The State’s response to extremism: attitudes towards subversive movements and violent organisations

The democratic polity’s struggle against manifestations of extra-parliamentary extremism and political violence is accompanied by a similar and perhaps even more acute quandary than its contest with political parties. In this struggle the government possesses the means to substantially restrict the freedom of expression and association of its citizens, consequently harming a number of their democratic rights. However, in its struggle against extremism, violence and, at times, even terrorism, the democracy is sometimes impelled to employ means that may engender restrictions on the most fundamental liberties, including the right to life.

Not without reason did Peter Chalk, whose intention was to delineate the democratic boundaries of the fight against terrorism, put forward an argument almost identical to that of the ‘paradox of the defending democracy’. According to his reasoning, the elusive challenge confronting every democracy was to find the means that would be most effective against insurgent factors while, at the same time, maintaining moral conformity with liberal democratic traditions. However, the search for these means continues, and the democracy’s predicament in its fight against violence and terrorism continues to provide ample grist for the academic mills of numerous social scientists.

Intensive research in this field, particularly in recent decades, has spawned a number of theoretical designs. Two ideal types, the ‘war model’ and the ‘criminal justice model’, have gained notable prominence. Not surprisingly, we can easily apply these models to the general discussion of the various facets of the ‘defending democracy’. The first type, the ‘war model’, is analogous to the notion of the ‘militant route’. This model takes on the goal of eradicating violence and terrorism, whereas the confinement of its actions to democratically accepted limitations, in its books, is a marginal factor. Alternatively, the ‘criminal justice model’, assuming more of an ‘immunised route’, regards the preservation of democratic guidelines as the cornerstone in its doctrine of struggle against violence, even at the expense of the effectiveness of this campaign.
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Operationally, these models can be distinguished by a number of principal aspects. First, through the lens of the 'war model', political violence and especially terror are perceived as revolutionary and belligerent acts, whereas the 'criminal justice model' looks upon them as criminal offences. Commensurately with their differentiated approaches to political violence, these models espouse different modes of response. The 'war model' gives the job of tackling political violence to the military forces, which may utilise any of the means at their disposal in order to strike at or suppress subversive elements. The 'criminal justice model', on the other hand, places the onus on the police forces while confining its actions to state criminal legislation, as further elaborated by Crelinsten:

In a criminal justice model, the rule of law is paramount, while in the war model, it is the rules of war that prevail. In the criminal justice model, it is the police who exercise the state’s monopoly on the use of violence. The rules of engagement, so to speak, involve the use of minimal force, which requires an exercise of judgement on the part of the officer(s) involved. Military rules of engagement, on the other hand, require the maximal use of force designed to overpower the enemy.

It is no coincidence that Crelinsten posits the ‘rule of law’ as the key distinction between the two models. The ‘rule of law’ in its rudimentary form is the bedrock of liberal democratic political culture. The liberal interpretation of the ‘rule of law’ extends well beyond the minimal requirement of the state for effective law enforcement. According to liberal premises, laws must be circumscribed and, when enforced, the impairment of basic human rights or arbitrary discrimination among citizens should be avoided. This approach obligates the liberal democracy to confine its struggle against political violence to very narrow boundaries, a fact that does not necessarily coincide with empirical reality in many liberal democratic polities, let alone non-liberal democracies.

A consideration of the campaigns waged by democracies against violence and terrorism indicates that, in most cases, the governing body does in fact uphold the rule of law, albeit in its formal aspect and not in the far-reaching liberal sense. Given the above, the use of the ‘war model’ in its academic – ideal – form, is rather uncommon. Most democracies facing a considerable threat or a pending crisis tend to forsake the rigid confines of the ‘criminal justice model’. However, as noted by Crelinsten and Schmid, they still do not cross the line and de facto embrace the ‘war model’. Rather, they customarily adopt countermeasures that avoid a total rejection of the ‘criminal justice model’. These means include drafting specific anti-terror legislation, the extension of police authority, modifications of judicial processes with the intent of expediting terrorist prosecution and, in certain cases, special courts for terrorists. In this fashion, the state maintains adherence to the law and at the same time enjoys a greater field of manoeuvre in its battle against subversive elements.
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Given the above, it is therefore posited that, in practice, the two polarities demarcating the arsenal of countermeasures to violence and terrorism at the disposal of most democratic polities are as follows: on one hand, there is the ‘narrow criminal justice model’, which features the liberal interpretation of the ‘rule of law’; and, on the other, we find the ‘extended criminal justice model’, which relies on the procedural interpretation of the ‘rule of law’. The latter version makes it feasible for democracies to take more extreme countermeasures against insurgent elements while still avoiding a decline into the ‘war model’; yet the question remains of whether a system employing the means of this model can in fact remain, and be called, ‘democratic’.

As reflected in its approaches to extremist parties and its responses to extra-parliamentary radical and violent acts of provocation, Israel has a history of continual revision. The general gist indicates a gradual transition from the ‘militant route’ or course of action – in this case, the ‘war model’ and the ‘extended criminal justice model’ – to an ‘immunised’ course, i.e. the ‘criminal justice model’. This chapter reviews the permutations through which Israeli counterinsurgent policy has gone, from the State’s inaugural years through to the third millennium. First, I consider the predominantly ‘militant’ route characteristic of Israel’s early days; then the relationship of the new-born State’s judicial system to the operational aspects of the ‘extended criminal justice model’ is examined; the move, from the 1970s on, to a ‘criminal justice model’ comes under scrutiny; and the chapter culminates with a look at the factors involved in a transition to an ‘immunised’ form of response.

Israel’s early days: the predominance of the ‘militant’ route

At surprising odds with the fact that in its struggle against political parties the inchoate Government of Israel suffered from a dearth of measures in its effort to protect itself from radical political manifestations, we find that in regard to (extra-parliamentary) extremist movements and violent uprisings Israel tended, even in its early days, to adopt highly rigorous forms of warfare against subversive groups. This approach is given prominence in the words of the first prime minister of Israel, David Ben-Gurion, only a short time after the founding of the State:

Democracy will cease to exist – if we debilitate it, render it incapable, powerless and devoid of effective defensive measures. So that . . . if democracy in Israel seeks to continue to exist and last for many days, it must be equipped with self-defensive means and tools of action and implementation that will prevent minorities – and not only non-Jewish minorities, but rather Jewish minorities as well – from gaining control by use of internal or external force.7

Israel’s intolerant disposition at the time towards manifestations of Jewish violence derived from events in the struggle to establish its sovereign State; but it
was also an outcome of developments which took place during the pre-State period. The years prior to the founding of the State of Israel were marked by the Zionist movement’s struggle to lay the foundations of the Jewish State. Like other nationalist undertakings, violent steps and strategies formed an indispensable part of this project. Of the movements associated with ultra-nationalist right-wing notions, the Etzel and the Lehi were the most noteworthy in their use of violence and terrorism. Such violence gave rise to much concern and dispute among the different political currents in the Jewish Yishuv (settlement) and continued unabated even after the dismantling of the British Mandate in Israel and the State’s inauguration in the spring of 1948.8

The most noteworthy evidence of the persistence of this ideological polarisation after the State’s establishment occurred approximately one month after the declaration of independence. The nascent State’s political leadership, affiliates of the Labour Movement, elected to adopt the more radical of counterinsurgent options at its disposal in an attempt to put an end to the internal struggle over sovereignty, as well as to bring about the dissolution of the militant Etzel and Lehi movements. The incident strikingly illustrating this critical step toward the assimilation of the ‘militant route’ or ‘war model’ was the affair of the weapons’ ship Altalena.

On 22 June 1948 the army’s chief of operations ordered his soldiers to open cannon fire on the S.S. Altalena with the resolute intention of sinking the ship. This momentous incident took place not far off the shores of Tel Aviv. On deck there were members of Etzel and in its hold were abundant stocks of weapons brought from France by the organisation. This drastic step by the State invites the question – which continued to perturb the political echelons for a long while after the incident – whether in fact the weapons’ ship Altalena was such a threatening element that it left the decision-makers with no alternative but to employ the most extreme measure at their disposal.

The answer to this question is multifaceted. Behind the scenes of the Altalena affair, there was the attempt by the month-old State to quickly raise an army to contend with the overall state of war that existed at the time. In order to organise such an army, it was necessary to combine all the clandestine elements that were in operation prior to the State’s establishment into one common national framework.9 However, to hastily unite several factions, often divided by vast ideological chasms and a history of bitter confrontation, in a common framework was no mean feat. Furthermore, the various elements of the new army less than willing to surrender their respective distinctions and forgather under a single national framework in which the Labour Movement had a highly dominant role. The Etzel, for example, strove to maintain a degree of autonomy in the new State-run army context and asked that its members be accorded a favoured status in the distribution of weapons seized from the Altalena.10 The State leadership saw this as a genuine threat because, specifically, they were
fearful of an armed, ideological militia operating within army ranks. This threat, as perceived by the State leadership, was in line with the conventional explanation of countries deciding to adopt strategies of the ‘militant route’.11

As the ship drew closer to the shores of Tel Aviv, the sense of threat to the leadership grew, for the latter were of the opinion that members of Etzel were attempting to form an alternative power centre with the intention of challenging the authority of the leadership of the new-formed State.12 These considerations raised the odds favouring a military option. In the meantime, those members of Etzel who had been conscripted into the budding national army abandoned their posts and made their way to the location at which the ship was expected to berth, thereby exacerbating the feeling of imminent threat, already prevalent, among the executive leadership. This sense of apprehension might explain why they did not listen to the Etzel leader Menahem Begin who, in response to the escalation, attempted to reach a compromise with this same leadership and thus prevent the sinking of the ship and the consequent loss of life. Instead, Prime Minister David Ben-Gurion’s ministers chose to accept the stark picture portrayed by Ben-Gurion, that of Etzel as an immediate and unacceptable challenge to the new sovereign Government.13 In the end, the ship was bombarded and scuttled, the list of fatalities including 16 Etzel members and 3 IDF (Israeli Defence Forces) soldiers.

