surveillance in order for it to actually mirror efficient

¹³⁵ For the most recent bill proposed on the matter see Lis J., (2013 May 6) Israeli Ministers back bill to stymie no confidence motions in Haaretz, at <http://www.haaretz.com/news/national/israeli-ministers-back-bill-to-stymie-no-confidence-motions.premium-1.519515>

and fundamentally agreed upon policies¹³⁶. The procedure attributes in fact a consistent power of review to the Parliament and treats the Budget Law approval with the same accuracy of any other law, if not more. However in some cases academic considerations have been made on the potential reforms that the budget procedure should pass through in order to guarantee a more significant impact from the Parliament, in order to guarantee a more broad representation of interests and actually pursue that general public good that the theory recognizes as aim of the democratic public policies. Galnoor¹³⁷ for example states that the main actors in budget shaping are the Ministry of Finance and the Prime Minister who uses the budget to appease the coalition parties and in particular those with the higher coalitional power. As a consequence, small parties that are functional to the survival of the coalition receive big budget allocations to carry on their agenda and the interests of the groups they represent. Once the budget has left the Finance Ministry and been approved by the Prime Minister, there is relatively small alteration from part of other Ministers, political parties or the Knesset finance committee. The tenure of the budget proposal is proportional to the stability of the governing coalition. The Financial Committee is vested with great authority by the law as it regards the budget. However, due to the structural and functional limitations that we mentioned above, the changes are rarely substantial. In particular, a nonnegotiable chapter of the budget is the security one, which is not included in the general negotiation but is discussed in the joint security committee composed by the Finance Committee and the Foreign Affairs and Defense Committee. Another procedure that de facto reduces the possibility of the MKs to influence the budget as well as to implement far reaching and expensive policies was instituted in 2002. In order not to endanger the stability of the budget, an amendment to the Basic Law: The State Economy posed the

¹³⁶ See for example the introductory page about the budget in the official website of Minister of Foreign Affairs, at <http://mfa.gov.il/MFA/AboutIsrael/State/Democracy/Pages/The%20Knesset%20-%20House%20of%20Representatives.aspx>

¹³⁷ Galnoor Y.,(2008) "Public Management Reforms in Israel," in Public Administration and the Quality of Public Services, Athens: Koinokiko Polykento.

requirement of a special majority (50 MKs) to approve (at any state) any private bill whose realization required a cost of more than 5 million shekels.

In budget matters another criticized method of action is the recurrent presentation by the Government of the Arrangements Law, a particular law that the Government initially used as an emergency corrective for the budget. With time, it became a very popular method for the Government to deal with a much broader range of issues. The choice of this instrument is due to the more agile procedure¹³⁸ of approval that is exploited to initiate legislation, complete legislative acts and stall or eliminate private members' bills already legislated. Though this expedient, the Government relies directly on the majority coalition to gain support for matters that sometimes has nothing to do with the budget. The role of the Parliament is reduced to a symbolic vote on which the majority safeguards its own survival. In the Caesarea Economic Policy Planning Forum the Arrangements Law was pointed at as one of the major evidences of the high centralization of the budgeting process and was accused to significantly lower the quality of the democratic process¹³⁹.

An isolated case that nonetheless is important to be mentioned is the approval of a biennial budget for 2011-2012, thanks to a special amendment to the general rule that provides the annual formulation of the budget. The issue was brought to the Supreme Court to evaluate the constitutionality of such an action. The concerns regarded the possibility of amending a constitutional law and of damaging the constitutional balance of power between the Knesset and the Government. It was argued that the biennial review had as a

¹³⁸ Unlike the other law proposals from the Government, the Arrangement Law is usually sent as a whole bloc to the Financial Committee and receives relatively less attention in the debate. This point was brought up with particular attention in the Fifteen Knesset, when the Parliament requested that the Arrangement Law will be actually discussed in the parliamentary committees interested in the specific contents.

¹³⁹ Recommendations from the session about "Balance of Power in the Budgetary Process," presented at the IDI's 13th Caesarea Economic Policy Planning Forum in 2005. At <http://en.idi.org.il/analysis/idi-press/publications/hebrew-books/the-balance-of-power-in-the-budgeting-process/>

consequence the reduction of the legislative power of supervising the implementation of policies and a deprivation of its power of distrusting the Government through the non-approval of the budget. The Supreme Court rejected the request, considering this exceptional measure as the continuation of an experimental procedure initiated for logistic reasons on the previous biennium. Reassuring on the improbable harmful effects in terms of inter-institutional accountability, nonetheless the Court invited the Government to consider the amendment of constitutional provisions an exceptional undesirable procedure¹⁴⁰.

The executive power

In a parliamentary democracy like in Israel the parliament is considered to be the highest actor because of its symbolic representation of the popular will. The Government is mainly composed by elected members of the parliament that assume another role in order to carry on the executive task. The check and balances, at least the institutional ones, go prevalently in one sense, which is from the Parliament to the Government. This because the collegial government for the public good is not abdicable to a strictly majority approach in the implementation of policies. That is, the government is entitled to represent its electorate (that is supposed to be the majority) but the Parliament's authority to restrain it safeguards the general balance of the governmental action and prevents it to become "the tyranny of majority".

This general premise granted, however, it must be noticed that the Government is attributed, by law, an extensive power as the titular of the executive power in Israel and some noticeable concessions are made to it that actually influence the parliamentary dynamics.

¹⁴⁰ For a more detailed explanation of the case see Levush R., Israel: Supreme Court Leading Decision on Constitutionality of Two-Year State Budget. Library of The Congress, at http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402623_text

On the field of policies implementation, the Government detains authority in any field that is not exclusive competence of another authority¹⁴¹. Some deliberations can become effective without necessarily passing through the approval of the Knesset: fields like security and foreign policy for example are usually classified for security reasons. This allows the total secrecy of the concerning meetings and the autonomy in the relative deliberations. According to the law, the cabinet can declare war without the consent of the Knesset and to declare the state of emergency¹⁴² that empowers it to adopt regulations without necessarily consult the legislative organ. This freedom does not only include strategic decisions or matter immediately connected to a security threat but also the institutions of special taxes (even though the law requests the special powers to be strictly exercised for matters related to the exceptional situation). The only boundary that is left also in the state of emergency is the constitutional one. The government in fact cannot rule in any case against the basic laws¹⁴³.

Executive's influence over the legislative body

As said, the Government shares with the Parliament a consistent role in the legislation process. In a quite dated but very explicative analysis, Mahler observed that in the legislative process the Government maintains a position of strength toward the Parliament. This position is given by structural advantages like the more efficient means that the Government possesses thanks to the ministerial bureaucracy. Legal, budgetary and administrative aspects are more easily at their disposal and this can create an efficiency gap that reflects in the proposed bills. Beside this advantage as members of the executive the political

¹⁴¹ Basic Law: The Government (2001 version), art. 32

¹⁴² The state of emergency can anyway be revoked by the Knesset whenever the legislative body considers appropriate.

¹⁴³ For the declaration of the state of emergency, declaration of war and special powers see Basic Law The Government (2001 version), art. 38-41

advantage is also decisive. The members of the government in fact are also leaders of the factions that sit in parliament. Their "control" over the MKs of the coalition's parties establishes de facto their ability to succeed as legislative actors¹⁴⁴. The strongest is the political control exercised by the ministries as leaders of factions (together with the coalition's unity), the smaller is the actual possibility for the Knesset to be a "honest" reviewer and critic of the Government proposals. As clear in any country and in particular in the extremely fragmented Israeli political system, the ruling coalition does not always maintain its unity that is instead variable. The government legislative initiative will also take into account the current status of the coalition in a way to maximize its legislative effort achieving, at the right moment, the success in the Knesset. The strength of the government legislative activity is clearly visible in terms of results. While the majority of government bills becomes a law, a much inferior number of individual members bills manage to pass in the Knesset (the probability is of course increased by the government support of the proposal that usually entail a vast if not unanimous consensus among the MKs of the majority coalition). As notes in the previous paragraphs the weakening of the party discipline creates some anomalous cases in terms of parliamentary support but in decisive votes the call to order is still pretty powerful.

In case of the presentation of a ministerial bill, the minister in charge of the presentation can dictate quite strict conditions to the Knesset, requesting for example that the bill will be posed in the agenda before the institutional two days of waiting. This possibility that is not given to the members of Knesset (whose proposals presentation, the Government can actually exercise a delay power). In particular cases¹⁴⁵, the presenting minister can also ask and obtain a shorter *iter* of discussion and approval of the bill. If the requested is approved, the whole process takes place in only one day. This procedure, profoundly affects the work of the committees that cannot review the bill

¹⁴⁴ See Mahler G.S., (1982) *The Knesset: Parliament in the Israeli political System*. East Brunswick, NJ: Fairleigh Dickinson University Press, Associated University Presses.

¹⁴⁵ Formally in case of particular urgency; in reality this practice has been used also in non-urgent cases.

thoroughly. From the moment of the presentation till the moment in which the law is not voted, the Government has the right to withdraw the bill, waiting for a more favorable moment for the proposal to be approved. Even in the case in which the bill is defeated in the plenum, it can be proposed again after a very short time (extremely useful opportunity, in case of critical absences among the members of the majority in the Knesset). This faculty again is a prerogative of the Government and it is not conceded to the MKs.

In the case of a private member bill too, the Government operates as an influential agent. Before the proposal is presented in the plenum the government receives a copy and is asked to take position about it. Political and coalitional considerations play a crucial role in this phase and in case of a compact majority, the Government can basically decree the approval or the defeat of a legislative proposal. The executive can also dismiss a single MK's proposal whenever declaring the plan to present in the near future a bill on similar issues. This act is particularly significant since it concretely shifts the legislative focus from the Parliament to the Government¹⁴⁶.

Another provision, already mentioned above is worthy to be repeated in this context. The provision regards the special majority requested to the Knesset in order to approve a MK's proposal that is not supported by the executive. Whenever the cost of implementation of such a policy is more than 5 million, at least 50 MKs are required to support the proposal during the whole *iter*. This norm, introduced as a method to safeguard the national budget decreases sensibly the likelihood that articulated and big legislative plans on part of individual MKs will become law. Considering in fact the divide party system in Israel, such a majority might be very hard to reach.

The Government's Dissolutive Power

¹⁴⁶ These observations are expressed more in detail in Sager S. (1985) *The Parliamentary System of Israel*, Syracuse:Syracuse University Press.

On the basic premise of governability that an existing and collaborative majority should guarantee, the Prime Minister verified the lack of possibility of fruitfully implement policies and rule the country for the lack of support by the Knesset can turn to the President of the State submitting a request to dissolve the Parliament and call for new elections. The President in this case is guarantor of the legitimacy of the operation and the safeguard of the democratic principle is ensured. However this phenomenon, can lead to another situation that deserves to be analyzed: the transitional government and its constitutional status. As well as in case of resignation of the Prime Minister, dissolution of the Government by the Knesset, or the transitional period after a new election (when the new government is not formed) the outgoing executive is given the status of transitional government. This phenomenon is not unique *per se* since it is present in almost all parliamentary democracies and it is due to logistic need of continuity also in a period of change (of *transition* indeed). The peculiarity in this case consists in the fact that the transitional Government in Israel is not curtailed of any power compared to a normal Government (elected and legitimate by an existing majority). On the contrary, its status consents the Government a more secure situation than a normal one. The outgoing executive can formulate laws without the fear of being dismissed by the Parliament and can appoint or dismiss Ministries without the Knesset approval. The transitional period, as happened in the past, can last for several months. In this period, the granted power might be exploited to gain popularity (both in the party system and toward the public), turning the institutional role in an electoral tool. The anomaly was addressed in 2000 by the Supreme Court that, through Justice Barak, recommended a certain caution to the provisional Governments. Even though the law empowers them with full powers, the peculiar status should be kept into account. In an act of responsibility, the provisional Government should abstain from deliberate on controversial issues, unless urgent situations occur¹⁴⁷.

¹⁴⁷ On the issue of Transitional government and its constitutional status see Navot S., (2007) *The Constitutional Law of Israel*. Alphen aan den Rijn: Kluwer Law International

Audit Bodies as Accountability Agents

One of the main monitoring tools that Israeli public bodies are provided with are Internal Audit bodies. They are effective by law starting from 1992, when the Internal Audit Law was established as a mean to ensure transparency, internal awareness and control; the effort put in improving the quality of democracy through an effective accountability system is evident in this choice. According to the law provision, internal auditors are to be nominated in all public bodies, local and central. The presence of internal auditors is mandatory in governmental authorities and corporations, in publicly traded commercial enterprises, banks and insurance companies¹⁴⁸. Schwartz notes how the creation of an internal auditing could potentially empower the single bodies with a more active control on their efficiency and ethics of their procedure, while allowing the State Comptroller to focus on results evaluation. However, the law did not explicit this passage creating a shared authority in this field.

The main audit body: the State Comptroller

The main tool for bureaucratic audit in Israel is the State Comptroller, whose functions have partially explained in the previous paragraphs. The State Comptroller is actually an instrument of control directly dependent on the Knesset, elected by the Knesset and is completely independent from any other executive body. Nonetheless, given the particular traits of the organ, a short investigation is definitely appropriate.

The State Comptroller has authority over many fundamental institutions in the Israeli public arena (among others public institutes,

¹⁴⁸ Schwartz, R. (2002). Controlling Government: Budgeting, Evaluation and Auditing in Israel in *Israel Affairs*, 8:4.

parties and the *Histadrut*¹⁴⁹). Its authority and possibility of investigation are very broad and, as is it easy to note from the previous paragraphs where it is continuously mentioned, the State Comptroller in Israel is almost an omnipresent reality. This organ determines in total autonomy its working agenda i.e. which subjects or bodies to audit. The Knesset or the Government can ask the State Comptroller to start specific investigations. On the contrary, the legislative power cannot prevent the State Comptroller from investigating. The State Comptroller is in charge of an incredible number of tasks: as single institute it monitors about 350 institutions and relevant public actors. Since its creation, the law gives the State Comptroller authority in assessing "the economy, the property, the finances, the obligations and the administration of the State, of Government ministries, of all enterprises, institutions, or corporations of the State, of local authorities, and of bodies or other institutions which were defined by law as subject to audit by the State Comptroller"¹⁵⁰ (beside the Ombudsman activity and the complementary ones that are also assigned to it by the law). According to Schwartz, the activity of the State Comptroller in Israel (that is largely considered one of the most efficient and active in the auditing activity) actually focuses on the analysis of procedures and only in part on an efficiency evaluation. The State Comptroller in fact would be divided between the will to remain detached from too sensitive political issues and the desire of attracting public opinion attention on its work. Its role then would stress more the accountability in terms of correspondence to the bodies to a legal procedure than in terms of providing citizens a justification of their actions in terms of results. Posed that I do not have the material resources necessary for a precise comparison or to trace a functional evolution of this body in the last 10 years, I find it necessary to acknowledge that the State Comptroller nowadays plays a very positive role as a censor of deviant behavior in the public sector. It is often

¹⁴⁹ The *Histadrut* is the biggest Israeli workers union, historically recognized as one of the main social bodies in the country. Its relevance in political and social negotiations is not negligible.

¹⁵⁰ Basic Law: The State Comptroller, art 2

mentioned as a champion of ethic and effective functioning of the public bodies and often intervenes harshly on the examined bodies, from a position of a safe neutrality and independence. Presenting its findings to the audited actors and to the Knesset it offers a valid opportunity for the public administration to improve the quality of their actions and to engage a more serious self-monitoring activity. The publication of annual reports is moreover a precious instrument for the citizens to acquire awareness of an important part of the democratic process. As a sign of appreciation toward this activity and toward the working methodology of the State Comptroller, citizens mentions is as one of the most trusted public bodies (especially the Jewish ones, according to the IDI Israeli Democracy Index 2012).

Judicial power and accountability

As the representative of the judicial power in the country I will take into analysis the Supreme Court, highest level of the judiciary that is recognized publicly as a powerful actor in the political and social life. Its position is actually quite controversial and it deserves attention in the rationale of the examination of the inter-institutional accountability. The description of the functions of this body has been done in the previous paragraphs but it is useful to remark its double function: the Supreme Court is both an extreme appeal court and a High Court of Justice. Its judges are appointed by the President of the State, following the recommendation of a special Committee composed of nine members: three judges of the Supreme Court, two representatives of the Government (the Minister of Justice, head of the Committee and another minister), two members of the Knesset and two representatives of the Israel Bar Association. Specific requirements are taken into consideration in the designation of candidates, among which a considerable experience in judicature or in the world of the legal academia. The appointment is not limited in time unless a disciplinary sanction is taken against the judge, they resign or retire.

The decisions of the court are definitive and no further appeal can be made. Nowadays, the power of the Supreme Court is quite extensive. Due to a functional evolution that had its peak in the Nineties, its role as a controller of the legislative and the executive is unanimously recognized (as existent but not as legitimate by some). The development of this significant role has been signed by institutional milestones (legal mainly) and by a progressive extension of the doctrine of justiciability by the court¹⁵¹. In parallel to the political stalemate of the late Eighties, the Supreme Court started to take numerous and significant stances in many fields as to replace the political immobility that the political situation led to. The approval of three Basic Laws in 1992 gave the Supreme Court a legal reason to actually strengthen further its position as a judicial reviewer. The Knesset in fact that till that moment had almost unlimited authority in changing any law with a simple majority, included in the new laws some important rules that limited its own power¹⁵² and conferred to these laws (at least two of them) a superior status, due to the specific requirements for their modification. The existence of the Basic Law Freedom of Occupation and the Basic Law Human Dignity and Liberty evidently dealing with the recognition of some basic human rights conferred the Court the authority of actually dismissing laws and acts on the basis of the coherency with the two "superior legal sources". This non codified power of judicial review was initially intended as a development concerning the future legislation but, even though the older legislation is formally protected by the judicial review, the enforcement of the new basic laws inspired the Supreme Court to creative and more liberal interpretation of the old legislative corpus. The Supreme Court increased exponentially its public visibility and popularity and raised ferocious criticisms by members of the political system that felt as

¹⁵¹ On the evolution of the court as a more active body in the sociopolitical arena see Hofnung M., (1996) *The Unintended Consequences of Unplanned Constitutional Reform in Constitutional Politics in Israel* *American Journal of Comparative Law*, 44:4

¹⁵² The new legislation in question is: The Basic Law: The Government (amended), The Basic Law Freedom of Occupation and the Basic Law Human Dignity and Liberty. While till now a simple majority was sufficient to change any law (with few exceptions, like the Basic Law The Knesset), these laws contain different provisions that protect them from being changed by a simple majority as to confer them a superior legal status.

illegitimate the new substantive intervention of the judicial body in the annulment of laws, in political decisions, appointments etc. Its action led the legislative and the executive to rethink at least in part the legislative strategy and to adequate, sometimes also preventively, the laws in order not to incur in thorny interpretations by the Supreme Court. It has been questioned whether the Supreme Court's activity genuinely contribute to improve inter-institutional accountability or represents the failure of the judicial neutrality and the occupation of this body by an ideologically oriented group with a definite agenda to carry on. If on one side it is undeniable that the Court activity (and activism to some extent) pose a further check on the executive and the Knesset and limits their autonomy, usually granting the people higher degree of liberty, on the other side, the creative interpretation on principles and rights risks to involve the Court in a value-based adjudication. The divisive and troublesome impact of this attitude is clear when thinking of the fact that basic principles in Israel, even those clearly expressed in official documents (like the Declaration of Independence and to some extent in the legislation in general) find a different kind of legitimation and interpretation in different groups of the population. Some scholars and representative of religious groups for example, have accused the Court of having abdicated its original role of arbiter and having become an active actor in the political arena, promoting its liberal agenda and preserving this power through the selection of judges that are ideologically inclined to serve the cause¹⁵³.

Non-governmental actors promoting accountability: the media

The media system is worth to be mentioned in this paragraph even though it does not formally belong to the institutional system. However, freedom of information and a critical and neutral approach to the political world undeniably contributes to the insurgence of a non-superficial public debate. An informed public opinion exercise

¹⁵³ On this issue see for example Azulay M., (2011 July 13) Knesset to veto Supreme Court judges? in Ynet, at <http://www.ynetnews.com/articles/0,7340,L-4094834,00.html>

pressure on the political system questing for transparency and responsiveness. The political power is, this way, compelled to improve its level of accountability to the public.

On the other side, the political power will try to exercise its power on the media system, in order to guarantee a pluralistic approach and not to fall victim of private economic interests of the information tools ownership. This dynamic in fact could alter strategically the political perceptions of the citizens or, in a worse scenario, endanger the state interest sacrificing it on the altar of a profitable newsworthiness. Press freedom is a generally respected principle in the country, not expressly mentioned in the legal sources but declared to be an essential component of human dignity by the Supreme Court. Information is pluralistic and is carried through a wide variety of newspapers targeting different groups, read daily by about one million Israelis (out of a population of about 8 million people). National newspapers published mainly in Hebrew (*Yedioth Achronot*, *Haaretz*, *Maariv* and *Israel Hayom* the main ones) but also in English (The Jerusalem Post), Russian (*Kurier*, with a smaller diffusion than the previous mentioned ones) and Arabic (*Al Sabar* and some other with regional diffusion). Press also differentiate its target according to level of religiosity; many newspaper and information magazines are in fact directed to the Jewish religious communities and are clearly recognizable for their format and the contents (*HaModia* for example). The biggest newspapers have an internet portal, with open or semi-open access to non-subscribers. All newspapers are privately owned and most of them play a watchdog role toward the government, stimulating critical debate and denouncing cases of public malfunctioning or violations. A big portion of them provide free copies to the public (shortened or entire ones) thus in public transportation, stations, and in various cities' open spaces is possible to receive copies or, at least consult them free of charge. On the other side, some newspapers are totally free; this allows a large diffusion that, in some cases has been regarded as a danger to the independence and neutrality of journalism in the country. This is the case of *Israel Hayom* (Israel Today) that started its activity in 2007 and became the most consulted newspaper in the country. The criticisms moved to this source of information regard its ideological

balance. The newspaper is therefore owned by an American businessman who declared its support for Netanyahu and the Likud and shaped the newspaper in a clear Likud-sided fashion. The strong ideological orientation would add up to the financial pressure that a free newspaper that offers low prices for advertisements would put on the other magazines, struggling to survive in the era of technological information.

Public radio and televisions are also granted with freedom and are compelled by the law to respect equal representation of the political stances both in electoral period and in non-electoral one. The legal provisions at this regard, bind the privately managed televisions too.¹⁵⁴ Satire and criticisms toward the political establishment are frequent and are actually among the most followed programs. Israelis are big consumers of cable and satellite channels and this contribute to open information, also on the outside world.

Internet is another fundamental source of information: 70% of the population declared to regularly access to the net that is basically unrestricted (except for few applications, mainly of geographic mapping that are partially restricted by the government for security reasons).

Freedom of information has been protected by law since 1999, when the Freedom of Information Law came into effect. The law entitled residents and citizens to obtain information in possess of a public authority. This included the government, the Knesset and any other public body. Thanks to this provision, journalist and other actors interested in the social and political review have wide access to official information. Access is highly restricted however, for matters of foreign policies, intelligence services, national security and privacy rights.¹⁵⁵ Freedom of information and press are indeed not absolute rights but can be sacrificed in virtue of the above mentioned exceptions. The security threat is intended to be both factual and potential: hate speech

¹⁵⁴ For a deeper analysis of this issue see the paragraphs above.

¹⁵⁵ Freedom House,(2013 May 1) Freedom of the Press 2013 - Israel ("Draft"), available at: <http://www.refworld.org/docid/5187a20b16.htm>

and public incitement to violence are legally prohibited, especially if they praise terrorist actions and the destruction of the State.

The governmental bureaucracy exercises a certain formal control over the information system, being in charge of releasing licenses and accreditations to journalists and to newspapers. According to Freedom House, Israel has a censorship system that is unique for a modern democracy. Not surprisingly in my opinion for a country where the security issue is that central, press is under the control of the Military Censor (whose officers are largely independent from the military and mainly subject to civil judicial authority). With the Censorship Agreement media accepted to submit articles on sensitive issues to the preventive control of the Censor. Severe actions can be potentially taken by the Censorship bodies against newspapers that do not comply with the directives (including the confiscation of the printing machines). However, nothing similar has ever taken place and, by law, power of appeal to the civil court is given against the decisions of the Censor.

Two recent events have been taken very seriously by Freedom House and cost Israel the downgrade from "free information" country to "partially free"¹⁵⁶. One regards the charges filed against an Israeli journalist for unauthorized possession and use of state secret documents (leaked by a blow whistler operating in the army)¹⁵⁷. The initial accusation of aggravated espionage was regarded as a dangerous precedent for press freedom in the country, especially on the premise that the Censor had permitted the publications of the articles containing some of the information later incriminated.

Another episode was considered as a dangerous move putting political pressure on the investigative activity on the televisions. At the

¹⁵⁶ This decision by Freedom House has provoked a huge scandal in the Israeli public opinion and it has been criticized by Israeli and foreign journalists as too severe. See Rettig Gur H., (2013 May 1) Israel downgraded in press freedom report, at <http://www.timesofisrael.com/israel-downgraded-in-press-freedom-report/>

¹⁵⁷ Zarchin T.,(2012 July 24) Haaretz journalist Uri Blau found guilty under plea bargain of holding secret IDF info, in Haaretz, at <http://www.haaretz.com/news/national/haaretz-journalist-uri-blau-found-guilty-under-plea-bargain-of-holding-secret-idf-info-1.453292>

beginning of 2011 a scandal exploded after an investigation of alleged corruption involving the Prime Minister was brought to light by a television channel. Pressures for apologies were exercised and a libel suit was filed by the Prime Minister against the channel. This episode, then resolved in an informal agreement between the parts (in which the channel stated that it would not have hurt the image of the Prime Minister anymore), has been connected by Freedom House to the later denial by the Knesset to the channel of postponing its debt payment to the government. The denied postponement, conceded to another TV channel, caused the insolvency and thus the withdrawal of the broadcasting license. Only an intervention of the prime Minister allowed the postponement to be given and the channel to survive¹⁵⁸.

Other concerns have been raised about the possible consequences of the political debate in the country and some legislation that has been proposed during the years. Amendments on the raise of the sanctions against libel were broadly discussed in 2012. Bills regarding the prohibition of use of Nazi symbols or comparisons to Nazism in protests¹⁵⁹ were debated in 2012 and recently a new bill on the prohibition of defamatory definition about the IDF (the Israeli army) was presented¹⁶⁰. Possible success of this legislation might harm information freedom, forcing the media to exercise their informative role with caution in order not to be incriminated or sanctioned.¹⁶¹ The main concern is that strict legislation will not be implemented and the

¹⁵⁸ A similar correlation is made by Bronner E.,(2011 December 26) Israel TV Station's Troubles Reflect a Larger Political Battleground in New York Times, at <http://www.nytimes.com/2011/12/27/world/middleeast/struggle-of-israels-channel-10-tied-to-political-wars.html?pagewanted=all&r=0>

¹⁵⁹ The proposal was discussed after the umpteenth Ultraorthodox protest in which Nazi symbol were used as a metaphor of the perceived barbarity of the state of Israel against the religious Jews. See Lis J.,(2012 January 9) Israel cabinet supports bill to prohibit use of Nazi symbols in protests in Haaretz, at <http://www.haaretz.com/news/national/israel-cabinet-supports-bill-to-prohibit-use-of-nazi-symbols-in-protests-1.406344>

¹⁶⁰ Levy G.,(2013 May 9) 'Jenin, Jenin Law' will prove something's rotten in the IDF, in Haaretz at <http://www.haaretz.com/opinion/standing-at-attention.premium-1.520038>

¹⁶¹ Freedom House (2012) Freedom of the Press Report 2012, at <http://www.freedomhouse.org/report/freedom-press/2012/israel>

media will continue their mission of information and stimulation of a critical and multifaceted debate of which the society nurture itself.

2.4 PARTICIPATION

Participation is unanimously recognized as a landmark of democracy. The possibility for the public to actively contribute to the state is the prerogative for public sovereignty: through participation citizens impact on the decisions on and of the representative bodies. The desire of every member of a community is to see the community itself more respondent to his interests or to his values; the higher this coincidence, the stronger the identification will be. A basic sense of identification is anyhow necessary to encourage the participation (if a society is totally extraneous to the individual, there is no incentive for him to fight for the change) as well as a minimum level of information of the current situation. In this paragraph, the most classic forms of participation are analyzed, in the strictly political sense (vote and affiliation to parties). Also civic forms of participation will be described, since as it will be easy to see, they are an alternative channel of contribution to the improvement of the society that actually mirrors the instances of the political scene. Through civic participation in fact, citizens broaden the borders of "what is political" and negotiate with the political establishment new forms of communication. Another example of how participation strengthen the ties of identification with the state and how it contributes to build national identity will be given through the analysis of the army service. As it will be enlightened this much Israeli form of participation strongly shapes perception of legitimate citizenship triggering a dynamic of exclusion of those groups that, for different reasons, do not join this national experience.

Participation through vote

In Israel the electoral participation is granted to all citizens above the age of 18 (except disqualification due to specific crimes that has been described in the previous chapters) for local and national elections. Physical presence in the country in the Election Day is requested to vote (except for the professional categories mentioned in the previous chapters). The only occasions of vote for Israelis are the elections of the

legislative organs at central and peripheral level (the Knesset and the local parliaments). The legal system in fact does not consider the possibility plebiscites or referendum, nor advisory, abrogative nor on citizens' initiative. As a form of direct democracy, the referendum was proposed several times during the years. However this idea was never implemented nor systematically regulated. Actually one law is in force in which the referendum is mentioned as a decisional tool. In 2010 a law passed that included a national referendum as a possible decisional tool in case of withdrawal from territories subject to the Israeli law. In case of peace negotiation, the government would require popular explicit consent to close deals involving these geographic areas. The bill was not unanimously welcomed in the political panorama. In the eyes of the supporters of the law, a referendum would allow the citizens to express directly their opinion in such a delicate matter. Critics stigmatized it as a sign of weakness of the government; other considered it an illegitimate procedure, claiming that the decision should be left to the population of those areas and not to what they define as "the occupying force". Beside considerations on the specific case, the creation of a legislative setting necessary for the referendum was deferred to a later moment. In case it will be decided that citizens need to directly express their opinion on this or any other matter, the country will have to provide itself with a legal frame for the referendum to take place.

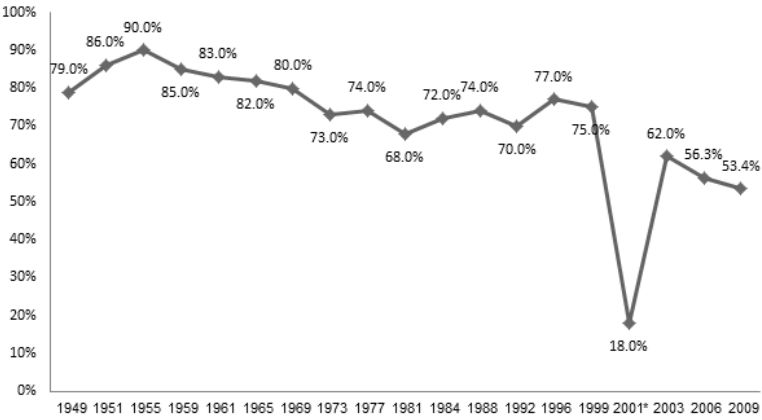
Vote in Israel is evaluated not as much for its intrinsic value of democratic expression but as a way to influence the political process and to safeguard one's interests. The Israeli Democracy Index 2012¹⁶² demonstrates that taking part in the parliamentary elections is considered by Israelis the most effective political action. The commitment to vote is however less strong that it used to be. The electoral turnout dropped sensibly in comparison to the first years of the state (when it reached 90%). This phenomenon is not an isolated one; on the contrary it regards most of the Western states and it is partially due to the general dissatisfaction with politics. The general

¹⁶² Hermann T., Atmor N., Heller E., Leber Y., (2012) The Israeli Democracy Index 2012, Jerusalem: The Israel Democracy Institute

electoral turnout in Israel (around 70% in the last elections) is in average with the other OECD countries (72%, according to the last report)¹⁶³. It is possible to trace a certain socio-demographic division as it regard abstentions: gender does not seem to influence the abstention rate while income plays a more significant role (that is anyhow much lower than the OECD average). In Israel the rate of abstention varies of 8 percentage points if moving from the richest to the poorest group of population, while the average gap among the OECD countries is 12%. Another discriminant for abstention is the ethnic belonging. Among the Arab citizens of Israel the electoral participation is much lower compared to the Jewish citizens.

Figure 11 Electoral Turnout, Arab Citizens of Israel.

(Source: Schafferman T. K., (Apr. 21, 2009), see above)



Even though their loyalty to the democratic rules is not in doubt, as well as their understanding of the formal importance to the vote expression, Arabs do not participate in big percentage to the vote. Schafferman lists several possible explanations. The first explanation is a general one, not based on ethnic difference but comprised in a general decreasing trend that regards all Israelis. The second one remarks a

¹⁶³ OECD (2011) Civic Engagement and Governance in *How is life? Measuring Well Being*, OECD Publishing

sense of discouragement and impotence among Arab citizens and their lack of identification with the state. Some Arab voters also lack confidence in the Arab parties and consider them weak and incapable to represent fruitfully their interests in the Knesset. At last, also the development of a strong Palestinian identity and the following of some political ideologies could encourage these citizens not to take part in the elections, in order not to legitimize the state and the regime¹⁶⁴. In the last elections (2013) a small increase in the electoral participation was welcomed with enthusiasm by the Arab parties and by the public opinion. Still, almost half of the Arab citizens of Israel did not express their vote (the turnout being 56%).

Information and public debate

Beside the electoral period, Israelis show a significant interest in politics and in engaging public debate. Generally the level of information is high, due also to news consumption through the traditional media (TV, radio and newspapers). In daily life, the exchange of information and informal debates about politics in the close circle of contacts (family, friends, colleagues etc.) is sizeable¹⁶⁵. As clearly visible from the figure below, this is a stable trend in the Israeli society. Massive media consumption and a constant update on politics it is likely to affect the authority relations between decision makers and the public. The media coverage of political world and actors, which is becoming more pressing in the last decades, narrows the symbolic distance between public and politicians; furthermore, more informed and educated citizens feel entitled and comfortable in expressing critical opinions

¹⁶⁴ Schafferman T. K., (Apr. 21, 2009), Participation, Abstention and Boycott: Trends in Arab Voter Turnout in Israeli Elections. IDI, at <http://en.idi.org.il/analysis/articles/participation-abstention-and-boycott-trends-in-arab-voter-turnout-in-israeli-elections/>

¹⁶⁵ The information originally reported by World Value Survey is analyzed in Arian A., Atman N., Hadar Y, (2006). The Israeli Democracy Index 2006. Auditing Israeli Democracy: Changes in Israel's Political Party System. Dealignment or Realignment? Jerusalem: Guttman Center of the Israel Democracy Institute

about any political topic. This results in a more critical and less dogmatic attitude to the political authority and increases the demand of participation in the decisional process and responsiveness from the political class¹⁶⁶.

Figure 12 How interested are you in politics?

(Source *The Israeli Democracy Index 2012*)

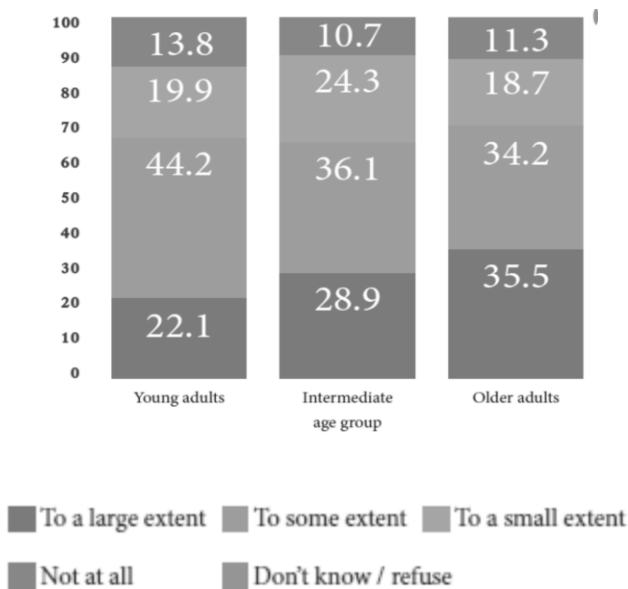
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
To a large extent	36.3	28.6	28.9	35.7	N/A	22.6	28.9	23.3	37.7	28.4
To some extent	39.8	38.5	41.5	36.5		33.4	37.2	38.3	39.1	38.3
To a small extent	17.5	23.3	18.1	18.2		25.6	22.0	24.9	16.0	21.1
Not at all	6.0	9.4	11.4	7.8		16.6	11.3	12.9	7.1	12.0
Don't know / refuse	0.4	0.2	0.1	1.8		1.8	0.6	0.6	0.1	0.2
Total	100	100	100	100		-	100	100	100	100

The age variable is not decisive in general figures, even though more people in older age show a more intense interest than youngsters.

¹⁶⁶ Hermann T., (2012) Something New Under the Sun: Public Opinion and Decision Making in Israel in *Strategic Assessment* 14: 4:41-57

Figure 13 How interested are you in politics?

(Source: *The Israeli Democracy Index 2012*)



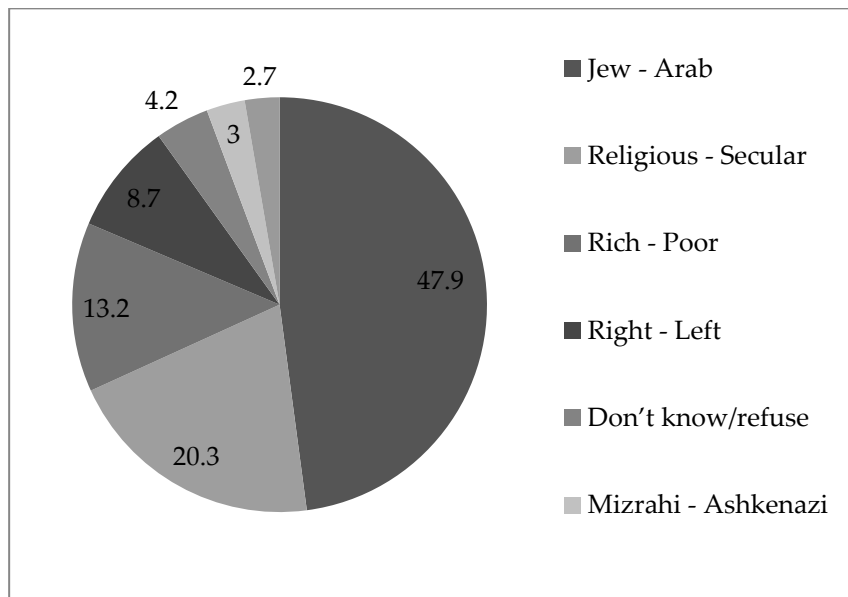
Party Identification

According to the Report on the Democracy Index 2012, the principal area of tension, shaping the opinion of Israeli citizens (with evident effects in terms of political choice) is nationality (Arabs - Jews). Among the Jewish group, level of religiosity is the most important variable; the group is dichotomized in religious – secular. The division left- right is also relevant but it coincides significantly with the level of religiosity. The length of residence in Israel is another crucial variable in shaping people's opinion. Given the continuous Jewish migratory flux to Israel, welcomed by the government and regulated by the law, this factor has been playing and is likely to keep playing a strong impact in the national public opinion. A variable that is becoming more and more irrelevant is the Jewish ethnic affiliation (Mizrahi- Ashkenazi) that is blurring, especially in the secular population as a result of

intermarriage and the creation of a quite inclusive Israeli modern identity.

Figure 14 Areas of tensions as perceived in the society

(Source: the democratic index 2012)



In the analysis of the variables influencing vote behaviors, the national fracture still proves significant. In the survey, some factors were given as a possible choice: party platform; party responsiveness in the previous Knesset; party's list of candidates; loyalty to party voted for in past; party leader; consideration on useful vote. Arab respondents indicated the programmatic platform as the most relevant issue (22% of the respondents placed it in the first position) while the Jewish group attached a bigger relevance to the party leader (28.4%). This trend was actually predicted in the previous report The Israeli Democracy Index 2006 (where the ideological factor was ranked first in importance but clearly lost relevance if compared to the previous surveys). A more

personalistic approach to the vote, whose consequences clearly shows nowadays, was fostered by the personalization of politics and by probably the semi-presidential experience in Israel that was implemented in 1999. The manifestation of personalization in politics and the reasons for which the electorate seems more affected by the leader as an individual figure are schematized by Rahat and Sheaffer in: institutional personalization (realized through the primaries, when the parties invite citizens to take part in the selection of candidates); personalization in the media (that is the increasing relevance attributed to the politicians as individuals and not as representative of a party); the behavioral personalization (symbolized by the already mentioned activism in the Knesset and the research of personal popularity)¹⁶⁷.

Nowadays, the identification with a party is not a common sentiment among Israelis. About 57% of the interviewed citizens affirmed that they do not feel represented by any party. The negative feeling is more common among young people than old one. This gap mirrors the trend registered when measuring the interest for politics. The scarce identification with parties and the tendency to vote on the basis of the leadership might concur to increment the electoral volatility. Therefore, when leadership was mentioned as a determinant variable in the voting decision, party loyalty was rarely considered a crucial aspect. On the other side, some of the volatility is undoubtedly a consequence of the strategic vote the citizens. Even though the proportional electoral system should encourage a sincere expression of ones' preference, the extremely fragmented party system (partially maintained in life by the proportional system) causes citizen to cast their ballot according to utilitarian considerations. The utilitarian rationale does not only involve the possibility to reach the electoral threshold; it keeps into account also coalitional potential agreements. In Israel no party has ever been able to govern without forming a coalition¹⁶⁸. For this reason, the decision of the voter is not only focused

¹⁶⁷ Rahat G. & Sheaffer T. (2007), *The Personalization(s) of Politics: Israel 1949-2003*, in *Political Communication*, 24:1: 65-80

¹⁶⁸ The winning party therefore, lacks the absolute majority necessary to support a party government. The relative majorities gained by the winner parties can be very low. In 2009 for example the biggest party, Kadima, won the elections with 22.5% of the vote.

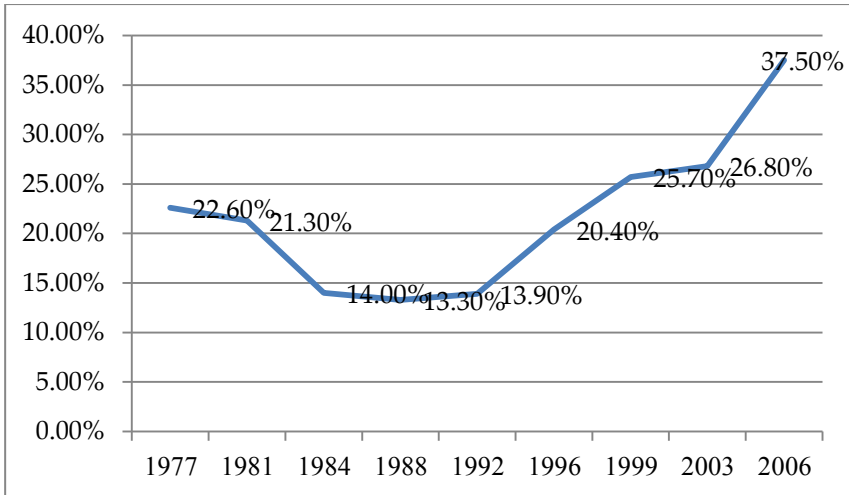
on their preferred party as a single actor but it broadens to the party's orientation for possible allies. If the possible allies are champions of issues or views that are not well seen by the voter, the decision might fall on another party (maybe on the second preferred one. Another reason for electoral volatility might be the multiplication of parties that are often generated by "migrant" leaders. It is quite common for Israeli politicians to leave the old parties and form new ones or to unite two of them. The growing range of alternatives, increased also by new leader-centered parties might cause a continuous fluctuation of non-satisfied electorate. Most of the parties today, have a weak ideological platform if compared to the traditional parties. The loss of the ideological strong loyalty guarantee endangers them even more. The fall of ideologies and the consequent increase in electoral volatility are not an exclusive trait of the Israeli political panorama: disappearing ideological bounds, individualism rises and "issue centered parties" or a strong, popular leadership can easily gain the support of many electors. According to The Israeli Democracy Index 2012, electoral volatility is anyhow moderate and changes on the basis of political orientation. A stronger satisfaction with the representatives of the parties is declared both by leftist and rightist voters. The more undecided ones are those hanging in the center of the political spectrum. For this reason, "migration" from right to left or vice versa is quite unlikely to happen. The more instable electors will be the undecided centrists. In case of a volatile right-wing, or left-wing voter, he will probably move from a party to another without leaving its ideological area (opting respectively for another right oriented or left oriented party)¹⁶⁹.

Kadima's leader, Livni, was not able to form a coalition and the mandate passed to Netanyahu, whose party, the Likud had received 21.6% of the national consensus.

¹⁶⁹ On the short range volatility see also Arian A. & Shamir M. (eds.) (1999) *The Elections in Israel 1999* Albany: SUNY Press.

Figure 15 Electoral volatility (1977 - 2006)

Source: *The Democracy Index 2006*



Participation through Party Membership

Party affiliation in Israel is open to all citizens and regulated by the internal laws of the parties. Being parties under the control of the State Comptroller, all the information about their formal procedures, data on membership, finances etc. are public. Usually citizens are asked to pay a contribution for their membership that varies from party to party. Members are allowed to make donations to parties but these are regulated, like any other donation, by the Law on Party Financing. Traditionally, Israeli parties vested a much broader role than only collector of consensus, aggregator of interests and representation in the elective bodies. Like in many countries, parties' action was extended to the organization of basic social services like, health, education, housing and work (thanks also to other nonparty structures that grew parallel to the parties and had strong links with them. An example of this is the *Histadrut* and the Labor party). Being member of a party gave access to

a sort of "party-system", comprising a broad range of additional service. The model "from the cradle to the grave" applied for a long time also to Israel. Politics played a major role in structuring the social life of many activists. Their social circle was often built around the political activity and their job was likely to be provided, directly or indirectly by the party. Participation in party life was, to some extent, also an effective opportunity for social upgrading: the ethnic fracture that crucially affected the society, at least till the Nineties, was partially reduced through the active involvement in parties' life. *Herut*¹⁷⁰ was considered a big collector of the so called Mizrahi support; the direct involvement often guaranteed the possibility of social integration to members of this ethnic group that for years found itself in a disadvantaged position in comparison to the Jewish population of Ashkenazi descent.

With the dissolution of mass-party model, Israel followed the general Western trend of decreased membership and activism. Furthermore parties, nowadays, do not regard the membership with the same attitude than in the past. In fact, with the time, membership has decreased its centrality as source of economic support. It has been substantially replaced by public funding that today is the main income for political organizations¹⁷¹. Also the functional role of the membership, as the propaganda activity in electoral campaigns, has lost its essentiality with an increasing shift toward professional management of the electoral campaigns. At this regard, Whitley adds that the absorption of parties in the state legal framework led to a stricter regulation and controls that constrained the membership in a much more regulated activity, discouraging the citizens. In the era of digital communication, citizens easily find alternative to the classic party membership, profiting from new spaces for social debate and

¹⁷⁰ Herut is the major right wing party that was created in the beginning of the State. In 1973 one of its leaders founded a new party, the Likud, in which the majority of Herut's factions merged few years later.

¹⁷¹ For a more detailed explanation of the public funding through the Party Financing Law see the previous paragraph on electoral accountability.

engaging in activities that express a political content but are not lead nor pass through the parties¹⁷².

Ultraorthodox parties and in particular *Shas* are an exception to this devolution of the parties as omnipresent actors in the life of their members. *Shas*, which has been studied in many fields of social science as an outstanding phenomenon started in the mid-Eighties and developed in Israel in the mid-Nineties, can still be considered for some features a mass party. *Shas* built a net of consensus and continuous mobilization of its membership with televisions, radios and newspapers. Forms of parallel organizations, which *Shas* is informally linked to, provide to its social target (mainly Mizrahi Ultraorthodox both for descendant and for deliberate choice to adopt a more religious lifestyle) education for infancy, schools and religious seminaries in which the basics of *Shas* ideology and the values of Ultraorthodox life are spread. Youth movements are also massively frequented and they often constitute a big bone of the party activism¹⁷³.

In the last decade, Israel placed itself on the average of other modern countries. A moderate and constant detachment from the parties has been taking place for long time and general disinterest has been growing toward parties' activity¹⁷⁴.

The Israeli Democracy Index 2012 offers an up to date representation of citizens that are supporters, members or activists of a party. Although these labels are for some of the public quite troubled especially when it comes differentiate among them, answers are clear enough to interpret the results without fears of misconception.

¹⁷² Whiteley P. F., (2011). Is the party over? The decline of party activism and membership across the democratic world in *Party Politics*, 17: 21

¹⁷³ The literature on *Shas* is extensive. For a brief but complete overview on the party and its platform see Usher G.,(1998). The Enigmas of *Shas*, in *Middle East Report*, 207: 34-36. See also Lehmann D. & Siebzehner B. (2008). Self-exclusion as a strategy of Inclusion: the case of *Shas* in *Citizenship Studies*, 12:3, 233-247

¹⁷⁴ For quantitative research on this topic and graphic representation: The Democracy Index 2006 (see above), 81-83.

Party Support/Membership/Activism

(Source: The Democracy Index 2012)

	Total Sample	Jews	Arabs
I don't support and I'm not active in any party	75.2	77.2	65.4
I've joined a party but I do not see myself as a member	3.6	2.9	7.3
I support a party but I am not a member	14.2	14.1	14.7
I'm a member of a party	2.7	3.1	1.0
I'm an active member of a party	1.3	1.1	2.6
I'm a member and I hold a position in a party	0.2	0.3	
Don't know/refuse	2.8	9.3	1.0
Total	100	100	100

The impressive number of people who declare themselves almost totally detached from the party system (not supporting and not belonging to any party) pairs with the high number of people who does not see themselves represented by any party. Among these unsatisfied electors, 3/4 of the non-supporting non-members place themselves. The trend is inverted when it comes to activists or supporters. In this case, two thirds of them feel represented by a party. Activists and members sincerely adhere to parties for their commitment to an ideology or, more frequently, for an approach to reality that they share with the party. Activists in fact consider their party significantly different from the other parties, unlike the more "detached ones" who have a more homogeneous (and often negative) consideration of all parties.

Internal life in parties is dictated by parties' regulations and is not possible to trace a general description. Also a detailed one, however, will not be done since it falls outside the scope of this work. A general panoramic, however, is given by a report published by IDI in order to

elaborate a Party Index¹⁷⁵. In this research, aiming to measure parties' internal degree of democracy, the competitors in the last elections (2013) have been analyzed along five dimensions: transparency, accountability, competition, representation and participation. The last dimension in particular is central for the scope of this paragraph and its results are eloquent in describing the current trends in party politics in Israel. The two main parties, Likud and Avoda (Labor) are considered to be the most democratic parties in the whole party system while some of the Ultraorthodox parties like *Agudat Ysrael*, *Degel HaTorah*, are on the bottom of the ranking (together with the Arab party *Mada*), marking the lowest score in any of the dimension (they actually gained only 2 points in total, for the participation dimension). Scarce connection is found between the size of the party (or its positioning in the continuum left-right) and its level of internal democracy. In the fragmented Israeli party system only four party use the primaries method to choose their candidate with closed primaries¹⁷⁶. Ultraorthodox parties usually select their political leaders through the spiritual leader's opinion, which of course affects enormously the general orientation of the party and the approach to the programmatic platform. The phenomenon of leader-centered parties causes in some ways the scarce participation in the appointment of the party leading class and the representatives in the electoral bodies. The new party Yesh Atid for example, that based its campaign on the empowerment of the middle class and a more open and modern way of doing politics, was created and almost exclusively managed by its leader Lapid.

The participation to the programmatic elaboration and the internal democratic process regulating the parties' life also varies in intensity from case to case. In some parties' websites, is even difficult or impossible to access the party statute. This is definitely not a good sign of developed internal democratic rationale and it does not favor the aware participation of citizens. It is clear however that a highly

¹⁷⁵ The Party Democracy Index, (2013), The Israeli Institute of Democracy, at <http://en.idi.org.il/projects/government-and-constitution/political-reform/the-party-democracy-index/>

¹⁷⁶ For a more detailed description of the primaries system in Israel and its legal framework see the previous paragraph on Electoral Accountability.

personalized party or a party in which the central authority is imposed by actors other than the membership (if not directly through some form of congress) will significantly sacrifice a genuine contribution from the base both in designing the program of the party and in its management.

Participation through other forms of associations

One of the reasons why the civic participation through party activism declined is because alternative forms of participation flourished, opening new channels for citizens to deliver political and social messages. In the literature, citizens are told to acquire new roles for participations not only as citizens but for example as consumers (through initiatives of selective buying) and as users of technological tools (that are to be considered not only like media but, nowadays, like real spaces where the interaction take place and where specific norms and codes are in effect).

These forms of participation and expression that are progressively spreading in the Israeli society are parallel (and sometimes used as modality of action) to organized groups that gather a big portion of citizens with various degree of activism and often gain attention at media level as well as at political one. Organizations in Israel are counted to be around 45.000 with about half of them being effectively active. The state inserted these actor in a legal frame for which any organization needs to be registered in the Registrar of Organizations that is supervised by the Ministry of Justice. Every organization needs to produce periodically a detailed documentation about activities and funding. The control is even stricter if the organization wants to apply for governmental funds or for the collection of private tax deductible contributions. These controls and passages require time, precision and competence in fulfilling the bureaucratic duties. The organs in charge to analyze the organization requests are mainly elected bodies at various levels, at last the Knesset Financial Committee. The higher the level of certificate, the smaller the number of organizations recognized. As seen by the above mentioned numbers, the associative world in Israel is quite developed. An extremely vivid social activity is

registered, with interest in various social, cultural and political matters. It is possible to observe that many organizations are structured along the main fractures of the society: several organizations deal with Arab rights (of Arab citizens, Arab residents that do not possess citizenship and Arabs living in the West Bank or in the contested territories); other groups advocate for Israel in the context of the conflict against Arab states; some promote the dialogue and cooperation among the two groups; others foster equality among Jews (among the different religious streams, the ethnic groups, the levels of religiosity etc.). Also the religious organizations and movements that we mentioned above are conducive to this maxi-category. As it has been observed, they propose an insight of how the world would be if those values supported by the political parties that they are close to would become majoritarian¹⁷⁷. A broader generalization is possible in this regard when resembling the bulk of the associative action to a civic struggle over the boundaries and the meanings attributed to the concept of citizenship and over the establishment of a balance between the Jewishness and the democratic feature of the State¹⁷⁸. Organizations can be direct emanation of parties or maintain a close tie with them. Parties are a precious source of support, material and not. An exchange of coverage and visibility among NGOs and political actors are also very common. In other cases, organizations deliberately avoid to be linked with political entities but being their agenda full of social issues that are on the verge of the political debate, their membership is likely to be quite homogenous from the political point of view. The above mentioned issues often overlap in the agenda of the organizations, mirroring the platforms of political areas.

Other organizations active in the society are connected to less divisive issues. This kind of activism found its framework in and has been

¹⁷⁷ Davis N. J & Robinson R. V (2012), *Claiming Society for God: Religious Movements and Social Welfare*, Bloomington: Indiana University Press.

¹⁷⁸ Religion Ben Porat G. & Turner I. S. (eds.) (2011). *The Contradictions of Israeli Citizenship: and, Religion and State*, New York: Routledge and State, New York: Routledge

fostered by the prosperity of the third sector in the country.¹⁷⁹ Organizations dealing with emarginated groups, people in distress, environment, culture and other issues developed during the years, some as a result of international movements or as branches of international NGOs and some as local initiatives that, as it will be argued in the next chapter represent a precious occasion for social integration of some groups and deeper legitimization as citizens.

Participation through protest

A brief paragraph is to be dedicated to the civil participation to the state through a particular mean of expression: protests. Participation is the contribution that citizens give in order to shape the society and entails the recognition (or the will of recognition) of the society in which this participation takes place. Protest is surely to be considered as a fundamental act of participation because the contribution is devoted, in a stronger effort, to change the society. In Israel, the right to manifest is granted by the law. Episodes of tension verify sometimes between the protestors and the police that monitors the protests¹⁸⁰ but protest is still a quite common instrument of participation, which often ensures media coverage and triggers the public debate. The same themes that mobilize the associative net are often brought to the public through public manifestations, especially in concomitance with parliamentary debates on related issues, declarations of politicians, new laws or the verification of particular events.

Frequent protests are organized on the issue of Arab residents' status and rights. In some cases their recurrence became a tool to maintain continuous attention. The continuous mobilization delivers by itself a political message: it demonstrates the commitment of the protestors

¹⁷⁹ Gidron B. (2012), *The Israeli Third Sector: Patterns of Activity and Growth, 1980–2007* in Hermann T. S. (ed.) *By the People, For the People, Without the People?*, Jerusalem: The Israel Institute of Democracy

¹⁸⁰ Episode of tension and, more rarely, of violence, are more frequent in case of protests in the contested territories, initiated by Arab groups or where issues regarding Arab rights and the problematic coexistence of Arabs and Jews in the country.

and the persisting indifference/inability of the political class to find viable solutions.

Religious Jews and secular ones were also very active in the "protest" scene in the last years. Through the protests, they represented their views about old and new social arrangements (one of the most debated issues nowadays is the legislation on military exemption of Haredi young males. Since the Supreme Court urged the Government to find an alternative solution to the expired previous arrangement known as Tal Law, the protest of the two groups exploded. Seculars claim the necessity of the inclusion of the Haredi males in the army while the Haredi community opposes it vehemently¹⁸¹).

One of the most recent massive protests, and an example of participation originated in a digital space (as a confirmation of what asserted above about alternative forms of civic engagement) is the protest of 2011. The event (actually protracted for some months), showed a powerful demand of change in the society along a cleavage that had been considered a minor one in the society: the socioeconomic one. The term cleavage here is not proper since the protest did not exactly traced a division within the society. Rather a broad group, young people¹⁸², directed its claim against the state for the long lasting indifference toward the increasing cost of life and the poor quality of public services. Some sort of socioeconomic cleavage emerged with the continuation of the manifestations within the movement itself. The composite, heterogeneous group of protestors held different prerogatives and views, not only for their different ideological drives but for different socioeconomic backgrounds they came from. Thanks to the survey conducted and published in The Israeli Democracy Index 2012 is possible to observe in the following chart the complexity of the group of protestors and to understand the internal cleavages that

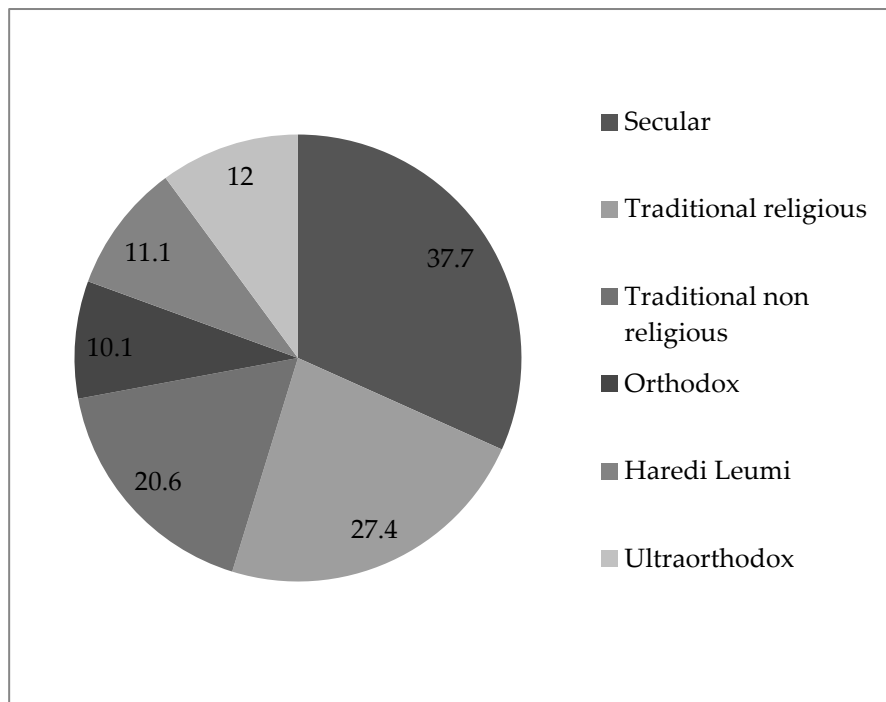
¹⁸¹ The valence of the army service and the debate on it will be analyzed further on and in the next paragraphs.

¹⁸² Not only young people took part in the protest but certainly they were the promoters and the protagonists of the events for all its duration. Among the respondents to the survey of The Israeli Democracy Index 2012 about 30% of young respondents (29.8%) and middle aged respondents (27.5%) took part to the protest while only the 18% of the older adults took part to the protest.

emerged with the time. Since the data below refer specifically to the Jewish group, it is fundamental to add that, also among the Arab respondents, a 15.7% reported to have been involved in the protest (while among the Jewish sample, the reported attendance was 27.6%).

Figure 16 Who took part in the protest (Jewish Sample)

(Source: *The Israeli Democracy Index*)



Participation through the military service

This paragraph goes beyond the strict application of the TODEM model and rarely will be found in other case studies. As it regards participation in the army, two options are describable in general terms: in some countries the army service is voluntary (with further

possibility for military career) while in others is compulsory. A higher valence as a participation means might be attributed in voluntary systems; Israel is not included in the latter group. Military service in Israel is compulsory for men and women for a period of respectively 3 and 2 years. Specific groups, however, are granted exemption through different methods (Arab citizens for example are exempted unless they volunteer while Ultraorthodox yeshiva students can postpone indefinitely the enlistment). After the compulsory period, reserve service is periodically requested (though not completely compulsory) till the age of 35 (this case regards primarily men; women usually are not called to reserve).

The army service, even though not definable as a spontaneous act of participation can be regarded as a crucial moment of participation in the State, i.e. legitimation and self-legitimation as citizens. This particular connotation is evident if considering the prominence attributed in Israel to the army service. The army period is considered a crucial developmental stage for Israeli youth and its power of integration and strengthening of an Israeli identity recognized both as an ideological tenet (it is important to note that the role of the army in the process of nation building is not exclusive of Israel) and as an academically observed phenomena.¹⁸³

The dynamics that Levy defines as Republican Exchange for which the state would grant rights, services and protection to the citizens in exchange for their military sacrifice¹⁸⁴ has been overcome in the Israeli society. In Israel in fact, the enlistment in the defensive body became one of the main ways to be legitimized as full citizens and to express the total adherence to the state.

Helman, in a qualitative study about the reserve service, depicts a very vivid picture of the perception of the military service among Israelis. According to Helman the military service is perceived as a political responsibility and a moment of integration of the individual in a

¹⁸³ Ben Shalom U. & Horenczyk G (2004), Cultural identity and adaptation in an assimilative setting: Immigrant soldiers from the former Soviet Union in Israel in *International Journal of Intercultural Relations* 28:6: 461–479

¹⁸⁴ Levy Y. (2011), Military hierarchies and collective action in Ben Porat G. & Turner B. S. (eds.) *The Contradictions of Israeli Citizenship: Land, Religion and State*, New York: Routledge

community. Participating in the army expresses commitment to certain goals that are shared by other people, unknown till the enlistment. During the army experience, bonds of national solidarity are established among individuals that were strangers to each other till that moment. A new community is created on the basis of the shared commitment to this supreme value that is the defense of the country. From the case studies is possible to evince how the sense of belonging to this community is perceived as empowering. In the imaginary of the respondents in fact, this is the legitimizing key for a full participation in the civil society.

In the Zionist ideology, of which basically any sector of the Israeli socialization is imbued, the patriotic rhetoric and the collectivistic attitude are focal points. The daily diffusion of such message (especially in the past) and the experience of the army that interested the majority of the population reinforced the perception of the military service as the normality. As a consequence, the basis was created for the marginalization of those groups that do not partake in this experience. The abstention from the military service is considered to be a deviant behavior and, as a consequence, entails to a lower degree of social legitimization. The investigation conducted by Helman proves that this attitude persists also as it concerns the reserve service, proving the ideological meaning that Israelis attach to this kind of social participation. In the eyes of the tested population, the fulfillment of the military duties has an immediate repercussion in terms of possibility to legitimately take part in the society; without the accomplishment of this social duty other forms of social participation are deprived of their meaning and most of all the experience of "Israeliness" is not complete. Following this rationale it is clear why participation through the army is a particularly interesting case for our study. In the popular imagery (elevated to state ideology) the boundaries of the Israeli nation are shaped by this experience. It creates a very specific idea of Israeli national identity, triggering discriminatory dynamics that will be the object of future paragraphs.

2.5 COMPETITION

This paragraph might appear shorter and, at first sight, less complete in the analysis of the topic. Actually, this is due to the very nature of the dimension, which includes many aspects that are related to other dimensions that have been previously described. Competition is an essential feature of democracy because it incarnates the freedom of presenting political alternatives and to engage political battles to affirm them in the society and in the representative bodies. The presence of more than one party (and in a broad sense the legal possibility of forming new parties and the limited and equal requirements necessary for the creation of a new party and for its presentation in the electoral competition) is the basis for establishing a competitive system. A stable and fair regulation on electoral campaigns and party funding will guarantee the competition on the vigil of the elections, ensuring that citizens will be allowed to choose according to their preferences and that parties will be actually able to present their alternative proposals to the electoral body. The electoral system represents a further step, greatly affecting the degree of competition within the decisional organs. Different electoral systems will provide with different results, and will enable parties with different amounts of powers. The distribution of power will shape the ability of the parties to carry on their agenda and to manifest their dissent to the executive and legislative initiatives. Mechanisms affecting the autonomy of the single elected representative are also to be considered effective causes of an increased or reduced competition. According to the political culture and the dominant state ideology, limits might be posed by the law to the expression of specific ideas or to behaviours considered to be beyond the line of acceptability. This varies from system to system and, is determined by values that are part of the state dominant identity¹⁸⁵. The quality of competition can also vary along the time, due to social changes (also technological) and the emergence, disappearance,

¹⁸⁵ The roots of these limitations are usually to be found in the dominant collective narrative. The prohibition of the formation of the fascist party in Italy is a typical example. Even if, in many countries, they have a mostly symbolic meaning, they are to be considered, nonetheless a constriction of competition.

intensification or weakening of social cleavages. Parties' purpose is to gain popular consensus and adapted strategies are set in order to pursue this scope.

Competition among political actors: the progressive fragmentation of the Israeli party system

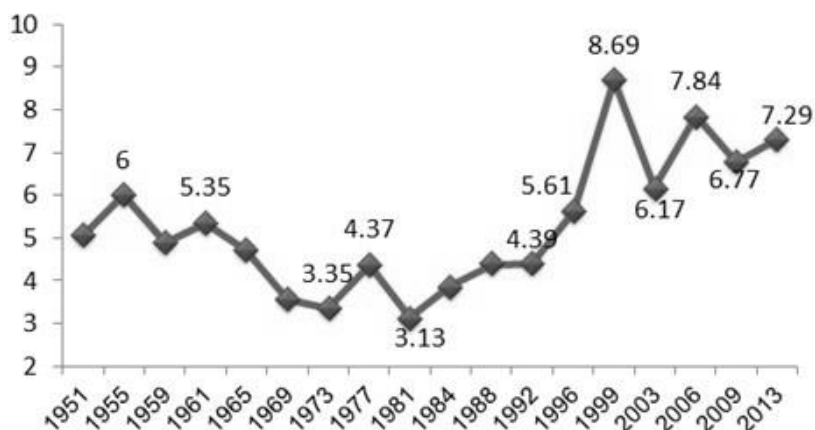
As explained in the section dedicated to Electoral Accountability, the possibility of forming a party in Israel is open to every citizen who, in agreement with other 99, undergoes a quite fair bureaucratic procedure (mainly presentation of documents) and registers the new political formation in a public registrar. A similar procedure is set for the participation in the elections. Israel has been experiencing a huge proliferation of parties since the creation of the State, with recurrent electoral and political unions, transfugism of Members of Knesset that joined other parliamentary groups in the middle of the legislature and members of parties' factions that left their parties to enter in other formations or to fund new ones. The law does not express any prohibition on this regard favoring freedom and a certain political dynamicity.

The number of parties that presented lists in the elections have been always quite high (about 30-35 parties, usually) as well as the number of parties that gained parliamentary representation (10-15). The pure number is indicative of the competitive attitude that the political system in Israel adopted since the beginning of its existence, probably being encouraged by one of the most proportional systems in the world. Israel, in fact, adopts a proportional system with a very low threshold (2% as of now¹⁸⁶) and with national constituency. The

¹⁸⁶ The original threshold was of 1%. The first change occurred for the elections of the Thirteenth Knesset (in which the threshold was raised to 1.5%) and again in occasion of the elections of the Sixteenth Knesset (in which the threshold was raised to 2%). Debates over a further rising are very frequent in the Knesset and many bills are proposed at this regard. One of the last proposals is to raise the threshold to 4%. See Azulay M., (May 8,

electoral system therefore, seems to grant competition. The high number of parties concurring in the elections, however, does not explain more than the choice of the political elites of presenting their platforms to the people. In order to understand how the public opinion is divided in Israel and what the relevant political groups in the Parliament are (with evident effects on bargaining dynamics, legislative effectiveness etc.) the calculation of the effective number of parties is necessary.

Figure 17 The Effective Number of Parliamentary Parties

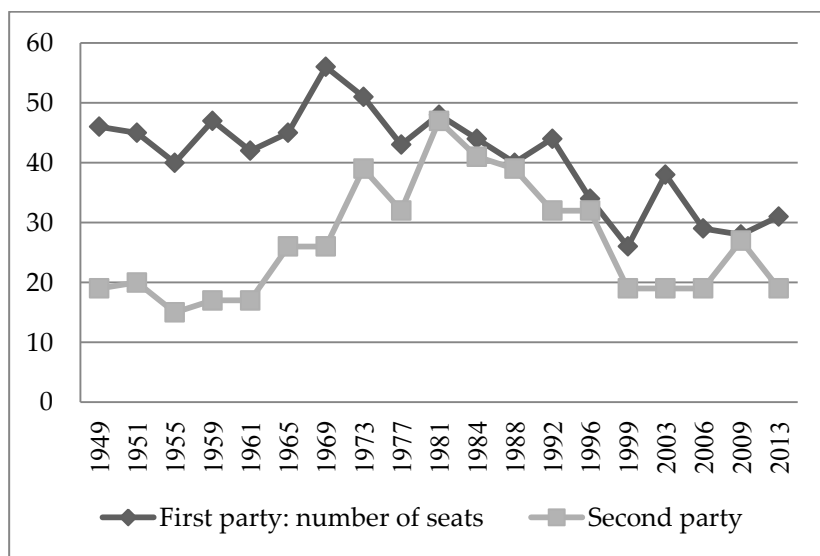


A historical overview of the effective number of parties along the years can be useful to understand the trend of parties' competition in Israel. The moderately high number of parties registered in the early years of the State confirms that the Israeli society, since the establishment of the State, has been divided along many lines and the space of competition has been definitely multidimensional. After the afflatus of the first elections, with the consolidation of MAPAI, the trend decreases and remains relatively low till the second half of the nineties. In the second

2013) Knesset approves Governance Bill in preliminary reading, in Ynet, <http://www.ynetnews.com/articles/0,7340,L-4377769,00.html>

half of the nineties, it jumps to a record, probably as a consequence of the temporary electoral reform that allowed to the electors to split their votes (one vote for the Prime Minister, one vote for the preferred party). The following elections are characterized by a reduced (but still high, except if compared to the earlier period) number of parties. To acquire a more substantive explicative power regarding the dimension in analysis, competition, these data should be considered together with some indication of the power distribution among parties. The most interesting indicator of party power for the research is the parliamentary power, roughly measurable looking at the number of seats that a party has gained.