At this juncture, the question debated by many scholars studying Ben-Gurion’s actions at the time should be raised. Was his decision to use such military force due to the feeling that the sovereign Government was indeed in grave jeopardy, or was this simply an opportunity to disable his political foes? Horowitz and Lissak elect to confirm the assumption that applying ‘war model’ tactics to the Altalena affair and the elimination of Etzel were steps taken in order to consolidate governmental stability. From their point of view, Israel’s aggressive policy toward the S.S. Altalena was only another variation on a universal theme according to which a group seizing power, within the context of the institutionalisation of nationalist and social revolutions, must apply force in order to rid itself of any radical elements carrying the potential to undermine the regime’s stability.14 Departing from this view, Barzilai submits a more critical stance and argues that a political act was in fact effected: Ben-Gurion’s real concern was to prevent the build-up of hostile political forces and potential adversaries to his own party’s Government.15

Whether Ben-Gurion’s motives were driven by sectarian considerations or were in the national interest, the Altalena affair signified the advent of an extensive campaign whose aim was to crush oppositional militarist factors in the country. The operation included army raids on all Etzel military installations, a sweeping arrest of the movement’s leaders, and, in effect, the total dismantling of its military capacities.16
With the dissolution of Etzel, the era of the deployment of the ‘war model’ against Jewish political violence in fact came to an end. The higher ranks in charge of the infant State of Israel began to edge towards the adoption of the ‘extended criminal justice model’ which, at least in the first years of its implementation was characterised by an ambiguous frame of operation and an inclination to occasionally slide back toward the ‘war model’.

**The State of Israel from the 1950s to the 1970s:**

**The institutionalising of the ‘extended criminal justice model’**

To reiterate: whereas the ‘war model’ in its simplest form relies on the rules of war rather than any constitutional or legislative basis, in contrast the ‘extended criminal justice model’ is bound to the principles of some sort of formal legal foundation. The legal system that evolved in the State of Israel served as fertile ground for the institutionalisation of a model of this type. Except for the United Kingdom, Israel is the only democracy which does not have a written constitution ensuring basic liberal rights, including the freedom of speech and freedom of association. Notwithstanding the internal political reasons forestalling the adoption of such a constitution, the budding State was under a genuine threat from its Arab neighbours, and that fact consolidated a sweeping public consensus on the issue of the precedence of security and military matters over civil rights. However, the sense of foreboding has persisted and this ‘security complex’ continued to dominate policy and political discourse for many years. Therefore, it should come as no surprise that over the course of its fifty-three years of existence, Israel has not adopted a constitution, nor has it ever retracted the state of emergency under which it has operated for all those years, making it possible to effect far-reaching extensions of the notion of the ‘rule of law’.

The existence of a state of emergency in Israel constitutes a key factor in understanding the institutionalisation of the ‘extended criminal justice model’. Hofnung argues that a ‘state of emergency’ is a governmental declaration of the existence of an exceptional set of circumstances, therefore requiring the adoption of extraordinary measures. The principal manifestation of the state of emergency in Israel was the adoption of a complex system of regulations intent on preserving state security, even at the expense of basic individual rights. An attempt to make sense of this tangled web of regulations will have to distinguish between three types of emergency legislation:

1. Defence (Emergency) Regulations, 1945: inherited from its predecessor, the British Mandatory Authorities in Palestine, these regulations grant a great
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deal of power to the military command. High-ranking officers are authorised to order house demolitions, impose curfews, make arrests, carry out searches and detain suspects without judicial restraint. The enforcement of these regulations within Israeli borders – especially with regard to Jews – is uncommon and has been carried out only with the approval of the highest levels of the executive authority (the cabinet or the minister of defence).

2 Section 9 of the Law and Administration Ordinance, 1948, which authorises the executive authority to suspend, revoke or alter parliamentary legislative measures in cases of emergency.

3 Parliamentary emergency legislation.¹⁹

For the purposes of this discussion, presented here are seven major operational courses, deriving principally from the 1945 Defence Regulations, which have helped lay the formal foundations for the adoption and institutionalisation of the ‘extended criminal justice model’:²⁰

- **Administrative detention.** Intended to prevent threats to state security or public safety, the exercise of this measure was not contingent upon the commission of a felony or the suspicion of involvement in one. In the Defence Regulations, an administrative detention was defined as the authorisation to arrest a person, without trial, for a period of up to six months. The minister of defence and, under special circumstances, the chief of staff, were vested with the authority to impose such detentions.

- **Restriction on freedom of expression.** Its principal manifestation was the existence of a military censor who possessed the authority to prohibit the publication of any items, including daily newspapers which, in his opinion, posed a threat to national security.

- **Restriction of the freedom of association.** The most severe measure available to Israeli governments, whose purpose was to limit the freedom of association, is provided in the ‘unlawful association’ clause of the Defence Regulations. This clause stipulates that unlawful organisations are those that recommend, or incite towards, the eradication of the Israeli or governmental constitution with the use of force, or who are responsible for the incitement to hostilities against the government of Israel or one of its ministers, or the destruction of the property of the government of Israel or acts of terrorism aimed at the government or its employees. The maximum penalty to be imposed upon a member or supporter of such an organisation is ten years’ imprisonment.

- **Restriction on freedom of movement.** An individual suspected of subversive activity may, according to the powers vested in the State by the Defence Regulations, be subject to a restraining order that will confine him or her to his or her area of residence and require that he report daily to the police station.
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- **Special courts.** Defence Regulations authorise the chief of staff to set up special courts for individuals suspected of activity which may jeopardise state security. Another legal proceeding is putting such suspects on trial in a civil court of law on condition that those courts sustain verdicts in accordance with emergency legislation.\(^{21}\)

- **Ordinance for the Prevention of Terrorism.** One of the principal legislative measures available to courts trying suspects of subversive offences is the Ordinance for the Prevention of Terrorism No. 33, 1948. According to paragraph 8 of the ordinance, the executive authority is responsible for determining whether or not a political movement is a terrorist one. An illustration of the rigidity of the ordinance is found in paragraph 2, which determines that an individual taking part in the establishment or activity of a terrorist organisation, or even in dispensing propaganda in any form, will be guilty of an offence for which the maximum sentence is twenty years’ imprisonment.\(^{22}\)

- **Special legislation regarding the occupied territories.** Territories occupied by Israel in 1967 are not subject to state laws (apart from East Jerusalem and Golan Heights, which have been annexed by law), in which case those areas are subject to international laws of occupation, thus authorising the regional military commander to take any measures necessary to maintain control of, and order in, those territories.\(^{23}\)

Such measures were most often exercised against the Palestinian population, though, as Cohen-Almagor has pointed out, Jewish settlers were also occasionally subject to administrative detention orders.\(^{24}\)

From the above, it seems that there was a situation in which the lack of a constitution necessary for safeguarding civil rights combined with the state of emergency which existed, entailing the potential enforcement of a wide array of decrees and regulations that substantially digressed from the notion of the ‘rule of law’ in its liberal democratic sense. This combination provided Israel with the tools needed to administer a model of response that, despite what appeared to be couched in a legal framework, was still a far cry from the more demanding requirements of the ‘criminal justice model’. Further evidence of its deviation from the limits of the ‘criminal justice model’ could be found in the decision, which in due course became ossified into tradition, to place the brunt of the response to extremism and political violence upon an operational intelligence body (counterintelligence) and not the police force.

**The status of the General Security Service (GSS)**

Contrary to expectations set forward by the ideal type of the ‘criminal justice model’, which puts the full onus for the fight against extremism and violence on
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the shoulders of the police, the central body dealing with threats of extremism, subversion and political violence in Israel is the Shabak. Police services are employed principally in the final stages of the investigation, that is, in the arrest of felons and their arraignment in court.

Once again it is possible to see how the State institutionalised a model of response which kept the army away from any involvement in political violence and terrorism within Israel’s boundaries. At the same time, it ensured the exclusion of the police force as well. Appointing the Shabak as the institution responsible for contending with these incidents is clearly indicative of the State’s attempt to adhere to some sort of framework within the ‘rule of law’ – yet not in the liberal perception of this notion.

Unlike the Israeli police force, the legal status of the Shabak is indeterminate. Furthermore, unlike in other countries such as the United Kingdom, where there is a system of robust public control over the secret services, in Israel there is a lack both of the legislation necessary for defining the limits and methods of the Shabak and of public accountability on the part of the GSS. A frail constitutional infrastructure enables the widespread existence of the phenomenon Crelinsten calls ‘provocative policing’, i.e. actions not necessarily designed to collect anti-terrorist evidence for the sake of prosecution, but rather in order to serve intelligence aims of the security forces. Moreover, the lack of a viable system of accountability also opens the door to actions verging on the illegal or what Carmi Gillon, former head of the Shabak, calls operating in the ‘grey’ areas. Among the ‘grey’ tools at the Shabak’s disposal – but denied to the police – are wiretapping, gathering under false pretences information about individuals, investigations which include the use of physical and mental coercion, and liberal access to the data banks of various authorities with reference to, inter alia, the State’s citizenry.

Contrary to the legal developments which, in recent years, encouraged the State of Israel to proceed toward a more bona fide interpretation of the ‘rule of law’ (a theme discussed later), in point of fact the status of the Shabak has changed little since the 1950s. Efforts also recently invested in the late 1990s to pass ‘Shabak legislation’ and, in general, to more clearly define the mandate of the organisation’s action, have raised some knotty questions. Paragraph 7 of the law proposal discussing the goals of the GSS and its roles, determines that

the Service is in charge of protecting the State’s security, the order of its affairs and its institutions from threats of terrorism, espionage, breaching of secrecy and other activities that may cause it damage. The Service is also responsible for the protection and promotion of other vital sovereign interests of the State as determined by the government. . . .
In their comparative review of legislation concerning the activities of the secret service, Zimerman and Kremnizer find support for the inference that this type of institution almost naturally tends to extend its range of operations to those so-called ‘grey’ areas which stand in contradiction to the rule of law. Therefore, the essence of a law pertaining to the secret service would need to regulate the organisation’s activities and chiefly set the limits of its authority by means of a clear mandate and by maintaining an effective system of accountability. The ambiguous wording of the legislative proposal with regard to the Israeli Shabak, as far as Zimmerman and Kremnizer are concerned, undermines this plausibility and removes the law in its current rendition from the realm of democratic acceptability.31

In the first decades of its existence, the State of Israel therefore engendered a quasi-legal framework for its counterextremist activities. The generous conditions of prosecution and the fact that an institution of counterintelligence, benefiting from a lack of accountability, was assigned this function, provided the State with a broad and almost limitless field of operation in its struggle against radical and violent elements.