Figure 18 Electoral gains (seats in the Knesset)



From the chart it is possible to notice that the first party (the one who won the elections; of course it is not the same party in all elections) has progressively lost its power in terms of autonomy, for it has gained less and less seats (the peak registered in 2003 is consequent to the 1999 elections in which, probably, the big parties were weakened by the

electoral reform that discouraged strategic voting). Taking into account the performance of the second party, a different trend is traceable. While in the beginning the gap among the first and the second party is bigger, it progressively shrinks and, starting from the seventies, it almost disappears. In few cases this weakening is well visible because of the overlapping of the lines (the difference between the first and the second party was of only one seat).

Crossing the evidences of the two tables (number of effective parties and gap between the first and the second party in terms of parliamentary representation) it is possible to infer common characteristics of the Israeli competition, marking some eras¹⁸⁷. In the first period, the effective number of parties is smaller than the pure number of actors that actually took part in the elections and gained seats because of the dominance of one party (MAPAI). MAPAI played a decisive role in the majority because it possessed a high number of seats that granted it a good margin of autonomy and a significant power in government (even though, no party has ever reached the absolute majority in the Knesset, dooming Israeli governments to be coalition governments, as in most proportional democracies). The competition among parties was somehow practically diminished by the existence of a colossus (in terms of ability of gaining consensus). The existence of a dominant party will be a trait of the Israeli political panorama till the Seventies. MAPAI in fact, maintained a position of great advantage on the others.

From 1977, when the right-wing Likud gained the power for the first time in Israeli history, the hegemonic constraint to party competition ended. Right and left engaged a political duel that lasted for decades, alternating each other in the government and dividing the electorate much more than in the past. Multipartitism remained a typical feature of the Israeli political arena but, due to the close competition among the two main formations (that gained both large parts of the available seats in Parliament), the effective number of parties decreased sensibly (because of the few seats that remained available). Governments

¹⁸⁷ A similar division is proposed by Stoll H. (2013), *Changing Societies, Changing Party Systems*. Ney York: Cambridge University Press

continued to be formed through coalitions and the winning party had to negotiate with the smaller parties for their support. The littler gap among the two main parties gave the minor groups a higher power of negotiation, undermining the leadership of the majority party and its autonomy in leading the executive.

After the reform experiment, that introduced a "presidential parliamentarism" in the attempt to grant more stability to governments, the bipolar dynamic seemed to persist (even though with a sensible loss of power of the Labor Party, political heir of the defunct MAPAI) till 2006 when a centrist party, *Kadima* took the scene. This party had been established in 2005 by Ariel Sharon, prominent figure of Israeli politics, himself a good example of the above mentioned political transfugism. The new party gathered politicians both from Likud and from Labor. The centrist attitude of Kadima gained large popular consensus, promoting a political alternative on the Arab-Israeli conflict and the territorial issues. Kadima's views merged the willingness to compromise typical of the left wing area with a distrustful attitude toward the Arabs, typical of the right wing parties¹⁸⁸. Kadima gained the majority of votes in two consecutive turns but in 2009 its leader, Tzipi Livni, failed to form a government that was in fact built by Likud. In the last elections, the phenomenon of Kadima had already lost its sparkle, due also to the internal scission that the party went through. Likud regained power (loosing seats though) in a joint list with a sectarian party (Ysrael Beitenu). Another actor emerged, confirming once again the overdeveloped nature of the party system in Israel: *Yesh Atid*, a leader-centered formation that targeted the secular middle class and became the second party in the country.

¹⁸⁸ On the 2006 elections, the power of the cleavages in the competition and dynamics of vote and on the phenomenon of Kadima see Arian A. & Shamir M. (2008). Israel 1996 -- 2006 A Decade Later, the World Had Changed, the Cleavage Structure Remained in *Party Politics*, 14: 685-705.

The effects of fragmentation

Political fragmentation has long lasting repercussions on the relation among parties and deeply affects the ruling dynamics as well as the functioning of the executive body. No party in Israel has ever been able to form a government on its own. The proportional electoral system, originated in the political organization of the Jewish community before the State was formed, was necessary to guarantee representation to all groups and notably increased the likelihood of coalitional governments. Also in periods in which the dominance of MAPAI was overwhelming, the absolute majority was never reached. The Prime Minister however, was empowered by its numbers to detain a certain authority over the coalitional parties and enjoyed quite a large margin of autonomy (sometimes, like in the case of Ben Gurion's governments, this autonomy was exercised at the price of executive crisis). Over the years, a bipolar competition emerged in the multiparty system and the need of negotiating with smaller parties for the survival of the majority became more evident. The weakest the main party, the more difficult have been for the Prime Minister to keep harmony within the coalition whilst playing a decisive role in the governmental agenda. After the elections, usually, an intense negotiation takes place in which the winner tries to find suitable partners to build a coalition. The coalitions have become progressively more multiparty, and this initial phase has been transformed in a complex puzzle to build. Since this early phase, the Prime Minister and his party are forced to narrow their margin of action as leaders of the executive in order to compensate the allies. Small sectorial parties have been constantly protagonists of these negotiations and they have been empowered to fiercely advocate the sectorial instances of their electorate.¹⁸⁹ Sectorial parties have been defined by Stoll¹⁹⁰ as representing ascriptive social groups (like religious or ethnic groups). The scholar suggests how the development of such parties is the result of a lack of integration in the society and in

¹⁸⁹ See Carmon A. (January 30, 2010), Decade in Review: Israeli Governance in Crisis, IDI, at <http://en.idi.org.il/analysis/articles/decade-in-review-israeli-governance-in-crisis/>

¹⁹⁰ Stoll H. (2013), See above.

the political context¹⁹¹. Some sectorial parties acquired in few years a stable minority power that makes them precious allies for a governmental coalition. The experience acquired on the dynamics of the Israeli electoral system and the increasing need of the big parties for coalition partners, trained the smaller parties to valorize their tie breaker position with ambitious request in exchange for their support. Ministerial positions and programmatic issues are essential tools of these negotiations. In the frenetic research of a viable coalition, expertise and personal inclinations are usually a secondary criterion in the allocation of offices, while party games and personal agreements vest paramount importance. The non-negotiability of certain political positions makes the task of building and managing a coalition very hard for the Prime Minister. In fact, it opens a sub-issue: the compatibility among the platforms of the coalition members. Electoral competition is deeply shaped by this issue. Foreseeing the need of negotiation with sectarian parties, the biggest formations are usually cautious in engaging sensitive issues. Declarations that result disgraceful in the eyes of the sectorial parties might prevent a future alliance and since these parties have proved to be quite stable in their consensus, the loss might be costly (also in terms of concessions, whenever the sectarian party would decide to join the future coalition).

The fragmentation of the system generates a difficult management of the executive coalition. Continuous negotiations to maintain the support, a difficult implementation of policies and thus a political instability are quite the norm in Israeli governments. The cabinet is not bound under a strong cohesive power. On the contrary, a long lasting competition goes on. The political coverage of ministries grants them a wide autonomy and power within the government and they keep promoting their party agenda in order to maintain popularity among their target electors. The Prime Minister that formally can destitute ministries and has predominance on the executive, is in fact in a weak position and is not as free to set the pace as the law formally grants

¹⁹¹ Stoll also notes how the effective number of parties increases in correspondence of an immigration wave, as to demonstrate how the need of political integration of the new citizens is not satisfied by the existing offer. Therefore, encouraged by the proportional system, they create political new alternatives to represent their agenda.

him. In order for the government to reach a homogeneous position, huge intra-coalition diplomacy is deployed. Problematic issues are regarded with fear in the executive body for their divisive potential (that might be lethal). The prevalent adopted strategy ends to be postponement, till a safer political moment arrives (or for the next government to come). Certain matters are deferred to the last urgent moment in which everybody is compelled to unity by the absence of an alternative.

Ideological distance and political cleavages

The ideological polarization of the Israeli party system and the competition among them has undergone centrifugal and centripetal phases. Mendilow reports that in the early days of the State, there was a neat ideological difference among parties. The differences among platforms included substantial issues regarding the main features of the new State. Differences between parties contrasted with a relative internal homogeneity, preserved under the vessel of ideological credos. Coalitional dynamics, however, dictated at that time the necessary ideological renounces to share the power. With the bipolarization of the competition, parties with relatively close orientation started making electoral or political alliances. The respective ideologies ended up merging and two quite stable political blocks emerged. A bipolar competition with centripetal tendency came as a result: the two blocks moderated their ideologies, competing for the median electorate. In the Eighties, after the wars and the emergence of a strong nationalism of religious inspiration, competition polarized again. Therefore, extremist parties broke the equilibrium of the centripetal competition and tried to acquire the less moderate voters, unsatisfied because left without an alternative¹⁹². The revenge of the center arrived in the mid-2000 with the phenomenon of Kadima and partially continued with Yesh Atid in

¹⁹² Mendilow J. (2003), *Ideology, Party Change, and Electoral Campaigns in Israel: 1965 – 2001*. Albany: SUNY Press.

the last elections (during which also the Labor, tried, without success, to move to the center in the attempt to recuperate some votes).

Despite the tendencies of the competition, it is possible to say that Israeli parties cover a broad ideological spectrum, even though with a weaker impetus toward the left. Competition in the country takes place along several cleavages that have been persisting for decades. The future of the territories and more generally the relations with the Arab neighbors has been considered prominent since the Six Days War (when the territorial issue emerged, following the capture of those territories by the Israeli army). The centrality of this topic is absolute and its power of shaping the consensus has been clearly understood by the political leadership who heavily addresses the issues of security, territories and conflict in every electoral campaign¹⁹³. The resistance of such an issue is due not only to historical reasons but to the persistence of a regional instability in terms of foreign relations with the neighbor countries. The risk of conflict is always perceived as extremely high and the internal unrest of the Arab countries in the Middle East is followed with preoccupation by the Israeli public opinion. Moreover, frequent skirmishes at the borders and acts of terrorism keep high the level of alarm. As an evidence of the supremacy of this issue, Arian and Shamir notice that any party, which seeks to acquire a stable role in the Israeli party system, must to address this topic. The explanation that they provide is that the conflict is not simply a foreign affairs issue. Instead, it is correlated to the Jewish-Zionist identity issue that, in front of this topic, reacts with strong cohesion, sweeping away the collective identity dilemmas¹⁹⁴.

The defense of the Land of Israel (Eretz Ysrael, as a biblical concept, referring to the land that was promised by God to the Jewish people to dwell in and to live in as a nation) is strongly connected with the

¹⁹³ The power of the security issue and military intervention as characterizing the pre-campaign period in 2009 is exposed in a broader analysis of the 2009 elections in Sznajder M., (2010) *The 2009 Elections in Israel*, Institut Europeu de la Mediterrania, at http://www.iemed.org/anuari/2010/aarticles/Sznajder_elections_en.pdf

¹⁹⁴ Arian A. & Shamir M. (2008), see above.

Jewish identity and so is the perception of the destructive threat coming from other populations (also of religious reference). They are perceived by most religious, especially the Zionist streams as a comprehensive topic whose solution urges for material and for spiritual reasons. A strong push to religious nationalism came after the Six Days War. This ideological "renewal" was translated, on the political side, in a stronger support for right-wing hawkish parties. Religious parties became gradually more exposed on the issue of the territories and in virtue of a more similar view on this topic, implicitly declared their preference for an alliance with the right-wing parties (even those of secular origins, like Likud). Both the alliances with-right wing and left-wing parties did not prevent religious formations from promoting their agenda. Conservative policies are the main topic of the religious agenda, whose roots are based on the religious tradition and on the desire of safeguarding and expanding religious institutions that constitute the core around which the religious community preserve itself. Religious parties in fact are the main representatives of another cleavage in the society: the secular-religious one. Religious parties are not the exclusive recipients of the religious vote, also because the Jewish religious world in Israel is articulated and different positions can be found among those who define themselves religious. Many religious people vote for traditional right-wing parties; some are closer to the left and other engage centrist projects like the one of Lapid, who expressed his negative views on the different social arrangements granted to the Ultraorthodox communities. Nonetheless, the fracture is evident and it shapes the electoral competition and the political activity dividing it in two groups: those who intend to relegate the religiosity to the personal sphere, with no interference or support from the state; and those who support a more penetrative role of religion in society, as an indispensable part of the national Jewish identity. These contrasting views clashes continuously because of their pervading nature in daily life and because of the governing arrangements that impose *de facto* some religious control over the life of all Israelis, independently from their will (the respect of the kasherut in public places, the religious authority in matters of personal status etc.)

Compared to the previous two, the socioeconomic fracture has proved less divisive and less urgent in the political discourse. However, in the last two elections (2009 and 2013) the topic emerged more consistently, due to the international crisis and to the social protest that in 2011 exploded in the streets. More dedication in improving social justice and the conditions of young people was requested to the Government. As a result of the extensive public debate that the claims triggered, the 2013 electoral campaign saw social issues in the first line. Socioeconomic and religious fracture overlapped in the public discourse. In particular the enrollment of Haredi men in the army as a contribution to the State and the public funds to the religious institutions and communities were seen by the secular group as an illegitimate expense because of the scarce contribution of the Haredi group to the common good. In the agenda of Yesh Atid, this rationale took a central position.

Personalization of the Competition

The Israeli electoral system does not allow citizens to express preference for specific candidates and the national constituency weakens a direct link between candidates and a certain community/geographic area/group of electors. These mechanisms should discourage the establishment of personal links and of a personalized dynamics of competition. However, in line with the global trend of personalization, Israeli politics has slipped toward a more individualistic competition and political dynamics. In fact, it has been noted that a certain institutional personalization has been developing since the Nineties, following the electoral reform. Even though the popular election of the Prime Minister was later abolished and the traditional proportional list modality was restored, the figure of the Prime Minister has been formally strengthened by the power of dissolution of the Parliament and by the institution of the constructive non-confidence¹⁹⁵.

¹⁹⁵ Balmas M. et al. (2012), Two Routes to Personalized Politics. Centralized and Decentralized personalization, in *Party Politics* 1-24.

Another "semi-institutional move" toward a more personalized system is the institution of primaries as a method candidates selection. These changes, which have been described in previous paragraphs, contributed to the shift of attention and political relevance from the parties to the single politicians.

Electoral competition has been deeply influenced: primaries for the selection of the candidates took the form of a party electoral event, necessary to mobilize the members and to gather them in view of the imminent electoral appointment. Membership in fact shrunk not only in numbers but in terms of assiduity of participation; events like primaries can be useful to close the ranks.

Medias' approach to the coverage of politics has changed also. The focus shifted to party leaders, relegating the parties in the shadow. Simplification and shortening of the messages, as well as dramatization and research of newsworthy details better apply to individuals rather than to formal institutions like parties. Even in a highly regulated framework of rules governing the media coverage of politics, politicians learnt rapidly how to use television and the other media to gain personal popularity and to increase their public appeals. Opinions are presented within the media format and using media language. Politicians' appearance in media events is guided by image consultants and spin doctors that try to maximize the profits from media exposure. A careful job on politicians' aspect, on the most appropriate topic and vocabulary is made by these professionals. Communicative talent became a big advantage that sometimes proves more effective than solid political contents.¹⁹⁶ As a new precious tool for electoral competition, the internet is used by many candidates to establish a more direct form of communication with the electorate. Special attention is dedicated to candidates' personal websites. Through the analysis of personal websites, researches¹⁹⁷ show an individualization of political communication and a neat detachment from the parties. An intensive use of the internet is recognized as a method of bypassing the

¹⁹⁶ Livak L. et al. (2011) MK websites and the personalization of Israeli politics in *Israel Affairs*, 17:3: 445-466

¹⁹⁷ Idem.

filter of the media and the political parties, to gather activists and to advertise events.

Personalization affects relations among parties not only in the electoral competition. Party discipline has sensibly given away to a more personalized approach to politics, both of ministries and of MKs. Coalition commitment that should strengthen the authority of the Government and facilitating the Knesset support is reduced in a considerable way. For this reason, loyalty has to be secured on the basis of personal bargains, with the risk of weakening the autonomy of the Prime Minister and of increasing the size of the Cabinet till becoming dysfunctional. Politicians find more profitable to satisfy the sectorial interests of their constituency and do not have incentive to behave according to the parties' directives. Populist tones prosper in the legislative body and the number of private bills has exponentially grown. Especially in the case of parliamentarians elected through primaries, their appointments do not depend on the parties; therefore, they direct their efforts to secure their popularity in view of a possible imminent electoral turn. In this atmosphere of permanent campaign, personal image acquire a disproportional value. Strategic advisors and media consistently influence the governmental activity of ministries and MKs at the expense of a genuine and totally dedicated executive activity.

The effects of personalization in the electorate are demonstrated in The 2012 Israeli Index Democracy where an appealing leader results to be the main determinant for vote decision among Jewish Israelis. This dynamic of course, promotes a more extemporaneous approach to the vote, detaching it from ideological constrains and party loyalties. Volatility grows. Gaining electoral consensus becomes more and more a mission that entails leader's appealing image, communicational skills and catchy contents. The successful Yesh Atid party seems, in a way, to be the example of these personalized political features. Yair Lapid, a popular journalist who created and assumed the leadership of a new party, based its consensus on a platform dedicated to the middle class, presenting himself as the interpreter of the diffuse discontent for the socioeconomic situation and riding popular issues within the religious-secular cleavage.

Extremist parties and competition

As said, party competition develops along social fractures that deeply scar the society. Inevitably therefore, ethnic conflict becomes a significant dimension. Ethnic fracture is certainly the most explosive in the country and episodes of violence and intolerance are registered frequently. The main source of ethnic conflict is the difficult coexistence between Muslims and Jews. The repercussions of such conflict are not only in daily life but also in the representative bodies. Violence in its physical form is much more common in the civil context, both in mixed cities and in more homogeneous environments. The tension between Arabs and Jews is always quite high. More than extremist organized groups, a number of extremist individuals are acting, often with massive violence, on the wave of extremist ideologies on both sides. Occasionally, clashes between Arabs and Jews result in aggressions also with dramatic consequences: it is not infrequent in fact that episodes of stabbing and lynching are reported by media. These crimes have a high emotional impact on the population, are passionately followed by public opinion and foster fervid debates in which the ethnic fracture is analyzed under different point of views (often contrasting, according to the political views and the ethnic belonging). During these debates, many other related sub-issues are brought on the table. The response of the Government to these extremist acts is prosecution and condemnation. Nonetheless, they represent a major problem in the achievement of social and political stability.

Some very sporadic episodes of violence have been registered also among Christians of different streams. Even though Christian minority is known to be rather pacific and more extraneous to the use of violence, some cases of violence happened. The fight between Greek and Armenian clergy that took place in 2008 in the Church of the Holy Sepulcher is quite emblematic. This episode is the evidence of a much tensed situation that involves not only classic ethnic rivalries but also

inter-ethnic or minor ethnic contrasts over concrete and symbolical issues.

A more unique extremist group (if to say so) is the Haredi "modesty police". This ultraorthodox group is one of the top manifestations of ultra-religious Jewish extremism and even though not many indictment actions are usually taken against the perpetrators of these acts (because of the strict secrecy of these groups and some conspiracy of silence in this community), media report them and open the way to public debate. This group represents a serious threat to the authority of the State inasmuch as they self-appoint as patroller of specific areas in many Israeli cities and aim to enforce a strict set of rules derived by an extremist interpretation of the religious sources. Their punitive code consists not only in verbal threat but also in physical one (with assaults, throwing of rocks, water and acid) as well as in damaging properties and private goods.

Social extremism, whose roots are in the deep social cleavages, has its counterpart in the political scene. Therefore, at political level, extremist acts are perpetrated too, even though most rarely involving physical violence. The law¹⁹⁸ forbids the electoral participation to parties whose programmatic platform implicitly or explicitly negates the existence of the State of Israel as the State of the Jewish people, denies the democratic character of the State or incites to racism. These are the forms of forbidden extremism that are recognized as such and opposed by the law. Evidently, they are not exhaustive of the broad spectrum of extremism that is verifiable in such a divided context. As a consequence, large margin is left for the representation of positions that can generate scandal and bitter fights in the representative bodies. Political debate becomes often radical during the assemblies of the Knesset. The polarization of political debate is of course bidirectional. Once an "extremist" statement is made by the representative of a faction, members of opposite factions respond with equally heavy accuses of treason, racism, violation of human rights etc. Offensive speeches are often directed to Arab Members of Parliament accusing

¹⁹⁸ Basic law: The Knesset, amendment 7a.

them to be traitors of the State and infiltrators of enemy States or terroristic groups. Striking episode of violent political action in the Parliament was the fight among Anastassia Michaeli, member of Ysrael Beitenu (a right wing sectarian party, whose electorate and elected are mostly Russian Jews) and Raleb Majadele, an Arab member of the Israeli Labor party. The fight over a school manager's approval to the mass participation of students to a human rights march, ended up with MK Michaeli throwing some water to her political adversary¹⁹⁹.

Another extreme action that reveals the harshness of the political fight was the participation of MK Zouabi (elected for the Arab party Balad) to the Mavi Marmara mission to Gaza. The mission was a strong message of challenge to the Israeli State and to its blockade on Gaza. The enterprise ended dramatically, with the intervention of the Israeli army and the death of some of NGO's activists. The participation of MK Zouabi had a strong symbolic impact on public opinion and on the Knesset. A strikingly harsh reaction was manifested in the following parliamentary session in which a violent debate took place and the right to parliamentary immunity questioned. One political part defined the action of MK Zouabi as a legitimate tool of political action; the other part saw it as an attempt against the integrity of the State.

¹⁹⁹ Azulay M., (January 9, 2012) MK Michaeli throws water in MK Majadele's face, Ynet, at <http://www.ynetnews.com/articles/0,7340,L-4173224,00.html>

CHAPTER 3

What does religion explain?

In this chapter the connection between Jewish religion and the findings of the previous chapter will be analyzed. Not all the dimensions that have been analyzed have a direct relation with religion but in four out of five it is possible to recognize some influence of religion.

The argumentations in this chapter do not aim to discredit Judaism nor religious people in any way or to attribute them a harmful role in the society. The positions that are attributed to the religious community (especially in the first part in which crime rate and discrimination are posed in connection with religious views and institutions) are of course not to be intended as a homogeneous trait of the entire religious population and it is good to remark how Judaism in Israel (and all over the world) assumes different shapes and degrees of Orthodoxy. It will be remarked several times how variegated the approach to religion can be. Even when the differentiation would not seem enough clear, it is important to clarify that religion here is dealt with as an aggregate social phenomenon and not as a personal one. Different interpretations of the religious principles (or the emphasis on one predicament over the other) are always possible. In Judaism in particular, this has been generating a continuous debate among authoritative social and religious figures and have been influencing the views and the behaviors of individual and group of believers.

3.1 RELIGION AND THE RULE OF LAW

The analysis of the Rule of Law was particularly extensive due to the importance of this dimension and to its complexity. I argue that, within the area of Rule of Law, two sub-dimensions are especially affected by religion.

As regarding the first sub-dimension, crime rate, religion will be analyzed both on the personal perspective (as a fostering agent in personal criminal activities) and for its role in the state's reaction.

Religion and gender discrimination

a) Sexual minorities

Israel is one of the most advanced countries in the world in the matter of sexual minorities' status. Tel Aviv is known to be an extremely modern city, where the LGTB community has a vivid social life and fair possibilities of professional realization. Same sex marriage is not allowed (see below about rabbinical courts and the exclusive authority on marriage) but the State recognizes unions celebrated abroad, together with paternity-maternity of natural and adopted children¹. Individual freedom is guaranteed by the law and discrimination on the basis of sexual orientation is explicitly forbidden. Homosexuals serve the army and are entitled to the same rights in the armed forces (treatments, tasks, promotions etc.). The legal setting generally grants equality and most of the population does not hold discriminatory views over homosexuals.

In more conservative areas, discrimination and episodes of violence (verbal or physical) have been directed toward sexual minorities. The discriminatory behavior is not a prerogative of Jewish believers and

¹ The recognition was ordered by the Supreme Court in 2006. See ACRI, (November 21, 2006) Court orders the state to register overseas same-sex marriages at <http://www.acri.org.il/en/2006/11/21/court-orders-the-state-to-register-overseas-same-sex-marriages/>

their religious leaders but is common to all three main religions, Judaism, Christianity and Islam. Many leaders of these three religions define homosexual relationships an abominable sin, a mental deviation and an intolerable social conduct in light of the sacred laws. Christian churches express condemnation against homosexual acts in official documents and declarations², taking inspiration from the Old and the New Testament and defining it a sin that needs to be repented in order to be reintegrated in the religious community³.

The Quran explicitly teaches that homosexual practices are beyond the limits that Allah posed to men (the story of Lot in Sodom and Gomorra is emblematic in this regard). While in ancient times the admiration for young virgin boys was described as a common occurrence⁴, the rejection became progressively stronger and homosexuality intercoursed became a crime punishable with imprisonment, economic or corporal sanctions and even death.

In Judaism (Orthodox and Ultraorthodox in particular) the source of such discriminatory attitude can be found in religious normative literature as the Torah and the Talmud. The most known sentence is from Leviticus: a passage of this book warns against same sex physical intercourse, defining them as an abomination. The practice of homosexuality is recognized as originally exogenous from the Jewish people that allegedly was chosen, among other reasons, for their immunity to homosexual behaviors. Rabbinical interpreters retrieve this information from another passage in the Leviticus where the Jewish people were warned not to assimilate to other people's conduct (referring, according to the interpretation, to homosexual practices). According to this rationale, the fact that other communities perished under the wrath of God would prove that their conduct was unfortunate and that it should not be imitated.

² For the Roman Catholic stream, see among others, the Catechism of the Catholic Church, part 3, section 2, chapter 2, paragraph 2359. In this paragraph, homosexuals are recommended to observe a chaste life.

³ In many official documents of the Evangelical Presbyterian Church is possible to read that homosexuals must repent to remain Christians and to be accepted by the religious community.

⁴ See Abu Nawas, one of the most famous Islamic poets

From a survey conducted in 2009 among about 500 Israelis⁵, a correlation emerges between discriminatory attitude against homosexuality and religious observance. 71% of the interviewed Ultraorthodox Jews 67% percent of Orthodox Jews, as well as 44% of so called Traditional⁶ Jews defined homosexuality a perversion. The percentage of people who defined homosexuality as a perversion decreased sensibly within the secular population (24%).

Studies proved that the intolerant views toward homosexuality in religious communities are not only a consequence of a religious strict observance but are the result of a close and homophobic culture. These elements contribute to the rejection of sexual behaviors that are considered deviant and push some of the members of these communities to verbally (or in worst case physically) discriminate homosexuals.⁷ Shapiro Safran explains that in the case in which a "perceived deviant behavior" was showed by a member of the community, the stigma would echo also on the close and large family. Sometimes, "normalization treatments" are offered. This proves that homosexuality is perceived as a sick condition against which medical or para-medical tools can be used. The acceptance of such option is often a *sine qua non* to remain in the community. The high social pressure could force individuals to choose between the devotion to their community and their sexual identity⁸. In such cases a very interesting phenomena is also noted: a difficult process of acceptance of the self, due to discrimination and pressure from the original community, is often aggravated by a non-complete acceptance from

⁵ See Ilani O., (2009, August 6)"Haaretz survey: 46% of Israelis thinks gays are deviants" in Haaretz, at <http://www.haaretz.com/print-edition/news/haaretz-survey-46-of-israelis-thinks-gays-are-deviants-1.281474>

⁶ The definition of "traditional Jew" is quite broad. In general, traditional Jews respect some of the religious practices mainly linked to traditional aspects.

⁷For a detailed quantitative study on American Orthodox and Ultraorthodox communities' approach to homosexuality see Shapiro Safran R., (2012) A Multidimensional Assessment of Orthodox Jewish Attitudes toward Homosexuality. Seton Hall University.

⁸ See Chabin M., (2012, June 13) Gay Orthodox Jews See Growing Acceptance In Israel in Huffington Post at http://www.huffingtonpost.com/2011/06/13/gay-orthodox-jews_n_876296.html

the gay community. Being the homosexual community frequent target of religious-based condemnation, the religious world is looked at with suspicion. Due to their social provenience, religious homosexuals might have a more difficult integration among the homosexual peers.

A more open attitude is however developing in the religious world. A growing number of religious scholars and rabbis are elaborating more moderate positions on homosexuality and even expressly calling for the end of discriminatory behaviors. This progressive stream asserts that Jewish gays should be recognized as members of the Jewish people despite the gravity of the transgressions that they are inclined to commit to satisfy their inner tendencies. These experts refer to the writings of the Sages and remark that every Jew should be welcomed and encouraged to stay in the community despite his sins. Nonetheless, homosexual practice is looked at with contempt. These tones, have been adopted by some Haredi rabbis in their "Torah Stance on Homosexuality", a document that was made public in 2011 and that called for the unavoidable necessity of psychological and spiritual rehabilitation. Rabbi Botteach, in one of his papers, equated homosexual behavior to the transgression of Kashrut or Shabbat. With this comparison, he showed how not even the transgression of one of the most sacred commandments (also sanctioned with death in the Torah) can be punished with the estrangement from the community⁹. Beside this distinction between sin and sinner (that Judaism has in common with Christianity), another distinction is made. Judaism separates between the sin as a desire and the sin as an act. Every human being has the natural desire and inclination to sin but the interior struggle and a successful result ensure the closeness to God. Torah commandments therefore are not meant to be insurmountable: anything can be achieved through commitment and sacrifice. Some rules are also given by the Sages in order to lessen the temptation: in specific eras for example, men were forbidden to enjoy the exclusive presence of one another (in order not to be tempted). Rabbi Nachum

⁹Botteach, S. (1994) *Moses of Oxford: A Jewish Vision of a University and Its Life*. London: Andre Deutsch Ltd .

Amsel¹⁰ explains the dichotomy between desire and act through a Midrash¹¹: "A person should not say I do not desire pig meat, I don't desire that thing (that is forbidden). Rather (he should say): -I do desire (it), but what can I do? My Father in Heaven commanded me (not to partake in it)." Through this comparison it is evident the logic of acceptance of the potential desire but also the implicit request not to satisfy it, refraining from living a "sinful" sexual life. Whether homosexuals should remain single or should form a heterosexual family is also under discussion in the rabbinical environment. However, idea of self-control and continuous struggle against the inner sexual impulse encounters a shared consensus in the Orthodox community. Evidently, the Jewish Orthodox attitude toward homosexuality is still quite rigid even though, nowadays, more open religious approaches have been advocating for the respect of human dignity and for the separation between sin and sinner. Rabbinical discussions at high level, however, represent a vanguard and cannot be taken as widespread positions. As stated before, the stigma around homosexuality is still strong within the Orthodox community (especially in some ultraorthodox circles). Many believers remain attached to the strictest and oldest Halachic interpretations, fomented by community practices and segregated lifestyle. The most conservative rabbis, moreover, encourage a strict interpretation of the norms, claiming that modern openings to homosexuality are the consequences of politically-driven exploitation of the sacred scriptures.

A discriminatory attitude is more spread in the society than in the legal and political framework. This does not mean that the quality of democracy is not affected by such manifestations. Beyond singular episodes of intolerance that are difficult to report and, as episodes, have scarce significance, the intolerant behaviors has manifested repeatedly. In the occasion of the 2005 Gay Parade in Jerusalem three people got stabbed by the participants to a counter-manifestation of Jewish

¹⁰ Amsel N., Homosexuality in Orthodox Judaism at http://www.lookstein.org/resources/homosexuality_amsel.pdf

¹¹Yalkut S. Midrash Vaykira 20. The Midrash (lit. exegesis) is a form of rabbinic literature. The Midrashim can be divided in two types: Midrash Aggadah (which explores ethics and values in biblical texts) and midrash Halacha (which focuses on Jewish law and practice).

Orthodox and Ultra-Orthodox believers. The stabber was condemned for his crime but the religious wrath was not stopped. In the following editions, other counter-demonstrations were organized and harsh verbal treatment was reserved to the participants to the Gay Parade. In 2010 Baruch Marzel¹², one of the leaders of the counter-demonstration, commented to Haaretz: "It (homosexuality) is a disease of choice, and a man can change his taste and his ways...when someone has AIDS they tell them not to infect others, so why are these people allowed to march here in Jerusalem and infect us with their disease?"¹³.

Despite State's general commitment to protect sexual minorities and to promote full equality, the political debate is influenced by diverse positions, some of them extreme. The sensitivity of the issue is perceived in the Parliament. Members of religious parties opposes regularly to demonstrations promoted by organizations that defend homosexual's rights, especially if the events have high symbolic relevance or if they are to take place in Jerusalem. In the last years amendments have been proposed to ban gay parades and rallies. The motivations adduced are public disturbance, offense to the public morale or religious considerations. A Shas MK, Nissim Zeev, defined oftentimes homosexuals as a plague for the society and a threat for the existence of the Jewish State. He proposed an extensive campaign for the recovery of homosexuals in rehabilitation centers where they could undergo "normalization" treatments (adding that the treatment should be mandatory for homosexuals who break the law)¹⁴. In 2007, the same MK declared that he was ready to promote a bill that would ban gay sexual relations if a sufficient political consensus was found in the

¹² Baruch Marzel is a well-known right wing activist in Israel whose extreme positions in various fields often earn him the prime scene. He was affiliated with many right wing political parties, He was a candidate for a small right wing party during the last Knesset elections but the party did not reach the electoral threshold.

¹³ Kyzer L., (2010, July 29) Anti-gay protesters: Sick perverts - get out of Jerusalem in Haaretz at <http://www.haaretz.com/news/national/anti-gay-protesters-sick-perverts-get-out-of-jerusalem-1.304824>

¹⁴ Zino A. (2008, January 29), MK Zeev: Gay 'plague' could destroy Israel" in Ynet, <http://www.ynetnews.com/articles/0,7340,L-3500042,00.html>

Knesset.¹⁵ Also inside the Likud, one of the two biggest parties in Israel since the Seventies, representing a laic right wing, some internal factions have been promoting much conservative views on gender minorities. Emblematic is the figure of Moshe Feiglin who openly declared in 2009 to be a proud homophobic and refused to confront with organizations that engaged in the defense of homosexual's rights in order not to legitimize these movements. Only recently Feiglin denied his position, maintaining however that, despite the respect for homosexuals as human beings, he will oppose any attempt to spread in the countries values that are dear to that community¹⁶.

Leaving the most critical voices aside, the Knesset has been often accused of scarce activism in improving the rights of sexual minorities in Israel. Nitzan Horowitz (from Meretz, a left wing party that has been present in the Knesset with an average of 5 seats in the last 10 years), is one of the most committed MKs as it regards sexual minorities rights. He proposed in 2012 a bill that would allow gay marriage (as well as interfaith one. The bill was rejected with a result of 11 in favor and -39 against. Accusations were made by the proponent of the bills and by the supporting group. The Government was blamed for trading social progress for coalition interests and for being hostage of the extremist religious logic that would let the majority of the secular population without representation¹⁷. Coalition interests undoubtedly play a strong role in this kind of issues; religious parties are basically always involved in Government coalitions (both led by right and left wing parties). They strongly oppose any controversial issue that might endanger their sets of values; their opposition (or better, the abandonment of the coalition) might mean the end of the Government. Moreover it is to note that also the leading parties (in particular the Likud) have factions that appeal to a religious or very conservative electorate. This creates internal divisions on sensitive

¹⁵ Meranda A. (2007, June 21), Shas MK Proposes 'rehab centers' for Gays in Ynet at <http://www.ynetnews.com/articles/0,7340,L-3415870,00.html>

¹⁶ Elis N., (2013, July 2) Feiglin tells 'Post': I am not a homophobe in Jerusalem Post, at <http://www.jpost.com/NationalNews/Article.aspx?id=302560>

¹⁷ Harkov L, (2012, May 16) Knesset rejects marriage equality bill, in Jerusalem Post at <http://www.jpost.com/Diplomacy-and-Politics/Knesset-rejects-marriage-equality-bill>

issues that are likely to push the global equilibrium toward more moderate approach. The result and the scarce attendance to the vote in fact, enlighten how the issue is generally perceived as a minefield in which also the non-religious-bound- MKs (or the non-coalition-bound-ones) prefer not to go into. The direct and the transversal impact of religious positions causes the legislative body to progress with difficulty on this path of integration and struggle for equality. Even if, in general, the country can boast a modern and quite progressive position on sexual minorities issues, any further progress (with an adequate and complete legislative apparatus) and the fight against discrimination (through the equalization of sexual minorities status) becomes every time a critic political and social issue.

Women

Another serious discriminatory attitude that is traceable in the society despite the general commitment of the State to avoid it, is the discrimination against women. Violence against women is an unfortunate widespread phenomenon all around the world, without exception for the "well civilized and liberal Western countries". An increasing sensibility has been growing on the issue to prevent violence and discrimination of any kind included the domestic one. A comprehensive regulative framework aiming to protect women's right, to defend them from violence and to valorize them in the society is one of the basic indicators of a country's social development nowadays. The commitment to educate the entire society to respect women and to denounce crimes against them is another basic element. As previously mentioned Israel is a modern country, equipped and committed to protect women. A legal framework exists on this matter and public structures are available to allow women to escape from a violent environment. Gender equality and the emancipation of woman as a fundamental actor in the development of public good is one of the basic ideological tenets of Zionism. It found expression in the socialist culture of the kibbutzim since the beginning of the Jewish enterprise in Israel. Nonetheless, criticisms have been moved about the existence of a patriarchal Jewish conception that relegates women to the role of

mothers and wives in the society¹⁸. This view has been attributed to the classical Jewish view of woman, derived from religious practices and interpretations.

Premised that many women belonging to religious communities (of any kind, also the more strictly observant) enjoy a satisfying life and are free to realize their professional and personal aspirations; premised also that violence, segregation and discrimination are not exclusively ascribable to religious communities but are the result of individual brutality and deviated practices that can be traced in all stratus of the population (both in Israel and in the world) it is worthy to analyze more in detail how some religious predicaments often re-elaborated and crystallized in a closed and stagnant social practice can lead to women discrimination and to a general underestimation of the feminine role in the society.

Holy Scriptures and Jewish tradition assign to women an ancillary position, usually inferior and subordinate to men, with rare exceptions. Beyond physical considerations on biological inferiority (that might have been justified in a period in which biology knowledge was not developed), women have been forbidden to study sacred books for a long time (exclusion that Judaism shared with other religions) and from being ordained leaders of the religious community (trait that, again, is not an exclusive one). A chauvinistic view of women as untrustworthy and inclined to lies and malice spread in the past and still endures, even though mitigated, in most of the communities (women for example are not allowed to serve in the religious judicial bodies and to appear as witnesses). In the event that the malicious nature of the woman manifest, the man is allowed to intervene to re-establish her moral equilibrium or her obedience. This corrective action can be performed, according to the Sages also through physical violence.

The positive function attributed to the woman, usually regards her central role in the family, in her procreative capability her serene

¹⁸ Berkovitch N., (1997). Motherhood as a national mission: The construction of womanhood in the legal discourse in Israel, in *Women's Studies International Forum*, 20:5/6: 605-519.

obedience. When women have these qualities, they can succeed in another fundamental task: to make men's life more complete and pleasant. Religious books praise women for their familiar-care-giver role. Through Jewish tradition (and through the main monotheistic religions), the domestic role of women became popular and commonly accepted for a long time in all Western world. Most religious Jewish communities today regard these concepts with veneration for their sacred or authoritative provenience and at the same time, with a more detached attitude as it regards their applications. For many scholars (especially those following the feminist approach), the justification of this picturesque domestic ideal of woman is only a more gilded way to have a discriminatory practice¹⁹ accepted. More "optimistic" interpretations however can be taken into account as a quite genuine attempt to safeguard sacred concepts or authoritative teachings in the light of a modern approach to Judaism and to interpersonal relations. For example, the popular statement that women have a less stringent obligation to pray and no need for holy garment because of the higher spiritual elevation; the renewed centrality of family and of the raising of Jewish new generation acquired (with a consequent exaltation of woman's role) can certainly be interpreted as attempts to give tradition a new more modern meaning without abandoning the ideal.

The modern interpretation of these ideas is however not equally spread or accepted in Jewish communities. In certain cases, individual and community practices are still strictly related to a literal interpretation of the most discriminative parts of the religious teachings. The community dynamics, at times, are still ruled by obsolete patriarchal logics that entails heavy gender based discrimination. In some ultra-Orthodox communities women are subject to a strict code of behavior both inside and outside the domestic environment. Ultra-conservative views of woman status are applied also to women that are not part of the community. A rigorous application of the concept of *tzinut* (modesty) limits freedom of choice in dressing and in establishing

¹⁹ See Serebro K.L., (2010) Perspectives of Orthodox, Jewish women regarding the perceived effects of Jewish religious and cultural values on women's choices in abusive relationships. Johannesburg: University of the Witwatersrand.

interpersonal relationships. Women are requested to wear long and usually dark clothes. Physical contact (and sometimes also eye contact) is allowed only among the marital sphere (with certain restrictions also in this sphere, on the basis of the physical "purity" of the woman²⁰). The exclusive presence in a closed space of two people of different sex is forbidden as well. In certain neighborhoods special segregation applies also to public spaces. Several attempts have been made (some successful, some not) to set segregated public spaces (walking sides for example).

The contrast with the principles of a modern democratic society is clear. If this segregationist attitude was limited to women that voluntarily²¹ chose to live in these communities and to adhere to this set of beliefs, the "problem" would be only cultural and educational. On the contrary, when discriminatory and segregationist attitudes are extended to all women, independently from their will, they constitute a substantial harm to the quality of democracy. Segregated communities exist in which discriminatory attitudes are the result of a common morale. The common morale is enforced in public and also "outsiders" are subject to it (they must dress "properly", behave "properly" etc.). This marks the existence a State within the State, in which the law becomes somehow subordinate to other ruling principles. In Israel, a woman who lives in or passes by specific neighborhoods (or close to them) can be directly discriminated against if she does not comply with the social rules that the community. Discrimination can consist in social pressure (isolating behaviors of different kinds), verbal or even physical violence. This attitude can be attributed to crystallized social practices and radicalized interpretation of religious norms. In Ultraorthodox neighborhoods episodes of intolerance are frequently registered: spitting to women and young girls (also religious) for their colored (so immodest) clothes, yelling at them offences, assaulting them with irritating spray because

²⁰ The marital physical contact is regulated by the concept of *Niddah* that requires a physical distance between spouses during the menstrual period and about seven days after the end of it (with small differences according to the ritual followed).

²¹ The issue of free will in the adhesion to such a paradigm should be analyzed carefully considering the eventual lack of alternatives, at practical level or at the level of social constrains.

of their forbidden proximity to guys or men²². Also members of the community are punished if they deviate from the behavioral standards. Punitive actions are perpetrated by family members or by organized modesty squads (previously mentioned) that intervene, even with physical power, to "reestablish the morality". Intervening with violence for the sake of an alleged morality is already an abuse. Furthermore, this kind of social dynamic sometimes gives a perfect alibi to cases of more elementary deviant behavior of men who act violently against their wives, sisters, daughters and female relatives. Violent men count on women's submissive attitude that they have been educated to, their difficulty to find a way out from the closed community or their inability to get valid help. Abused women in segregated community are weaker victims because often they do not possess cultural and material strength to rebel. Religious education and values to which they adhere usually proudly and happily are proved to influence women's attitude and choices in abusive relationships. Gender stereotypes are perpetuated by the religious logic, especially when this is strictly applied²³. Graetz maintains that women self-validation through male approval can lead to justify abuses and to perceive them as legitimate educational means²⁴. Sense of shame is also very developed in religious community: damaging the name of somebody is expressly forbidden by the sacred scriptures and a certain hesitation is perceived in denouncing the abuser, especially in the case of family members. Moreover an important religious task that is assigned to women in the religious culture is to keep peace in the house. This concept has been criticized by feminist scholars for the burden that inflicts on women. Women, therefore, are held responsible for maintaining calm and serenity in the home. Doing so, they accomplish the aim of a happy marriage. In case of domestic abuse, the deeply

²² The Associated Press, (2008, October, 4) Jewish 'modesty patrols' sow fear in Israel in NBC News at <http://www.nbcnews.com/id/27023066/print/1/displaymode/1098/>

²³ Serebro K. L.(2010) Perspectives of Orthodox, Jewish women regarding the perceived effects of Jewish religious and cultural values on women's choices in abusive relationships, Johannesburg: University of the Witwatersrand.

²⁴ Graetz N., (1998) Judaism Confronts Wife-Beating in Woman in Judaism in A Multidisciplinary Journal, 1:2.

interiorized concept of *Shalom HaBait*²⁵ can create a sense of guilt in the woman for not being able to maintain a peaceful house. As a consequence she might increase her level of submission in the attempt to reach a more peaceful atmosphere. Beyond the religious personal beliefs, a woman might encounter practical obstacles to rebel to an abusive condition. Especially in the Ultraorthodox world, both for religious and for economic reasons, it is unlikely that an abused woman will inform a lawyer or an external member of her situation of distress. She is more likely to ask for suggestion to a family member or, better, to a rabbi. Since the above mentioned morale is generally respected by all family members (and in case of the parents even enforced by them), sometimes women's request of help are downplayed. Many reasons can lead to ignore women's complain: families might be unwilling to expose themselves to scandals in the community; women's complains might be considered exaggerate; violence might not be seen as a serious phenomenon. In this phase, rabbis have a crucial role. Women who turn to a rabbi to ask for help demonstrate firm trust in religion as an institution and commitment to live according to religious rules. Therefore the rabbi's answer is likely to be accepted and not contested. Rabbis' reaction might be very different from case to case since the position on woman abuse (especially physical) is various. Many rabbis have been taking a clear stance against gender based discrimination and violence. Basing their positions on sacred scriptures and Sages' opinions, they actively cooperate with shelter houses or programs of rehabilitation for abused women. These rabbis would certainly advice the woman to leave the abusive house and even ask for a divorce. Other rabbis, especially in case of nonphysical violence, might instead encourage the woman to tolerate the situation, minimizing the abuse as a sporadic episode and reminding the woman of her sacred duty of keeping *Shalom HaBait*.

Divorce is another big obstacle for religious women. The fear to shame their families discourages the departure from the abusive home. Furthermore, this would put at risk their personal reputation and that of their children. Divorce is not an enticing option for religious women,

²⁵ Literally: Peace in the house

and not only for personal reasons. In Israel matters of personal status are ruled by religious tribunals and the margin of intervention of the civil tribunals is minimal²⁶. Moreover, religious people are expressly forbidden (by religion) to turn to a non-religious tribunal. Religious tribunals are judicial bodies administered almost exclusively by men and that judge according to the same religious beliefs and practices that have just been mentioned. Even though exceptions have been verified and in some cases the judges stood for wives' and mothers' rights, a more favorable attitude toward men is generally recognized in religious tribunals. In many cases actually, contrasting positions have been taken by civil and religious courts²⁷. The guarantees that the civil law offers in matter of divorce (and mostly in matter of children custody) prove ineffective in these cases. Another problem related to a request of divorce is the possibility of the husband to oppose. In Jewish religious law a woman has word over the man to marry (autonomously chosen or selected by her family, practice that is much diffused) but she does not have any word on the ending of the marriage. During the wedding ceremony in fact, a contract is stipulated between the woman's father and the husband-to-be in which he acquires authority on the woman and exclusive rights on their union. Only the husband will be able to rescind the marriage, renouncing on his rights over the wife and freeing her from his authority (through an authorization known as *get*). Women whose husband would not agree to free them from the marital obligation remain bound to the marriage contract and cannot marry again nor have halachically legitimate children while men enjoy a bigger freedom even in the case they are in an open divorce-trial²⁸. In light of what said, the decision to divorce for a religious woman can lead to lose her husband, her name, the support of

²⁶ This argument will be extensively treated in the following paragraphs. At this stage it will be only briefly mentioned to guarantee a complete analysis of the topic of gender based discrimination.

²⁷ As it will be explained in the following paragraphs, religious and civil courts have competitive authority in cases of divorce. Moreover, the Supreme Court can be asked to review religious tribunals' verdicts.

²⁸ Children's status, according to Halacha, is determined from the mother. In case of a non-divorced woman the children would be the result of adultery, thus considered bastards, with heavy consequences for their religious and social integration.

the family and of the community, her children and not to be able to start a new life as a woman, wife and mother of legitimate Jewish kids. With these premises, the perspective of a new life is likely to seem scarier than desirable and the risk is significant that women will not take stance against their abuser and will keep living in a situation of degradation and abuse.

As discussed the State actively fights against women discrimination and violence through an articulated set of rule. The establishment of a competitive authority between religious and civil courts for the ruling divorce-related matters represents a crucial tool for the fight against women discrimination. However it is not sufficient to grant a total avoidance of discriminatory behaviors, partially because of reticence of the abused women to conceive the violations as crimes and partially because of the circumvention of the law and a lax commitment to control.

The existence of segregated buses is another striking example. IRAC dates the creation of the first segregated *Mehadrin*²⁹ buses in 1998 but the first "official" source is dated 2001. In this year, Egged (the main public transportation company in Israel, cooperative owned and subsidized by the State) established segregated bus lines to serve routes most used by Ultraorthodox. The agreement was stipulated by the transportation company in order not to lose market in favor of private Haredi companies. In the agreement with the Mehadrin Council, cheaper fares were set and special conditions were agreed between the two parts³⁰. In these buses, appropriate clothing is generally required, distribution of advertisements and commercial radio programming is forbidden. Moreover, there are separated entrances and seats for men

²⁹ Mehadrin (lit. beautified) is a term that is usually used in relation to food religious restrictions. It indicates the more rigid standard of rabbinical supervision as it regards the application of dietary laws. As a metaphor it indicates a specific very strict interpretation of religious predicaments that would lead to the total avoidance of contact between men and women outside the marriage context.

³⁰ For a more detailed report on the agreement and see Ilan S., (2001 October 24) Haredim may get gender-separated bus line, in Haaretz, at <http://www.haaretz.com/print-edition/news/haredim-may-get-gender-separated-bus-line-1.72777>

and women: women enter from the back door and sit in the back seats while men enter from the front door and sit in the front seats. The rationale behind it is to avoid any contact among travelers and preserve their mental purity. Since the beginning, the fact instigated a fervent debate on the consequences in terms of gender equality and on the democratic failure that these buses represented. The transportation company and the Ministry of Transportation maintained a careful approach: at first they denied the existence of such an arrangement and then they assumed a detached position and remarked on the possible economic loss if they were not to perform the service (that would have been performed anyway by unauthorized Haredi buses). The initiative started in places with significant ultraorthodox population (like Bnei Brak or specific religious neighborhoods in Jerusalem), and developed year after year. In 2010 about 50 Mehadrin lines were active (serving cities like Ashdod, Haifa and Arad, where the Ultraorthodox population is a minority). Voluntary spatial disposition in a bus does not necessarily mean segregation (even though it can result strange, obsolete and also not educational in the eyes of an external observer). However, episodes of mistreatment, verbal and physical violence occurred several times when women occupied front positions and refused to move to the back upon request of male passengers³¹. In 2007, the Israel Religious Action Center (IRAC) filed a petition against Egged and the Ministry of Transportation, representing five women who claimed to be victims of violence due to their resistance to obey to the segregation practice³². The State set up a committee that would investigate about the dynamics that regulate such a public service. As a result of the committee, an experimental season was initiated with a stricter commitment to control. Due to the scarce results reached in this phase, the Supreme Court was called again to pronounce a judgment on the matter. With a sentence that was welcomed by both sides as a

³¹ One of the most popular reports on these events is described in: Berman D., Canadian woman beaten on Egged bus joins High Court petition (2007 February 2) in Haaretz at <http://www.haaretz.com/weekend/anglo-file/canadian-woman-beaten-on-egged-bus-joins-high-court-petition-1.211790>

³² IRAC, (2010) Excluded, For God's Sake: Gender Segregation in Public Space in Israel at Jerusalem: Israel Religious Action Center.

victory, in 2010, the Supreme Court ruled the illegality of forced segregation in public spaces but it did not forbid any voluntary arrangement, not enforcing significant changes to the situation. Special bus lines are still active in Israel. The transportation company denied that an official arrangement is still in force but in the Haredi press announcements have been published about "special lines" with time schedules and further details³³. Cases of discrimination and pressure toward women that oppose segregation are still registered and denounced. NGOs and activist groups are monitoring the situation and updating the media and the political world. The main request is not the cancellation of these lines but the creation of alternative ones for citizens that are not willing to conform to segregation. At the moment, the choice to take "normal" buses is onerous in terms of money and time, since the *Mehadrin* buses drive in faster routes and cost less. On the political side, general condemnation is given to specific episodes of violence and women "resistance" is praised as civil symbols against extremism³⁴. However no political stance has been taken so far to improve the situation.

b) Ethnic Discrimination

The ethnic dimension in Israel is a complex one due to the political ethnic-based conflict that started before the creation of the State, accompanied its formation and resulted in military conflicts along the years. Moreover, the ethnic fracture is perceived in Israel both as an internal and as an external issue. Most of the Arab neighbor countries are considered a potential threat (or, worse, declared enemies); the Arab population of Israel is assimilated to the Arab enemy and identified as an internal danger to the survival of the State. Also

³³ [Ettinger Y.](http://www.haaretz.com/print-edition/news/israeli-bus-company-advocates-segregated-seats-despite-court-ruling-1.368789), (2011, June 21) Israeli bus company advocates segregated seats despite court ruling in Haaretz at <http://www.haaretz.com/print-edition/news/israeli-bus-company-advocates-segregated-seats-despite-court-ruling-1.368789>

³⁴ [Ettinger Y.](http://www.haaretz.com/news/national/israeli-leaders-are-to-blame-for-the-religious-segregation-they-decry-1.402330), (2011, December 19) Israeli leaders are to blame for the religious segregation they decry, in Haaretz at <http://www.haaretz.com/news/national/israeli-leaders-are-to-blame-for-the-religious-segregation-they-decry-1.402330>

historical reasons play a fundamental role in the perception of other ethnicities as a potential danger for the Jewish people and contribute to a defensive attitude toward them. Religion plays a crucial role in enlarging the ethnic fracture and in making positions more extreme. In Judaism, Jewish people are seen as an exclusive group. Recurrent calls are made for the defense of Jewish identity, beliefs and culture from exterior influences. Non-Jews are not considered to be inferior *per se* but the acceptance of the religious norms by the Jewish people pose them on a higher level (a higher level of responsibilities thus closeness toward God). From this basic concept, however, many doctrinal extensions have been generated in the religious literature. For example, it is still controversial whether the principle of the sacredness of life (that is prevalent over any other commandment) applies or not to non-Jewish lives³⁵. Even though other prescriptions are present that incite to tolerance and harmonious coexistence, some famous interpretations undoubtedly encourage a discriminatory approach to ethnic differences³⁶. As a practical result (with religion not being the exclusive cause, as explained above), many well-known rabbis in the country were authors of incitement to violence and discrimination, especially against the Arab population, defined as the enemy³⁷. Even though this

³⁵ As said, this prescription is actually controversial but finds authoritative and influential supporters. Doctrinarian texts present different views on the issue, limiting sometimes the permission to Jews or to righteous Gentiles. The modern interpretation, also promoted by the Rabbinate of Israel, is an egalitarian one: Jews and non-Jews should be saved, transgressing the Shabbat or any other commandment. From time to time, however, the debate is reopened by provocative declarations of religious Jewish authorities. See Ynet, (2012, May 17) Rabbi Yosef: Treating gentiles violates Sabbath in Ynet, at <http://www.ynetnews.com/articles/0,7340,L-4229767,00.html>

³⁶ Mozgovaya N.,(2010 October 20) ADL slams Shas spiritual leader for saying non-Jews 'were born to serve Jews' in Haaretz at <http://www.haaretz.com/jewish-world/adl-slams-shas-spiritual-leader-for-saying-non-jews-were-born-to-serve-jews-1.320235>.

³⁷ Verbal discrimination against the Arab population is fostered by political reasons beside religious ones. However definitions of Arabs as enemies and somehow inferior beings are not exclusive. In fact they are part of a more general verbal discrimination against non-Jews. Rabbi Joseph Ovadia for example stated that Gentiles have been created to serve Jews and their life is granted by God only not to create a material loss to Jews, like in case of a donkey. More extremist voices have defined Arabs "dogs" (Rabbi Meir Kahane, well known in the Eighties for his defamatory activity toward Arabs and killed by an Arab gunman in 1990) and Gentiles animals in comparison to Jews.

attitude is not universally agreed upon and even if religion *per se* cannot be held responsible for a discriminatory approach to interpersonal relations, its use as one of the sources for ethnic discrimination cannot be denied.

As an example, the phenomenon of selective housing and the attempt to create homogeneous ethnic neighborhood is one of the causes of ethnic discrimination and harm the quality of democracy, even if perpetrated as an individual act and not in conformity to the law. In Deuteronomy 7:2 is written: "*You must doom them to destruction, grant them no terms and give them no quarter*" referring to the nations that the Jews had to defeat in order to take possess of the Land of Israel. As further elaboration of this sentence, many Sages derived the prohibition of giving land (or properties) situated in Israel to non-Jews³⁸. It is controversial how Muslims should be treated in the observance of this prohibition. Muslims, in fact, are considered by Judaism on a higher level than other gentile religions since they hold monotheistic belief. According to this view, some religious authorities consider the possibility to rent or sell them Jewish property in Israel less abhorrent than selling it to so called "idolaters". From a minority but important position, Rabbi Menachem Hameiri³⁹ and Rabbi Baruch Epstein maintain that this prohibition regarded only the seven ancient immoral nations populating Israel in biblical times. It would be wrong to apply it to ethical "strangers" whose lives are guided by religious norms⁴⁰. Nonetheless, this remains an almost unheard voice. Rabbi Ovadia Yosef (spiritual and political leader of Shas), has been confirming with vehement tones the halachich prohibition of selling houses to non-Jews. Besides the religious forbiddance, he has been presenting further social reasons to respect such a provision. Therefore, the presence of non-Jewish population in a Jewish neighborhood might jeopardize the Jewish lifestyle, introducing a complete different culture

³⁸ Talmud Mas. Avoda Zara 20a

³⁹ Mishnei Torah Beit Habehira AZ 20

⁴⁰ Brody S., (2010, November 19) Why the call not to sell land to non-Jews in Safed? in Jerusalem Post, at <http://www.jpost.com/Jewish-World/Judaism/Why-the-call-not-to-sell-land-to-non-Jews-in-Safed>

and customs that might favor by the way a sharp conflict⁴¹. The position of Rabbi Ovadia was actually shared publicly by about 40 rabbis who turn to the vast public warning the Jewish population on the risks of selling or renting Jewish property to Gentiles. After the public message in which the cession of Jewish property to Gentiles was described as contaminating the Jewish lifestyle, exposing the community to the unfortunate risk of intermarriage and causing a devaluation of the estate in all the area⁴², Prime Minister Benjamin Netanyahu took the distances from this position. The statement was rebuked for leading to possible antidemocratic derives. Netanyahu invited the religious community not to promote such ideas that in the past had been used against Jews. Moreover, the Prime Minister recalled the tolerant message of the Torah that suggests living in peace and harmony with the neighbors.⁴³ The reaction of the Prime Minister is in line with the legal provisions that do not ban any estate transaction with any ethnic group and promote equality and freedom. On the other hand, some influence of this discriminatory attitude on the large public and, partially, on the institutional apparatus is traceable. An interesting case is the one of the rural community Nevatim. In 2010 a Jewish couple was heavily bullied (with disparaging message, damages against the patrimony and heavy harassment) for renting their house to a Bedouin family. In Nevatim, an internal committee had the authority of admitting interested buyers to be part of the community. When the community ruled against the rental to the Bedouin family, the Jewish renter turned to court, which established restrictive conditions for the new inhabitants in the attempt to find a compromise with the community. The phenomenon of the vetting committee is not a rare one in Israel and it has often been used to maintain ethnic homogeneity inside the area. About 700 rural communities in Israel applied discriminatory criteria against non-Jews and remained exclusively

⁴¹ Nashoni K., (2010, October 28) Rabbi Ovadia, selling homes to non-Jews prohibited in Ynet at <http://www.ynetnews.com/articles/0,7340,L-3976568,00.html>

⁴² Jpost Staff, (2010 July 12) 40 rabbis Jews shouldn't rent sell homes to gentiles , in Jerusalem Post, at <http://www.jpost.com/LandedPages/PrintArticle.aspx?id=198353>

⁴³ Mandel J & Hartman B., (2010 December 8) PM blasts rabbi's calls not to sell apartments to non-Jews in Jerusalem Post at <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=198473>

populated by Jewish population⁴⁴. Independently from the legal status of these communities that might be private areas in which the owners retain the complete authority on the admission of new members, it is important to reflect on the political inactivity about such situations (even when they produce to explicit discriminatory results) and on the broadness of the attitude, that is posed into action publicly and effectively. Yair Ettinger, commenting the letter of the rabbis said: "These things (discrimination against Arabs, saying that their way of living is different than the Jews and that Jews' oppressors are among them) in the past wouldn't be acceptable in Israeli society. But now, even though it is not politically correct, people allow themselves to say things in public that you wouldn't even dare to say in a private synagogue. It's a big change".⁴⁵

c) Discrimination against other religious group

Discrimination against proselytizer religious movements in the country is only partially based on ethnic criteria but poses a shade on the relation between religion and rule of the law. This kind of discrimination is mainly perpetrated by individuals or private groups but it strays in the political sphere and it occasionally reflects on legislative initiatives. Proselytizing is legal in Israel and missionaries of all religious groups are allowed to carry on their mission. Israel has signed many of the international conventions on freedom of religion⁴⁶ and its Declaration of Independence expressly exalts freedom of

⁴⁴ Cook J., (2010, March 22) Israel's no renting to Arab policy, in Global research <http://www.globalresearch.ca/israel-s-no-renting-to-arabs-policy/18267>

⁴⁵ Mitnick J., (2010, December 9) Rabbis tell Israeli Jews not to rent to Arabs; even Holocaust museum frowns. in CSmonitor, at <http://www.csmonitor.com/World/Middle-East/2010/1209/Rabbis-tell-Israeli-Jews-not-to-rent-to-Arabs-even-Holocaust-museum-frowns>

⁴⁶ See, for example, many of the United Nations conventions: the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN International Covenant on Civil and Political Rights, the UN International Covenant on Economic, Social and Cultural Rights etc.

worship and abhorrence of discrimination in this field. Citizens, residents and visitors are formally allowed to practice their religion, including conducting proselyting activity⁴⁷. Some limits however are posed by the law: from 1977, offering material benefits as an inducement to conversion is forbidden by law. It is also illegal to perform a conversion ceremony for persons under 18 years of age unless one parent is an adherent of the religious group. Despite the legal permission, several intolerant messages have been addressed by Jewish clergy to religious movements that deploy missionaries for conversion purposes. Israel is a multicultural and multi-religious country inhabited and visited by millions of believers of different religions (due also to the presence of places that are sacred to several religions, like Jerusalem, Hebron, the Jordan River etc.). Some missionary groups are active in the area, in particular Witnesses of Jehovah and some Christian cults. Judaism (like Islam to a certain extent) does not seek conversion and, on the contrary, requires a complicated path for conversion in order to discourage applicants and limit the conversion to those who prove an exceptional commitment. The general feeling toward proselyting movements therefore is of suspicion. Moreover, proselytizers are the incarnation of the external influences that could undermine the closeness to the Jewish people to God and, in the eyes of Jewish believers must be fought against. Rabbis and religious groups raise their voices against proselytizers whenever their activities become public. The case of Jehovah's Witnesses is emblematic of the contrast between the law and the actual conduct, carried on also by elected officials. Whilst a Jehovah's Witnesses community was initially allowed to hold their meetings in Raanana sport hall, the room was successively negated, in the aftermath of a protests made by a member of the city hall. Similarly, in another city, two Jehovah's Witnesses who were doing door to door activity were fined with the accusation of "peddling" without a license and their

⁴⁷ US Department of State, International religious freedom report Israel and occupied territories at <http://www.state.gov/j/drl/rls/irf/2002/13997.htm>

Bibles were confiscated⁴⁸. One of the Christian cults more dedicated to proselyting, the Evangelical congregation, was prized for stipulating an agreement with the government renouncing to its missionary activity in Israel. Particular attention is devoted among the Jewish religious establishment and in the public opinion to the Messianic Jewish community. This religious group is composed by halachically Jewish people who accepted Jesus as the Messiah. They live as Jews respecting, in addition, the predicaments of the New Testament. It is obvious to understand why the Messianic community is committed to persuade their fellow Jews to accept in their Jewish lives, the figure of Jesus as the Messiah. This group represents a hybrid because of its ethnic belonging to the Jewish people (recognized by the State) but poses *de facto* a threat to the Jewish theological apparatus (accepting Jesus as the Messiah). Religious authorities and groups of believers are especially active against Messianic Jews' activity. Threats against them varied from verbal to physical harassment. In 2006, the chief rabbi of the Ethiopian community of Rehovot expressed the Jewish community's dismay over the activity of a Messianic community in the area. The rabbi asserted that his community was ready to attack the missionary group if they would not stop their activity of proselytism⁴⁹; he also proposed to create a black list within the Ethiopian community to exclude those who engage in missionary activity from any social intercourse in the Ethiopian community. This act would have had harsh consequences on the excluded members, preventing them from marrying and living an integrated life within the Ethiopian community. In September 2007, the Chief Rabbinate warned Jews not to participate to the Sukkot celebration organized by the Messianic community since it might have been an occasion for the group to approach Jews and convince them to convert. In a more violent manifestation, in May 2008, some Yeshiva Haredi students burnt several copies of the New

⁴⁸ This emblematic episode is reported on the United States Department of State, (2012 July 30), 2011 Report on International Religious Freedom - Israel and the occupied territories, at <http://www.unhcr.org/refworld/country,,USDOS,ISR,,502105b15f,0.html>

⁴⁹ Wagner M. (2006, October 18), Ethiopians fight Christian proselytizers, in Jerusalem Post at <http://www.jpost.com/LandedPages/PrintArticle.aspx?id=38318>.

Testament as a sign of protest for the missionary activity of some Christian groups and Messianic Jews.

As said, missionary activity directed to Jews is generally not well seen; nor is the interest and conversion of Jews to other cults. Formal and informal Jewish groups have been deploying discriminatory campaigns against the missionary groups, sometimes publicly stigmatizing them through leaflets containing pictures, names and addresses of the adherents⁵⁰. One of the most active organizations in fighting against proselytism, whose mission is to help new immigrants and Jews in general to integrate in Israel and to live a Jewish life, is called Yad LeAchim (Hand to the Brothers). This organization was reported to harass and assault groups of proselytizers (or individuals) and to pressure landlords and employers to adhere to their anti-missionary campaigns (thus potentially encouraging the application of discriminative criteria in the employment sector and in the estate transactions). Yad LeAchim promoted in 2013 an anti-missionary campaign on the IDF radio to warn the audience about the dangers of the missionary activity of certain religious groups. The Supreme Court intervened in this initiative denying at first the permission to air the advertisement and then accepting a new formulation that stressed the prohibition of material compensation as an incentive to conversion.⁵¹ This organization has been denounced by the media and by several NGOs for its illegal and violent methods of action. In 2010, for example, The Jerusalem Institute of Justice filed a petition to the Attorney General asking the dismantling of Yad LeAchim. The file contained a detailed analysis of the illegal acts committed by the organization in contrast with the national legal framework. The document also

⁵⁰ Eglash R., (2011 September 1) Messianic Jews 'named and shamed' in J'lem-area town in Jerusalem Post, at <http://www.jpost.com/National-News/Messianic-Jews-named-and-shamed-in-Jlem-area-town>

⁵¹ Arutz Sheva, (2013, February 8) Anti-Missionary Campaign due to start on IDF Radio, in Arutz7, at www.israelnationalnews.com/News/Flash.aspx/261689#.UR4LpaWpXng

denounced an "unlawful cooperation between Ministry of the Interior officials and (the) activists" of the organization⁵².

Despite proselytism is a legal activity, the position of the Government has been increasingly harshening on this topic. From the Nineties, several bills have been presented to the Knesset, especially by MKs from religious parties who tried to ban the proselyting activity in the country. The 1997 anti-missionary bill was promoted by a number of MKs among which Nissim Zvili (Labour Party) and Moshe Gafni (United Torah party). It aimed to the prosecution of those who advertised and recommended conversion opportunities distributing leaflets and other written material. After an intense debate both in the local and in the international public opinion, the bill was eventually modified and defeated. The pressure of national and international bodies and organization that denounced the potential harm that the bill would entail in terms of freedom of religion played a decisive role in the matter. In 1998, Raphael Pinchasi (Shas) presented another anti-missionary bill with stronger sanctions for attempting to change somebody's religion (up to 10 years of prison). In more recent times (2007), Yaakov Margi (Shas) proposed to punish missionary activities with an imprisonment sanction from 6 months to one year. Recent facts demonstrate a particular restrictive interpretation of the norms till *de facto* establishing an informal illegality of proselyting in Israel and spreading among the public the perception that this activity is illegal⁵³. Some nonresidents (tourists, clergy, students etc.) were temporarily detained for religious reasons at Ben-Gurion Airport, prevented from entering the country, and sent back to their countries of origin because they were suspected of being missionaries. These events represent a serious infraction of the rule of law. Proselytism is legal in Israel. The denial of entrance in the country on the basis of religious beliefs is a serious violation since it is not based on any evidence of a committed

⁵² On behalf of the Jerusalem Institute of Justice, Mayers C.,(2010 February 22), "Request to Dismantle the Yad L'Achim Organization" at http://jij.org.il/articles/III-AG%20Request_ENG_.pdf

⁵³ United States Department of State,(2012, July 30) 2011 Report on International Religious Freedom Israel and the Occupied Territories, at: <http://www.refworld.org/docid/502105b15f.html>

crime but it assumes a predisposition to commit and illicit activity. A certain degree of collaboration between the Ministry of Interior and anti-missionaries organizations like Yad LeAchim has been denounced. The Ministry in fact would rely on the information obtained by this private organization to deny entries to the country and to expel people⁵⁴. This method has been criticized by the judicial power which overturned in 2010 a ministerial decision to deny a visa to a clergy member, accusing him of missionary activity.

d) Discrimination against non-Orthodox Streams of Judaism

The unequal treatment that non-Orthodox streams of Judaism are subject to represents another case of discrimination clashing with the formal regulation. The Declaration of Independence, considered the document that contains the core values upon which the country is constituted, declares the freedom of religion and expression as rights to safeguard. Moreover, it defines Israel as the State where all Jews will be able to live safely and freely, without being discriminated. After all, this was the original Zionist purpose. Beside the Ultraorthodox and the Orthodox groups, other streams of Judaism are present in Israel, the Conservative, the Reform and the Reconstructionist. These streams differ from the Orthodox ones for the acceptance of a lighter theological apparatus and for a less rigid interpretation of the religious rules. Some of their religious practices differ from the Orthodox ones and such differences have been the reason of disputes also at State level. Religion therefore has many implications on the public sphere and the rabbinical establishment has a certain institutional power, both as an institution and on the political level, through the influence that exercised through religious parties. In conformity with the legal provision, non-Orthodox streams have no representation in the

⁵⁴ For the collaboration between Yad L'achim and State officials as it regard the exchange of information on potential missionary activists, see note 45. See also Editorial "State-backed persecution" in Haaretz, Oct 6 2009 <http://www.haaretz.com/print-edition/opinion/state-backed-persecution-1.6623>

rabbinical institutions and are not allowed to carry on the institutional functions that Orthodox Rabbis are entitled to (celebrate marriages or convert, for example). For the same reason, some religious practices in public places are forbidden to non-Orthodox streams. "Women of the Wall" is a very famous example of unequal treatment among Jewish streams. "Women of the Wall" is an organization, whose members are mainly women from the Reform community that actively advocates for equal rights to all streams of Judaism. The women of the group are regularly prevented from praying in the most sacred Jewish place, the Western Wall, because of their praying method that is considered as unacceptable according to the Orthodox standards. These women in fact use specific religious tools and clothes that in Orthodox Judaism are a prerogative of men. Moreover, they conduct prayers and publicly read from the Torah. These practices are considered to be inappropriate and even blasphemy by the orthodox and the ultraorthodox movements. Since the Western Wall is managed according to orthodox rules, the praying area is strictly segregated (and sometimes the entire square) and non-Orthodox practices are forbidden but in a small secondary area of the Western Wall⁵⁵.