The operational aspects of the ‘extended criminal justice model’

The first sign of genuine transition from the ‘war model’ to the ‘extended criminal justice model’ became evident already in the last stages of the dissolution of Etzel and in the administrative detention of five leaders of that organisation. These former commanders were granted the right to appeal to the Supreme Court,32 a fact which proved that the security forces were liable to the civil court system, even if this subordination was still partial. However, the most significant step towards the adoption of the ‘extended criminal justice model’ and the repudiation of the ‘war model’ became apparent in those actions taken to eliminate the smallest and most zealous underground right-wing organisation at that time, the Lehi. The incident that prompted this process was the assassination of the Swedish diplomat and United Nations mediator for Palestine, Count Folke Bernadotte.

Bernadotte was killed on 17 September 1948, in a well-planned ambush by Lehi members. The State’s immediate response to the assassination was more in compliance with the ‘war model’. Soldiers from the Palmach (elite army squads) unit raided Lehi military camps, closed down Lehi offices and arrested dozens of its members. 33 However, the next significant step was more moderate, conforming to the judicial frame that took shape under the state of emergency. Three days after the murder, the Government declared Lehi a terrorist organisation, thus expediting the process of the indictment of Lehi-affiliated members, including those who had not been active participants in its operations. Where
evidence was found to be less incriminating, members were subject to arrest and administrative detention.

These steps were an indication that the State of Israel had become an established reality and therefore a sovereign entity bound to a system of rules, albeit an initially frail judicial structure. Every use of military force against civilians now had genuine potential to harm the public legitimacy of the new Government. The ‘extended criminal justice model’ was consequently acknowledged as an option often necessary for governmental stability both in order to gain legitimacy and to justify the expulsion of violent antagonists.

As for the motive behind the identification of Lehi as a terrorist organisation, Barzilai argues that the decree was more inclined towards the de-legitimizing – and thus subduing – governmental opponents than it was based on the rationale of taking counterterror stabilising action. Notwithstanding the sound basis of this argument, it seems that the disavowal of the ‘war model’ in favour of the ‘extended criminal justice model’ demonstrates how Ben-Gurion, in his efforts to undermine his political opponents, in fact chose a more restrained approach and ended the rigid methods employed in the earlier stages of the struggle against Etzel.

The decision to shift the responsibility for dealing with Jewish extremism and violence from the army to the Shabak was another indication of the institutionalisation of the ‘extended criminal justice model’ as the dominant doctrine in the struggle against Jewish terror. Isser Harel, founder of the Shabak, began the process of segregating the GSS from the army, thus reinforcing its status as an autonomous non-military body. According to Harel, this made it easier to reconcile between security operational needs, on the one hand, and the legal constraints of a democratic political system, on the other. Harel also attempted to set the ground rules for GSS operations. As he saw it, the role of the organisation in the struggle against terrorism should be limited to preemptive surveillance and interrogation. Evidence, once gathered, would then be transferred to the police for further investigation and prosecution, if necessary.

On the face of it, it seemed that Harel’s aspiration, to judge from his descriptions, was to limit Shabak’s role to ‘reactive policing’ in relation to Jewish terrorism, a move Crelinsten regards as intended to keep counterterrorism within the rigid restraints of the ‘criminal justice model’. However, both the test of reality as well as allegations tendered by Carmi Gillon, who directed the Shabak forty years after Harel, prove that the course chosen by Harel and his successors was undeniably ‘provocative policing’. For example, security agents would regularly identify targets – including political movements – as potential threats to subsequently shadow them and to pursue the actions of their leaders in order to gather information.

The early 1950s witnessed a number of events which helped provide the means for the institutionalisation of the ‘extended criminal justice model’. Three
radical movements sprouted at that time: Brit Hakanaim (Covenant of the Zealots), Hamachaneh (The Camp), and the Zrifin (the name of the prison where members were held) Underground.\textsuperscript{17}

The first two movements eventually merged under a common leadership composed of militant Haredim (members of the ultra-orthodox) who objected to the Zionist character of the State but, ironically, received most of their inspiration from Lehi operations. At first their actions amounted primarily to hooliganism and damage to property, therefore making Shabak involvement unnecessary. However, when it reached the stage where the police found themselves quite powerless in restraining the organisation, the Shabak was asked to assume responsibility for dealing with this group, and so took on the task of quelling its operations. Harel, the Shabak’s head at the time, planted two agents among its ranks whose mission was to monitor and report member movements. After receiving intelligence reports regarding the intention of the organisation to step up its actions and engage in more militant tactics of terror, the Shabak launched a comprehensive campaign against the group and its supporters, and twenty suspects were put under administrative arrest.\textsuperscript{18}

The handling of the Zrifin Underground, or Kingdom of Israel Underground, is an even more striking example of the increasing entrenchment of the ‘extended criminal justice model’. The Underground, whose members were also chiefly inspired by the Lehi tradition, began its foray into terrorism in the winter of 1953, and on 9 February of that year it carried out its most violent and bold attack. A large bomb was detonated at the Soviet embassy building in Tel Aviv and three diplomats were injured. Following an investigation coordinated by the GSS and the police force, the Israeli Government decided to enforce the Ordinance for the Prevention of Terrorism against the group.\textsuperscript{19} In addition, for the first – and, in effect, the only – time in the history of the State of Israel, a special military court was set up to adjudicate the allegations made against members of a Jewish terrorist organisation.\textsuperscript{40}

By the mid-1950s, the number of violent threats made by the Jewish public began to wane. It would be hard to categorically determine whether the enforcement of the ‘extended criminal justice model’ led to this decline, or whether other factors were responsible, such as the processes of institutionalisation which the country was undergoing, or the unrelenting tension with Arab countries that substantially contributed to the consolidation of the Jewish public of this State in its attitude to its political leadership and national symbols. That said, and refraining from an attempt to determine a causal relationship between the two, it could be inferred that the attenuation of threats was also accompanied by a substantial change in the assorted toolkit of counterinsurgency adopted by the State.
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The State of Israel from the 1970s until the new millennium: towards a model of criminal justice

Modifications to the legal basis

With the advent of the 1970s, a legislative infrastructure began to take form in Israel. Its goal was to contain the complex of state reactions to the challenges it was faced with in a more democratically stable legal framework. This infrastructure addressed three essentials of the democratic system: human liberty; freedom of expression; and freedom of assembly.

- **Liberty.** In 1979, the procedure of administrative detention secured legal status by power of the statute of authorities, emergency provision (arrests). It differed from the earlier Defence Regulations by imposing a limited judicial review on the minister of defence’s decision to exercise administrative detention. The new enactment stipulated that the administrative detention warrant be presented before the president of the district court within forty-eight hours of the act of detainment. Despite this adjustment, the rationale behind the idea of administrative detention remained unchanged: namely, the State takes upon itself the right to impose restrictions upon an individual’s freedom as ‘preventive measures’ and without arraignment before a court of law. Moreover, the law set forth special instructions regarding the concealment of evidence held against the detainee, which authorise the minister of defence to prevent the detainee from examining the evidence compiled against him or her, including information often constituting reasons for his or her arrest.41

- **Freedom of expression.** The decrees prohibiting sedition and incitement, as well as incitement to racism (amendment, 1986) of the Penal Code, 1977 were in effect intended to establish judicial grounds for existing limitations on the freedom of expression. It should, however, be noted that the offence of sedition as set down in the Penal Code is currently under the constant criticism of judicial and liberal factions. Their main objection is that these enactments provide the State with too much of a free hand when taking severe steps against radical political activists, a predicament that, according to the Association for Civil Rights in Israel, puts freedom of expression in the country in considerable jeopardy.42 Further confirmation of this approach is submitted by Kremnizer and Gnaim, who underscore the liberal approach by arguing that making sedition a criminal offence deviates from the conventional boundaries of a democratic system, overly restricts the freedom of expression and does not accord with the principles of legality and clarity. They propose replacing this offence with a number of penal restrictions defined in an explicit and lucid fashion, and of a more limited nature, which also may help avert unrestrained enforcement during times
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of crisis. However, while the charge of sedition remains a point at issue, the ruling against incitement to racism appears to be a law constrained by a well-balanced system of checks and balances, enabling it to be included under the *bona fide* definition of the ‘rule of law’. On the one hand, the law makes it possible to protect society at large from the scourge of racism; and, on the other, the law tends to significantly restrict administrative retaliation in regard to its violators. The maximum penalty for an offence of incitement to racism cannot exceed five years’ imprisonment and, furthermore, unlike for other criminal offences, clause 144e of the ruling stipulates that in each case where the State intends to file suit for crimes of incitement to racism a written agreement from the attorney general must be obtained. At the end of 2000, a strong effort was made to push forward additional legislation on the subject of incitement, this time in reference to incitement to violence. The purpose of this legislation was to replace the use of clause 4a of the Ordinance for the Prevention of Terrorism.

- **Freedom of assembly.** The Penal Code, 1977: Illegal Assembly significantly curtailed the range of areas decreed illegal by the Defence Regulations and in fact incurred substantial reductions in penalties (a maximum of three years’ imprisonment in contrast to the ten-year sentence originally ordained by the Defence Regulations). Like the conviction for incitement, the right of indictment with regard to illegal assembly was given solely to the Attorney General. Another law related to the freedom of assembly was the Law of Associations, 1980, whose purpose was to regulate civil associations in Israel. Clause 3 of the law determines that an organisation will be denied formal registration if one of its aims is incompatible with the existence of the State of Israel or its democratic character, or if there is reasonable cause to believe that the association may be used as a front for illegal activities. This law does not outlaw the existence of assemblies of this type but it denies them the rights granted to formally registered associations.