Usually, whenever the Women of the Wall approach the Western Wall and start their prayer, the security forces stop them, sometimes arresting them for disturbing the public order and performing a forbidden action (that is praying according to non-Orthodox procedures)⁵⁶. Even though, formally, the accusations moved to the Women of the Wall have a normative source, it is easy to see how these norms clash against freedom of expression and are functional to satisfy specific requests of one Jewish stream. The State position is ambiguous: it condemns extreme acts of discrimination but it enforces or does not prevent the enforcement of discriminatory provisions. Doing so, the State neglects some of the fundamental intentions expressed in the

⁵⁵ United States Department of State, (2012, July 30) 2011 Report on International Religious Freedom - Israel and the Occupied Territories, at <http://www.refworld.org/docid/502105b15f.html>

⁵⁶ Mort J. A., (2012 December 14) Union for Reform Judaism Reform Movement Dismayed by Continued Religious Discrimination in Israel, Union for Reform Judaism, at http://urj.org/about/union/pr/2012/?syspage=article&item_id=98020

Declaration of Independence, and in particular, a very existential one: to be a shelter for the Jews all around the world. The attempt of non-Orthodox streams to gain legal equality before the law and in the society has encountered impenetrable resistance from the religious parties that defend the interests of the Orthodox and Ultraorthodox groups and are encouraged outside the political arena by the rabbinic establishment. Even the steps that have been taken in order to improve the conditions of these streams reveal a discriminatory attitude. It is true that the recent recognition of Reform rabbis⁵⁷ establishes a precedent for public funding to Reform clergy and confers them legitimacy. However, this recognition has taken place under the authority of Ministry of Culture and Sport and not, like the other religious clergy, under the Ministry of Religious Services⁵⁸. The fact, which was welcomed as an historical step in the non-Orthodox world, leaves an important aspect uncovered: the fact that the non-Orthodox rabbis will receive their stipend through Ministry of Culture and Sport, explicitly poses them in an inferior level in comparison to other religious officials (also non-Jewish) that are vested with religious authority and derive from it fundamental civil power. Even though their recognition as chiefs of cultural communities might strengthen the non-Orthodox communities and their legitimation in the eyes of the population, it does not grant them (or their followers) the same rights of any other recognized religious community.

Legal and Judicial System

⁵⁷ The civil and legal battle emblematically carried on by Miri Gold, reform rabbi and from other petitioners (individuals and organizations, among which, IRAC, the formal petitioner) lead in 2012 to the recognition of Rabbi Gold and other 15 non-Orthodox rabbis whose stipend would be financed by the government and no, like that moment, through private funding.

⁵⁸ Ettinger Y., For first time, Israel to recognize Reform and Conservative rabbis May 29 2012 in Haaretz, <http://www.haaretz.com/jewish-world/jewish-world-news/for-first-time-israel-to-recognize-reform-and-conservative-rabbis-1.433171>

In matter of administration of justice and legal system in general, a general commitment to democracy is easily recognizable. Aharon Barak, president of the Supreme Court till 2006 underlined the distance of the Israeli legal culture from the religious one. In his interpretation, also in the cases in which the Jewish law is applied, it is the result of the secular legislation that is rather inspired to the Western model of democracy based on equality, peace, rationalism and freedom. In one of his articles Barak maintained that "While Israel is a "Jewish and democratic State" its Jewishness does not make it part of the Jewish legal culture". Nonetheless Barak recognized that the influence of Jewish law is evident in the content and the language of the law, and that the coexistence of religious and secular laws has a deep influence in the Israeli legal system⁵⁹.

In this paragraph, an evident relation between religion and the legal and judicial system will be stressed. Religious tradition played a crucial role in the creation of the Israeli legal system and has been exerting a lasting influence on it. As main examples of this influence, I will address the constitutional issue, the functioning of the religious tribunals and the ruling principles within them. In the previous chapter, the legal system and the administration of justice have been described. Briefly, the legal system structure has been influenced by the historical experience of the Ottoman Empire in which the central imperial power was mitigated by some regional autonomy (that allowed the religious communities, including the Jewish one, to enjoy a certain degree of freedom in internal matters). The British Mandate did not implement major reforms, strengthening the rule of law, but maintaining the Ottoman habit to leave the communities free to conduct many activities in line with their legal and social costumes. With the acquisition of independence, the burden of constituting a set of laws that would have shaped the State, the society dynamics and the administration of justice became a political urge that needed to be resolved. The Zionist elite had in mind the construction of a modern state, on the model of the European States, from which most of them came and in which they had received their political and social

⁵⁹ Barak A., (1997) *The Tradition and Culture of the Israeli Legal System in Justice* 13: 3-10

formation. The European conception of modern State was the one of a centralized state, whose legislation was emblematic of civic development and institutional strength. While most of the Zionist elite was distant from the Jewish spirituality, a religious component participated significantly to the Zionist enterprise and it played its influence in the moment in which the features of the newborn state had to be arranged. Putting aside the so called Religious Zionists, the Zionist movement itself was further articulated in different groups which attributed to Judaism a crucial role not only from the religious point of view, but from the cultural, historical and traditional. A non-Zionist religious component was also present at the moment of the establishment of the State. All these groups were for all intents active parts of the Jewish community before the independence was reached, underwent the process of State-building and had words in it.

The Declaration of Independence is a symbol of the complexity and variety of positions at the time of the creation of the State. The intent to be a modern nation, integrated in the international political system, adherent to the basic principles of democracy (equality of social and political rights; freedom of religion, conscience, language, education and culture, justice etc.) is clearly expressed. In the same way, the recall to tradition (incarnated in the biblical values and historical contents) and the commitment to find in it inspiration for the management of the State is strong and recurrent. Analyzing the first official document of the State it is possible to notice a certain consociational stance. It was in fact the result of an intense negotiation. Rubinstein⁶⁰ recommends prudence in referring to the Declaration of Independence as something more than a declaration of principles with certain celebrative intent. However, what is immediately inferable is that the theocratic option as a form of government is rejected and the democratic one is embraced (as premised by Ben Gurion in the Status Quo letter). In the Declaration of Independence therefore, after a solemn premise that refers to the historical, cultural and spiritual origins of Israel as the homeland of the Jewish people, an explicit mention to the Constitution-to-be is done.

⁶⁰ Rubinstein E., (1998) "The Declaration of Independence as a Basic Document of the State of Israel" in *Israel Studies* 3:1:195-210.

The Constitution appears as the tool that will lead the State-building process and will serve as a basis for the creation of a democratic modern State (whose principles are described in the following of the Declaration). In particular it is written:

*"WE DECLARE that, with effect from the moment of the termination of the Mandate being tonight, the eve of Sabbath, the 6th Iyar, 5708 (15th May, 1948), until the establishment of the elected, regular authorities of the State in accordance with the Constitution which shall be adopted by the Elected Constituent Assembly not later than the 1st October 1948, the People's Council shall act as a Provisional Council of State, and its executive organ, the People's Administration, shall be the Provisional Government of the Jewish State, to be called "Israel"."*⁶¹

Without going into language analysis details, that are not pertinence of this work, the positioning of this concept seems to attribute to the Constitution the role of *trait d'union* between the historical Israel to the creation of a modern Israel, clearly defining it as a modern State ruled by the law and the democratic principles.

The possibility to elaborate a Constitutional Chart however did not remain an unquestioned matter, and ended, as known, with the renounce to a written compact Constitution. The debate spread before the formation of the Constitutional Assembly and has remained on the public agenda. The internal debate was fostered both by religious and non-religious groups and discussed matters of principle and practical ones. While in matters of principle the religious component expressed its contrariety to the Constitution, a certain degree of openness to negotiation and collaboration was present in the early preliminary constitutional works. The early constitutional attempts were not perceived by the religious component as a serious threat coming from the liberal world. To a certain extent, some kind of legal formalization

⁶¹ For the complete text of the Declaration of the Establishment of the State of Israel see <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm>

was considered as a viable tool to officialise the Status Quo. The religious groups maintained a relatively collaborative approach to the creation of a Constitutional Chart based on the Torah. The Torah was indeed considered the ultimate legitimate normative source for Jewish life. This supremacy translated at the aggregate level, to the entire Jewish State. Rabbi Kook, one of the most authoritative voices of the Mizrahi movement, one of the Sages of Religious Zionism, stated:

The spirit of religion, oppressed and shattered, that existed in Christian Europe and in Moslem Asia, could not live concurrently with a social revival, full of vigor and a lust for a shining life. In order to properly perfect this revival one needs the true light of God in the collective soul. This is found in Israel. The separation of religion and society is good for them, while it is dangerous for us. However, if we will not go out to enlighten the darkness, to explain the difference between the religions, that is between a religion which should not be called by this proper noun by virtue of its superiority and sources, and an imitation which only has what it could draw from the source by way of thievery, the matter would remain hidden from the eyes⁶²

In this writing, the necessity of preserving the Jewish allegiance to the religious norms and that of translating the Jewish blessed status in a national realization are seen as inseparable. Also the Ultraorthodox groups, united under Agudat Ysrael, showed in the beginning a milder attitude toward the Constitution, remarking the central position of the Torah and negotiating for being constitutionally recognized as an independent community. A significant number of researches attribute to the religious resistance a main role in the failure of the Constitutional enterprise in the aftermath of the independence⁶³. The religious abhorrence for the human rebuilding of Israel before the coming of the Messiah would have been aggravated by the idea of a legal chart not

⁶² Rav Kook A., *Igrot Rayah, Vol I p 215*.

⁶³ See Kretzmer D., *Constitutional Debate in Israel* D. Kretzmer, (1990) 1:3. *Constitutional Forum* constitutionnel 13-14. See also Wald K, *The religious Dimension of Israeli Political Life*

based on the Halacha. On the other side, several scholars⁶⁴ maintain that the main opposition came from the majority party, Mapai, and in particular by the Prime Minister Ben Gurion on the basis of much more practical reasons. A written constitution would have posed strict constraints on the Government in a moment in which a wide margin of autonomy was needed to deal with the new challenges of the State building. A cautious approach was suggested, for the adoption of an essential chart in a moment in which the population was not representative of the much bigger Jewish mass that was still in the Diaspora and that would have emigrated in the following years. This attitude of Mapai would have incentivized religious parties to step back, strengthening their arguments against the Constitution and pushing in the political debate the supremacy of the Torah as a normative source. Even if the absolute reliance on the religious laws and the idea of a Jewish State that was to be organized under the sacred authority were not the determinant cause, at least they concurred to abort the constitutional project. As Elazar explains, the main manifested fear was that the document would threaten the supremacy of the Torah and the constitutional tradition elaborated on its footsteps, that the Jewish community had been preserving for centuries. According to the scholar, this opposition should not be seen as a symbolic attempt to preserve traditional customs. "This would be a serious misreading of the situation. The most traditionally Orthodox Jews are as convinced that their constitution, the Torah, is law and not custom or convention, as the most ardent supporters of a modern written Constitution"⁶⁵. The legal value of the Sacred Books in ancient Israel and the later Halacha that is based on the religious prescriptions, would be the proof for the actual validity of the religious law as a normative tool for a society and could be maybe flanked but not be replaced by a Constitution derived from convention. As time passed,

⁶⁴ See Goldberg above but also Barzilai (Barzilai G., *Communities and Law: Politics and Cultures of Legal Identities*, Ann Arbor: University of Michigan Press, 2003) who stresses the scarce priority that Zionism gave to the traditional democratic pattern and to the constitutional option et al., Elazar et al

⁶⁵ Elazar D., *The Constitution of the State of Israel*, Introduction in Jerusalem Center for Public Affairs, at <http://jcpa.org/dje/articles/const-intro-93.htm>

the religious narrative of opposition to the secular legal codification strengthened, due also to a much more rigid approach of the religious parties on the issue. Among the religious parties in fact, a view spread of the secular sector as attempting to secularize the society and the State.

The absence of a written Constitution has been harshly criticized, especially because it has been considered the cause of inequalities and particularism. Peleg⁶⁶ recalls how a Constitutional Chart would have guaranteed to Israel a higher quality democratic strength, absolving one of the functions that he sees as fundamental for a democratic State: the protection of minorities. Even though the scholar refers to the Arab minority, the statement is correct and it can be actually be extended to other minorities (Jewish minorities) or, even to the entire Jewish group, which, as Peleg mentioned, found their freedom of action somehow trapped in a non-universalistic approach to the society that the renounce to a Constitution symbolized.

One of the main concerns of the religious groups related to the implementation of a written Constitution was the role of the judiciary in the State and the maintenance of the Rabbinate's authority. Before the creation of the State of Israel in fact, both during the Ottoman and the British domination, the religious authority enjoyed a broad degree of independence that allowed the different ethnic and religious groups to live as semi-independent communities, administering, among others, personal matter issues. As an effect of the Law and Administration Ordinance (section 11) passed in 1948, the legal apparatus effective before the Declaration of Independence remained in force, with the idea that needed modifications would occur by the hand of the Provisional Council of State or, later by the legitimate State authorities. In 1953, the Mandatory order was changed with the enactment of the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law. This norm recognized the Rabbinical Courts exclusive jurisdiction over marriage and divorce between Jews and concurrent jurisdiction with civil courts

⁶⁶ Peleg, I. (1998), Israel's Constitutional Order and Kulturkampf in *Israel Studies*, 3:1: 230-250

over matters involving division of marital property, custody of children, and maintenance. According to Rubinstein, this law is a milestone in the narrative of the rabbinical authority and in the role of religion in the State. In pre-State era and before the enactment of this norm, Jews could actually decide to submit themselves to the rabbinical law through their voluntary adhesion to the Jewish community, Knesset Israel (without suffering consequences in terms of recognition of their Jewishness in case they did not adhere to the body). From that moment, the authority applied automatically to all Jews, empowering the religious authority on the entire ethnic group⁶⁷. This law, that had the same effect also on the Muslim and the Druze population (the latter did not have an automatic inclusion in the religious community, like the Jewish community) expresses an important State view on the citizens of the State whose ethnicity was equalized to a religious status. The State of Israel defines itself as Jewish and democratic State, negating any theocratic aspiration. It is interesting however, how religion in this case proves to be fundamental for the State definition of citizens' identity and for the establishment of the judicial power, one of the maximum organs in a democratic State. Adopting the equation ethnicity-religion thus attributing exclusive jurisdiction to the religious courts in specific matters, the State renounced to manage a large area of jurisdiction, regarding the individual sphere of its citizens and somehow contradicting that liberal stance expressed in the Declaration of Independence. Some might disagree with this stance and would recall how the State does not exonerate itself from the authority on personal status since the Religious tribunals and the rabbinical judges are direct emanations of the State authority. In 1955, the Knesset recognized the *Dayanim* (religious judges) as State officials and equalized them to normal judges in economic treatment and status. Also a special commission was set to help the President of the State to choose the religious judges. Religious judges' activity was submitted to the authority of the Ministry of Religious Affairs (during the reorganization of the Ministry of Religious Affairs the jurisdiction became the Ministry of Justice and this way it remained) and to the

⁶⁷ Rubinstein A., Law and Religion in Israel 2 Isr. L. Rev. 380 1967

Supreme Court, the highest judicial organ in the State who has the function of last appeal court.

Religious courts are incorporated in the State system. This means that a body that bases its activity on religious values is considered a legitimate instrument of the rule of law in the country. Even if it is not a sufficient element to declare Israel as a theocratic country, its influence on the quality of democracy should be kept into consideration. The formalization of a double judicial apparatus, one religious and one secular and the concession of the exclusive authority to the religious courts on certain matters entailed the acceptance from the State of religious principles as legally binding for the citizens of the State. The functioning of the religious courts (not only its judicature) is based on religious principles that the State accepted as valid but have been contested by the public opinion and by the academia as contradicting the equality principle to which Israel committed in the Declaration of Independence and that have been confirming in the Basic Laws and other legislation.

Rabbinical courts follow the Orthodox Jewish rules in the administration of justice. Judges are ordained Orthodox rabbis (therefore women cannot work as judges in these courts) who rule according to the Halacha, the religious law. As mentioned in the previous paragraphs, religious norms are quite strict about the role of women in the society. For this reason, also the role of witness is denied to women in a rabbinical court. Moreover, not all lawyers are free to debate causes before a religious judge, since a rabbinical license is necessary. The mechanism of obtainment of the rabbinical license perpetuates the almost total exclusion of female or non-religious lawyers. Actually, the fact that women can actually apply for the license is already a progress. It was indeed introduced as a possibility in the mid Nineties, as a result of public pressure and the intervention of the Supreme Court). These rules are in open contrast with the commitment of the State of Israel to eliminate any form of discrimination based on gender and conscience. The inclusion of special articles in many laws in order to create a legal exception and not to harm religious norms that have been incorporated in the legal

system is hard to accept in a democracy⁶⁸. Following the same mechanism of subordination to "religious-State laws" Israel had often to limit its adherence to international conventions and bills⁶⁹. In a major convention such as the International Covenant on Civil and Political Rights, the State faced its inability to intervene in family matters and was forced to make a reserve on specific articles of the Convention⁷⁰. In an extensive interpretation also the articles pertaining freedom of religion⁷¹ and conscience and the equality before the law⁷² were rejected because inapplicable to the Israeli context. A similar reserve was

⁶⁸ One of the most significant examples is the Basic law Freedom of Occupation. In art 4 is written: "There shall be no violation of freedom of occupation except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required, or by regulation enacted by virtue of express authorization in such law".

⁶⁹ The following examples were suggested by De Blois M., (2010) Religious law versus secular law in *Utrecht Law Review*, 6:2:93-114.

⁷⁰ The main reservation was made on Article 23. The text of the articles is attached so that it is easier to estimate the essentiality of the principles enucleated and realize the impact that the religious courts and religion-inspired legislation can have in the society. Art 23 says: "1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

⁷¹ International Convention on Civil and Political Rights. The article 18 says: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions."

⁷² See above. Art. 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

attached to the Convention on Elimination of all Form of Discrimination against Women. The reserve was made on art.16, addressing equality in marriage and family⁷³ and art.7b⁷⁴, addressing gender equality in political and public life.

The acceptance of the religious authority as the only authority in marriage and divorce means that no other form of marriage or divorce can be granted in the country. This condition entails the attribution of the exclusive legitimacy to the sets of religious norms that govern these matters. Unlike Islam and Christianity (to certain extent), Orthodox Judaism strictly prohibits intermarriage (among people of different religion, see Deuteronomy 7:3, note) as well as same sex marriages (Leviticus 18: 22, 20:13). Marriage is one of the pilasters of Jewish religion and culture. It is seen as a pious action, relished by God, inasmuch as it results in a Jewish family (an observant one, in the religious ideal) that will bring to life Jewish children⁷⁵. Besides the religious rationale, this family paradigm entails also a social rationale that is the preservation of the tradition and the Jewish identity, perpetuated generation after generation by ensuring a homogenous cultural background of the families. In a small ethnic group like the Jewish one that was scattered all around the world for centuries, conservatism allowed the survival of the group and its traditions. Those who opened their horizon to other communities and formed a family with one of their members were exposed to public contempt. The firmest position has been taken by religious Jews who, observing

⁷³ Convention on the Elimination of all form of Discrimination against Women. Art 16 is a very detailed one and comprehends several aspects regarding marriage and family relations. It addresses equality of rights of marrying and divorcing, rights on education and custody on children, disposition of property, equality in the marital relationship. For the original text of the Convention see: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article7>

⁷⁴ See above. Art. 7 commits the state to insure and encourage gender equality guaranteeing to men and women the same possibility "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government"

⁷⁵ Jewishness is inherited from the mother (or by conversion, rather a difficult process in Judaism), so the Jewishness of the female spouse is a crucial issue when dealing with family matters.

more strictly the religious precepts, felt invested with the responsibility of preserving the pureness of their ethnicity as a sign of loyalty to God⁷⁶. In the "Jewish State of Israel", this approach took the further meaning of ensuring the continuation of the Jewish identity, paramount in the State's identity (leaving aside the "demographic" challenge, well known concept in the public debate and relevant point in the political platform of some parties). This religious rationale, which has implementation in the legal frame, creates a gap that leaves many citizens without an option for marriage. Inter-marriage, as much as it can be considered by somebody as an unfortunate decision, a betrayal of one's ethnic belonging or even an infraction of the religious morale, has been for centuries a reality and now more than ever the occasion of contacts among people of different religion and ethnic belonging are frequent. The openness to contact with other communities is a daily reality for Israelis, who live in a multicultural society, experience massive tourism from all over the world and themselves conduct their life in a cosmopolitan way, often working in international environment and travelling abroad for a number of reasons. This of course increases the possibilities to find a partner who is not Jewish. Moreover, as a result of the Israeli immigration policy (and specifically the Law of Return⁷⁷), consistent waves of immigration arrived in Israel through the years and many people of Jewish descendant (but not Jewish according to the Halacha) were granted citizenship in the country, integrated and became part of the society. They constituted a broad group of Jewish citizens that, however, is not entitled to a Jewish marriage or to another

⁷⁶ One of the most quoted Biblical sources from which the maternal descendant is established is Deuteronomy 7:3-4 "Neither shalt thou make marriages with them: thy daughter thou shalt not give unto his son, nor his daughter shalt thou take unto thy son. For he will turn away thy son from following Me, that they may serve other gods; so will the anger of the LORD be kindled against you, and He will destroy thee quickly". As it is possible to see, the inter-marriage here is associated with a detachment from the Jewish faith and with the spiritual degeneration of the future generation of the family.

⁷⁷ Briefly, the Law of Return is one of the laws regulating the immigration policy in Israel. On the basis of the ideological concept of Israel as the historic homeland where Jewish people can freely return to, this law allows to Jews or Jews' descendants (and their spouses) to easily acquire the Israeli citizenship and get integrated in the Israeli society. For the text of the law see: http://www.mfa.gov.il/MFA/MFAArchive/1950_1959/Law%20of%20Return%205710-1950

form of marriage in the country. In fact they belong by law to the Jewish community or, at best, they have been registered as not belonging to any group. Members of non-Orthodox streams find themselves in a dead end street when it comes to marry. As explained the Rabbinate is exclusively run by the Orthodox movement and Conservative or Reform rabbis, do not hold any legitimacy in matter of personal status. Premised that the members of these communities do not usually intend to marry in a different ritual than their own, they might be prevented from doing so: non-Orthodox converts are usually not recognized by the Rabbinate and also in the case of a native non-Orthodox Jew its Jewishness might not be recognized by the Orthodox establishment. Also some Jews, recognized as such by the Halacha might encounter problems to marry. Their freedom in fact might be restricted by the religious rule that forbids the marriage among specific groups of people. A male member of a *Cohen* family (that in Ancient Israel was the sacerdotal caste) is forbidden to marry divorcees, converts, a widow who performed *chalitza*⁷⁸. Whoever was born from a non-legitimate relationship (extramarital relationship⁷⁹ or incestuous relationship) is considered *mamzer* (lit. bastard). The mamzer can only marry with other mamzerim and this prohibition is valid for several generations after him.

For the above mentioned people, the only viable option is to marry abroad and to get later recognition by the State, through the registration in the population registry. This option is in fact chosen not only by people who cannot marry under the legal provisions of the country but also by many Jews who are entitled for marriage in the Rabbinate, mostly not observant (or not entirely) who perceive the Orthodox views on marriage as retrograde or simply do not wish to attribute a religious value to their union.

⁷⁸ Chalitza is a ceremony that a widow without children performs in order to be free from her husband's brother to marry her. With this ceremony she becomes free to marry again but her status is the same of a divorced woman that a Cohen is prohibited to marry.

⁷⁹ As already mentioned, extramarital relationship can be considered also the one of a woman whose husband has refused to give permission for the dissolution of the previous marriage.

Delegating exclusive authority to the religious apparatus, the State also accepts the views that guide the religious management of such personal status matters. The approach to the marital relationship is not egalitarian in Orthodox Judaism and this shows its most practical consequence in case of divorce⁸⁰. Unlike marriage that can be performed abroad and recognized as valid (also by the Rabbinate if it matches specific parameters), divorce of two Jewish Israeli citizens can only be performed by the religious authority in order for the union to be recognized as totally dissolved⁸¹. As mentioned in the previous paragraphs, divorce in the rabbinical courts is a prerogative of the husband who is entitled to refuse to "free" the wife from the marriage bound. While a man is in divorce procedure can start a new legitimate relationship and can have legitimate children. On the contrary, women remain "chained" (*agunot* in Hebrew) to the marriage until the husbands want. This power can be used by the husband to blackmail the wife, asking for economic compensation or other concessions. Religious courts do not fight these dynamics and, even if they dispose of strong tools to avoid stalemate situations⁸², they often do not intervene, depriving women of the right to remarry and to have legitimate children. According to the religious morale, women are judged more strictly as it comes to extramarital relationship or misbehavior within the couple. In such cases the verdict can be extremely unfavorable for them (as it regards alimony, property matter and custody of children for example). A quite unbalanced behavior as it

⁸⁰ The divorce issue is a delicate one also in other religious communities in Israel. Catholics for example do not allow divorce. In order to break the marriage, Catholics do not have other choice but to engage a long and expensive procedure of dissolution, which is very difficult to obtain.

⁸¹ A divorce that is not performed by the rabbinical court is generally considered not valid. This affects the woman's status and her possibility to remarry and to have legitimate children. This set of rules has repercussion on the future children of this woman, which will be considered mamzerim, so ineligible to marry with non mamzerim in Israel.

⁸² The power to inflict sanctions is granted by the Rabbinical Courts Law. On the Rabbinical Courts Law and its implementation in order to solve divorce proceedings see: Kaplan Y. S., (2012) "Enforcement of Divorce Judgments in Jewish Courts in Israel: The Interaction Between Religious and Constitutional Law in *Middle East Law and Governance* 4:1-68

comes to economic matters has been often noted, disregarding to the "spouses' faults", often penalizing women. Also custody of children is attributed according to religious consideration, for which custody of boys after the age of six is normally granted to the father or more generally to the parent whose lifestyle is closer to religious observance⁸³.

The authority of the Religious Courts, however, is not unlimited. Ancillary matters related to divorce proceedings such as alimony, children custody and economic matters can be discussed both in a civil and in a rabbinical court. The competence is assigned on the basis of earlier attribution that is depending to which court the request has been filed first. Religious courts apply religious rules in the determination of these matters while civil courts apply norms based on equality of the spouses. For this reason, this concurrent competence might result in a very different response, both with binding value and both accepted by the State as legitimate. As it is easy to imagine many couples perceive this dual system of judicature as an opportunity to receive a more favorable treatment (in case of the woman, it is usually the fear of receiving a less favorable one). When a divorce request is filed, a real competition is engaged by the two spouses for filing the ancillary matters suit in one or another court. The case should be really taken into account not only for the discriminatory attitude toward women that is so often recognized in religious courts' rulings but also for an evident infraction of the principle of univocal justice that is one of the basics of a democratic country. The unacceptable contrast between verdicts of the two different courts had been enlightened also by the civil judicial power, in particular by the Supreme Court. The Supreme Court remarked the superiority of civil law principles in matters in which religious tribunals do not have exclusive competence. Significant interventions of the Supreme Court on the rulings of the religious courts are not very frequent and they are usually received not positively by the religious establishment. The pronouncements are seen as an intrusion of a laic institution in the autonomy and legitimacy of

⁸³ See Cohn M., (2004) Women, Religious Courts and Religious Law in Israel - The Jewish Case, in *Scandinavian Journal of Social Sciences* 57-76.

the religious based justice. One of the most famous cases at this regard is the Bavli case that took place in the mid Nineties. In this case, the rabbinical court detained decisional power with regard to alimony and division of assets. The verdict on such matters followed the religious law and attributed to the wife a much inferior sum than the one she would have obtained in a civil ruling. While the civil decision would have been based on the Spouse- Property Relations- Law that establishes an equal division of assets among the spouses, the religious court calculated the sum on the basis of the marriage agreement, a document that most of the couple consider a symbolic one (actually a purchase contract) that is signed in absence of the bride on the wedding day by the groom and a male member of the bride's family (usually the father). Mrs. Bavli appealed to the Supreme Court that decreed the illegitimacy of the sentence, demanding for a more equal formulation in the light of the principles of gender equality to which Israel inspires its legislation on the matter. It was remarked by the Supreme Court that rabbinical verdicts should keep into account the civil legal bounds⁸⁴. The reaction of the religious court was furious. The anger of the religious establishment derives from the feeling that civil courts intrusions undermine the status of the rabbinate and the Torah as a legitimate legal source. In these cases, the rabbinate appeals to the judges' unconditional loyalty to the Halacha that cannot be compromised to satisfy any negotiation with the secular branch of the judicature. Moreover, as sustained by De Bloiis,⁸⁵ the pressure exerted by the secular branch of the judicial system on the religious tribunals is considered to affect the legitimacy of the divorce proceedings, since they would violate the voluntary nature of the spouses' decisions that is the core of a "kosher divorce". Potentially a divorce, in which the intervention of the civil courts played a determinant role, might be challenged by another rabbinical authority, in a different time or place,

⁸⁴ See Segal Z., A tower of Bavli in Haaretz, 22 Nov 2004 at <http://www.haaretz.com/print-edition/opinion/a-tower-of-bavli-1.140954>. For a more detailed description of the case see Cohn M., Women, Religious Law and Religious Court in Israel, 27 Retfaerd, Scandinavian Journal of Social Sciences 57-76 (2004).

⁸⁵ De Bloiis M. (2010), See above.

and its validity rejected. This constitutes a potential vicious circle that perpetuates a clash of authorities and principles.

The conflict of judicature described above shows here another aspect of paramount importance. Two different institutions both financed and legitimized by the State and in charge of administering justice provide with different rulings and end up representing in the public opinion two different visions of the world to which citizens feel alternatively closer. The danger that originates is the labeling of each institution as "defendant of" or "preferred by". The Supreme Court suffers from this bias. It is evident when looking at the surveys on public trust on institutions that clearly show a more favorable attitude to this institution by left winged citizens who are generally the most secular and liberal. In a democracy justice should be seen as impartial in order to be accepted as legitimate. The possibility (even only in specific cases) to choose a preferred institution on the prevision of a more favorable verdict damages the very concept of impartiality of the law and deeply affect the legitimacy of the judicial structure.

As seen, religion plays an important role in the administration of justice in the country, which delegated to the religious institutions a large portion of power, especially as it regards marriage and divorce. Many criticisms have been moved to this system. The clear liberals stance of Israel is seen as diminished by a court structure that is based (for certain matters) on religious identification and compel citizens to participate in the religious mechanism, subjecting themselves to the religious rules⁸⁶. The right to marry is a human right recognized by every democracy. Through the delegation of authority to the religious courts Israel actually impairs some of its citizens of this right. The option of marrying abroad might be a well-accepted and popular way to circumvent this regime but it is definitely not an answer that the State can give neither to its citizens nor to itself. On the contrary, the growing number of Israeli citizens who marry abroad every year

⁸⁶ See Rubinstein A., (1967). Law and Religion in Israel in *Israel Legal Review*, 380:384-

⁸⁸.The author states: "To subject persons to religious law and religious judges in matters of marriage and divorce, is equivalent to forcing them to participate in religious rites"

should alarm the State, who is evidently lacking the ability to satisfy a basic need of a big portion of its population.

A number of steps have been taken already to remedy to blatant cases of disparity and to blind alleys created by the official procedure. In 2010 the Knesset approved the Law on Spousal Agreements for Persons without a Religion, authorizing the registration of spousal agreements between two people neither of which is registered as member of any religion. Another option, that is becoming popular, is to be recognized as *ieduim batsibur* (lit. "publicly known" as a couple). This kind of common law arrangement is viable in Israel only when the partners are both citizens. The *ieduim batsibur* are not formally recognized as married though enjoying almost all the rights of a married couple (with less guarantees on the division of assets, heritage etc.). Recently the civil court has also issued a divorce among two homosexual partners, signing a milestone in the personal status jurisdiction. The marriage that of course had been celebrated abroad and later recognized as civilly valid by the State of Israel, was however not accepted as valid by the rabbinate, who absolutely refuses same sex unions. The State has normally no jurisdiction on divorce, being this issue delegated to the religious court. However, in this exceptional case in which the couple would not have had any alternative to dissolve their marriage, the state performed the divorce through the family court of Ramat Gan rising a vivid public debate and alimenting the hopes of those who seek for the institution of a civil option for the management of the other judicial issue⁸⁷ (that by the way provide the double option of judicature, under the consent of both the litigant parts).

⁸⁷ Halperin-Kaddari R., (2012 December 12) Will Israel's first gay divorce pave the way for others? In Haaretz, at <http://www.haaretz.com/opinion/will-israel-s-first-gay-divorce-pave-the-way-for-others.premium-1.484332?localLinksEnabled=false>

3.2 RELIGION AND PARTICIPATION

As previously asserted, participation is a crucial dimension of democracy since it allows the affirmation of people's sovereignty over the state and the governments bodies. The desire to constantly monitor public administration, to personally express one's views and concretely intervening in social life spells out the intention of affecting with one's opinion and sets of values the reality to which he belongs.

Religious observance is a fundamental agent in determining participation dynamics; the sets of values and the laws that every religion promotes, are likely to be interiorized by the followers, with a various degree according to the level of religiosity, to the religious streams and to the interpretation given to the religious predicaments (usually deriving by the religious leader of the community, less frequently personally inferred through personal approach to religious texts and prescriptions). Religious believe and practice is likely to influence both the modality and the content of the civic participation. The influence on the modality is due to the circle of socialization that religious practice produces (the believer is rarely an isolated individual but, more often is integrated, with various degree, in the religious community. The community is likely to be quite homogeneous due to the sharing of common religious values. This commonality can favor aggregated forms of participation). Moreover, in the participative act, the individual, who is bound by religious predicaments, will act accordingly. Religious values and norms become part of the believer's life and they are likely to be transferred, totally or in part in the activity in which the believer takes part in. For example, a Catholic observant believer will probably rather join a movement against abortion than a movement that promotes a more permissive approach on the matter. Judaism is not an exception to this general dynamic of religious influence on participation. On the contrary, it represents a very good example, being a very pervasive religion, which regulates most of the field of personal life, with some implications in communal life and interactions with others. The main streams of Judaism in Israel (generally identified as Orthodox and Haredi) imagine a society that is built around the religious rules and praise with favor the hypothesis of

a widespread respect of the predicaments of the Halacha. Since a general turn to faith and religious practice of the Jewish people is a condition for the ultimate advent of the Messiah, the importance of living in a global observant community is paramount. Civic participation to the Jewish state, is experienced very differently by different kind of Jewish believers, each of them promoting their own agenda. The agenda promotion activity includes several levels: from the legitimation of communities' practices and behaviors (like the group Woman of the Wall, mainly composed by conservative and reform Jewesses, fighting for the right to pray in the Kotel according to their ritual) to the protest for an existing condition that infringes the values of that group (like the mainly Haredi opposition to the exhibition of female singers in public ceremonies), to the promotion/expansion of certain practices and values in the society at large (like the Haredi street activity to promote the *tefillin* prayer). In general terms, participation in Israel is quite dynamic and even if political militancy is in decline, information and social activism (including protest) are much used tools, both to contrast existing situations and to propose or actively realize new alternatives in different social and political fields.

Within the population some factors have been recognized to influence the level of participation: socioeconomic conditions for example are proved to influence the degree of active participation in society (influencing for example voters' turnout⁸⁸). Relevant to this paragraph is the connection between religion and dynamics of participation and it will be argued that, within the Jewish group, religion affects mostly the participation of the Haredi group.

It is important to remark that the Haredi group, also referred to as Ultraorthodox, is itself a composite community and an overall description will undoubtedly lead some kind of over-simplification and generalization. Nonetheless, the following claims only aim to give an overall picture of the common rules and dominant views on

⁸⁸ Afriat A. & Dahan M. (2010), Socioeconomic bias in voting for the Knesset in *Israel Economic Review* 8:1:1–20

participation in the Ultraorthodox world and are supported by an extensive literature.

In the TODEM analysis, participation has been measured in several of its manifestations, first of which the electoral one. A decreasing trend was tracked: even if Israel remains largely in average with the other OECD countries, active engagement in political activities is sensibly minor than in the past. A general disaffection has been registered and a lower identification with parties seems to be more and more diffused. The Arab sector is on top of this negative trend and reaches the highest abstention peaks. The causes of abstention for this specific community are considered to be a feeling of alienation, marginalization from and rejection of the political and social system. One would expect that the Haredi community, the majority of which nurtures anti-Zionist feelings, harshly criticizes the state authority as blasphemy and claims its extraneousness to the state of Israel would follow this declining trend. One would expect that the Haredi community would set itself apart from the political participation in a state that they do not identify with. Instead the electoral participation registered in Haredi neighborhoods is surprisingly high. In Bnei Brak for example, Israeli town prevalently inhabited by Ultraorthodox, the turnout in the last elections was 72.4%⁸⁹ (77.58% according to another journalistic source⁹⁰), above the national average that is less than 70%. The data might actually confirm the prevalent opinion reported in The 2012 Israeli Democracy Index that participation in elections is considered for its functional aspect more than for its symbolic one. In fact, the majority of the respondents to the survey stressed how, through vote, it is possible to impact on the political process and safeguard one's interest⁹¹.

⁸⁹ Flier B., (January 16, 2013) Lopsided voter turnout means skewed election results in Ynet, at <http://www.ynetnews.com/articles/0,7340,L-4333386,00.html>

⁹⁰ Hasson N., (January 23, 2013) Israel's election results: insights and oddities, Haaretz, at <http://www.haaretz.com/news/israeli-elections-2013/israeli-elections-news-features/israel-s-election-results-insights-and-oddities.premium-1.495838>

⁹¹ Hermann T., Atmor N., Heller E., Leber Y., (2012). The Israeli Democracy Index 2012, Jerusalem: The Israel Democracy Institute

Political preference of the Haredi voters is mainly directed to Haredi parties. Because the intra-ethnic fracture (based on the contraposition between Jews of Western descent and Jews coming from Middle Eastern and North African countries) is much alive in the religious world, Haredi parties maintain this division. Therefore, Ashkenazi and Sephardi formations have, as targets, specific sector of the Ultraorthodox community. Degel HaTorah and Agudat Ysrael are the two historical Ashkenazi ultraorthodox parties that occasionally merge in United Torah Judaism; Shas is the Sephardi alternative that was created in a later period but gained a bigger consensus (partially also from Ashkenazi and non-Ultraorthodox voters). Participation in these parties is subject to the Ultraorthodox traditional set of values. This entails a total exclusion of women from passive electorate and political activity and a more general gender segregationist approach. The role of women as pious mothers and protagonists of domestic life is in fact promoted on the basis of a traditional interpretation of the religious law and is exposed as an exaltation of the virtue of modesty. The choice of the party leadership and the main party line is heavily influenced by the religious authority, which is not directly engaged in public offices but openly directs the political organization. A possibility of future change in favor of a more bureaucratic leadership is hypothesized by Brown⁹². However, the authority recognized to rabbis and their central position in the Haredi communities is likely to safeguard their influence in the political sphere. Political sphere therefore is mainly seen as a mean to gain favorable conditions for the community and as a way to influence the society with religious values. If compared to the recent trend of internal democratization that is progressively taking place in the Israeli party system as well as in many Western countries, the centralistic management of religious parties immediately appear insufficient in terms of openness to participation as well as in terms of electoral accountability. The total delegation of the decisional power to a "superior" authority would deprive the party membership of important tools of expression. They would be relegated in a secondary position, basically the same of any other elector non-member or activist

⁹² Brown B., (2011) *Toward Democratization in the Haredi Leadership?* Jerusalem: The Israel Democracy institute.

of a centralized non-open party. This deficiency however needs to be seen in a broader context. Total deference is reserved to the rabbinical authority in the community. According to the Torah in fact, priests and judges enjoy a status of privilege because of their closeness to the divine law and presence. People should follow their predicaments without contesting them as well as consulting them in any controversial decision. Rabbis in fact are wise and inspiring models of spiritual loftiness and repositories of the divine will⁹³. The accountability established between the party membership and the elected as well as the participation to the political project of the party can be defined as accountability "by proxy". It is built, therefore, on the trust and the absolute authority conferred to the religious authority, which might resemble a modern version of biblical decisional bodies. Furthermore, the development of a classic accountability mechanism is somehow thwarted by a strong sense of community that is often posed before the personal dimension. Hakak⁹⁴ confirms this idea when underlining how the personal narrative of Yeshiva Haredi students is scarce and the referral to the community is continuous. Even though slight signs of change have been recently developed both in the party management (apparently progressively more delegated in the hands of party bureaucrats, trustees of the rabbinical spiritual authority) and in part of the membership who gets occasionally involved in factionist rivalries for important offices⁹⁵, the rabbinical decisional power results stable and much respected.

Segregationist attitude in the Haredi world

Religious orientation and level of practice are relatively recognizable from external features in Israel. Looking at the crowd at a bus stop might be possible to see women with tight, short jeans and tank tops,

⁹³ Among the most known biblical sources for this concept see Deuteronomy 17: 8-12

⁹⁴ Hakak Y., (2012) *Young Men in Israeli Haredi Yeshiva Education*, Leiden: Koninklijke Brill

⁹⁵ Brown B., (2011) See above

women with scarfs or bends on their head wearing colorful dresses that cover their knees and elbows and women clothed in dark dresses whose hair are entirely covered by a wig, a net or a hat. The same could happen with men: Western and modern clothes in the first case might be accompanied by a knitted skullcap in the second case (and maybe by zizith, cords that hang down hip deep); the third man would look strikingly different from the previous too, wearing black trousers and a long black coat (rarely but possibly of another color) and a big black hat over a cloth skullcap. This generalization, that of course is not precise not exhaustive might help to mirror the level of social integration in the Israeli society. Secular Israelis Jews and Jews belonging to non-Orthodox streams of Judaism would probably look like the first described type; the second type is a rough representation of the Orthodox stream of Judaism, integrated in the modern Western costumes but retaining evident traits of their religious identity (this might actually be the case that also includes some non-Orthodox Jews); the third case, representing the Haredi community, would deliberately differentiate itself by the rest of the population, strongly marking the belonging to a detached group. The esthetic (and partially superficial) considerations mirror to a certain extent the level of integration and participation in the society. Secular, non-Orthodox and Orthodox Jews have similar dynamic of participation and social integration that takes place in mixed or religiously connoted events and organizations. Orthodox Jews maintain a strong attachment to their religious identity and sets of values and bring them in every activity that they engage. In Orthodox schools, an educational option that the state offers to its citizens, are one of the main moments of socialization and indoctrination for the new generations. Even though these schools are prevalently attended by religious kids and youngsters, a certain rate of mobility between the secular and Orthodox educational system is registered (meaning that not only Orthodox students go to Orthodox schools and vice versa). Quite an integrated bulk of citizenship results from this system. The Zionist idea of Israel as homeland of the Jewish people (with different interpretation on the meaning of the word Jewish and on the actual realization of this quality) is the main binding agent among these groups. The Haredi community is less inclined,

whenever not totally contrary, to the Zionist ideals. They deliberately maintain a separate existence from the rest of the population, choosing to dress differently, to educate the new generations in specific Haredi schools and maintain their microcosm physically and symbolically separated as well as imbued with a literal following of the Halacha. On the political side, Haredi blame the state of Israel to be a blasphemous attempt of what only the Messiah will be able to realize. Stadler⁹⁶ observes how the Haredi rejection of modern culture and Western customs, sharpened with the rise of the secular European Haskala and Zionism, led the Haredi community to a further closure and to the strict preservation of a behavioral system based on sacred texts and their interpretation by illuminated sages. The overlapping of interpretations across the centuries gave primacy to some ideas over others, sometimes quite far one from the other. As reported by Stadler, work is an example of concept that underwent a neat change: while in previous times was seen as something respectful and honorable, modern interpretations link it to the punishment inflicted by God to Adam and Eve, stressing instead the necessity to live a life of total trust and confidence in the mercy of God, also for the provision of essential goods. The biblical metaphor of manna is often taken as a symbol of divine care to people who fully detach themselves from the mundane preoccupations and focus on spiritual grow and closeness to God. The modern predominance of this view might be also functional to the desire to contrast the Zionist ideal of productive work as a mean of social rebirth. Also civic engagement is considered by the Zionist ideology as part of this constructive attitude and is favorably regarded as a mean to legitimize one's citizenship. In Haredi ideology, productivity (broadly intended) turns to be a disvalue since material achieving does not represent success but the greediness of man and its egoistic impetus of setting himself apart from God⁹⁷. The will of detaching themselves from the secular contaminated society and the totally focusing on prayer and the study of sacred texts result in a further social segregation of the Haredi community that excludes itself

⁹⁶ Stadler N., (2002) in Is Profane Work ah Obstacle to Salvation? The Case of Ultra-Orthodox (Haredi) Jews, in *Contemporary Israel in Sociology of Religion*, 63:4:455-474.

⁹⁷ Hakak Y., (2012) See above.

from the working environment and relies almost exclusively on donations, public contributions and women's working activity⁹⁸ (that is often not well paid, given the low level of education of women in the Haredi world). This general setting holds true, even if a new attitude seems to be rising. Hakak notes how the disinterest of some Yeshiva students is nowadays an accepted reality also by the rabbinical establishment, which tries nonetheless to keep the students in a protected religious environment. The birth of a Haredi middle class in Israel has also been celebrated by Zicherman and Cahaner⁹⁹. This would be composed by educated men and women whose religious strict observance and belonging to traditional Haredi communities do not prevent them from being integrated in the society and economically well positioned. Examples of Haredi progressive openness to the society will be given in the following pages. Nonetheless, it is fundamental to notice that this segment of society still remains deeply marginalized in terms of participation, both in dominant internal narrative and in the eyes of the rest of the population.

Haredi Protest as a mean of participation

The contra-acculturationist attitude¹⁰⁰ of the Haredi community is often expressed through public protest. The hard feelings that this community nurtures toward the State and the society, toward their symbols and rules stem in public manifestations of disdain. The opposition to a liberal vision of woman and corporeity for example, is manifested through rebellions against the advertisement world, which largely uses feminine images as protagonists of commercial campaigns.

⁹⁸ Haredi women are not allowed to study in Yeshivot and even though some educational opportunities in the community or outside they are usually non-intensive or extended session of studies. The role of learner is almost exclusively masculine in the Haredi society.

⁹⁹ Zicherman H. & Cahaner L. (2012), *Modern Ultra-Orthodoxy: The Emerging Haredi Middle Class in Israel*, Jerusalem: The Israeli Institute of Democracy.

¹⁰⁰ Freidman Hermann *The Haredim who are they and what do they want*

It is not infrequent that posters in the streets are torn¹⁰¹, as well as buses damaged for carrying advertisements showing feminine face or bodies, considered to be indecent and provocative. These protests trigger an intense public debate and groups from the non Haredi world (mainly secular but not only) engage social and legal duels to contrast Haredi's actions and demands. These actions however, have sometimes led to victories of the Haredi community¹⁰². Even if most of them are only partial and temporary victories, they show Ultraorthodox's ability to impose an agenda. Moments of recurrent clash between identities are the national holydays that the Haredi community does not recognize. The prevalent anti-Zionist sentiment makes commemorations like the Independence Day absolutely illegitimate and even heretical in the eyes of many Ultraorthodox¹⁰³. At this regard, an interesting study¹⁰⁴ underlines the Haredi attitude of rejection toward the day dedicated to the national commemoration of the victims of the Shoah. The main reaction is a disparaging one. In most of the Ultraorthodox newspapers, the Haredi narrative of the Shoah is strengthened and the inappropriate forms of commemorations are stigmatized as the poisonous fruit of a society that is drowned in sin and blasphemy. Despite that, the research points out how this day is *de facto* recognized by the Haredi media (thus diffused to the Haredi public) through thematic articles and a specific vocabulary. This empirical result confirms once again the value of protest as a mean of participation as well as the progressive opening of the Haredi mentality toward an acceptance, even though partial and very critical, of the State. This reactivity to the reality is, from the democratic point of view, undoubtedly preferable to a status

¹⁰¹ Greenwood P. (2011, November 15), Jerusalem mayor battles ultra-orthodox groups over women-free billboards in The Guardian at <http://www.guardian.co.uk/world/2011/nov/15/jerusalem-mayor-battle-orthodox-billboards>

¹⁰² Lidman M., (2012, August 29), Egged: We will not use people on J'lem bus ads in Jerusalem Post at <http://www.jpost.com/National-News/Egged-We-will-not-use-people-on-J'lem-bus-ads>

¹⁰³ Oplatka Y. (2013, April 23) Haredim taught to reject State in Ynet, at <http://www.ynetnews.com/articles/0,7340,L-4370726,00.html>

¹⁰⁴ Heilman S. & Friedman C. M., (1996) The Haredim In Israel: Who Are They and What Do They Want? American Jewish Committee (AJC), at <http://www.bjpa.org/Publications/details.cfm?PublicationID=2577>

of alienation and impenetrable segregation. However, the stronger and the more frequent the reactions occur, the more the social fractures are unveiled, creating clashes among different segments of the society and fomenting social unrest. Another case in which the protest of the Haredi community can reach incredible peaks both in terms of participation and of intensity (with the use of a strong symbolic apparatus and, sometimes, the use of a moderate violence) is the case of protest against political deliberations. These protests become particularly high pitched when the decisions directly affects the life of the Haredi community (negatively, in their perception). One of the most contested issues in the last year is the protest against Haredi military conscription. As before mentioned, the Haredi community negotiated special arrangements with the secular political leadership at the origin of the State, that granted *de facto* the exemption for yeshiva students. Through the years, few crucial modifications have been made to the arrangement but the substantial exemption has been always granted to the growing community of Haredi young males. The recent verdict of the Supreme Court about the unconstitutionality of the previous norm in this matter, and the incapacity of the Knesset to formulate an agreed upon and viable alternative proposal, made the previous agreement decade. These developments were stimulated by a large movement of protest that, like many times in the past, claimed the necessity of a universal participation in the army to which the Israeli society attaches a particular identity value. On their part, the Haredi organized several protests, characterized by an impressive attendance and very high tones, occasionally degenerated in acts of violence and vandalism¹⁰⁵.

Why most Haredi do not serve in the army

As previously described, compulsory army service in Israel is considered a crucial moment both as an individual formative experience and as a mean to acquire full legitimacy as a citizen. The

¹⁰⁵ Ultra-Orthodox Jews in mass protest against Israel army draft (May 17, 2013) in BBC at <http://www.bbc.co.uk/news/world-middle-east-22565285>

Israeli army was not conceived only as a military tool (nor only as an obligation to fulfill under the basic democratic paradigm duty-rights) but as an important ideological element. The role of the army as an agent of social integration and identity building, therefore, was openly declared by the political establishment in the beginning of the state era. Its success in this task is actually recognized by many scholars¹⁰⁶. The attachment to the State, the pioneristic values and the promotion of a new identity, based on productivity and self-empowerment were basic Zionist values that spread starting from the end of the Nineteenth century in Europe, developed exponentially with the first European waves of immigration and further on with the creation of the State. The creation of the New Jew as an ideological objective amplified the call for a concrete contribution to the State, exalting the material work and force. The collectivistic stance was further reinforced by the socialist ideas that were predominant among the Israeli first political class. These values fixated vigorously in the collective imagery and were completely interiorized. For this reason, still nowadays, serving in the army assumes a paramount significance as a civic and moral obligation and it is not perceived by the majority just as an imposed duty. The effective regional instability that many times saw the Israeli army as protagonist as well as the rhetoric that has been constructed around this public actor lends the military the meaning of homeland champion. Those who take part in this enterprise contribute to preserve the State, and the life of all citizens. Those who do not, are regarded as traitors or inferior citizens since they do not part in the salvific mission of the nation's army.

In this frame, Haredi ideology and lifestyle stand at the margin. Zionist values have been largely unpopular among the Haredi society since the moment of their creation. The self-empowering impetus is

¹⁰⁶ Ben Shalom U. & Horenczyk G (2004), Cultural identity and adaptation in an assimilational setting: Immigrant soldiers from the former Soviet Union in Israel in *International Journal of Intercultural Relations* 28:6: 461–479. Other scholars instead point out at the army as a perpetrator of social inequality and exclusion. This very stimulating argument, however, falls beyond the purpose of this work. An example of this interesting approach is in: Peled, Y. (2008), The evolution of Israeli citizenship: an overview, in *Citizenship Studies*, 12:3, 335 -345

regarded as an arrogant human pretense of creating one's own realization far from the grace of the Creator. Modernization is partially considered on the same level and it is looked at with suspicion. Spirituality and detachment from material world constituted the ideal of Haredi lifestyle. The main purpose in life is to get as close as possible to God; therefore elevation of the soul needs to be the primary goal and no other preoccupation should interfere. Deep understanding of the religious predicaments is the way to strengthen the spirit while any material desire represents a lethal danger. The creation of a Jewish State is also interpreted in this optic and even if the Haredi community recognizes the holiness of *Eretz Ysrael* (the land of Israel) and choose to live there, they do not identify with the human creation of the State. As a result, they refuse the obligations that it entails for its citizens. The role that Ultraorthodox Jews recognize to themselves in the Jewish community is of enhancement of the spiritual level¹⁰⁷. The burden that they take living a life of study and prayer is not considered less important or less heavy than the contribution that other citizens give through the military service or the engagement in other public activities. On the contrary, the continuous study is regarded to as a main task, whose fulfillment cannot be posed at risk by the long interruption that would derive from serving the army. The army, moreover, represents another threat to the Haredi mission: the secular environment would represent a terrible temptation for the young students that are educated and socialized in a pure and protected collectivity. The exposure to the moral decline that is dominant in the Israeli society might irreparably harm the mission of the Haredi "spiritual warriors", driving them far from their purity. From this reason, the Haredi community, and in particular spiritual leaders oppose vehemently to any kind of contact with the external world and in this specific case with the army.

Stadler and Ben Ari however, discover a discrepancy between the old and the new generation of Haredi. While the position of the former is much stricter and looks at any contact as a mortal threat for the

¹⁰⁷ Stadler N. & Ben Ari E. (2003) Other Worldly Soldiers? Ultra-Orthodox views of Military Service in Contemporary Israel in *Israel Affairs* 9:4 17-48

spirituality of the individuals and the community, the younger Haredi have a more moderate position at regard. They acknowledge the State of Israel as a reality and the practical importance of the army (also to be noticed that an increased wave of militarism and hawkish positions has been developing among the religious groups in the last twenty years. This might have influenced the views of young Haredi toward the army). The arrangements to encourage Haredi military service (the predisposition of a special unit exclusively for Haredi soldiers; their destination to specific positions related with religious matters in the army, the predisposition of an articulated system of vocational courses, and postponed decision on the actual enlistment etc.) were not extremely successful in increasing the rate of enlistment but evidently partially eroded the wall that the Haredi society had posed between its youth and the military service. The strict position of Haredi rabbis is in fact seen as a generational trait and as the demonstration of their concern for the community's integrity. Youngsters define their study as an alternative kind of service to the community but confess that what stop them from accepting to serve in the army are social constraints in the Haredi community (in particular the social stigma and the repercussion on their future marriage) and the fear of being tempted by the secular lifestyle.

Religious belief as promoter of participation

Till this point religious belief and observance seems to be a strong obstacle to Ultraorthodox community's participation in the society and acquisition of a full legitimacy as citizens (partially intentionally rejected by the members of the community itself that would not aspire, in general terms to be part of a State entity that they consider blaspheme). A major clash originates from this situation where socioeconomic discourse merges with the State ideology. Haredi refuse and fail to incarnate the New Jew and the Israeli citizen. Therefore, their marginalization appears inevitable. However, from the same source, religion, a possible key of pacification seems to rise. In the

Haredi community, already from the Nineties, a well-functioning volunteering service has been activated that operates all over the country. The recipients are not exclusively members of the community; all group of the Israeli society can benefit from these services. An extensive study on the topic analyzes two of these organizations¹⁰⁸, Yad Sara and Zaka. They are particularly relevant for their capillary diffusion in the national territory and for the high impact of their activity. The two organizations were both created by Haredi groups that keep sustaining these initiatives with voluntary work and private donations. Yad Sarah was founded in the late Seventies and expanded through the Eighties also as a consequence of the economic liberalization that aggravated the status of marginalization of the weakest groups of the population, namely Haredi and Palestinian citizens. Its initial mission was that of lending medical simple instruments (wheelchair and small medical machine for domestic use) and it further developed covering many other area of social interest like help for elderly, management of recreational and educational activities. Moreover, it engaged in some international benefic activities. Despite the Ultraorthodox paternity of the initiative, Yad Sarah's became soon an occasion for a much broader and variegated group of volunteers from all strata of Israeli society. The idea of compassion and charity is much present in the sacred scriptures and even more in the texts from the sages that the Haredi community regards with much veneration. Donating and helping the poor and the sick are also considered good deeds that a pious person should perform as a religious duty. In Yad Sarah these religious predicaments are sublimated and put in practice. To a certain extent, through Yad Sarah, the Ultraorthodox community has been promoting some fundamental values anchored to its credo, spreading a message of social caring and piety. Public recognition of the organization and its work has been formalized through the award of several national prizes. On the international level, Yad Sarah is known in many countries and in 2005 had been granted (for the first time in the history of Israeli social actors) the status of UN council observer.

¹⁰⁸ Stadler N., Lomsky-Feder E. & Ben-Ari E. (2008): Fundamentalism's encounters with citizenship: the Haredim in Israel *Citizenship Studies*, 12:3:215-231

The second very peculiar example of Haredi participation in the public sphere reported by the above mentioned research is ZAKA¹⁰⁹. Following the terror attacks in the Nineties this group was created for a specific and delicate purpose: the identification of victims of disastrous events. This sensitive task includes the re-composition and the treatment of the dead victims and their "delivery" to the competent public authority. The quick legitimization obtained by ZAKA in the public opinion and in the society derives from the volunteers' expertise in Jewish practice of burial and treatment of bodies. Moreover, their legitimization is strengthened by their constant collaboration with the official forces of rescue and public authorities. As a contingent task the organization supports the operation of first aid to the injured. At first the ultra-Orthodox rabbis viewed the work of the organization as heresy and sin. The Jewish relation with death and the handling of dead bodies is in fact very complex. Dead bodies are considered impure and touching them is highly prohibited but under very special conditions. The engagement in this sensitive activity vests the volunteers of a special status and challenges their identity as believers and as members of a religious community. The drive to this contribution to the society however is explained by the volunteers in religious terms. They emphasize the sacredness of life (that has been taken away from the victims), the piety and the respect for the dead. The fundamentality of these values, and the desire to affirm them in the society committed the volunteers to a task whose acceptability is contested in the religious world and, for its unpredictable nature, might cause the transgression of other religious commandments (like the transgression of the day of absolute rest).

These activities, that still involve a minor portion of the Haredi community, are anyway the symbol of a possible negotiation on the meaning of civic participation in the State. Religious values are not *per se* an obstacle to the development of a civic conscience. On the contrary positive values should be enlightened and their implementation of the

¹⁰⁹ A more focused description of Zaka is given by Stadler N. et al., (2005) Terror, Aid and Organization: The Haredi Disaster Victim Identification Teams (ZAKA) in Israel in *Anthropological Quarterly* 78:3: 619-651.

shared ones should be encouraged as a mean of integration. As mentioned in the opening of the paragraph, participation is the personal contribution that every individual gives to the community. Being it personal, it carries the peculiar traits of individuals. In a multi-fractured democratic society the total identification with the State's identity is hardly achievable and sometimes unfairly requested. In order not to create dangerous niches of marginalization therefore the even partial contribution should be regarded with favor and emphasized in order to create a more distended social climate and slowly expand the collaborative space.

3.3 RELIGION AND COMPETITION

If participation is the personal or collective contribution to the society in order to promote ones' values and views, competition is the way different ideas and values confront each other to prevail in the political or social arena. Not all the ideas and values that are introduced in the public sphere through an act of participation pass to the stage of competition. In order pass to the stage of competition, ideas and values needs to be disagreed upon, or at least questioned. For example, while there is a large movement of participation all over the Western world to protect children from physical violence, this issue is not matter of competition, since, as of our knowledge, there is no social group that promotes battering of children. As it was explained in the previous chapter, the confrontation of different ideas is influenced by various elements. Some of them are systemic, because they concern the "rules of the game". Even if, in democracy, rules aim to be the fairest possible and to guarantee an equal competition, different sets of rules can favor or disfavor some of the players. This mechanism is sometimes addressed as a distortive feature of the system. It is known that a competitive system can have different degrees of distortive effect; it is also recognized, however, that distortive effects are impossible to avoid completely. Beside institutional constraints, competition is affected (in it substance) by social factors. In every society, indeed, diverse issues are object of interest for the population and constitute the ground for social and political debate. According to Lipset and Rokkan¹¹⁰, these issues are definable as social cleavages when:

- a) They have a divisive power within the society;
- b) Each faction has common evident characteristics of which they are self-aware;
- c) There is commitment to promote the faction's interests;

¹¹⁰ Rokkan S., Lipset S. M. (1967) Party systems and voter alignments: Cross-national perspectives. Toronto: The Free Press.

d) Institutional actors are ready to give the issues a more structured organization and political representation.

Some social cleavages are more widespread around the world while others are more peculiar of specific societies. At the time of the creation of the Social Cleavages Theory, religion, with its strong power of influencing values, views and lifestyle of large masses of people, was considered to be one of the main agents in the creation of social cleavages. Israel, with its articulated set of religious parties and religious political representation, its continuous public debate on the separation between Church and State, funding to religious institutions and related sub-issues, immediately appears to be one of these countries. The adherence to the Social Cleavage model is briefly (and roughly) summarized in the following table:

Does religion produce a social cleavage in Israel?

Division of society	Secular VS Religious view of State and Society
Common bonding traits within the parts	<p>Secular: Their lifestyle is not (or slightly) influenced by religious predicaments. Jewishness is considered an ethnic and cultural concept. Religion should have no (or minor) role in public life.</p> <p>Religious: Daily observance (in different degrees) of religious predicaments. Jewishness is vested with ethnic, cultural and religious meaning. Religion cannot be (totally) separated from the State.</p>
Commitment to bring group's values and interests in the society	Secular: Creation and preservation of a modern State characterized by separation between Church and State.

	Religious: Revival of Jewish religious roots and promotion of a more religious lifestyle. Shaping State policies and State features in this direction.
Institutional actors for structuration and representation of the cleavage	Secular: secular parties (rarely explicitly antireligious but expressing their views on the secular-religious issue as an important part of their agenda). Religious: Religious parties

Already in pre-State period, when the Zionist idea of establishing a Jewish State in the area that the Jewish tradition referred to as Eretz Ysrael started taking form, the Jewish community showed different reactions. While the secular and more assimilated group generally looked at this possibility with favorable eyes, the religious community did not immediately embrace the project. Their main concern was about the religious admissibility of a secular State created in Eretz Ysrael with the claim to be the national realization of the Jewish people. Among the reasons for which part of the religious community adhered to the Zionist project, there was the desire of influencing with their values and practices the rest of the community, leading gradually more and more Jews to detach themselves from secular lifestyle or at least preventing the State from "blasphemous" turns¹¹¹. This latter point, in a more intransigent version, will be also adopted by part of the Haredi community, which did not join the Zionist movement but, after a period of absolute rejection, adopted a slightly more collaborative attitude toward it. The division between diverse interpretations of Jewishness was therefore evident from the very beginning of the state

¹¹¹ The participation of part of the religious community in the Zionist enterprise was also due to the messianic meaning that they gave to the mass immigration to Eretz Ysrael. This was considered as a religious commandment and as the first step to redemption.

enterprise and was strongly mirrored in the social dynamics of the Yshuv¹¹² and in the post-independence political scenario.

Jewish religion, with its pervasiveness in believers' everyday life, creates an immediately visible separation in the society. The simplistic esthetical description that was provided in the previous paragraph to put in evidence the difference among Secular, Orthodox and Haredi show somehow a neat division accompanied by strong identity awareness. Both in secular and in religious ideologies, group awareness has been strongly emphasized and enriched with the main values that the respective ideologies give primacy to. At times, especially when tones got particularly exacerbated, group bounds were negatively defined (with the rhetoric of "we are not... we are those who oppose to..."). Religious communities have maintained a certain level of separate socialization from the secular world, with different degrees according to the religious and political stream. In the case of non-Orthodox streams, the separation from the secular group is almost imperceptible (unlike their religious identity). Religious Zionists usually have a good social integration with secular world accompanied by exclusive intra-group socialization, especially as regards education, marriage and religious practice. Frequent contacts with secular world might have attenuated collective bonds and ideological views in some cases. However, the most loyal to the Religious Zionist movement have been preserving conservative nationalistic views based on religious interpretation (especially after 1967), have endorsed the settlement movements and have supported an intransigent approach to the territorial cessions and the peace process. In the case of the Haredi group, the strong community bonds based on a strict observance of the Halacha and its recognition as the only legitimate law, have often resulted in self-segregation (that, in a circular process, keep strengthening internal community bonds). Haredi strategy is well explicable with the motto "social segregation and cultural

¹¹² The term Yshuv defines the Jewish community settled in Eretz Ysrael during the Ottoman Empire and the Mandate era. I mainly refer to the New Yshuv, which was formed after the Zionist ideology spread and the first wave of immigration opened the way to a massive migratory flux.

fortification"¹¹³. Secular identity, well present as a group identity since the beginning of the Zionist era, has known moments of more passionate public claim in which secular lifestyle and the conception of the State have been harshly opposed to the religious ones.

Already during the British Mandate, when the Jewish political panorama started taking a definite shape (especially as a result of the diffusion of nationalist aspirations), religious identities (here used in plural to stress the internal complexity of the phenomena) were translated in a more institutionalized form by religious parties. In the political negotiation that preceded the formation of the State and in the following years, religious parties were able to gain substantial victories in shaping the public Israeli sphere. Their political weight allowed them to maintain and to enlarge this influence.

With time, the religious cleavage acquired a growing complexity, intertwining both with the territorial issue (described in the previous paragraphs as the main cleavage in Israel, massively reflected in the political arena) and with the intra-ethnic one. In the early years of the State, religious parties focused mainly in shaping the society according to religious predicaments and to self-promote as heralds of Jewish traditionalism. The main interest, in fact, was to grant autonomy to the religious streams in order to preserve their customs and consolidate the inner communities. The impellent request for the maintenance of separate educational streams, coming both from the Religious Zionists and from the Haredi, is the incarnation of the cleavage in the very essence of State and is the evidence of the ideological mission of the religious component.

Later on, especially after 1967, the political platform of many religious parties was enriched (with different levels of influence) by the territorial issue, revisited in religious terms and incorporated into the religious ideology. This step, distinctive of the National Religious Party (main representative of Religious Zionism) represented an opening to certain conservative non-religious factions (mostly right wing parties)

¹¹³ Maimon D. & Rosner S., (2013, February 21), The Haredi Challenge, The Jewish People Policy Institute at <http://jppi.org.il/news/127/58/The-Haredi-Challenge/>

but created a broader gap and a harsher political fight with the more liberal and "pacifist" sector, seen as betrayer of the Zionist enterprise and indifferent to the sacredness of the land of Eretz Ysrael. Paradoxically, a milder reaction was observed in Haredi sector whose relation with the State has always been conceived as more pragmatic. Their contempt for the State of Israel and the secular lifestyle of its citizens did not dramatically increase as a result of the territorial issue. On the contrary, in many Haredi leaders' declarations, the priority of saving human lives was preferred to territorial cessions¹¹⁴. A general trend to more nationalistic views, however, has been developing also in this segregated community.

The intra-ethnic issue emerged in all its relevance in the aftermath of the immigration wave from Middle Eastern and Northern African regions. Ashkenazi and Sephardi Jews in Israel conducted since the beginning separate existence, due to different interpretations of religious rules, rituals and the recognition of different rabbinical authorities. Nonetheless, until the Eighties, the political participation of both groups converged in Agudat Ysrael, Haredi party of Ashkenazi origins. In 1983, the Sephardi group declared its separation from Agudat Ysrael, due to systematic under-representation and discriminations in the party. The formation of a new party, Shas, entailed the deep fusion of religious and ethnic discourse. The claim for social, cultural and spiritual redemption made by Shas on behalf of all Mizrahi Jews, further enlarged the basis of consensus and enriched the party ideology of another element, the socioeconomic one. Chetrit¹¹⁵ inserts Shas in a slow and radical awakening process of the Mizrahi group, preceded by naïve and short-lasting political initiatives that nonetheless opened the way to a more structured political awareness. It is further stressed how the profound religious inspiration gave strength and stability to the party. Its rhetoric remained centered on the religious sphere and its action focused on building and sustaining a

¹¹⁴ The argumentation regarding the overlapping of territorial and religious issues reflects the position of Kopelowitz E., (2001) *Religious Politics and Israel's Ethnic Democracy in Israel Studies*, 6:3:166-190.

¹¹⁵ Chetrit S., (2000), *Mizrahi Politics in Israel: Between Integration and Alternative in Journal of Palestine Studies*, 29:4:51-65.

network of services and socializing bodies for the Mizrahi religious communities. Its social projection was functional to the strengthening of the religious community and to the enlargement of its electoral constituency. Despite the focus that Chetrit poses on the ethnic connotation, Shas religious ideological origin appears sharper than the ethnic one. The overlapping of the other two issues (the ethnic and the socioeconomic one) has however contributed to charm a broader Mizrahi target that for decades has been feeling discriminated by a "dominant and economically more developed ethnic group".

As a further proof of the predominance of its religious nature, Shas, even more than other religious parties, integrates in its political discourse an insistent call for the return to religious belief and practice. The return to faith is a very popular concept in the Israeli discourse. The Hebrew expression *lachzor betshuva* means literally "to return to the answer". The expression implies two fundamental concepts: the original belonging to something that the individual abandoned¹¹⁶ and the sense of completeness and satisfaction deriving by finding the existential answers in religious life. In religious parties' propaganda and in particular in Shas, this element is absolutely central. Shas made of this concept a powerful bridge between the religious and the secular electorate: the internal movement dedicated to the "tshuva mission" has been gaining importance as party's emissary. The proposal of a more pious life attracts many traditionalists and drives them in the party's sphere of influence. While the call for the supremacy of religious principles and for a stronger religious influence in society is common to certain extent to all religious parties, Lehman and Siebzechner¹¹⁷ stress an important difference. Ashkenazi religious factions have been preserving a more hierarchic approach, with a strict rabbinical control and rigid constraints to popular participation. On the other hand, Shas

¹¹⁶ This point to which the individual is invited to return can have double interpretation: either to the moment of the birth in which the Jewish soul is pure and therefore close to God; or to the ancient status of Jewish people, chosen by God to accept his covenant and to live a pure life of spiritual proximity to the divine.

¹¹⁷ Lehman D. & Siebzechner B., (2006) *Holy Pirates: Media, Ethnicity and Religious Renewal in Israel* in Meyer B & Moors A., *Religion, Media and the Public Sphere*. Bloomington: Indiana University Press.

focuses on capillary mobilization and proposes a spiritual and social renewal. Those who gravitate in Shas' sphere of influence are provided with social structures and services that are linked to the party (schools, recreational centers, synagogues, credit institutes etc.) and to which it ensures public funds. Using this method, Shas mobilizes and includes people in a "protected and controlled" social system. This approach has been resurrected by Shas from the ashes of the public welfare system that MAPAI had built in the early years of the State and that progressively crumbled because of the liberal economic turn. It is not wrong to say that nowadays Shas represents a modern version of the traditional mass party.

On the other hand, Shas preserves the anti-system approach typical of Ultraorthodox parties, presenting the return to faith not only as a spiritual renewal but also as a rebellion against the hegemonic culture and elite. As Stoll¹¹⁸ underlines while describing sectarian parties (including Shas), these formations are born from the incapacity of the mainstream parties to offer representation to specific groups' instances and to satisfy their needs. Religious parties, that see themselves as the bearer of Jewish tradition and faith against the godless Zionist regime, carry on a sort of Gramscian resistance to the State–oppressor¹¹⁹ and participate in the political competition and in state bodies not to legitimize them but to build, from inside, a social alternative to defeat them.¹²⁰

Religious Parties' post-electoral competition

The religious cleavage and its strength are effective not only in shaping public debate, electoral competition and in structuring parties' ideology. In fact, through the popular consensus that they receive, they

¹¹⁸ Stoll H., (2013) *Changing Societies, Changing Party Systems*, New York: Cambridge University Press.