The above legislative efforts regarding the freedom of expression and assembly are indicative of Israel’s attempt to confine its struggle against extremism and violence to an acceptable democratic framework. It nonetheless appears that the fact that it had not, at the very outset, sought to eliminate the practice of administrative detention or completely abolish the option of exercising the Defence Regulations (which can be replaced by the above-mentioned laws) shows that the State preferred to retain a wide range of operation and counteractive means which continue to deviate from common democratic principles. A survey conducted for the purposes of the present study indicates that the State’s predisposition to retain these forceful means of response is broadly endorsed by the Jewish population in Israel. Seventy-four per cent of the respondents agreed with the statement asserting that the Emergency Regulations existing since the
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State’s establishment are vital for the preservation of its security. Sixty-nine per cent supported the notion that administrative detention is a legitimate tool to be employed in the interests of state security. Another 54 per cent agreed that the Shabak, and not the Israeli police force, is the appropriate agent for dealing with ideological delinquency perpetrated by the Jewish extremists.

As outlined above, the State of Israel has an equivocal approach regarding the measures to be employed in the operational struggle against extremism and violence. This is a significant factor in determining that a regression to extreme response tactics marked by a substantial extension of the conception of the ‘rule of law’ still occurs in many cases, even though there does seem to have been a gradual improvement in sustaining the unadulterated rule of law.

Issues accompanying the contraction of the ‘criminal justice model’

In this section, I scrutinise Israel’s response to five instances of Jewish extremism and violence of the last three decades. The examples are as follows: the Kach Movement; the Israeli radical left; the ‘Jewish Underground’; Rabbi Uzi Meshulam’s violent group; and the events preceding the assassination of Prime Minister Yitzhak Rabin. The comparative analysis of these events demonstrates not only the different responses to these respective threats, but elucidates the factors encouraging and inhibiting the toughening or moderation of each response.

The Kach movement

Kach appeared in Israel in late 1971 and was in effect an offshoot of the violent and vigilante American organisation the Jewish Defence League. When the leader of the movement, Rabbi Meir Kahane, emigrated to Israel, it seemed that his intention was to import the League’s violent methods to this new arena. As early as 1972, Kahane and his followers proved to be a significant challenge to the State of Israel when, in the August of that year, Kach simulated a public show trial incriminating the mayor of Hebron, Mohammed Ali Jabari, for his part in the 1929 massacre of Jews in this city and the later events of the 1948 War of Independence. In order to carry out this trial, Kahane and his adherents defiantly entered the mostly Arab city, thus creating significant potential for violent confrontation. However, the security forces quickly intervened. Soon after, Kahane stepped up his actions and his people became involved in smuggling weapons to Jewish terrorists with the aim of causing damage to the Libyan embassy in Brussels.

A retrospective look at the evolution of the Israeli response to the Kahane phenomenon indicates that in his first years in Israel the security forces had a problem evaluating the charismatic Rabbi’s intentions. The culture of extrem-
ism and violence which he and his followers brought with them into Israel substantially differed from anything previously experienced in the country. Therefore, enforcement authorities preferred to look upon him more as a provocateur than as a terrorist. In 1973, for instance, he was given a two-month suspended sentence on routine criminal charges for conspiring to commit offences in the United States. The conviction was based on evidence from letters he wrote to his adherents encouraging them to engage in acts of terror.49

Seven years later, the security forces had formed a more concrete assessment of his terrorist potential and, in consequence, began to treat him differently. The Khach leader became a principal object of surveillance by the security services,50 and an extensive system of intelligence was employed by them against Khach. Some of the information compiled by these means ultimately led to the administrative detention of Kahane in 1980 for a period of four months consequent to his organisation’s designs to fire a long-range missile at the Dome of the Rock Mosque on the Temple Mount.51 During the years 1984–88, when Kahane served as a Member of Parliament, Shabak suspended its surveillance due to a provision that prohibits the policing of elected public officials. Nonetheless, his supporters and party members remained under strict observation both during his service as MP and also after the disqualification of his party just prior to the 1988 elections and his subsequent return to extra-parliamentary activities.52

In the November of 1990, a fatal blow was delivered to the Khach Movement. The murder of the Rabbi in New York completely devastated his organisation and led to the dispersal of his followers among two minor movements – Khach and Kahane Hai. An interesting point is that, despite the peripheral status of these political movements in terms of the Israeli political discourse of those years, they still remained a main target of undercover work.

In March 1994, and in the wake of the massacre perpetrated by Dr Baruch Goldstein at the Tomb of the Patriarchs, the Government decided to enforce the Ordinance for the Prevention of Terrorism against these two movements. This governmental resolution strikes one as quite dramatic considering that only two small splinter groups were the alleged concern. Notwithstanding the occasionally aggressive element in these movements,53 their ranking on the list of violent extremists at the time was minor, particularly in view of the radicalisation of the Israeli right, which included either collective or individual blatant acts of defiance against the rule of law and governmental legitimacy. Still, as if the enforcement of the Ordinance for the Prevention of Terrorism was not enough – making it significantly easier to detain and prosecute radical activists – a short while after the Goldstein bloodbath, the Government issued warrants for the administrative arrests of nine Khach and Kahane Hai members.54 This gesture reinforces the feeling that the State of Israel had indeed resolved to take especially stringent measures in this case. Israel’s approach, in terms of its policy of
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reprisal for extremism and violence, propelled the State many years backwards to its early years.

The enforcement of the Ordinance for the Prevention of Terrorism specifically against these movements and the arrest of its members seem quite out of proportion to the alleged threat that they posed; and the pretext for this decision appears peculiar. Baruch Goldstein was identified as a ‘lone wolf’ at the time – he committed the massacre at the Tomb of the Patriarchs of his own accord, unassisted by any organisation, a fact that was later substantiated in the findings of the State Commission of Inquiry set up to investigate the events of the slaughter at the Tomb of the Patriarchs.55 That being so, why did the Government take such forceful and disputable action? Cohen-Almagor submits the following explanation for its actions: exercising the Ordinance for the Prevention of Terrorism against these organisations was an inevitable development simply because the Government of Israel had no other means to deal with these movements.56 He bases his conclusion on a number of theoretical tests. One of them is the examination of consequences. This type of analysis adopts contrasting assumptions. The first assumption, which questions the very need for the ordinance, argues that its enforcement will not be particularly effective because the radical movement core will continue to survive and its members will remain active, perhaps under a different name and exercising more caution. Another consideration, and no less important, is that the enforcement of the order would draw the political system close to a slippery slope in terms of its ethical foundations. The second assumption supports the need for the ordinance and views its use as a formidable declaration and rejection of the legitimacy of these organisations and as an attempt to expel them from the licit boundaries of society.57

A review of these events shows that the State of Israel has indeed reached the precipice at the end of this slippery slope. On the one hand, the execution of the Ordinance for the Prevention of Terrorism has perilously eroded its liberal foundations and, on the other, the movements that were affected by the ordinance remain active and almost unperturbed by its implementation. At the November 2000 rally in tribute to Rabbi Kahane ten years after his assassination, the helplessness of the authorities of the law was apparent in respect of the enforcement of the ordinance. Throughout the memorial ceremony, activists cited excerpts from Rabbi Kahane’s publicly outlawed manifesto and wore shirts embossed with the rabbi’s visage and party insignia. Two months later, following the murder of the rabbi’s son and leader of Kahane Hai Binyamin Kahane (who was a random target of Palestinian terrorists), these movements proved once again their resilience to the State’s measures, and also gave indication of their expanding membership. In significant numbers, activists from the two banned movements showed up for the younger Kahane’s funeral proces-
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sion, which quickly transformed into a display of force. Followers of the two
movements committed acts of brutal violence against Arabs encountered
during the course of the funeral procession, waved their flags and called for
revenge.58 Itamar Ben-Gvir, one of the more prominent activists of Kach,
summed up things by saying that ‘trying to make the Movement illegal is simply
a joke’.59

In effect, the slide down the slippery slope and the State’s estrangement from
the fundamental conception of the ‘rule of law’ have been more painful than
Cohen-Almagor anticipated. He argued that the enforcement of the ordinance
was supposed to have prevented the use of administrative procedures which, in
his view, were in any case illegitimate means in the struggle against terrorism.
The fact remains that activists from dismantled movements continue to be under
the constant surveillance of the security services and the exercise of adminis-
trative procedures has not become any the less popular. Since the use of admin-
istrative detention, for Kahane’s devotees, was renewed in the wake of Tomb of
the Patriarchs’ slaughter, warrants for the restriction of movement and arrest
of activists in Judea and Samaria have been issued on a regular basis,60 and these
are additional to the measures assigned to the State by the Ordinance for the
Prevention of Terrorism.61 That said, it should be noted that the judiciary,
having a more liberal approach, tends to prefer the freedom of members of Kach
and therefore, the number of actual convictions remains disproportionately low
in comparison to the number of prosecution referrals. Furthermore, judges have
consistently admonished prosecuting attorneys for their over-zealousness in
bringing charges against members of these movements and for the numerous
charge-sheets they continue to serve against violators of the Ordinance for the
Prevention of Terrorism.62 This posture assumed by the courts presents the judi-
cial authority as a critical mainstay in the struggle to uphold the principles of
‘the rule of law’ vis-à-vis an executive authority which prefers to sacrifice those
values on the altar of ‘security protection’.

Attempts to explain what persuaded Israel to respond with such severity to
these organisations at a time when it seemed that the use of the ‘criminal justice
model’, in its narrowest terms, would have sufficed, lead to the conclusion that
first and foremost, the very feasibility of this Ordinance stemmed from these
movements’ marginality. By exercising the ordinance in relation to these two
radical groups, the State was able to send out a forceful message against those
elements of terrorism indicated above by Cohen-Almagor. The timing of this
decision was also significant. The whole affair took place in the first few months
after the signing of the Oslo Agreements, at a time when a number of powerful
right-wing elements were coordinating huge demonstrations – some of them
violent – against the Government. Kach and Kahane Hai were ideal targets, allow-
ing the State to deliver an ostentatious message to all sides involved. Their
considerable political marginality made their denunciation possible without risking severe public dissent or the mobilisation of a parliamentary lobby for their cause.

Another explanation for the ironhanded and isolated governmental response to these two movements in particular can be found in the security system’s outdated and entrenched perspective. Over the years, state leaders and security services have regarded Kach and Kahane Hai as the most extreme and violence-prone factions on the fringes of the far right. In retrospect, particularly following the assassination of Rabin, this policy has turned out to be misguided.\(^\text{63}\) In any case, these movements proved to be easy targets for the enforcement of a policy of brash response, a posture readily adopted by intelligence factors that preferred to adhere to their outmoded perspective instead of extending their view in the direction of the more genuine threats taking root at that time.

In conclusion, the Supreme Court’s decision to convict Binyamin Kahane of seditious offences one month prior to his murder is, paradoxically, indicative of how Israel elected to moderate its stance toward the Kach Movement. This conclusion is due to the fact that Kahane, who was tried for the distribution of a pamphlet proclamation in 1992 in which he called for the bombing of the Arab city of Um el-Fahm, was convicted in accordance with clause 134(4) in the Penal Code appertaining to the offence of sedition. Theodore Or was the Supreme Court Justice responsible for prosecuting Kahane, and on that same day he also acquitted journalist Mohammed Jabarin, who had been accused of publicly supporting the intifada (the Palestinian uprising) in Judea and Samaria. His explanation for these rulings was that while Jabarin was sentenced according to paragraph 4(a) of the Ordinance for the Prevention of Terrorism, which prohibits public praise for grave acts of violence, Kahane’s trial was standard criminal procedure. Moreover, Or determined that while paragraph 4(a) of the ordinance ‘is a draconian clause which is hard to accept in an enlightened society where freedom of expression is highly esteemed’, the offence of sedition as defined in the Penal Code was intended to promote the heterogeneous existence of an Israeli society comprised of a diverse populace. In addition, the legal formulation of the sedition offence was very restrained; that is, in order to convict a person of acts of sedition, it must be proven that there is a ‘considerable’ degree of sedition and that there is a high probability of the commission of violent acts subsequent to the defendant’s proclamation.\(^\text{64}\)

At this stage, in order to avoid unduly simplified conclusions, we are compelled to redouble the effort to be cautious. Indeed, the assumption at the base of the notion of the democracy’s ‘immunising’ policy posits that responses limited to legal frameworks are more acceptable than responses anchored in administrative regulations or special procedures. Certainly, the lesson taught by experience with regard to the party political system indicates that, in the major-
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ity of cases, Israeli-drafted laws whose goal was to contend with incidents of political extremism can be seen as weighed and balanced structures subject to scrupulous judicial commentary. However, as already noted, the law enabling conviction for offences of sedition deviates, according to some, from the accepted standards of the democratic system. The legal advisor Professor Miri Gur-Aryeh specifically took issue with Justice Or’s approach in his verdict regarding Kahane and, in effect, represented a line quite similar to the general arguments raised by Gnaim and Kremnizer. In Gur-Aryeh’s view, there is justification for convicting a person who has initiated a discourse with the potential to fuel a violent atmosphere. She argues that conviction should be aimed against violent acts, whereas public speaking with the potential to create a violent climate must be dealt on a level other than the criminal. In sum, I do not retract the approach that conviction by dint of law indicates restriction of the democratic response to the boundaries of the ‘immunised route’. However, at the same time, it seems a justifiable assumption that judicial frameworks should also be liable to critique and renewed evaluation from time to time, and that, in any case, the law should be clear and transparent and include only the minimal limitations essential for upholding democracy.

The radical left in Israel

Another group significantly marginal to the Israeli political scene, and hence also considerably vulnerable to policies along the lines of the ‘extended criminal justice model’, is the radical left. Despite Sprinzak’s argument that, in comparison to left-wing European organisations, the radical left in Israel has proved to be a relatively benign element because it rarely engages in violent action, Israeli policy-makers tend to view organisations such as Hanitzotz (‘The Spark’) and The Revolutionary Communist League and, later, Derech Hanitzotz (‘The Path of the Spark’) as terrorist factions. The reasoning was that these movements did not recognize the State of Israel’s right of existence and, moreover, were financially endorsed in part by George Habash’s Popular Front, Ahmad Jibril’s Democratic Front and Næf Hawatmeh’s Maoist-orientated organisation. Therefore, these movements were branded as Shabak intelligence targets and their members were closely watched. Furthermore, apprehended members of these bodies were tried and convicted under the Ordinance for the Prevention of Terrorism, and not according to standard criminal procedure. Of significant interest, and confirming the thesis that marginal groups are more susceptible to strong state counteraction, is the fact that Carmi Gillon, one of the intelligence leaders in the struggle against them, addressed them as ‘a completely marginal phenomenon, having no effect whatsoever on society and a phenomenon which never threatened the fragile consensus in this country’. If that was truly the case, why were organisations identified as only mini-
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mally subversive subject to the same policy as those that persistently engaged in political violence? The following example shows both how this factor of marginality comes into play here and also how the ‘politicisation’ of the fight against terrorism reflects the Israeli State’s general orientation toward the radical left. According to Barzilai, a prominent example highlighting the political use of the Ordinance for the Prevention of Terrorism is found in the amendment made to the ordinance in 1986 (paragraph 4h). The purpose of this modification (championed by the Likud Party) was the prevention of meetings between Israeli left-wing activists and Palestinian representatives. Ultimately, the Supreme Court had to decide the matter and, choosing to avoid political confrontation, it imposed prison sentences on the leftist activists who took part in such meetings. The almost laughable incongruity of this matter became acutely evident when, during meetings between Rabin Administration and PLO representatives in Oslo in the summer of 1993, official delegates of the Israeli Government found themselves in violation of the regulations of the Prevention of Terror Ordinance. This incident lends further credence to the assumption that groups suffering from weak political backing are more likely than those with stronger backing to be labelled ‘terrorist’ regardless of the degree of threat they pose to the country. By the same token, it is apparent that counter-terrorist policy and the enforcement of counter-terror measures are substantially influenced by political interests and, in this particular instance, the political sway of one party over another in the attempt to preserve a coalition balance of forces.

The Jewish Underground

Further confirmation of the above assumptions from a reverse ideological angle is exemplified in the case of the Jewish Underground, which sprang from the settler movement in Judea, Samaria and Gaza – Gush Emunim. Devoted to the ideology of the ‘Greater Land of Israel’ and inspired by the theology of Rabbi Kook, its principal mode of action – implemented immediately upon its formation – was the construction of illegal settlements in Judea and Samaria, occasionally leading to confrontation with the law authorities, as in the case of the Sebastia settlement in July 1974. Despite that flagrant civil disobedience, the attorney general, with the endorsement of Prime Minister Yitzhak Rabin, chose to avoid bringing the settlers to (criminal) trial.

Gillon’s thesis implies that the decision to refrain from the prosecution of these settlers was not free of political interests: legal considerations were subordinated to the prime minister’s aim to avert needless political confrontation, especially in view of the strong political lobby backing the settlers. Gillon adds that the decision not to enforce the law against these offenders in effect opened a path toward the radicalisation of several members, eventually leading to the ‘Jewish Underground’, the most sophisticated Jewish terrorist organisation in
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Israeli history. Among other actions, its members were responsible for severely disabling the mayors of Ramallah and Nablus in the summer of 1980 by sabotaging their cars\(^7\) and also for the attack on the Islamic College in Hebron about three years later.

In consequence of these acts of aggression, Prime Minister Menahem Begin ordered the security services to take forceful action against the perpetrators. The Shabak was assigned the mission, but, in this instance, the organisation elected to adhere to a more moderate *modus operandi* defined by limited goals. The GSS proceeded to gather all evidence possible in the attempt to bring the culprits to trial. Then, following intensive investigation and the collection of sufficient incriminating evidence, the police and Shabak carried out the bulk of the arrests and began to interrogate suspects, who complied to the full. An interesting fact is that both Gillon, who led the investigation, and Haggai Segal, one of the detainees, reported that the interrogation of suspects was conducted in a civilised manner and without the use of Shabak’s standard methods.\(^7\)

It can therefore be surmised that despite the involvement of the GSS in the investigation of the Underground, it would be difficult to classify this as a case typical of the ‘extended criminal justice model’, because the Shabak’s role in this case was in effect restricted to standard police procedures. The process of convicting the organisation’s members also backs up the assumption that, in this instance, the State preferred to remain faithful to a more light-handed, so to speak, policy of counteraction. Unlike its treatment of the underground movements of the 1950s, Israel elected this time not to use the legal methods of the ‘extended criminal justice model’; in other words, it did not declare the movement to be terrorist, nor did it establish a special court or exercise other administrative measures against members and supporters of the Jewish Underground. All members of the movement stood criminal trial and were brought before a criminal court of law.

A short while after they were convicted (the gravest offence was murder), a great deal of political pressure was applied to grant them pardon. This pressure was so effective that in a matter of years not one member of the Underground remained behind bars. This is clearly illustrative of the reason for Israel’s adherence to the ‘criminal justice model’. The State’s relatively liberal response to the most sophisticated and brutal Jewish terrorist organisation the country has known was a result of exactly the same circumstances which led it to react to marginal and minimally threatening movements with much more severity and ironfisted measures.