¹¹⁹ Leham D. & Siebzeher B., (2006), See above.

¹²⁰ Davis N. J & Robinson R. V (2012), *Claiming Society for God: Religious Movements and Social Welfare*, Bloomington: Indiana University Press.

have access to representative bodies. At this stage, the systemic elements massively show their effects. Especially in post-electoral competition, parties adapt their action to these institutional constraints. Religious parties have a minority consensus in the Israeli political panorama. In the 120-members Knesset, they have never overcome the aggregate number of 30 seats. This number might in fact seem a considerable one, given that, especially in the last fifteen years, many governments have been led by parties whose relative majority consisted in 26-31 seats. However, the divisions among religious formations (deriving from internal fights, different ethnic targets, different positions on "non-religious" issues and the very role to play in representative bodies) never have been solved completely, thus preventing the formation of a united religious bloc. Some partial agreements and fusions have been realized along the years, as well as separations. In this aspect, religious political parties are quite similar to their secular "fellows". In post-electoral competition, religious parties' power does not strictly derive from their numbers, rather from the balance of power that, starting from the Seventies, the electoral results have been creating. As explained in previous paragraphs, with 1977 electoral victory of Likud, the political dominance of MAPAI ended and the system turned to bipolarism. The competition for the government of the country became a close political confrontation among two main parties which won one over the other often for few votes. Since no party has ever been able to form a government without the support of a coalition, religious parties have been regarded as the most probable allies. Beside ideological reasons that might have been favoring the alliance with the religious parties (among those a consociational mentality, developed since the establishment of the State and described in detail by Cohen and Susser¹²¹), it is necessary to consider that the most voted religious party has often been the third voted party, after the winner and its direct opponent. Much utilitarian calculations might have driven the majority party to ask the collaboration of the third party (that, in the referred period, held from 6 to 12 seats). Following its acceptance, it would have been theoretically

¹²¹ Cohen, A. & Susser, B. (1996). From accommodation to decision: Transformations in Israel's religious-political life in *Journal Of Church & State*, 38:4, 817.

easier to convince other religious parties to join the coalition. Moreover, religious alliance would have facilitated the "public support" of specific sectors of the population. From the beginning of the State era to the Eighties, the main religious party was of Zionist inspiration. It generally collected more than 10 seats per election and took part in every Government till 1992 under various names and forms (due to unions and disaggregation). In the Eighties, however, another religious political actor took the scene in the political arena: Shas. After its first apparition in 1984 national competition when it gained 4 seats, Shas progressively raised its consensus. After 1996 it has never gained less than ten representatives, reaching a seventeen-peak in 1999. If looking at the increasing fragmentation of the system and to the extreme volatility of the political consensus, religious parties have been enjoying a relative stability, comparing to other parties (in this context, the drop of votes from a tournament to the other as a result of the split of a party cannot be considered a significant migration of votes). Shas is a good example of this relative stability (as well as Agudat Ysrael, even if with much smaller numbers). The NRP on the other hand has suffered from a more alternate fortune, especially since its radical position on the territorial issue transformed it in a right wing niche party and since Shas consolidated its power. However, for over 20 years the party positioned itself steadily in the Knesset with 10-12 representatives. Starting from the bipolar era, religious parties have been particularly active in governments and have been livening up the political dynamics and the sorts of the executives. It is easy to understand that very close results among the two main parties gave a disproportionate power to the small potential allies, investing them of the role of kingmakers. Religious parties (especially Haredi), whose agenda consists mainly in enlarging the autonomy and the structuration of their community and in extending their reparatory influence on the godless State, have been welcoming this new opportunity, trying to benefit from it as much as possible. Tiring negotiations have been taking place in the attempt of forming coalitions. A pretty stable dynamic have been developing: in return for religious party support, the majority party guarantees ministerial appointments (particularly requested in the bargaining are religious

affairs, education, housing etc) and allocation of regular and special funds for the religious parties-related organizations (schools, synagogues, recreational centers and the other above mentioned). While the economic matter is common to all religious parties, the request of political offices is usually absent in the case of Ashkenazi Haredi parties; their aim in fact is not to take effective part in the Government but to negotiate with it for the preservation and the consolidation of the autonomous enclaves¹²² that they live in. A more articulated approach has been adopted by Shas that, as explained, is formed and supported by a much larger electoral and social basis. Shas' social basis gravitates around the network of services that the party offers and in which the religious and political indoctrination take place. The maintenance of this complex network is vital for Shas, both in order to maintain a high level of responsiveness toward its constituency and to enlarge it. This high-demanding attitude of religious parties has heavy consequences in terms of governance and stability of the executive. In the past, the dominant position of MAPAI allowed it to lead governmental coalitions with a certain degree of autonomy and the support of a small coalition member was rarely critical for the survival of the majority. From the Seventies, the situation changed completely: being coalitions much narrower than in the past, the weight of any vote augmented notably. The soaring power of bargaining led minor parties (the religious ones being an excellent example) to be increasingly demanding, sometimes exceeding in semi-legal practices to guarantee the allocation of funds to their network, to provide public jobs as a repayment for party loyalty etc. A stricter attitude in opposing governmental initiatives was also registered, often as a sanction for non-satisfied requests. The immobilization of the Government and the frequent degeneration in intrigues and not transparent agreements has been evident to and criticized by the public opinion. Naturally this has been aggravating the resentment of the secular public against the religious parties. Religious parties' unconditioned commitment to preserve sectarian interest and the increasing request of resources and power to achieve this goal, have

¹²² On the concept of social enclave, see above Lehman D. & Siebzehner B., (2006).

been fostering a deep secular unrest, deepening the already neat social cleavage. Repeated governmental crises caused *in totum* or partially by the power dynamics between religious and secular coalition members and the persistent public pressure led to an electoral reform (that entered into force in 1996). This was adopted with the deliberate aim of strengthening the role of the Prime Minister through direct popular election. The measure proved ineffective and even more harmful: religious parties conducted very intense and target-focused campaigns and the electors, freed from strategic considerations, voted massively for their preferred parties, disregarding their dimensions. As a result, the big parties were weakened in terms of electoral consensus and Knesset representatives. The new numerical strength acquired by smaller parties was a very effective tool for influencing the governmental coalition. After three electoral turns, in 2001, the old law was reinstated.

Religious parties have been recognized as viable partners for governmental coalition both from the Left and from the Right. Since the Seventies, a more nationalistic approach has been adopted by all religious parties (in particular by the Zionist religious movement). As a consequence, these parties have been shifting toward the nationalistic hawkish right wing. Instead, the Labor and the leftist parties have been blamed for ignoring the needs of the underprivileged population and to have a too amenable attitude toward the Arab population and the territorial issue (related to the peace process). These criticisms have not prevented religious parties to enter in coalition with both Right and Left, under favorable conditions to which the support is subordinated. The flexibility of religious parties in molding their enmity against secular parties (especially the much criticized leftist parties) has commonly being interpreted as a utilitarian exploitation of the democratic rules to ensure economic sustainment to the separatists communities as well as to invade the public sphere with religious coercive elements. This dualistic attitude can be otherwise explained on the light of Kopelowitz's research¹²³. Kopelowitz states that, as any other party, religious factions are driven to political involvement by the

¹²³ Kopelowitz E., (2001), See above.

desire to realize specific points of their agenda. Doing so, they inevitably confront with state institutions and the secular political establishment. The perception of the latter as harmful to their ideology can constitute an obstacle or even prevent their participation. Moreover, the decisional authority within the party, and in particular the strict control of the rabbinical leadership, is considered as another potential factor influencing the active involvement in the executive body. It is explainable, under this rationale, how a political decision or a specific position taken by the Government can determine the abandonment of the coalition by one or more religious parties. For example, the Ultraorthodox Ashkenazi party United Torah Judaism, in 1999, left the Government led by Ehud Barak (Prime Minister for a left-wing formation guided by the Labor) in protest against the shipment of a turbine to the Ashkelon power station on the sacred day of Sabbath that Judaism prescribes as a day of absolute rest and devotion. On the same level, the strict rabbinical discipline and the view of the active participation in the Government as a sinful legitimization of a secular blasphemous institution, has generally prevented the Ashkenazi Haredi parties from taking substantial responsibilities in the governments that they have been part of. On the contrary, Shas, with its desire of managing as much economic resources as possible in order to direct them to organization that match they ideological criteria and sustain its communities, has preferred a more active role in the executives that it has supported. From the just reported examples and from Kopelowitz's theoretical scheme it is possible to infer that not mere opportunistic considerations determine the entrance and the stable presence of religious parties in a governmental coalition. Rather the effective possibility to promote specific core policies of the party's agenda is fundamental as well as the respect, from other coalition members and from the Government, of the basics of the party's ideology. Since religious parties have quite significantly different programmatic priorities (as well as different approaches to politics and the society), their behavior vis-à-vis the Government (potential or existent) can vary from case to case¹²⁴. The adoption of positions or

¹²⁴ An example reported by Kopelowitz is the attitude of the National Religious Party in the debate over the withdrawal from the occupied territories (after the maturation of

concrete measures that contrast one party's core values can trigger the perception of the secular partners as detractors and compromise the alliance. The same governmental measure can instead be considered by another religious party as a minor one and therefore not grave enough to break the coalitional bound.

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more a nationalistic ideology that related the post-war territorial expansion to a messianic vision of imminent salvation). In 1992-1996, the National Religious Party showed a very intransigent attitude toward its "historical partner", the Labor, over the Government's peace policies. The different ideological structure and priorities left the Ultraorthodox Shas a broader margin to compromise over the territorial issue. Shas, whose position on the peace process and the territories is but dovish, showed a more supportive attitude toward the government, claiming the supremacy of safeguarding Jewish lives over the preservation of the land.

3.4 THE HISTORICAL REASONS OF THE INFLUENCE OF RELIGION

Once analyzed Israeli democracy according to the TODEM method, it is undoubtedly possible to confirm that Israel is in fact a democracy. In the third chapter, causal relations between religion and some of the aspects of the Israeli democracy have been detected. It proved evident that religion deeply shapes key-aspects related to citizens' life and their civic role. Beside the effect that religion has on individuals and groups, influence has been observed in some institutional settings and systemic elements.

A question emerges when considering that the religious population has always been a minority in the Jewish community in Israel and in the Zionist movement. How was such an influence able to impose itself? This question is particularly relevant to find an explanation for influence tracked in the institutional setting. It is necessary then to investigate the historical mechanisms that brought the religious views to predominate in the political scenario.

Religion and Zionism

When Zionism developed in Europe as a nationalist movement in 1897, the reactions among the large Jewish European community was multifaceted. Nationalist views that had emerged all over Europe in that period indicated the nation-state as the very expression of people sovereignty. The right to self-determination had been a much popular concept from the early XIX century. By the end of the century, some imperialistic elements started to be visible.

In the case of Zionism, nationalism and the right to self-determination took the connotation of a salvific mission. According to Herzl¹²⁵, considered the founding father of the movement, the establishment of a Jewish State was the only effective solution to the "Jewish problem". A

¹²⁵ Herzl T., (1896) The Jewish State. Electronic version at <http://www.jewishvirtuallibrary.org/jsource/Zionism/herzl2.html>

Jewish State would have allowed the Jewish people to redeem themselves from centuries of oppression and discrimination perpetrated by States that exploited their minority status, relegated them at the margins of society and often used them as scapegoats. The passionate proposal to build a new society and to give to the Jewish man a new social and existential role took, at times, extreme conformations. Dowty¹²⁶ mentions, for example, how Herzl himself seemed to partially have accepted the anti-Semitic European claims: he portrayed Jews as avid and parasitic and claimed that the condition of subordination imposed to the Jewish people in Christian Europe was responsible for this human decline.

Zionism aimed to "normalize" the Jewish world community in a modern national entity. In this modernistic view carried on in the ideological footsteps of the Jewish Haskala, religion was considered as a trait of weakness and one of the causes of Jewish self-retreat. However, in the initial phase (and later, during its consolidation), Zionists tried to curb the broadest consensus possible. Since the Zionist message was a universal quest for Jewish consensus over the establishment of a national home, the need was urgent to minimize defections. A too critical approach toward religion was likely to jeopardize the legitimacy of the project in the eyes of the Jewish large public, which primarily lived in segregated or semi-segregated communities and was socialized in a Jewish traditional environment. Moreover, the Jewish nation was scattered all around the world; they had been living in non-sovereign communities for centuries, under the domination of foreign regimes. As a consequence, the most authoritative interlocutors of the much secular Zionist founding fathers were rabbis, the authorities of the various areas and communities. Therefore, massive reference was made to the Jewish tradition. Even the "choice" of the geographical location of the State-to-be (debated passionately for many years) was a greatly affected by the traditional Jewish narrative. The tradition-driven choice of the land, favored a

¹²⁶ Dowty, A. (1998) *The Jewish State: A Century Later, Updated With a New Preface*. Berkeley: University of California Press

broader identification with the movement's ideology. Furthermore, it opened the way to a rhetorical, tradition-based discourse that would not have been possible in case of a different geographical location. Most of rhetorical vocabulary was derived by traditional symbols and incorporated spiritual values (Weissbrod¹²⁷, for example, refers to the central concept of Zion, referring to the hill on which the Temple in Jerusalem was built. The word's meaning was broadened with the time but still retains a sacred aura). In some cases, religious symbols were used according to a confrontational¹²⁸ logic. Beside symbolism and rhetoric, therefore, Zionism proposed a clear transformation of the Jewish identity. Its positivistic, man-centered message left few doubts about the commitment to establish a non-religious national State.¹²⁹

The religious reactions to the new nationalistic ideas are briefly but effectively schematized by Shafir and Peled¹³⁰. The attitudes toward the new nationalistic ideology were of:

a) Pragmatic Accommodationism: This attitude was peculiar of the Mizrahi movement, ideologically led by Rav I. J. Reines since 1902. The Mizrahi movement recognized the secular Zionist's orientations and general aims. After an initial skeptic and quite critical reaction, Rav Reines did not oppose the state enterprise that represented a way to safeguard Jewish lives against the degeneration of the nationalistic European climate as well as against the new wave of violence that was plaguing Eastern European Jewry. Well known educator and founder

¹²⁷ Weissbrod, L., (1983) Religion as a National Identity in a Secular Society in *Review of Religious Research* 24:3:188-205.

¹²⁸ On the confrontational use of traditional values and symbols see Liebman C. S. & Don-Yehiya E., (1983) The Dilemma of Reconciling Traditional Culture and Political Needs: Civil Religion in *Israel Comparative Politics* 16:1: 53-66.

¹²⁹ This meager description does not aim to exhaustively describe the Zionist ideology that was extremely articulated and, from its very beginning, included different approaches and sub-ideologies. The general and short mention is functional to introduce to the historical context in which the state enterprise was conceived.

¹³⁰ Shafir G. & Peled Y. (2002), *Being Israeli: The Dynamics of Multiple Citizenship*. Cambridge: Cambridge University Press. The original classification includes five types. One of them describes the attitude of Shas, Ultraorthodox Sephardi Party that, as mentioned, was formed in the Eighties. Analyzing now the early reactions to Zionism, this case is not relevant.

of progressive religious approaches, Reines showed interest in shaping the new State's educational system, especially after the cultural issue was considerably brought up by Ehad Ha'Am (father of the so called Cultural Zionism). Education was perceived as a mean to safeguard religious culture and exercise a religious influence on the secular population¹³¹. This approach is considered that of modern orthodoxy: religious people can actually live in a secular environment, adapt themselves and give a significant contribution.

b) Principled accomodationism: This more positive attitude toward Zionism was elaborated by Rav Kook. Rav Kook, who later became a great source of inspiration for the Mizrachi movement too, attributed a religious meaning to the secular Zionist enterprise. The settlement in Eretz Ysrael was seen as the first step for redemption. Despite their distant orientation from religion, Zionists were nonetheless seen as tool in the hand of God. Their task was that of promoting the gathering of Jews in the Promised Land. Kook invited his followers to join the Zionist enterprise. This approach will become the leading ideology of Religious Zionism. It will actually remain the spine of a powerful political stream in the State of Israel, which will evolve with the years and with the historical developments. The Mizrachi movement integrated with the Zionist stream and in fact adopted the same rhetoric strategy. Secular Zionist symbol in fact were processed and ingurgitated in the religious symbolic apparatus that guided Mizrachi's ideology. Ohana¹³² observes how both the Zionist leadership (later incarnated by Ben Gurion) and Rabbi Kook translated each other core values according to their own paradigm and created their own political theologies in order to favor group identification. The former used religious symbols and myths to build consensus around the State idea. The latter, mobilized the pioneers and instilled in them Messianic views, attributing a salvific meaning to the physical work in Eretz Ysrael. Secular and Religious Zionism had opposite rhetoric aims: the

¹³¹ For a more extended analysis of the educational issue, central in the Israeli society since the pre-State period see Gross Z., (2003) State-Religious Education in Israel: Between Tradition and Modernity in *Prospects*, 33:2:149-163.

¹³² Ohana D., (2012) The politics of political despair: the case of political theology in Israel. Jerusalem: The Israel Institute of Democracy.

political meaning prevailed in one case, while in the other the religious did. However, both greatly contributed to the legitimization of Zionism, developing a common narrative that had a unifying effect on the population.

c) Pragmatic Rejectionism: This was the reaction of the great part of Ultraorthodox community, united in Agudat Ysrael¹³³. This movement rejected Zionism both from the political and from the religious point of view. The later presence of the Haredi community in the State of Israel (mainly consequences of the latest European prosecution and of the Holocaust) was seen as an act of detached vigilance on the "sinner" fellows Jews (to which Haredi contraposed an example of faith and proper lifestyle). The only relation with the State was functional to the economic survival of the Haredi community.

d) Principled Rejectionism A minority of Haredi Jews reacted with extreme disgust to the Zionist ideology and defined the State project as a demonic act. They opted for a total closure toward it and, till today, they have been opposing the State and its very existence.

When the massive immigration started, Zionist ideology became predominant in the Yshuv (the Jewish community in historic Palestine). In the Yshuv, the autonomy granted by the Ottoman Empire and then by the British Mandate and the national aspiration fostered the organization of a proto-political community, based on voluntary adhesion, which dealt with several matters (education, religious affairs, personal status etc.). As Dowty¹³⁴ notes, the Yshuv resembled many aspect of the Diaspora Jewish communities both in the political and in the social organization. The European experiential background, the voluntary nature of the Yshuv (thus the lack of any binding power on the members) and the inclusive approach that the Zionist movement had opted for since its creation (necessary to gather as much strength as possible) led to the adoption of a consociational style. The Zionist leadership, who aspired to be the political guidance of the Jewish

¹³³ European organization of anti-Zionists constituted in 1912. In Eretz Ysrael, Agudat Ysrael represented an alternative community to the Zionist Yshuv. With the establishment of the State it became the first Israeli Ultraorthodox party.

¹³⁴ Dowty, A. (1998), See above.

community in Eretz Ysrael, committed to manage with this method the internal dynamics of the Yshuv. With its institutions, the Zionist movement controlled the quasi totality of the economic funds, mainly coming from external donations to the cause. The funds were generously distributed to all Jewish sub-communities, in a way to grant the construction and preservation of their particular social networks (schools, religious centers etc.). Meanwhile the immigration flux kept enlarging the Jewish population. The political negotiations with the international community for the establishment of the State proceeded with alternate fortune.

Another big challenge requested the maintenance of a united Jewish community: the security problems deriving from frequent clashes with the Arab population. The case of De Haan is in a way emblematic of the potential threat that a lack of identification with the community and the state enterprise could pose to the Yshuv. De Haan, ex Zionist then become one of the representatives of Agudat Ysrael, established strict and continuous contacts with many leaders of the Arab community. During these contact, De Haan ensured the Haredi support for the creation of a Palestinian State. In exchange, he asked the permission for unlimited Jewish immigration in Eretz Ysrael, on which the Jewish community would have relinquished any nationalist aspiration. The episode of De Haan, even though not historically determinant, is the example of the consequences of social and identity divisions within the Jewish community. The fact that one of the Zionist armed organizations assassinated him in 1924 is the proof that these dissident figures were regarded with preoccupation by the Zionist establishment. The relations of some Haredi groups with the Arab world did not stop after this episode. Some Haredi communities (Neturei Karta¹³⁵, the most known) have been maintaining a total rejectionist approach to the State of Israel and still hold relations for Iran and other countries whose relations with Israel are tensed.

The absolute necessity for unity and consensus was a priority also for international reasons, especially before the establishment of the State.

¹³⁵ Most of these communities originated after that Agudat Ysrael started a minimum pragmatic relations with Zionists.

While the Jewish population was growing and while the problematic relations with the Arab population were emerging, the Zionist political elite advocated for the official international community's recognition of the effective possibility to build an independent State. It was a very delicate political stage and dissident voices were perceived as harmful and delegitimizing. The Ultraorthodox propaganda against the Zionist project reached the international community through the media and through diplomatic work of Agudat Ysrael's representatives in foreign countries. The delegitimizing power of the protest can be summarized in one episode: Agudat Ysrael downplayed the Jewish Agency in Britain and intimated it not to speak on behalf of all Jews (and asking for their own representation, which was denied). The strong preoccupation of the Zionist leadership for these centrifugal forces and the desire to create a cohesive Jewish society the new State, led Ben Gurion, chairman of the Jewish Agency in Palestine to propose an agreement to the "separatist" Ultraorthodox party. This move represented a sign of respect and acceptance of the religious lifestyle, also vis-à-vis the Zionist Religious stream. In June 1947, during the UNSCOP's visit to the much troubled area, with the purpose of redacting a report to be used for a UN resolution to solve the Jewish-Arab conflict on the territorial allocation, a famous letter was sent by Ben Gurion to the leadership of Agudat Ysrael. With this letter, containing the basic points for an agreement on the Jewish nature of the State, Ben Gurion aimed to recompose the fracture caused by the political debate on universal suffrage¹³⁶. This issue had scandalized and infuriated the Haredi community that abandoned the Yshuv. In the letter, Ben Gurion clarified that "Neither the Jewish Agency Executive nor any other body in the country is authorized to determine the

¹³⁶ The struggle of women for the right to vote and to be elected lasted years. It is, to certain extent, relevant to explain the internal dynamics of the Yshuv and the consociational approach that was adopted while pursuing an agreed upon solution. Interesting is for example that in 1920 Election for the National Assembly of the Yshuv the Haredi population in Jerusalem, was provided with kosher ballot box; Haredi women did not vote but Haredi men's vote was counted as double. For a more complete analysis see Fogiel Bijaoui S., (1992), *On the way to Equality? The struggle for women-s suffrage in the Jewish Yshuv, 1917-1926* in Bernstein D. (ed.) *Pioneers and Homemakers: Jewish Women in Pre-state Israel*, Albany SUNY Press.

constitution of the Jewish State-in-the-making in advance¹³⁷". He clarified that the State would not have been theocratic, explaining that the United Nations would have never accepted such an arrangement for the new State. Moreover, he stressed that a multiethnic population that was currently living in the country. On the other side, he did not clearly express the Zionist position at regards. The letter (known nowadays as Status Quo) ensured a particular attention to the basic requests of Agudat Ysrael concerning Shabbat observance, dietary laws (kashrut), personal status laws and the educational system. Even though the letter was just the official presentation of precedent political agreements (on issues that for the main part had also been granted during the Yshuv era), the Status Quo arrangement sanctioned the specific role of Orthodoxy and its establishment. Religion gained a formal authority in matter of personal status and in representing the Jewish confession within the State. This agreement therefore was the premise for the exclusive religious management of all matters of marriage and divorce. The total economic support from the State and the monopoly in State funded religious services was granted to the Orthodox stream. In the aftermath of this concessive agreement, Ultra-Orthodox communities would be granted special conditions in order their lifestyle and their beliefs not to be hurt by the State's settings.

The Declaration of Independence, crucial step in the State-building process, represents another example of conciliation between the secular and the religious group. The Declaration of Independence was intended to be a portentous national unifier, based on moral values with which the vast majority of the Jewish community could identify. In doing so a particular attention was to be put in the wording. For ideological purpose in fact, the rhetoric style was preferred to the legalistic one¹³⁸. A very famous and significant controversy emerged apropos the reference of God in the text. The secularists strongly opposed this possibility as much as the traditionalists and the religious supported it. The two ideological paradigms were clashing again in the

¹³⁷ The text of the letter is reported in Rabinovic E.& Reinharz J. (2008). *Israel in the Middle East*. Lebanon NH: Brandeis University Press

¹³⁸ Rubinstein E., (1998) The Declaration of Independence as a Basic Document of the State of Israel in *Israel Studies* 3:1:195-210.

most emblematic and emotional document that represented the realization of the much strived for project. A compromise was found in the use of a most subtle expression, "Rock of Israel". The religious community could interpret according to the biblical meaning (in which this expression identified God). On the other hand, it retained no religious meaning for the seculars.

Religion in the new State

When the State was created, the autonomous community of the Yshuv turned in a community of citizens in their national home. The old divisions persisted and so did the consociational approach of the political leadership. According to Birnbaum, during the Ottoman domination and later in Mandate era, Jewish religious communities had developed strong nationalistic feelings (fostered by Zionism). These feeling were poured on the newborn State in the form of aspirations to a greater role of religion in society.

One of the first debates in which the "new citizens" engaged was the need of a constitutional text. I will not linger on this issue extensively since a broad description has been made in the previous chapters. The concurrent factors (the principled opposition of the religious sector to a secular law, the will of the leading class to avoid rigid constraints etc.) that led to the final decision not to elaborate a constitutional chart are all attributable to the attempt not to define in univocal terms the relation between Church and State. This left to the political class a broad margin of freedom to stipulate contingent agreements with the religious sector. Moreover, drafting a Constitution would have meant to state formally and in details the general principles expressed in the Declaration of Independence. The consequences of such a specification were regarded as potentially divisive for secular-religious relations. As mentioned in previous paragraphs, the caution not to contradict religious principles with legislation has been always very high in Israel and has even prevented the country to fully accept some international treaties. In other words, the Constitution was seen as a too strict and

definitive set of rule that hardly fit the consociational approach that the political class had adopted in that period.

The proportional electoral system, in use in the Jewish political organizations before the State was formed (both in the Diaspora and in the Yshuv), was maintained as an electoral system. Together with a national district and a very low threshold, it guaranteed representation to all groups. General knowledge is that Ben Gurion was instead a fervent supporter of majority electoral systems, to which he attributed a stabilizing power. If comparing the whole centralized bureaucratic and administrative system (that has been described in the second chapter) to the centrifugal tendencies that the electoral system allowed, it is evident that a double rationale guided the institutional building process; namely the desire of a diffuse control of the society as well as the need not to strangle the composite social identity. Also with the adoption of a proportional method, MAPAI's political dominance was overwhelming (even though it never reached the absolute majority). The governmental coalitions were formed with an inclusive approach. In particular, Religious Zionist parties were systematically coopted in the Government. A sort of "historic covenant" was informally stipulated where Religious Zionists refrained from interfering in national policy and focused on formalizing the legal validity of the Status Quo and in strengthening religious influence in the institutional apparatus¹³⁹.

The Law and Administration Ordinance, approved immediately after the establishment of the State, preserved the authority of Religious Courts, as a concurrent judicial body (exclusive in some cases, extensively described in the previous chapters). This way, the preoccupations of the religious community were levied and the risk of a social fracture in this sense was avoided¹⁴⁰. The price for this

¹³⁹ Neuman K., (2012) *New Politics, No Politics, and Antipolitics: The Dilemma of the Religious Right in Israel* in Herman T. (ed.) *By the People, For the People, Without the People? The Emergence of (Anti) Political Sentiment in Western Democracies and in Israel*. Jerusalem: The Israeli Democracy Institute.

¹⁴⁰ One of the main practical reasons for the exclusive management of marriage and divorce by Religious Courts was the preservation of "pure Jewish" marriages, to be guaranteed by a halachically oriented body. The systematic and accurate control of the

delegation of power was, as Peled¹⁴¹ notices, a strong pro-male bias these legal fields as well as a traditional patriarchal idea of family.

The public respect of Shabbat was progressively ensured with a set of laws (starting from the early Law of the Administration Ordinance) which defined the Jewish day of rest, prohibited Jewish business to work and to employ Jews for the Shabbat (except some exceptional cases). The issue of public transportation was also dealt with: public transportation on Shabbat was limited to few mixed cities in the country. The Shabbat-issue has a great symbolical valence and deeply marks the Jewish nature of the State. Beside the religious request that enlarged the deal to a *public* Shabbat observance (which has been creating divisions and protests in the secular world), the election of Shabbat as the day of rest underlines the deep influence that religious tradition has on Israeli identity, independently from the level of religious observance. A general acceptance of Shabbat as the day of rest is underlined by Mazie¹⁴² whose interviewed sample links the celebration of Shabbat (not necessarily implying religious observance) to a chain of Jewish peculiar traits, upon which the Jewish identity relies.

Dietary rules were another of the main points that the State had to deal with in compliance with the Status Quo. Kashrut rules were (and still are) respected by Jewish population with variable levels of strictness. A certain degree of observance of Jewish dietary laws is one of the most popular forms of traditionalism (practiced in most cases also by the less religious population). The implemented legislation, however, has a very particular meaning. In 1948 therefore the respect of Kashrut laws

origin of the spouses would have ensured to the religious faction (extremely contrary to intermarriage) that all couples married in Israel had the halachical approval for their marriage. The institution of a civil authority for marriage would not have guaranteed such a control and have might been cause of a deep fracture in the society.

¹⁴¹ Peled, Y. (2008) The evolution of Israeli citizenship: an overview, in *Citizenship Studies*, 12:3, 335 -345.

¹⁴² Mazie S. V., (2006) *Israel Higher Law: Religion and Liberal Democracy in the Jewish State*, Lanham: Lexington Books.

was ordered not in all public kitchens¹⁴³ but specifically in the IDF kitchen (Kosher Food Soldiers Ordinance). Besides providing for an urgent and legitimate need (that is the accommodation of soldiers' dietary food while they are serving their country), the law underlines the concern of the State for the broadest participation in the Army (that as we saw was conceived as a socializing agent). Further accessory laws in matter of kashrut will be further approved (like the forbiddance of pig raising and slaughtering in Israeli soil and the prohibition of non-kosher meat importation).

On the basis of procedure that had developed in the Yshuv period and following the Status Quo Agreement, the Education Law (1953) provided large autonomy to the different Jewish groups in matter of education. As said, education was seen as a precious source of indoctrination and preservation of group's ideology and values. The role of education had been originally a landmark of the Mizrahi movement (that aimed to revive the national soul in its land in the spirit of tradition and of the Torah). Short after however, the Ultraorthodox (who had a long scholar tradition in Europe) and the Secular Zionists joined the educational mission, setting up their own educational institutions. In the new born State, the educational asset was formalized through the Education Law (1953). Arab schools and formative activities were recognized as a separate stream; Jewish secular education (initially composed by two streams, then merged in one) was divided from the Jewish National Orthodox one. The Haredi remained at the margin of this legal framework: most of their schools were given the special status of unofficial recognized institutions (that in some cases meant a minimum or absent bound to the official educational programs). These schools, whose attendance has been in continuous growth, are substantially financed by public funds (allocated directly by various ministers for students and education or indirectly, through local funds and organizations)¹⁴⁴.

¹⁴³ This provision was not legally decreed but the norm was commonly accepted and respected as a consequence of the Status Quo.

¹⁴⁴ Apropos Haredi schools funding, it is useful to remind the previous argumentation on the political funding to religious network of social services. For a more detailed insight on Haredi educational system see Shiffer V., (1999) *The Haredi Educational in Israel*:

Related to the educational issue (even though not present in the original letter denominated Status Quo), exemption from the army service was conceded for Yeshiva students. Their commitment to continuous education and formation on the light of the Sacred Scriptures (a duty for Haredi men), earned them in the Haredi community the title of "spiritual warriors". Partially for the exiguous number of the Haredi population at the time of the agreement and partially in the attempt to legitimize their social function and identity (shaped on religious values) within the nation State, the exemption was granted. Similar exemption was given to Orthodox religious women in the aftermath of a vivid political battle that resulted with the in Civil Defense Law in 1949¹⁴⁵. The reasons in this case were more related to the inappropriateness of the army environment to the pureness of religious girls. The domestic and maternal role attributed to girls in religious communities clashed with the military experience that was seen as corruptive. Again, the tradition-rooted symbolism and ideology were embraced in the public and legal discourse.

For almost thirty years the political panorama was MAPAI- dominated. The social structures that this mass party managed to set were a powerful ideological vehicle used to foster State loyalty and sense of belonging as well as to shape citizens' identity. The continuous migratory flux from the Diaspora was channeled in these ideologically controlled structures and was guided through the integration process. The consociational approach endured, since MAPAI's leadership was aware of the possible threat coming from internal unresolved fractures. Government coalitions were quite large and the religious parties were not strictly necessary for the formation or the maintenance of the coalitions. Nonetheless, the young State's leaders maintained an inclusive approach and constantly asked for religious representatives'

Allocation, Regulation, and Control. Jerusalem: The Floersheimer Institute for Policy Studies.

¹⁴⁵ On the exemption of religious women from the military service and more extensively on the political debate that originated from the different criteria of drafting applied to the different genders, see Berkovitch N., (1997). Motherhood as a national mission: The construction of womanhood in the legal discourse in *Israel, in Women's Studies International Forum*, 20:5/6: 605-519.

support¹⁴⁶. State's legitimacy and security were constantly put under threat by the hostile neighbor countries. For this reason, the construction of a strong national identity rooted in biblical elements was seen also as a defensive measure. Specific inspirational biblical images and symbols were selected, reshaped and projected to the present reality. Adhering partially or totally to this logic, religious parties (and especially the National Religious Party) had the possibility to influence government policies and to consolidate their power in the emergent society.

Religion in the era of bi-partism

Following further waves of immigration and the development of a more intense social awareness of the Mizrahi Jews, the strong consensus machine of MAPAI progressively crumbled. Likud succeeded in gathering the social unrest coming from this ethnic group that felt discriminated against and victim of the socially and economically more developed Ashkenazi group. The Zionist Ashkenazi elite and its ideology based on human effort and self-realization was perceived by the Mizrahi group as distant and unfair. Shafir and Peled¹⁴⁷ stress how this detachment led to the emergence of an ethno-nationalistic interpretation of citizenship. The Zionist republican discourse based on duty-rights balance was accused to be the instrument of the Ashkenazi social domination. On the contrary, the common Jewish descendant was emphasized as the key for social advancement and legitimacy. Traditional and religious values were raised as the essence of Israeli identity by the Mizrahi political activists and by the parties that structured their claims. Among them, Shas will be in the Eighties the main collector of the Mizrahi unrest and ethno-nationalist appeal. With a deep religious connotation, the party will invite the electorate to rebel against the false and selfish Ashkenazi

¹⁴⁶ Cohen, A., & Susser, B. (1996). From accommodation to decision: Transformations in Israel's religious-political life in *Journal Of Church & State*, 38:4, 817.

¹⁴⁷ Shafir G. & Peled Y. (2002), See Above.

leadership. Moreover, it will gain the trust of many Israelis of Mizrahi origin providing them with the network of social services that MAPAI and the Alignment had not succeeded in giving them.

Dowty¹⁴⁸ illustrates moreover that Mizrahi Jews, coming as refugees from Arab countries, had a more hostile attitude toward the Arab population. They warmly favored an aggressive Judaization of the occupied territories that Israel had conquered during the wars against its neighbors. At the same time, also Religious Zionists took the distances from their "historical allies" and get closer to the Hawkish positions of the right wing, attracted by their better representation of the religious link to the land as a sacred mission for the physical and the spiritual redemption. In the mid Seventies, after the Yom Kippur war, a blatant manifestation of this new attitude came to life: Gush Emunim. The very name of this extra-parliamentary group, "the block of the faithful", synthetizes its origin and its ideology. Gush Emunim engaged a massive operation of settlement in the occupied territories and deeply opposed the "Land for Treaties" policy, inaugurated in 1973. Gush Emunim's ideology promoted the revival of Zionist initiative and encouraged the settlement in the land that was Jewish for divine will since Biblical time. Other more moderate parties were considered traitors of the Zionist ideology, weakened by their political and social privileged position as well as by the Western culture¹⁴⁹. The historical dominance of MAPAI (renamed Alignment after the merge with smaller Zionist secular parties) weakened progressively and in 1977 the Likud prevailed in the elections for the first time. This victory was looked at as an historical moment. It was actually a landmark for the historical Zionist Left that never recovered completely. It was also an inaugural event for the religious political influence in the country. From now on, the religious sector lost its role of minor ally, taken on board because of its symbolic relevance. Instead, it will become the very keystone of almost every government. This change is crucial since it represents the political maturation of the religious sector that, until

¹⁴⁸ Dowty, A. (1998), See Above.

¹⁴⁹ For an interesting article on Gush Emunim and its long lasting impact in the Israeli society see Newman D. (1995), From Hitnachelut to Hitnatkut in *Israel Studies*, 10:3:192-224.

that moment, had resisted and consolidated as a minority with almost no power of negotiation (in numerical terms). With the bipolarization of the party system, religious parties passed from a phase in which some power was given to them, to a phase in which they could actually claim that power, due to their political relevance. This change was as profitable for the religious parties as unfortunate for the big parties, which had lost their autonomy. The Zionist sector, furthermore, expanded notably its area of political interest: the ideological turn toward the territorial issue, made of it a more complex actor to satisfy in a coalition.

In this political environment that became increasingly more competitive, the secular sector underwent major changes also. Most importantly, a greater adversity developed to the religious environment, now seen as greedy, inward oriented and a harmful for the society. The 1990s Russian wave of immigration (mostly detached from the religious tradition and practice) as well as a progressive individualization and Westernization of the secular segment augmented the gap between the secular and the religious world. The liberal discourse took the scene among the secular public. The religious sector responded strengthening the ethno-nationalistic appeal (supported by the laical right wing that adopted a much similar rhetoric in order to meet the favor of the religious allies). Moreover, in this battle royal, religious parties felt legitimated to take advantage of their strategic position and to abandon and destabilize the Government whenever they felt that their requests had remained unheard. The result was a recurrent political instability. In 1992 an electoral reform was promoted in the attempt of solving the problem curbing the power of sectarian parties (among which the religious ones). Even though, as explained previously, the attempt failed, the electoral reform is a unmistakable sign of impatience and of a totally changed approach toward the religious parties. Since the beginning of the State enterprise, the efforts had been put in including them; in 1992 the aim was to neutralize them.

The so called "Constitutional Revolution" is another example of the secular strives for the redefinition of the institutional setting (legal in

this case)¹⁵⁰. The power acquired and used by religious parties for the preservation of group's interests, prevented the Basic Law: Freedom of Occupation and the Basic Law: Human Dignity and Freedom to substantially endanger or deny the religious authority and the religious-rooted legislation. What the power of religious parties could not prevent was the new role of judicial review, acquired by the High Court of Justice, in virtue of the superior status of the above mentioned Basic Laws. The judicial body's power extension was decreed by the two Basic Laws that detain a higher legal status than the other laws. The conservative sector of the society fervidly opposed, claiming that the Supreme Court acted as a political body and not as a judicial neutral one. When Justice Aaron Barak was in office as the President of the Supreme Court, the body engaged in numerous cases. Its verdicts and more generally its increased activism provoked according to Susser and Cohen¹⁵¹, a further estrangement among the secular and the religious sector of the society and prevented any possibility of restoring a functional consociational approach.

¹⁵⁰ Cohen, A., & Susser, B. (1996). See above. In this article is noted how Constitutional Courts' activism and the further secularization attempted the consociational approach that was originally adopted by the Zionist leadership.

¹⁵¹ Cohen, A., & Susser, B. (1996), See above.

CONCLUSIONS

An analysis of the Israeli democracy following the TODEM method for democratic deepening enlightened that religion plays a determinant role in democratic procedural dimensions and deeply influences the quality of democracy. Of the five dimensions (rule of law, inter-institutional accountability, electoral accountability, competition and participation) four are significantly influenced by religion. In this conclusive chapter the findings of this research will be summarized. Doing so, an answer to the research questions (*How does religion (in particular Judaism) affect the quality of democracy in Israel? Why, historically, religion assumed this role? How the correlation between religion and democracy affects the life of the so called "dominant" Jewish group?*) will be given. A first schematic answer to the first and main question is given in the following table:

Dimension	How does religion affect it?
Rule of Law	<ul style="list-style-type: none"> - Very strict interpretation of religious precepts leads to gender/religious/ethnic discrimination. The State' ability to contrast it is reduced by: scarce authority in "religious-populated enclaves"; possible repercussions in coalitional politics (these positions are partially supported by MKs of Religious or Secular Conservative Parties) that limits also the possibility of implementing progressive legislation at regards. - Existence of Religious Courts with exclusive authority in matter of personal status. Legal validity to the Religious law. As a consequence: some citizens are negated basic rights; <i>de facto</i> implementation of a discriminatory law; different sets of rules (thus different verdicts) in the

	adjudication of matters in which the authority is concurrent.
Electoral Accountability	The total obedience to the rabbinical authority (as a religious precept) allows the dynamic of accountability "by proxy": the spiritual charismatic authority has full decision on Ultra-religious parties' internal dynamics (including candidate and leaders).
Participation	<ul style="list-style-type: none"> - Strict interpretation of religious norms leads to social detachment and self-segregation in homogeneous communities. Participation is associated to the risk of spiritual and cultural "contamination". - Participation in the State is seen as functional to the survival of the segregated community and implementation of its agenda but identification is strictly denied. - Religious values stimulate, in some cases, social engagement in specific activities in which values can be translated in practice (for ex. benefic organizations).
Competition	<ul style="list-style-type: none"> - Religion is a persistent social and political cleavage, formally structured by religious parties. Religious vote throughout the years: 20-30%. Religious influence in parties' ideology is very strong and assumes different forms. - In post-electoral competition religion keeps its influence due to the power that religious parties have in coalitions (blackmail power).

The first documents of the State: Declaration of Independence and constitutional debate

At the institutional level, religion has been exerting its influence since the creation of the State. In the first official document of the State, the Declaration of Independence, the use of symbols and semantic that are religion-related is massive, especially in the introductory part. The attachment to Eretz Ysrael is explained recalling that there the Jewish nation was given the Torah. People's faith in God is mentioned as well as the desire, alive for centuries during the Diaspora, to come back to the land that represented their spiritual center. The possible insertion of the word "God" in the Declaration provoked an intense debate. As a result of the negotiation among the different opinions, a biblical metaphoric expression was chosen (the Rock of Israel) to make a reference to God without directly mentioning him. Similarly, the word democracy is not mentioned in the Declaration, even though a clear commitment to democracy is clearly inferable looking at the general content. One of the main elements that reveal the democratic aspiration is the emphasis on the elaboration of a Constitution by an elected Constituent Assembly. In the Declaration, the Constitutional Chart represents the *trait d'union* between the historic past of the Jewish nation in Eretz Ysrael and the reestablished modern and democratic State of Israel. This crucial element failed to be translated into practice. Religious political leadership initially proved quite collaborative. Then it retreated to more intransigent positions when the divisions among the secular political leadership emerged apropos the Constitutional issue. The concerns of the religious group about the Constitution were both practical and spiritual. On a practical level, they thought that the secular class would have used the Constitution to curb power to the religious establishment and build a secular society. On the other side, a supreme source of legislation, as Constitutions are by definition, would have undermined the authority of the only supreme law that the religious group recognizes: the Halacha. Therefore, even though the absence of a Constitutional Chart in Israel is not exclusively imputable to the religious hostility, it certainly played a role on the issue.

A weaker State against discrimination

The absence of a written Constitution has been firmly criticized, and it has been looked at as a missed opportunity. In particular, a Constitutional Chart, with its universalistic approach to society, would have guaranteed a higher democratic strength and a powerful aid to fulfill one of the main democratic functions: the protection of minorities¹. This argument finds at least partial confirmation in the research findings. The State of Israel proves a general commitment to fight against crime of any type, including discrimination. However, the effectiveness of this commitment is challenged, in some cases successfully, by practices of religious derivation, which flourish among religious citizens. It has been noticed how sacred texts as well as masterpieces of religious doctrine contain elements that can lead to discriminatory behaviors. The level of religious observance and the adoption of more progressive or stricter interpretations increases or decreases the likelihood of a discriminatory attitude. The aggregate dimension is also influential. The higher the level of religious observance, the highest the possibility is that the individual will live in a homogeneous community, often segregated from the external influence. In Ultraorthodox communities, for example, where the level of observance is high, the segregation increases the probability of values stagnation (with consequent crystallization of old practices and beliefs that in some cases do not even find a strong explanation in religion) and the adoption of a more intransigent and intolerant approach to those actions that are interpreted as religious violations.

From the TODEM investigation the main areas of discrimination possibly related to religion are: gender discrimination, ethnic discrimination and religious discrimination.

Gender discrimination is based on a deep "chauvinist"-bias traceable in religious sources and in a conservative approach to interpersonal relations, related to the exaltation of the spiritual dimension and the

¹ Peleg, I. (1998), Israel's Constitutional Order and Kulturkampf in *Israel Studies*, 3:1: 230-250.

downgrade of the physical one. The stigma around homosexuality is strong and common within the religious community. Homosexuality is seen as an abomination and a disease. The solution that a consistent part of religious authorities proposes to this obscene tendency is medical treatment. In alternative, a total rejection of one's own sexual identity is advised and the creation of a traditional family is suggested as a diversion. An enormous social pressure is exerted on the homosexual members of religious communities. The collective stigma is reversed on the individual and on his family. Such an inflexible reaction is likely to create interior dilemmas and a struggle for self-acceptation. Furthermore it can discourage the public expression of one own sexuality. In cities where the religious population is numerous, public manifestations organized by the gay community have triggered ferocious protests from the religious community degenerated sometimes in acts of physical violence.

The conceptual roots of discriminatory behaviors against women are listed above (since they are the same for both acceptations of gender discrimination). Discrimination against women has two manifestations: internal to the community and external. At the internal level, religious culture and education play a determinant role both on the perpetrator and on the victim. The virtues of a religious woman, agreed upon in the collective morale and instilled in youngsters through familiar and scholastic education, are modesty, calm, docility, obedience to the man as well as dedication to the domestic affairs (including the concept of *Shalom HaBait*). This vision, favors the silent acceptation of familial abuse and foster dynamics of self-accusation and justification of the violent behavior². In some cases the justification or the minimization of violence comes also from the leaders of the community, whose opinion is trusted and hardly contested by the community members. Detachment from the rest of the society as well as the sense of shame represents a further obstacle for the victims. It can be hard for a woman that lived all her life in a segregated community to leave her world and build a new life in a different context. In the case of spousal violence,

² Graetz N., (1998) Judaism Confronts Wife-Beating in Woman in Judaism in A Multidisciplinary Journal, 1:2.

the legal constraints represent a further problem, that is actually common to secular and religious women. Religious courts have authority on matter of divorce. These courts act according to religious principles that, as seen, tend to perpetuate gender inequality. Religious women, that hardly would refer to a civil court also for ancillary matters to divorce (it is seen as a sin in the religious world) risk to be significantly penalized in the divorce proceeding, also in economic matters and in the custody of children. Moreover, the Jewish law, enforced by religious courts, gives the husband the last word on the divorce proceeding. If the permission to divorce is negated by the husband, the woman will find herself in a limbo as she will remain married for the civil and the religious law. This mean that in case the woman decided to break a violent spousal, she is likely to lose her husband, her name, the support of the family and of the community, her children and not to be able to start a new life. With these premises, actually, the perspective of a new life will not seem so attractive and the risk is significant that women will not take stance against their abuser. The gender-biased approach due to religious beliefs is not only adopted within the community. In fact, it is extended to all women, independently from their will and it intensifies in case of women that find themselves in a religious-dominated spatial area (like a religious neighborhood). The community's morale is enforced in public and also "outsiders" are subject to it (this entails restrictions in behavior, clothing etc.). The contravention of or the perceived threat to these niche norms can provoke the violent reactions of religious individuals (verbal or physical).

Despite State's general commitment to protect sexual minorities and to promote full gender equality, the political debate is influenced by diverse positions, some of them extreme. Members of religious parties opposes regularly to demonstrations promoted by organizations that defend homosexual's rights accusing them public disturbance and offense to the public morale. Unequivocally discriminatory positions have been taken by many Members of Knesset (declaring that women should not sit in Parliament; that homosexuals are a plague for the society etc.). A quite intense legislative activity has been dedicated to the proposal of discriminatory bills (proposing mandatory

"normalization" treatments and even, ban of gay sexual relations, opposing women's appointment to selection etc.). These positions are not exclusive of religious parties (as well as not totally agreed upon within the religious parties). The denigrating discourse, especially regards homosexuality, is supported and fomented by some representatives of secular conservative parties. More progressive factions counteract this approach, and dedicate part of their legislative activity to the promotion of equality and integration. Progressive factions as well as the secular public opinion often blame the Government for trading social progress for coalition interests. The Government is portrayed as a hostage of the extremist religious logic that betrays the aspiration of the secular and moderate majority. Coalitional interests can be particularly harmed by these issues: religious parties are extremely intransigent on these matters and could easily break the governmental alliance if their point of view was not taken into account (with possible repercussion in future alliances). The direct and the transversal impact of religious positions cause Governments (independently from their political connotation) to barely progress on matter of integration and equality.

Similar religious constraints to the institutional promotion of equality and the fight against discrimination have been found also in the case of ethnic and religious minorities. An exclusivist conception of Jewish ethnicity and the desire of creating a pure Jewish social and territorial entity had driven some religious leaders to promote discriminatory estate transactions. In the attempt to create homogeneous ethnic neighborhoods and in compliance with a much controversial biblical norm that warns Jews not to let other population dwell among them, some rabbis forbade the cession of property to non-Jews in Israel. Other initiatives have been taken in this direction, where the ethnic criterion was used as discriminant for the acceptance of new members in a residential area.

The same exclusivist logic, leads to discrimination against religious minorities in the country. This is particularly true in the case of proselytizer groups. They are perceived as a threat for the Jewish identity, since they might be driving some Jews to embrace other cults.

This possibility is regarded with terror by religious groups. As a consequence, even though proselytism is not a crime in Israel, some of them engage a "holy war" against these groups. The main target is the Messianic cult, whose members are observant Jews who recognize Jesus as the Messiah. Some religious Jewish organizations, committed to the defeat of these dangerous cults, oftentimes harass verbally and physically the members of these proselytizer communities. The fight against these groups is flanked by religious parties' parliamentary activity that tried several times to ban (or severely restrict) the possibility to proselytize in Israel. Several bills have been presented to the Knesset, especially by MKs from religious parties, which tried to ban the proselyting activity in the country. Some of these proposals have been approved and became law. Also at local level, episodes of discrimination perpetrated by institutional actors have been taking place under the pressure of religious parties' protestors. The ambiguity of the Government on this matter is sometimes astounding: a restrictive interpretation of the norms have been informally decreeing the illegality of proselytism, spreading among the public the perception that this activity is illegal. A certain degree of collaboration between the Ministry of Interior and anti-missionaries organizations to prevent "suspect" proselytizers to enter or to stay in the country had been denounced and rebuked by the Supreme Court. A strong power against the implementation of equality is registered also in the case of non-Orthodox streams of Judaism. The different approach to religious observance and to prayer creates scandal among the Orthodox believers. Contempt is showed toward these minority groups by the Orthodox establishment that often questioned their real Jewishness. In cases in which the two realities meet in sacred places, violent reactions are likely. At the political level there is much awareness on this matter since it is deeply intertwined with other legal matters. The position of the State is ambiguous: it condemns extreme acts of discrimination but it enforces discriminatory provisions. Orthodox and Ultraorthodox parties fiercely advocate against the improvement of the status of non-Orthodox communities, looking at them as undignified competitors both on the religious and on the political level. Under the pressure of public opinion, especially the international one (non-Orthodox Judaism

is a majority stream in the United States) some timid steps toward equality that have been made among the indignation and violent opposition of the religious parties³. As of now, even though the reforms might strengthen the non-Orthodox communities and contribute to their legitimation in the eyes of the population, their status in front of the law remains a lower one.

A State within the State

As remarked above a high level of observance influences not only the views and the behavior of the individual but has consequences also at aggregate level. Religious communities and especially the Ultraorthodox tend to spatially detach themselves from the rest of the society and socialize in homogeneous communities where values and customs are agreed upon and based on strict observance of the Halacha. These customs and traditions have been preserved since the time of the Diaspora, when Jews lived in foreign countries and struggled against persecutions and assimilation processes to maintain their identity. One of the original requests of the Ultraorthodox faction to the Zionist leadership at the time of the Yshuv was to be able to preserve their autonomy in matter of lifestyle, education and religious practice. This was a *sine qua non* to obtain the Ultraorthodox minimal collaboration in the establishment of the State. The request was consented, probably imagining that the exiguous community would have surrendered after a while to the secular society, integrating itself and embracing modern life independently from their religious belief. Up to this time, this transformation has not occurred. Instead, the Ultraorthodox community grew and dwelled in new Haredi neighborhoods and new Haredi towns. The lasting desire to distinguish themselves from the rest of the population and to preserve a strong identity has been an incentive them to open educational institutions, shops, banks and social services that fit their values and

³ At the time of the writing a process of reform seems to be started. It is way too early to state the effects of the very recent measures and to analyze them more in detail.

their social norms. In the creation of these microcosms, they have been granted the autonomy that had been originally conceded. The influence of Ultraorthodox parties has ensured the public disbursement of conspicuous funding necessary to set up the services and maintaining them. If this autonomy has allowed a centenarian tradition to survive and a group of citizens to safeguard their identity, on the other hand it has caused the State to renounce to part of the control over its citizens. Educational separation that was decreed in 1953 (but was in force from the time of the Yshuv) enabled the Haredi community to set up educational projects focused on the religious traditions and doctrine. The special status conferred to the Haredi educational stream limits the control authority of the State on the learning material and teaching quality. Even if these schools receive public funding and substitute the mandatory schooling, as a matter of fact, they are practically not bound to guarantee an appropriate educational path for the students. In Haredi neighborhoods, as extensively described, a different set of informal rule is in force. Roads are closed to the traffic every Shabbat and during the religious holidays. Specific norms of behavior are in effect: interpersonal contacts among women and men are not welcomed and sometimes spatial segregation is enforced. There are separate entrances to many shops, which are required to sell goods that are not offensive for the public morale (not colorful clothes, not books or movies that have not been approved by Haredi religious authority etc.). The official authority does not usually interfere with this social asset that, nonetheless, contributes to the consolidation of antidemocratic values and represents an obstacle for the free circulation of non Haredi citizens in that area. To ensure the respect of these norms, an informal "police service" is acting semi-clandestinely. These squads generally known as "modesty police" are responsible for safeguarding the decency in the Haredi areas, patrolling public behavior, business and residents' private life. Their method of action, not always remains in the limits of legality. The State intervenes in resounding cases (when physical violence or grave vandalistic acts are denounced) but, many times, it finds itself powerless up against the code of silence of a population that scarcely relies on State authority.

Dual Judicial System

The most evident way in which religious influence impairs the rule of law in Israel and directly affects the institutional system is through the existence of religious courts and their incorporation into the national judicial authority. The acceptance of religious exclusive authority in matters of personal status entails the attribution of the exclusive legitimacy to the sets of religious norms that govern these matters. The religious norms acquire legal status and are extended to all citizens, disregarding their level of religiosity. This has an automatic restrictive effect on the legislation of liberal values both at national and at international level. At national level, the inclusion of special articles and margin notes in legal texts is a much used stratagem in order to create legal exceptions and not to harm religious-legal norms. At international level, Israel is often unable to accept the whole text (of Conventions, Agreements, Declarations, Pacts etc.) and is forced to put its reserve on articles that enucleate basic rights. Going back to the authority of religious courts, and its power in matter of personal status, religious views and rules on this issue are implemented as an adjudication criterion. This causes two main problems: a) some citizens are left without an option for the enjoyment of rights connected to the personal status (for example all citizens that are not able to marry in a religious court, couples whose union is not accepted according to the religious law, couples whose religion is not recognized in Israel therefore does not have authority in matter of personal status) b) the religious law enhances inequality as a legal principle (see the above mentioned example of divorce in which the husband has decisional power on the end of the marriage). Moreover, also the functioning of the religious courts (not only its judicature) relies on inequality: women are not allowed to sit as religious judges and the procedure for the obtainment of the rabbinical license favors men and observant people. As explained in the previous chapters, religious courts and civil courts share authority in complementary matters of the divorce procedure. The authority is actually competitive. This means that the citizen can appeal alternatively to one or the other court. A serious dysfunction in terms of

rule of law stems from this duality. The two courts adopt different criteria, almost contrasting among them. The situation could verify in which two identical cases were adjudicated in very different terms. The verdicts would be both legally valid. The fact that two cases can be totally identical is extremely improbable but a more convincing example is that at times, when a religious verdict has been contested in the Supreme Court, it has been overturned since not in line with the civil norms. It is difficult to say what is more harmful for a democracy: the fact that two judges of the State can give a total different verdict or the fact that the Supreme Court overturns a verdict because elaborated according to a discriminatory rationale but the underlying principle maintains its validity for future adjudications. In this context, the legitimacy of the judicial power is also weakened. Judicial power should be seen as an impartial arbiter. With the provision of different verdicts, religious and civil courts risk to be seen as partisan, in contrast one with each other.

Religious Parties

Just having a quick look to the general topic of the present and the previous paragraph, it is possible to realize how substantial the role of religion is in the institutional apparatus. In these two small passages in fact, Judiciary, Legislative and Executive are nominated as the fields in which religion exerts its influence. In the last chapter has been confirmed according to the model of Rokkan and Lipset⁴ that religion in Israel produces a social cleavage. This social cleavage is structured and organized by religious parties. Some of these parties' commitment to religious values is very strong. Religion is not only an inspiration but is actually the protagonist of the model of State and society that they aim to realize. The minority consensus that these parties gain does not allow them to implement their ideology completely; however it is sufficient for the parties to exert influence in the elective bodies to

⁴ Rokkan S., Lipset S. M. (1967) *Party Systems and Voter Alignments: Cross-national Perspectives*. Toronto: The Free Press.

realize part of their agenda. In the fragmented political system of the last decades, religious parties' power has been increasing. Their blackmail power allows them to be more and more demanding since their vote is often determinant for the life of the Government. Religious parties have been taking part in almost every coalition since the State was created. In exchange for their support, they have been assigned ministries (Ministry of Interior and ministry of religious Affairs has been two traditional offices assigned to religious parties but also different ministries has been assigned during the years) and monetary budget to direct to the religious communities and institutions. The hard strategy of these parties about the support to the Government results sometimes in stalemates. In order to recompose the fractures, informal and non-transparent arrangements are stipulated in favors of the blackmailer party. These episodes are often denounced by the media and the public reactions are ferocious. Parliament and Government progressively lose popularity in the eyes of the citizens (especially secular): on one side they resent religious parties for they ruthless approach to politics; on the other side they resent the main parties for satisfying the utilitarian demands of the religious parties and submitting to their blackmail in order to stay in power.

Orthodemocracy

In the introduction a detailed argumentation has been made apropos the concept of Ethnic Democracy created by Smootha⁵. The studies of Smootha have been actually very inspiring for this research and have stimulated the first questions about the relation between religion and quality of democracy in Israel. Smootha elaborates his theory focusing on the ethnic issue, which is the most powerful cleavage in Israeli society⁶. In ethno-democratic regimes, the State is considered a

⁵ Smootha S., (2001) Ethnic Democracy a model. Working paper n. 13, European Centre for Minority Issues.

⁶ Arian A. & Shamir M. (2008) Israel 1996 - 2006 A Decade Later, the World Had Changed, the Cleavage Structure Remained in Party Politics, 14: 685-705.

prerogative of the dominant ethnic group. The model defines the State as a tool in the hands of the ethnic majority who shapes policies and institutions in order to achieve its goals. The same ethnic path was followed in an analysis of the Jewish population. Mizrahi Jews were considered highly discriminated on the basis of their provenience by the dominant Ashkenazi class. However, the ethnic approach in its entirety leaves a number of phenomena unexplained, which instead have found an answer analyzing the religious dimension.

This research was originated by the desire to explain paths of discrimination that were not perpetrated through ethnic lines. A significant portion of basic individual and collective rights, indeed, are not accessible to some Jewish Israeli citizens. Other rights are negated to all Israeli citizens because of the survival of religious dominance on some legal spheres. Moreover, dissatisfaction and social unrest has been growing in the segment that the ethnic approach portrays as the dominant class: the Ashkenazi population, or more generally the secular one. The results lead to the introduction of a new term: Orthodemocracy, which portrays the relation between democracy and religion in the country. This term does not define a model but simply summarize the role of Orthodox Judaism (and for some respect religious orthodoxy in general) in the institutional apparatus and in the life of the citizens. I do not deny the belonging of Israel in the category of democratic countries. What the term Orthodemocracy implicates is that orthodoxy influence the democratic quality and, in some cases, poses itself before democracy. All the above mentioned institutional cases in which religion affects the State are proof of this concept: in particular, the 1953 formalization of a double judicial apparatus and the attribution to the religious courts of exclusive authority in certain matters. Recognizing religious norms as civilly valid forces all citizens to submit to them. Rubinstein⁷ looks at this reform as an historical event since from this moment on religious affiliation (and the submission to a certain religious authority and sets of rules) became a condition and not a choice.

⁷ Rubinstein A., (1967). Law and Religion in Israel in *Israel Legal Review*, 380:384-88.

Incorporating the religious courts in the State system means that a body that refers to religion as a normative source becomes a legitimate instrument of the rule of law. As it concern Judaism, the Rabbinical Courts are exclusive expression of the Orthodox stream and do not keep in any consideration Non-Orthodox streams of Judaism. The State therefore not only imposed the adhesion to religious norms on all Jews but specifically chose one of the streams of Judaism, further narrowing the horizon of freedom. The privileged position in the institutional ordainment of the Orthodox interpretation of Judaism and the consequent disadvantaged position of those who do not identify with it betray the main existential purpose of the State of Israel: to be the homeland of all Jews and the place where they can live their Jewish identity freely and without being discriminated against. What happens instead is that the organization of public services and the public sphere in general aim to be congenial to the Orthodox observance. All other streams of Judaism and those who do not recognize themselves as believers, encounter some kind of obstacle Orthodemocracy is preserved through the active participation of religious parties in the political life of the country. Following this rationale, it is possible to understand their extreme closure to reforms that could improve the conditions of non-Orthodox streams or the bitter tones against the Supreme Court's intervention in religious courts' verdicts.

From this brief summary and from the research at large, it is possible to confirm the hypothesis that the Israeli State considers its citizens first as members of religious groups, then as members of ethnic groups and only at the end, as citizens of the State. This has two repercussions, one regarding the society at large and one regarding the Jewish group. Conferring civil authority to religious orthodoxy, the State misses an occasion to be regarded as point of reference (in matters that have a great impact on the life of the citizens). Those who are satisfied with the religious provisions of the above mentioned services will strengthen their bonds of loyalty to the religious authority. All those citizens that cannot enjoy their rights in the country will certainly feel discriminated against and their level of identification with the State will decrease sensibly. In terms of legitimation for the State, both cases are a failure. Moreover, the delegation of this area of authority to different actors

increases the separation among the population. Even if they are all citizens of the same country, nonetheless they are not under the same equal law.

The second repercussion, internal to the Jewish group, is that the "secular Ashkenazi"⁸, modeled as the dominator of the Israeli society, accused to having shaped the Israeli democracy according to his standards and interests find himself trapped in a situation of discrimination. The "secular Ashkenazi" identification with religious values is usually scarce as well as the will to submit to religious rules. The rules and the political dynamics of the Orthodemocracy constitute a hard burden to carry for him. This condition actually favors the detachment from the social and political sphere and the self-retreat in a individualistic position, full of resentment for those who are seen as usurpers of his freedom.

Historical reasons

Orthodemocracy is the result of a deliberate process of institution-building driven by political considerations. While non-institutional settings can be the result sociological transformations in which the political power plays a minor role, the case in analysis presupposes political guidance and awareness. In this research, a brief paragraph has been dedicated to the historical reasons of why religion exerts such an influence in Israel. The analysis confirms the hypothesis that the very origin of this influence is the power that the religious group had as a legitimizing agent. The affirmation of Zionist nationalism was engrossing as much as complicated. In the Jewish world, especially the religious one, not everybody held favorable views on the Zionist project. Zionism however could not afford a religious mass-defection both for numerical considerations and for ideological ones. The

⁸ In this paragraph the expression "Secular Ashkenazi" is used as a term of reference to the ethnic studies that depicted it as a stereotype of economic success and social domination. In reality, non all Ashkenazi are secular and not all secular are Ashkenazim).

meaning of a Jewish national enterprise would have been gravely harmed by the non-adherence of a significant part of the population. For this reason, a strategy for gathering consensus was engaged. The favorable religious faction was immediately coopted (this will constitute the Religious Zionist group and will be kept within the leading coalition for thirty years by the Zionist secular leadership). To mild the position of the most reticent groups (especially those united under the non-Zionist Agudat Ysrael movement) the adopted strategy was a profusion of religious symbolism and rhetoric and, most effectively, the reassurance that the religious identity and tradition will not be obstructed or downplayed in the new State. The consociational approach was a traditional custom in the Diaspora. Jews used to live in semi-autonomy and organize their social life in a way not to endanger the unity and the safety of their community. The same model was exported in Palestine, when the wave of Zionist migration took control of the New Yshuv. After all, the initial characteristics of the Yshuv were actually similar to the Diaspora communities. The importance of fostering identification with the Zionist project and involving all social groups in the community was remarked after few "attempts of sabotage". Leaders of the Ultraorthodox party Agudat Ysrael, for example, tried to founder the State plan establishing secret contacts with the Arabs and delegitimizing Zionism at international level, with negative propaganda. International legitimation was an indispensable requirement in the delicate process in which the actual possibility of forming a State was still under the examination of the international organs. As symbolic evidence, exactly during the UNSCOP visit in Palestine, the Status Quo was stipulated as an agreement between the Zionist elite and Agudat Ysrael. This document sealed the agreement between Religious and Secular leaders on their reciprocal concessions: the support for the creation of the State of Israel was to be traded with the implementation of some religious traits of the new State. The Status Quo is the symbol of the organization of the society along the religious fracture. It proves the political power that the religious component of the Jewish community derived from symbolic and political elements, all linked to the legitimation of the State of Israel as the Jewish Homeland.

Looking at the post- Independence period, it is possible to trace a consociational rationale in all the main political choices: the influence that religious parties exerted in setting the basic legislation (Orthodemocracy), the choice of the proportional as an inclusive electoral system, the involvement of the religious parties in the governmental coalitions, the social autonomy that was given them and funded with public money, etc. For almost thirty years MAPAI dominated the political scene and preserved this asset. In the late Seventies, with the institution of a bipolar political system the consociational approach left the place to a more competitive pattern. Religious parties shifted progressively from a condition of symbolic power (that is the power of legitimation) to a condition of numeric power (because their votes became necessary for the survival of the Government). The new political power has been allowing them to maintain basically intact (or to enhance) the Orthodemocratic apparatus that was created during the early years of the State. This "new" competitive position however, together with an ongoing individualization and secularization in the society has further deepened the secular- religious rift.

The dynamics of Participation

It has been found that the Haredi group is the most reticent to social participation. Its self-exclusion from social interactions and activities is justified with the will of preserving spiritual purity, religious identity and not being contaminated by a corrupted society and by a blaspheme ideology. From one hand, the incorporation of religious values and the religious parties' agenda implementation proved to be a *sine qua non* for the identification with, the recognition of and the participation to the State of specific group of citizens.

A minimum degree of pragmatic collaboration with the Government has been kept through religious parties that advocate the Haredi cause in order to gain further autonomy and resources to maintain it. The political mobilization is very effective: the detached and segregated

Haredim can turn to the most loyal activists and voters during the electoral period. Their politicization follows the same religious path. Haredi parties for example, attribute centrality to the spiritual leader that de facto controls the party (choosing its leadership, the candidates etc.) This accountability "by proxy" is built on the trust and the absolute authority conferred to the religious authority. After all, the sacred scriptures confer to rabbis a superior and uncontested authority.

On the social level, the rejection to participate is justified on religious basis but acquires often political and social meanings. The almost total rejection of work as a positive element in human life is proved to be a rather "recent" interpretation, elaborated by the rabbinical tradition but actually not totally respondent to the Biblical source that praises work as a noble activity⁹. The affirmation of this interpretation among the Israeli Haredi world might actually assume a political connotation of refusal of the man-centered Zionist ideology that defines productivity and creativity as paramount. The troubled relation of the Haredi communities with participative forms enlightens the absolute concern about the preservation of their values and their lifestyle and depicts the non Haredi society as hostile and marauding.

Some openness has been shown in the last decades especially in the new generations. Another element has absolute relevance for the next and final paragraph: the creation of some benefic Haredi organization that grew in the territory and provided the entire population with precious services.

Religious values as a key for reconciliation

Religious belief and observance have a prevalent deterrent effect on the Haredi participation in society. This rejection prevents them from increasing their identification with the State and to acquire full legitimacy as citizens. These are partially effects and partially declared

⁹ Stadler N., (2002) in Is Profane Work an Obstacle to Salvation? The Case of Ultra-Orthodox (Haredi) Jews, in *Contemporary Israel in Sociology of Religion*, 63:4:455-474.

ideological purposes of the Haredi leadership. Civic partnership in the sinful State of Israel is not an enticing possibility for the Haredi community, focused on the preservation of religious tradition and values. However, from the same source, religion, a possible key of pacification seems to rise. The religious values that the Haredi volunteers puts in practice through the benefic organizations they are involved in and that they created, give them gratification both as believers and as citizens. Their role harmonized the two identities and pacifies the dilemma State-Faith. These activities, which involve a minor portion of the Haredi community, are anyway emblematic of a possible negotiation on the meaning of civic participation in the State. Religiosity does not necessarily contrast with the civic dimension; on the contrary there is margin for religion to help building a new social identity that will not create an internal dilemma.

The path that this research would like to propose is a path of reconciliation and education. Participation should be favored in the acceptance of individual contribution. As Bick¹⁰ argues, participation should be valorized by the State as a moment of bridging social capitals, putting aside the particularistic interests that aim to affirm groups' ideology as dominant. The particularistic approach rapes others' identities and favors detachment and closure. Indeed, it fosters the reciprocal perception as threat and a defensive self-retreat. Giving a sort of "federal autonomy" to the Haredi community, the State has fostered a particularistic view of participation and citizenship. As a consequence, the rift between religious and secular citizens has deepened. The Haredi community (but also the secular one to a certain extent) created a "super-individual" dimension, maintained jealously its particularistic views and used the society to impose them. The aim to building a more inclusive society, as a result of compromise and integration of the different views was not taken into consideration. On the contrary, a consuming negotiation has taken place on the meaning of Israel as a political and social entity. An unsolvable diatribe about the Jewish identity has been occupying the scene for decades. The

¹⁰ Bick E., (2010), The Tal Law: A Missed Opportunity for "Bridging Social Capital" in Israel in *Journal of Church and State* 52:2:298-322.

political class has never been able to set an agenda that would diminish the internal conflict or implement long term measure to shape the political culture of its citizens.

Till the moment in which particularistic considerations will be the main motor of political and social actions, improvements will not be seen. A good point of starting should be the retrieval of those basic values that are shared by the groups (this should not be impossible given the common cultural roots). The Declaration of Independence, being the result of long negotiations over matters of principle, includes many of these values. They should be taken out of the rhetorical context and implemented in shared paths.

Absolute protagonists of this cohesive project should be the progressive voices within the religious communities. Those rabbis who express milder opinions on homosexuality, those who engaged in continuous collaboration with shelters for beaten women, the volunteers of benefic organization should be seen as gatekeepers (and not as Troy horses). Only the honest recognition of the other as equally entitled to contribute to the society with his own resources and only the will of rebuilding a common society can lead to an improvement in the relations among secular and religious citizens and to the preservation of everyone's own identity.

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