The ruling elite and the designers of Israeli defence policy opted not to respond to the Jewish Underground on account of the threat it posed or the severity of its actions, but rather on the basis of the political and public clout to which it had access. The Underground benefited from broad public support, principally among religious Zionists and right-wing parties, e.g. the Mafdal and
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the Tehiyah, and even the former Prime Minister Yitzhak Shamir unreservedly supported the pardoning of organisation members.74

An additional factor helping to solve this analytic puzzle is the security forces’ and the State’s adherence to certain conceptions, in this case cultural conceptions. Members of the religious Zionist camp, who also formed the wellspring of the Underground, had struck a positive chord and earned a dependable reputation in Israeli political discourse. Many ordinary Israeli citizens, as well as politicians, found them to be a rejuvenated image of the authentic Zionist pioneer.75 Unlike members of Kach, who had mostly emigrated from the United States and the USSR, and were therefore strangers to Israeli culture, followers of the Jewish Underground represented the very heart and core of the Zionist–Israeli experience.76 These devotees even ‘captured the hearts’ of their interrogators. According to Gillon,

The atmosphere in the interrogation of the Jewish Underground suspects was quite exceptional. Most of the people arrested were considered all-round ‘excellent boys’, they were officers in the IDF and many of them had served in units which had worked closely with the Shabak. Now, unexpectedly, there was a situation of interrogator and suspect and they were sitting on the side of those being interrogated, in the role of the accused.77

Hence, despite the gravity of the acts committed, the personal background of the terrorists, as well as their political backing, were factors responsible for almost completely upending the type of counter-terror tactics enforced against them.

Uzi Meshulam’s group

Use of the ‘criminal justice model’ in Israel in its purest form can be detected in the State’s response to the ‘Yehud Affair’. This incident began in the winter of 1994 when a religious sect, led by the charismatic Rabbi Uzi Meshulam, began to barricade themselves in the rabbi’s house. The declared goal of this sect was to urge the Government to launch an investigation into the 1950s’ disappearance of Jewish Yemenite children, a social wound that had yet to heal.78 In order to cast off all doubt with regard to the group’s unquestionable militancy and potential for terror, the words of the incumbent Police Inspector-General Assaf Hafetz at a governmental session speak for themselves. Hafetz described the Meshulam coterie as an ‘unprecedented and extreme nationalist terrorist group’. He added that actions committed by the group cannot be anticipated and may lead to disastrous consequences,79 and this evaluation later proved to be not far from the truth. Meshulam’s group confirmed its dangerous potential even in the first days of their fortification, when adherents threatened to use live weapons if and when security forces took action against them.
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But, as noted above, the Israeli response was to handle them with much restraint and to remain within the narrowest limits of the ‘criminal justice model’. The takeover of the group and arrest of its members were conducted by the Israeli police forces who opened fire at the barricaded building only after the first volleys had been discharged by the building’s occupants. After their arrest, Meshulam and his followers stood trial under standard criminal procedure. During the course of the trial, there were reports that Meshulam devotees were dispersed at locations around the country and were intent upon attacking law officials and engaging in vengeful acts of violence in wake of the verdict. These reports, too, did not lead policy-makers to implement the Ordinance for the Prevention of Terrorism against this group, nor to take administrative measures against its members. However, the police exhausted every inch of its authority within the standard criminal procedure in order to investigate group members and use the rigour of law against them.

An effort to grasp why the State chose this course of reaction and continued to adhere almost totally to the ‘criminal justice model’ leads the reader once again to the contentions raised above. As for the marginality-based explanation, Uzi Meshulam and his believers did not benefit from a broad base of support similar to that enjoyed by members of the Jewish Underground. Nonetheless, they were successful in prescribing the public agenda by brandishing an issue that touched a raw nerve in the collective memory of Israeli society. Subsequent to the group’s entrenchment in the Meshulam residence, a political front emerged consisting of public figures and Members of Parliament who demanded a State-run commission of inquiry into the Yemenite children affair. Scrutiny of the political reasons behind this policy reveals that the State of Israel was indeed interested in dropping the matter of the abducted Yemenite children from the political agenda for fear of ethnic riots. If these occurred, any aggressive action taken by the State against Meshulam and his people might serve to keep the issue in the political spotlight and subsequently lend credence to their claim that the State was trying to keep them quiet.

As for the adherence to outdated conceptions – our main argument for the authorities’ handling of this case, Uzi Meshulam’s group operated out of socio-ethnic motivations, traditionally not considered by security forces to be associated with political violence. Policy-makers’ adherence to the notion that Jewish terrorism is solely a result of the ideological cleavage between right and left prevented them from regarding the fortification of an armed sect with a charismatic religious leader as a terrorist threat. Therefore, in this instance, the special security services and more rigorous counter-terror measures were forsaken, and instead the ‘criminal justice model’ was implemented in full.

In view of the outcomes of the above events, it appears that the ‘criminal justice model’ has proved itself to be the most efficacious in comparison to other models employed by the State of Israel. In the July of 1999, Uzi Meshulam was
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released from prison after serving nearly five-and-a-half years of his sentence, on condition that he would be responsible for severely restricting the number of people allowed in his house and limiting his connections with the media. At the time of writing, two years after Meshulam’s release from prison, the leader remains in retirement from political action and his group is dispersed.

The assassination of Prime Minister Yitzhak Rabin

The traumatic incident that brought down the fragile ‘house of cards’ of the Israeli response to political extremism and violence and returned the State to more extended counter-terrorist operations was the assassination of Prime Minister Yitzhak Rabin. On 4 November 1995, at the conclusion of a mass peace rally organised by the Israeli left-wing, the prime minister was shot by a Jewish religious assassin, Yigal Amir, a student of law at the Bar-Ilan University, who regarded the Oslo Agreements as a disaster for the people of Israel and considered Yitzhak Rabin to be a traitor to his country.

The murder of the prime minister was the culmination of an Israeli extremist right-wing crusade spearheaded by nationalist and ultra-orthodox religious factions, which began shortly after the signing of the Oslo Agreements between Israel and the PLO in September 1993. The mounting extremism was marked by severe infractions of the law and clearly illustrates the factors influencing the change in Israeli policies of counter-violence.

In general, the Israeli response to extremism associated with the Oslo Agreements can be divided into two main time-frames. The first, prior to the prime minister’s assassination, was distinguished by a fairly indifferent approach on the part of the law’s authorities to extremists, especially with regard to incitement offences and serious provocations against the legitimacy of the ruling Government. The second, post-assassination, frame, was marked by the persecution of agitators and the use of a variety of measures at government’s disposal against those who had incited and rebelled against the Rabin Government. The hasty shift from an initially fairly indifferent standard to a position bordering on panic demonstrates the lack of a clear and consistent policy to counter extremist and violent elements. Furthermore, the running of the country in the first few months after the prime minister’s violent death was a prominent indication of the considerable problems involved when a state, on one hand, lacks a fixed policy of enforcement and, on the other, has recourse to a wide array of legal and semi-legal measures in its response to extremist phenomena.

The events of the first days following Yitzhak Rabin’s assassination were instructive of the depth of the shock to the security system and institutions of law and enforcement. Three days after the assassination, the headline ‘Steps to Be Taken Against Extremists’ was spread across the front page of the widely
circulated Israeli daily Yediot Aharonot. The item reported the convening of an emergency council of the Ministry of Justice in reaction to the demand for a more severe penalty against inciters and the need to launch a criminal investigation against individuals who had extolled Rabin’s murder. In fact, a short while after the murder, the Integrated Law Enforcement Task Force against Incitement and Sedition Offenders was instituted. The composition of the force, which included appointees from the army, police, the Shabak and the state attorney, was already enough to indicate the State’s regression from the ‘criminal justice model’.

The most interesting conclusion drawn from an overview of the procedures undertaken by enforcement agencies following the assassination is that while standard criminal proceedings as prescribed by the ‘criminal justice model’ were applied to the murderer and his accomplices, the State’s position regarding the system that formed the conceptual foundations of the murder was fundamentally different.

The extensive assortment of measures exerted upon far right-wing activists, who the State found responsible for providing the religious–idealist license for the murder, found its expression a few weeks after the tragic event. Rabbi Yitzhak Ginsburg, head of the Zealot-oriented yeshiva Ohd Yosef Hai (‘Joseph Still Lives On’), was arrested at the start of 1996 by order of the prime minister and the minister of defence and was put under administrative custody for a period of nineteen days. The rabbi was arrested on account of a pamphlet that he had distributed in September 1994 in praise of the murderer Baruch Goldstein. Shmuel Sitrin and Aryeh Freidman, extreme right-wing activists who expressed support for the murder of the prime minister, were also placed under administrative detention by dint of a warrant signed by the brigadier-general of the Central Command.

In contrast, when David Belhasan, a resident of Kiryat Arba (a Jewish settlement near the city of Hebron), in an interview with the CNN television network, committed a similar offence by expressing joy at the death of the prime minister on the day of his funeral, he was convicted under the Ordinance for the Prevention of Terrorism of declaring words of praise, sympathy and encouragement for a violent act. Belhasan received a suspended prison sentence of three years. The State’s approach with respect to the case of Belhasan – even according to Talia Sasson, director of the state attorney’s Department of Special Duties – was marked by ‘overstated justice’ due to the stormy climate, fomented by the prime minister’s assassination, among members of the prosecution. Indeed, four years after his conviction, Belhasan was acquitted by the Supreme Court. His acquittal was predicated on precedents decreed by Justice Or in his verdict in respect of the journalist Jabarin, according to which the Ordinance for the Prevention of Terrorism may not be applied in the conviction of offences of incitement.
Generally speaking, it seems that in the period following the assassination of the prime minister, enforcement of the Ordinance for the Prevention of Terrorism – also against individuals having no connection with the organisation to which the Ordinance was applied – became the preferred counteractive stratagem of the State. In November 1997, the extreme right-wing activist Michael Ben-Horin, who prepared the book *Baruch Hagever* (‘Baruch the Man’, and Goldstein’s first name) for publication, was sentenced to eight months in prison. This book is entirely devoted to words of praise regarding the actions of the murderer Baruch Goldstein. As a result, Ben-Horin was accused of incitement to racism under paragraph 114b of the Penal Code, but, at the same time was convicted for supporting a terrorist organisation under the ordinance.\(^90\)

Avigdor Eskin, an ex-*Kach* activist who cast the kabalistic death-wish, the *pulsa denura* (Aramaic, meaning, approximately, ‘[to smite with] fiery lashes’), upon Yitzhak Rabin and who, after the latter’s death, told television photographers that the curse had been completely fulfilled and that he was planning next to curse the incumbent Prime Minister Shimon Peres, was also convicted under paragraph 4 of the ordinance, and was sentenced to four months in prison and one year suspended.\(^91\) In October, 2000, he was once again convicted, in compliance with the Ordinance for the Prevention of Terrorism, for commending an act of violence. Found in Eskin’s possession were stickers with the following words printed on them: ‘He will redeem us’ (‘will redeem’ in Hebrew is *yigal*, also the first name of Rabin’s assassin; the meaning of the sticker, therefore, was that the assassin ‘Yigal will save the People of Israel’).\(^92\) In view of the Jabarin precedent and the Belhasan acquittal, the prosecution also withdrew charges levelled against Eskin and acquitted him in both cases.\(^93\)

The Ordinance for the Prevention of Terrorism was not the only means employed in this case. Enforcement authorities also tended to utilise the criminal law whenever an opportunity arose. In the months preceding the prime minister’s assassination, Moshe Feiglin, leader of the *Zu Artzenu* (‘This Is Our Country’) movement, preached as well as practised civil disobedience, primarily by blocking central intersections and carrying out illegal attempts at establishing settlements. For these acts, he was convicted of sedition and for publishing seditious material,\(^94\) and was confined to a half-year in prison and received a one-year suspended sentence.\(^95\) Rabbi Ido Elba, on the other hand, who distributed among his students in April 1994 an article whose theme was ‘Inquiry into the (*Halakhic*) Principles of Killing Gentiles’,\(^96\) was sentenced to two years in jail and received a two-year suspended sentence on the grounds of committing an incitement to racism offence as stipulated in the Penal Code.\(^97\) Two extreme right-wing activists, who brandished signs showing Prime Minister Yitzhak Rabin in SS uniform during an anti-government demonstration in October 1995, were also brought to trial after the murder. In this case, as well, the trial remained within the confines of the criminal law, and they were convicted of
libel; however, at the same time, other right-wing activists who were indicted in the same charge-sheet were accused and convicted of the offence of supporting a terrorist movement.

A number of important conclusions can therefore be drawn. First, every one of the activists affected by state counteractive and penalising measures after the murder of Yitzhak Rabin came from the right-wing fringes and were not affiliated to any of the central political bodies of this camp. In effect, there is clear evidence of a pecking-order in terms of the measures enforced against the various activists of the camp: as activists are closer to the political centre, the State’s means of reprisal becomes more moderate. This complies with the marginality thesis as well as the notion of the politicisation of the governmental response. It is especially interesting in view of the intensive involvement of the mainstream Israeli right in acts of incitement against the prime minister, yet not one single politician from this camp was interrogated in this matter. Further corroboration for the marginality explanation can be found in comments made by Professor Eyal Benvenisti of the Hebrew University, who strongly condemned the State’s heavy-handed policy against offences of incitement, which remained in force even several years after the prime minister’s assassination. In his words, ‘the erosion of the commitment to freedom of expression is responsible for the danger of selective enforcement and the possibility that the bulk of indictments will be served against the weak and eccentric or people whose opinions and expressions may happen to rub the prosecution the wrong way’.

A second inference pertains to the fact that while the State had a wide variety of statutory measures at its disposal for the purpose of accusing and arraigning extremists, in many cases, authorities still preferred to utilise precisely those measures that significantly diverged from the accepted legislative framework of the criminal process. This fact is of special importance because, according to Sasson, it is an indication of how the protection of basic democratic liberties – and, foremost, the freedom of expression – is very important to state enforcement agencies and, as a result, a greatly abbreviated policy was decided upon concerning all aspects of indictments pertaining to issues that might constrain such liberties. However, the test of consequences and Sasson’s testimony itself demonstrate that members of the general prosecution do not make an adequately clear distinction between the more democratic tools such as the Penal Code and the less democratic measures such as the Ordinance for the Prevention of Terrorism and, therefore, often seek to convict a person or group of people under the two frameworks at the same time. Furthermore, decisions made by the general prosecution were not always a direct outcome of the impartial deliberation between the State’s commitment to respond to extremism and the safeguarding of democratic principles. As argued above, extra-legal considerations, such as the prosecution’s emotional state following the prime minister’s assassination, had a significant effect on policy formation.
Jewish extremism and violence

The considerable sensitivity which developed among state prosecutors in relation to incitement offences in the wake of the prime minister’s assassination sparked sharp debate among Israel’s most prominent scholars as to the boundaries of the freedom of expression in the country. Locking horns with those who advocated the enforcement of laws restricting the freedom of expression, many senior Israeli jurists argued against the prosecution and the attorney general. They felt that the extensive regulation of expressions of opinion on the part of citizens and public appointees, whether on the basis of administrative rulings or various legal clauses, suppresses, to a great extent, the freedom guaranteed by the democratic system. These jurists demanded that the State differentiate between the legal and the legitimate: they called for a distinction to be drawn between actions deserving to be tried in a court of law and those warranting a ‘social trial’. Ironically, legal scholars who had previously argued that extremist declarations should be treated using legal and judicial means, argued in this case that extra-judicial means – and, above all, the education system and civil society – are to be preferred. This orientation conforms with our a major contention of this book – to be discussed later – regarding the importance of the education system to democratic principles and to the vibrant functioning of the ‘pro-democratic civil society’ in the process of the transition from a ‘defending democracy’ to the ‘immunised’ trajectory of response.

In summation, the comparative perspective applied to the five cases presented above indicates that despite the appearance of a gradual tendency towards a more restrained policy of response, it seems that variables associated with political or security system considerations and conceptions are of notable impact still on the nature of the response. Hence, it can be posited that, even at the start of the third millennium, a clear-cut policy of counteraction is yet to materialise in Israel and that, in effect, the majority of the decisions reached by systems of security and enforcement are in response to a specific occurrence.

Conclusions

The emerging reality in Israel since its establishment indicates that in contrast to the policy regarding extremist political parties, which has undergone a perceptible process of ‘immunisation’, in relation to the policy of response towards radical and violent movements this process has proven to be more equivocal. However, one cannot overlook the far-reaching changes in the nature of the State’s response to these phenomena in the fifty-three years of its existence. In legal terms, the State of Israel has endeavoured to steer retribution as much as possible in the direction of democratically acceptable frameworks, and therefore it has made an effort to replace emergency-empowered authorities with legal capacities listed in a parliamentary consensus. One of the more prominent
manifestations of this was demonstrated during the Fifteenth Knesset’s term in 
office with the launching of a commission whose role was to evaluate the plau-
sibility of revoking the prolonged state of emergency. However, it seems that 
for as long as the State’s executive order feels that the State is exposed to grave 
security threats, both outside and inside its borders, the chances are remote that 
the emergency state will be retracted or that the Shabak’s role will be delimited 
in a type of legislation befitting a democratic system of government.

The more substantial modifications that took place in Israel’s policy of 
counteraction reside in its operational aspects. In general, the State of Israel in 
itss earliest years already discarded the use of the ‘war model’, that is, the 
approach which holds the army responsible for dealing with Jewish extremism. 
As time passed, and with the adoption of the ‘extended criminal justice model’, 
a more moderate trend became institutionalised, according to which it seemed 
appropriate to entrust the treatment of these phenomena to the Shabak and 
make use of administrative measures. However, in due course, and principally 
with regard to the case of the Jewish Underground, the State sought to refrain 
from overdoing the severity of its response and tried to limit it as much as pos-
sible to the narrower boundaries of the ‘rule of law’, i.e. to the ‘criminal justice 
model’. This tendency reached a peak in the handling of the Meshulam ‘affair’ 
which was limited entirely to the bona fide realms of the rule of law.

What, therefore, is the likelihood that, with the start of the third millen-
nium, the State of Israel will complete its ‘immunising’ process in the many 
respects of its response to Jewish extremism? Prima facie, the State’s general ten-
dency towards moderation, either in its attitude to extremist parties or in its 
approach to radical movements, can be seen as a deterministic process that will 
ultimately lead the Israeli policy of response to reside within genuine frames of 
the ‘rule of law’. Still, a number of major obstacles in the path of this process 
must be accounted for.

First, it is again worth noting the relative weakness of the liberal tradition 
in Israeli political culture. In the absence of an underlying liberal culture, 
the conditions necessary for the adoption of modes of counteraction which 
respect the rights and liberties of the individual cannot prosper. Furthermore, 
the lack of a constitution which defines the State’s principal tenets and ethical 
boundaries does not make it any the easier to determine which counteractive 
measures are legitimate and which are not. Inquiry into the Israeli public’s 
attitudes to these questions reinforces the argument supporting the relatively 
modest status of liberal democratic values in the moral perspective of the 
Jewish society in Israel and reveals that the cultural underpinnings essential for 
significant change and the adoption of a liberal policy of counteraction are still 
shaky.

Although table 2.1 indeed indicates that the Jewish public in Israel tends to 
generally uphold the democratic framework of this country, however, a more
meticulous review of the results shows that in contrast to that disposition, a great part of the population (more than 25 per cent) rejects even the most basic democratic principles. Specifically, 41 per cent objects to the notion of equal social and political rights for all the country’s citizens while, over the course of time, the percentage supporting the equalizing of rights is also gradually declining; 31 per cent objects to public criticism of the government in times of emergency; 62 per cent believes in imposing severe restrictions on democracy also in cases where there is a modest threat to state security; and, finally, 29 per cent prefers to live under a non-democratic government with opinions similar to theirs than to be ruled by a government that was democratically elected but does not represent their opinions.

This multi-faceted system of values has proven to be comfortable ground for the continued existence of Israel as a democracy, but it still underscores the more formal elements at the expense of substantial elements of the democratic polity. The ongoing Israeli–Arab conflict and the Israeli Jewish sense of apprehension regarding the State’s Arab citizens constitute an additional key factor which may

Table 2.1 Commitment to democratic values and attitudes (findings appear as percentages and include the answers ‘agree’ and ‘absolutely agree’)

<table>
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<tr>
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<tbody>
<tr>
<td>The State of Israel must uphold complete equal social and political rights for all its citizens regardless of religion, race or gender</td>
<td>77</td>
<td>69</td>
<td>59</td>
</tr>
<tr>
<td>In emergency situations as well, the government can be publicly and openly criticised</td>
<td>65</td>
<td>–</td>
<td>69</td>
</tr>
<tr>
<td>The lightest threat to state security is enough to justify serious restrictions of democratic rights</td>
<td>26</td>
<td>41</td>
<td>38</td>
</tr>
<tr>
<td>I prefer a democratic government whose opinions and actions are opposed to mine to a non-democratic government with whose opinions I agree</td>
<td>70</td>
<td>62</td>
<td>71</td>
</tr>
</tbody>
</table>

Source: 1994–95 surveys, Peres and Yaar-Yuchtmann 1998, pp. 237–9; the 2001 survey was conducted for the purpose of this study.
have a part in thwarting genuine reform in the Israeli response to extremism. Israeli society, which has been defined by sociologists as a ‘society under siege’, has developed, due to the protracted sense of looming peril, a considerable reliance on its security system and an attitude that comes close to being a veritable glorification of the Shabak and other elite units. A study conducted towards the end of 2000, despite the fact that it followed a lengthy period where the security establishment in general and Shabak in particular underwent noticeable erosion in their public image, fully confirmed the above assumption: 92 per cent of respondents expressed a strong belief in the Israeli Defence Forces (IDF), 90 per cent in Mossad and 85 per cent in Shabak. An opinion poll administered nine years earlier dealing with the attitudes of the Israeli public regarding the judicial system in general and the security context in particular, revealed that 46 per cent of Israeli citizens in this sample were absolutely opposed to judicial criticism served by the Supreme Court of Justice against the defence system’s rulings. In a survey conducted for the purposes of the present research early in 2001, the ‘index’ now stood at 55 per cent of the population objecting to this type of censure. In this case, the Israeli security establishment continues to enjoy the almost complete and unreserved trust of the Israeli public, a fact which provides it with a very generous mandate for its operations.

One point that is of special concern, and which is a direct outcome of the non-liberal character of the Israeli democracy, pertains to the fact that the general propensity of the State’s Jewish residents is for security considerations over democratic ones with regard to internal security. However, a significant gap can be found between their attitude towards Israeli Arabs (militant) and their attitude towards Israeli Jewish residents (liberal). A substantial rejection of the ‘war model’ and, indeed, the ‘extended criminal justice model’ as the preferred responses to extreme right-wing-instigated violence is apparent among the Jewish population sector (only 28 per cent supported the use of military means against violent radical right-wing activists while 42 per cent supported the transition of responsibility for the treatment of these activists from Shabak to the police). It is noteworthy that the attitude towards the response considered appropriate for extremists among the State’s Arab residents is inverse: 62 per cent endorsed the employment of military means in regard to radical and violent actions among Israeli Arabs and 64 per cent supported the notion that the responsibility for dealing with the Arab population continue to be assigned to Shabak and not the Israeli police force. A summary of the results presented above indicates that the Israeli Jewish public may in fact aspire to live in a democratic state, but in each case where there is a conflict between democratic values and security concerns, it exhibits a consistent preference for security interests. In addition, the figures indicating the public’s willingness to apply a more moderate model of response against extremists in the Jewish right-wing bloc still does not indicate a liberal approach; rather, the opposite is true. That the findings are
inverted with regard to Arab Israeli militants and that the majority of the public tends to support the employment of the ‘war model’ against this sector reinforces the assumption that the desire to respond more lightly to right-wing extremists comes from an identification with them and not from an adherence to liberal democratic values.

In conclusion, justice and enforcement systems in Israel would seem to be willing to continue the process, and to adopt the ‘criminal justice model’. Its main principles consist of the liberalisation of the response to extremism and violence and a greater adherence to the fundamentals of the ‘rule of law’ in a democracy. There are, however, still major obstacles to the adoption of this ‘model’ as the Israeli doctrine of response.

The existence of such factors as the defence system’s outdated conceptions, the intrusion of political interests and external events in decision-making on the policy of response and, furthermore, the absence from the immediate context of a distinct constitutional structure and especially its lack of a liberal democratic political culture, make it difficult for the ultimate transition of the Israeli response to Jewish extremism and violence to substantially democratic frameworks. In the ensuing chapters, I attempt to provide an answer to the question, to what extent is it possible to identify the potential for change in Israeli society, in particular concerning its attitude to liberal democratic values, a change which must also supply the social basis for the democracy’s immunising process?

NOTES


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3 Crelinsten and Schmid, ‘Western Responses to Terrorism’, pp. 332–3.
6 Crelinsten and Schmid, ‘Western Responses to Terrorism’, p. 334.
17 The Israeli legislature continues to extend the state of emergency every half-year despite the fact that, in the last few years, there has been vibrant discussion regarding the need to replace the regulations anchored in the state of emergency with an alternative, more accountable, system of legislation which will establish the idea of a fundamental rule of law in the State. Gideon Alon, ‘The Knesset Extended the State of Emergency for Another Six Months’, *Ha’aretz*, 22 December 2000 (Hebrew).
22 Available online at: www.ict.org.il/counter_ter/law/lawdet.cfm?lawid=11
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29 Gillon, Shin-Beth Between the Schisms, p. 425.
32 Sprinzak, Brother Against Brother Violence and Extremism in Israeli Politics, p. 31.
33 Author Unknown, ‘The Searches and Arrests in Tel-Aviv are Continuing’, Yediot Aharonot, 19 September 1948 (Hebrew).
34 Barzilai, ‘Center versus Periphery’, p. 239.
36 Gillon, Shin-Beth Between the Schisms, pp. 407–12.
37 Sprinzak, Brother Against Brother Violence and Extremism in Israeli Politics, p. 61.
38 Anon., ‘Emergency Laws were Implemented against the Zealots’, Yediot Aharonot, 17 May 1951 (Hebrew).
42 Moshe Reinfeld, ‘Kahane Must Also Be Acquitted’, Ha’aretz, 28 November 2000 (Hebrew).
48 Sprinzak, Brother Against Brother Violence and Extremism in Israeli Politics, p. 190.
50 Gillon, Shin-Beth Between the Schisms, p. 91.
51 Kotler, Heil Kahane, p. 144.
52 Gillon, Shin-Beth Between the Schisms, p. 92.
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58 Gideon Meron, ‘Lynch, the Masses Called For’, Yediot Aharonot, 1 January 2001 (Hebrew); Shlomo Tsenza, ‘Mass Funeral and Arab-Bashing’, Ma’ariv, 1 January 2001 (Hebrew).
59 ‘Hundreds Celebrated at the Rally 10 Years to the Murder of Kahane’, news item on Israeli Channel 2, 16 November 2000. Further information can be found at www.israelnews2.co.il
60 Personal interview with Itamar Ben-Gvir, a leading activist of the ex-Kach Movement (1 March 1999).
63 Gillon, Shin-Beth Between the Schisms, ch. 16.
64 Moshe Reinfeld, ‘Why Was Kahane Convicted and Jabarin Acquitted’, Ha’aretz, 28 November 2000 (Hebrew). However, it should be stressed that the offence of sedition itself as it appears in the Penal Code makes it easy for the State to take strong steps against radical political activists; a fact, which according to the Association for Civil Rights in Israel, endangers the freedom of expression in the country (Moshe Reinfeld, ‘Kahane Must Be Acquitted’, Ha’aretz, 28 November 2000 (Hebrew). Confirmation of this approach can be found in the claim put forward by Kremnizer and Gnaim. The latter adopt a liberal perspective according to which the offence of sedition as it appears in the Israeli law books exceeds the accepted limits in a democratic polity, it disproportionately constrains the freedom of expression and does not accord with the principles of lawfulness and clarity. They propose the replacing of the sedition offence with a number of circumscribed punitive restrictions which are defined clearly and explicitly and are meant to prevent indiscriminate enforcement during times of crisis. Mordechai Kremnizer and Khaled Gnaim, Incitement, Not Sedition.
66 Sprinzak, Brother Against Brother Violence and Extremism in Israeli Politics, p. 121.
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73 Gillon, Shin-Beth Between the Schisms, ch. 9; Haggai Segal, Dear Brothers (Jerusalem: Keter Publishing, 1987), ch. 17 (Hebrew).
74 Gillon, Shin-Beth Between the Schisms, p. 156.
77 Gillon, Shin-Beth Between the Schisms, p. 116.
78 The real motive behind the fortification was apparently an escalation of a quarrel between neighbours.
79 Reuven Shapira, ‘Meshulam’s People Wrote Up a “Hit List” which Included Peres, Shachal, Hefetz and Ben-Porat: This Is a Nationalist Movement the Like of Which Has Never Been Seen Before’, Ha’aretz, 15 January 1996 (Hebrew).
81 Interview with Tzadok Chugi, Uzi Meshulam’s lawyer, 2 March 1999.
82 Nina Pinto, ‘Uzi Meshulam Has Been Released from Prison’, Ha’aretz, 8 July 1999 (Hebrew).
84 Anon., ‘Steps to Be Taken against Extremists’, Yedioth Aharonot, 7 November 1995 (Hebrew).
87 Anon., ‘Settler Who Expressed Joy at Rabin’s Murder Was Convicted of Violating the Ordinance for the Prevention of Terrorism’, Ha’aretz, 8 April 1997 (Hebrew).
92 Moshe Reinfeld, ‘Eskin Was Convicted of Commending Violence by Carrying in His Possession Stickers with the Words “He Will Redeem Us”’, Ha’aretz, 11 October 2000 (Hebrew).
94 Moshe Feiglin, Where There Are No Men (Jerusalem: Masada, 1997) (Hebrew).
96 This article also appeared as a chapter in the aforementioned book Baruch Hagever.
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97 Moshe Reinfeld, ‘Halakhic Inquiry or Incitement’, Ha’aretz, 7 October 1996 (Hebrew).
98 Cohen-Almagor, Speech, Media and Ethics, p. 85.
102 Shlomo Avineri, ‘It’s About Capital Cases’, Ha’aretz, 5 February 2001 (Hebrew).
107 Gad Barzilai, Ephraim Yuchtman-Yaar, and Zeev Segal, The Israeli Supreme Court and the Israeli Public (Tel-Aviv: Papyrus, 1994), pp. 100, 216 (Hebrew).